



## **BARINGO COUNTY GOVERNMENT**

### **PROPOSED REHABILITATION OF KABARBESI WATER PAN**

**TENDER NO: BRCG/TNR/MOALF/877515/2020-2021**

**CLOSING DATE: 22<sup>ND</sup> JUNE 2021**

**TIME: AS INDICATED IN IFMIS.**

The Project Manager  
CHIEF OFFICER,  
DEPARTMENT AGRICULTURE  
P.O.BOX 53 - 30400, KABARNET

The Employer  
BARINGO COUNTY GOVERNMENT,  
P.O. BOX 53-30400,  
KABARNET.

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## SECTION I -TENDER NOTICE

The County Government of Baringo wishes to invite interested and eligible bidders to tender for the following;

#	Tender Number	Tender Description	Bid Security Amount
1.	TENDER NO: BRCG/TNR/MOALF/877515/2020- 2021	PROPOSED REHABILITATION OF KABARBESI WATER PAN	Ksh. 239,000.00

Tender documents may be downloaded free of charge from the county government website [www.baringo.go.ke](http://www.baringo.go.ke) or IFMIS portal [www.tenders.go.ke](http://www.tenders.go.ke). Due to pre-tender site visit and pre-tender conference will be done with strict adherence ***Covid 19 pandemic on Monday 7<sup>th</sup> June 2021, as from 1200 noon***, interested bidders are requested to meet at the site, located at Emining ward along Emining- Marigat Road, Baringo. Bidders may contact our offices for any clarification through email address [supplychain@baringo.go.ke](mailto:supplychain@baringo.go.ke).

Complete tender documents must be submitted through **IFMIS SUPPLIER PORTAL:** [supplier.treasury.go.ke](http://supplier.treasury.go.ke) as per the requirements contained in the documents so as to be received on or before the **Tuesday, 22th June 2021 time indicated in IFMIS.**

Manual Submissions **SHALL NOT** be accepted. All tenders must be submitted through the **IFMIS platform.**

**Director Supply Chain Management**  
**BARINGO COUNTY GOVERNMENT**  
**P.O. Box 53-30400, Kabarnet, Kenya**

Tenders must be accompanied by a Bid Security in form of a ***Bank Guarantee*** from a reputable bank or an **insurance company** approved by PPRA and valid for **120 days** from the tender closing/opening date.

## SECTION II - INSTRUCTIONS TO TENDERERS

### 1. General; Eligibility/Qualifications/Joint venture/Cost of tendering

- 1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful tenderer will be expected to complete the Works by the Intended Completion Date specified in the tender documents.
- 1.2 All tenderers shall provide the Qualification Information, a statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or has not been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for the project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to tender.
- 1.3 All tenderers shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 1.4 In the event that pre-qualification of potential tenderers has been undertaken, only tenders from pre-qualified tenderers will be considered for award of Contract. These qualified tenderers should submit with their tenders any information updating their original pre-qualification applications or, alternatively, confirm in their tenders that the originally submitted pre-qualification information remains essentially correct as of the date of tender submission.
- 1.5 Where no pre-qualification of potential tenderers has been done, all tenderers shall include the following information and documents with their tenders , unless otherwise stated:
  - (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer;
  - (b) total monetary value of construction work performed for each of the last three years;
  - (c) experience in works of a similar nature and size for the last five years, and details of work under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts;
  - (d) major items of construction equipment proposed to carry out the Contract and an undertaking that they will be available for the Contract.
  - (e) Qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.
  - (f) reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the past three years;
  - (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
  - (h) authority to seek references from the tenderer's bankers;
  - (i) information regarding any litigation, current or during the last three years, in which the tenderer is involved, the parties concerned and disputed amount; and
  - (j) Proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.
- 1.6 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated:
  - (a) the tender shall include all the information listed in clause 1.5 above for each joint venture partner;

- (b) the tender shall be signed so as to be legally binding on all partners;
  - (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - (d) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of all partners of the joint venture; and
  - (e) The execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 1.7 To qualify for award of the Contract, tenderers shall meet the following minimum qualifying criteria:
- (a) annual volume of construction work of at least 2.5 times the estimated annual cash flow for the Contract;
  - (b) experience as main contractor in construction of at least five years
  - (c) two works of a nature and complexity equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);
  - (d) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Works;
  - (e) a Contract manager with at least five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and
  - (f) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than 4 months of the estimated payment flow under this Contract.
- 1.8 The figures for each of the partners of a joint venture shall be added together to determine the tenderer's compliance with the minimum qualifying criteria of clause 1.7 (a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 1.7 (a), (b) and (e) for an individual tenderer, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's tender. Subcontractors' experience and resources will not be taken into account in determining the tenderer's compliance with the qualifying criteria, unless otherwise stated.
- 1.9 Each tenderer shall submit only one tender, either individually or as a partner in a joint venture. A tenderer who submits or participates in more than one tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the tenderer's participation to be disqualified.
- 1.10 The tenderer shall bear all costs associated with the preparation and submission of his tender, and the Employer will in no case be responsible or liable for those costs.
- 1.11 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.
- 1.12 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 1.13 The procuring entity shall allow the tenderer to review the tender document free of charge.

## 2. Tender Documents

- 2.1 The complete set of tender documents comprises the documents listed below and any addenda issued in accordance with Clause 2.4.
- (a) These Instructions to Tenderers
  - (b) Appendix to Instructions to Tenderers
  - (c) Conditions of Contract
  - (d) Appendix to Conditions of Contract
  - (e) Specifications
  - (f) Drawings
  - (g) Bills of Quantities
  - (h) Standard Forms
- 2.2 The tenderer shall examine all Instructions, Forms to be filled and Specifications in the tender documents. Failure to furnish all information required by the tender documents, or submission of a tender not substantially responsive to the tendering documents in every respect will be at the tenderer's risk and may result in rejection of his tender.
- 2.3 A prospective tenderer making an inquiry relating to the tender documents may notify the Employer in writing or by cable, telex or facsimile at the address indicated in the letter of invitation to tender. The Employer will only respond to requests for clarification received earlier than seven days prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.
- 2.4 Before the deadline for submission of tenders, the Employer may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all tenderers. Prospective tenderers shall acknowledge receipt of each addendum in writing to the Employer.
- 2.5 To give prospective tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders, in accordance with Clause 4.2 here below.

### **3. Preparation of Tenders**

- 3.1 All documents relating to the tender and any correspondence shall be in English language.
- 3.2 The tender submitted by the tenderer shall comprise the following:
- (a) These Instructions to Tenderers, Appendix to Instructions to Tenderers, Conditions of Contract, Appendix to Conditions of Contract and Specifications;
  - (b) Form of Tender
  - (c) Tender Security;
  - (d) Priced Bill of Quantities ;
  - (e) Qualification Information Form and other Standard Forms;
  - (f) Alternative offers where invited; and
  - (g) Any other materials required to be completed and submitted by the tenderers.
- 3.3 The tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause relevant to the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the tenderer.

- 3.4 The rates and prices quoted by the tenderer shall only be subject to adjustment during the performance of the Contract if provided for in the Appendix to Conditions of Contract and provisions made in the Conditions of Contract.
- 3.5 The unit rates and prices shall be in Kenya Shillings.
- 3.6 Tenders shall remain valid for a period of one twenty (120) days from the date of submission. However in exceptional circumstances, the Employer may request that the tenderers extend the period of validity for a specified additional period. The request and the tenderers' responses shall be made in writing. A tenderer may refuse the request without forfeiting the Tender Security. A tenderer agreeing to the request will not be required or permitted to otherwise modify the tender, but will be required to extend the validity of Tender Security for the period of the extension, and in compliance with Clause 3.7 - 3.11 in all respects.
- 3.7 The tenderer shall furnish, as part of the tender, a Tender Security in the amount and form specified in the appendix to invitation to tenderers. This shall be in the amount not exceeding 2.5 percent of the tender price
- 3.8 The format of the Tender Security should be in accordance with the form of Tender Security included in Section G - Standard forms or any other form acceptable to the Employer. Tender Security shall be valid for 30 days beyond the validity of the tender.
- 3.9 Any tender not accompanied by an acceptable Tender Security shall be rejected. The Tender Security of a joint venture must define as "Tenderer" all joint venture partners and list them in the following manner: a joint venture consisting of".....", ".....", and ".....".
- 3.10 The Tender Securities of unsuccessful tenderers will be returned within 28 days of the end of the tender validity period specified in Clause 3.6.
- 3.11 The Tender Security of the successful tenderer will be discharged when the tenderer has signed the Contract Agreement and furnished the required Performance Security.
- 3.12 The Tender Security may be forfeited
- (a) if the tenderer withdraws the tender after tender opening during the period of tender validity;
  - (b) if the tenderer does not accept the correction of the tender price, pursuant to Clause 5.7;
  - (c) in the case of a successful tenderer, if the tenderer fails within the specified time limit to
    - (i) sign the Agreement, or
    - (ii) Furnish the required Performance Security.
- 3.13 Tenderers shall submit offers that comply with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. Alternatives will not be considered, unless specifically allowed in the invitation to tender. If so allowed, tenderers wishing to offer technical alternatives to the requirements of the tendering documents must also submit a tender that complies with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. In addition to submitting the basic tender, the tenderer shall provide all information necessary for a complete evaluation of the alternative, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of  
**The lowest evaluated tender conforming to the basic technical requirements shall be considered**

- 3.14 The tenderer shall prepare one original of the documents comprising the tender documents as described in Clause 3.2 of these Instructions to Tenderers, bound with the volume containing the Form of Tender, and clearly marked "ORIGINAL". In addition, the tenderer shall submit copies of the tender, in the number specified in the invitation to tender, and clearly marked as "COPIES". In the event of discrepancy between them, the original shall prevail.
- 3.15 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer, pursuant to Clause 1.5 (a) or 1.6 (b), as the case may be. All pages of the tender where alterations or additions have been made shall be initialed by the person or persons signing the tender.
- 3.16 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 3.17 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.
- 3.18 The tender security shall be in the amount and in the form stated in the Invitation for Tender.

#### **4. Submission of Tenders IFMIS PORTAL**

#### **5. Tender Opening and Evaluation**

- 5.1 The tenders will be opened by the Employer, including modifications made pursuant to Clause 4.4, in the presence of the tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender. Envelopes marked "WITHDRAWAL" shall be opened and read out first. Tenderers' and Employer's representatives who are present during the opening shall sign a register evidencing their attendance.
- 5.2 The tenderers' names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as may be considered appropriate, will be announced by the Employer at the opening. Minutes of the tender opening, including the information disclosed to those present will be prepared by the Employer.
- 5.3 Information relating to the examination, clarification, evaluation, and comparison of tenders and recommendations for the award of Contract shall not be disclosed to tenderers or any other persons not officially concerned with such process until the award to the successful tenderer has been announced. Any effort by a tenderer to influence the Employer's officials, processing of tenders or award decisions may result in the rejection of his tender.
- 5.4 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may ask any tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.7.
- 5.5 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender (a) meets the eligibility criteria defined in Clause 1.7;(b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the tendering documents. A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. A



material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the works; (b) which limits in any substantial way, inconsistent with the tendering documents, the Employer's rights or the tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.

- 5.6 If a tender is not substantially responsive, it will be rejected, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 5.7 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:
- (a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
  - (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.
  - (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.
  - (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work (i.e. Corrected tender sum less P.C. and Provisional Sums)
  - (e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.
  - (f) the amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with Concurrence of the tenderer shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11.
- 5.8 The Employer will evaluate and compare only the tenders determined to be substantially responsive in accordance with Clause 5.5.
- 5.9 In evaluating the tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:
- (a) making any correction for errors pursuant to clause 5.7;
  - (b) Excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Day works where priced competitively.
  - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and
  - (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 4.6
- 5.10 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in tender evaluation.

- 5.11 The tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.
- 5.12 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a Non-indigenous sub-contractor.

## **6. Award of Contract**

- 6.1 Subject to Clause 6.2, the award of the Contract will be made to the tenderer whose tender has been determined to be substantially responsive to the tendering documents and who has offered the lowest evaluated tender price, provided that such tenderer has been determined to be (a) eligible in accordance with the provision of Clauses 1.2, and (b) qualified in accordance with the provisions of clause 1.7 and 1.8.
- 6.2 Notwithstanding clause 6.1 above, the Employer reserves the right to accept or reject any tender, and to cancel the tendering process and reject all tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the action.
- 6.3 The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum (hereinafter and in all Contract documents called the "Contract Price") that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time the other tenderers shall be informed that their tenders have not been successful. The contract shall be formed on the parties signing the contract.
- 6.4 The Agreement will incorporate all agreements between the Employer and the successful tenderer. Within 14 days of receipt the successful tenderer will sign the Agreement and return it to the Employer.
- 6.5 Within 21 days after receipt of the Letter of Acceptance, the successful tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and specified form
- 6.6 Failure of the successful tenderer to comply with the requirements of clause 6.5 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.
- 6.7 Upon the furnishing by the successful tenderer of the Performance Security, the Employer will promptly notify the other tenderers that their tenders have been unsuccessful.
- 6.8 Preference where allowed in the evaluation of tenders shall not be allowed for contracts not exceeding one year (12 months)
- 6.9 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 6.10 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

- 6.11 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
  - 6.12 Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.
  - 6.13 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.
  - 6.14 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
  - 6.15 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
  - 6.16 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.
- 7. Corrupt and Fraudulent practices**
- 7.1 The procuring entity requires that tenderers observe the highest standards of ethics during procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.

**SECTION III (A) - APPENDIX TO INSTRUCTIONS TO TENDERERS - REQUIREMENTS**

- 1.1. General;  
Where there is a contradiction between Section II– Instructions to Tenderers and Section III- Appendix to Instructions to Tenderers, the latter (Section III - Appendix to Instruction to Tenderers) shall be the reference;
- 1.2. Under Section II – Instructions to Tenderers, line 2.1, add (h) - Invitation to Tender
- 1.3. Delete the whole of lines 1.3, 1.5, and 1.7 of Section II – Instructions to Tenderers and replace with below table of **mandatory requirements below**. Eligible tenders must meet & submit the following information in the form requested under ‘**Documentation Required**’ column in order to qualify for further evaluation;

**Table 1 – Mandatory Requirements**

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
<b>Statutory and General Requirements</b>							
Registration as a Company	Bidder Must be a legally constituted firm according to the laws of Kenya and must have been in operation for at <b>least 4 years as per certificate of incorporation</b>	<i>Must meet requirement</i>	<i>N/A</i>	<i>Must meet requirement</i>	<i>N/A</i>	Certificate of Incorporation; <ul style="list-style-type: none"> <li>Fully completed - Confidential Business Questionnaire – <b>Section VIII of Standard Forms</b></li> </ul>	
Tax Compliance	Bidder <b>MUST</b> be Tax Registered and be Tax Compliant	<i>Must meet requirement</i>	<i>N/A</i>	<i>Must meet requirement</i>	<i>N/A</i>	<ul style="list-style-type: none"> <li>Current and valid Tax Compliance Certificate – valid as of submission deadline.</li> </ul>	
Physical address	Must have a physical office and works yard	<i>Must meet requirement</i>	<i>N/A</i>	<i>Must meet requirement</i>	<i>N/A</i>	<ul style="list-style-type: none"> <li>Current and valid Single Business Permit as of the submission deadline.</li> </ul>	

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
CR12	Must show the list of directors and percentage of shares of shareholder/s printed within the past recent six (6) months	<i>Must meet requirement</i>	<i>N/A</i>	<i>Must meet requirement</i>	<i>N/A</i>	<ul style="list-style-type: none"> <li>A certificate of current CR12 MUST be attached</li> </ul>	
Registration by National Construction Authority	At least category <b>NCA 6 for water works</b> <b>NCA 6 For Building works</b>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<i>Must meet requirement.</i>	<ul style="list-style-type: none"> <li>Current and valid NCA categorization as per requirements column;</li> <li>Current and valid annual practising certificate for the above.</li> </ul>	
Tender Sum and Tender Validity Period- form of tender	Bidder shall quote the Tender Sum and Validity period and as per Invitation to Tenders	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<ul style="list-style-type: none"> <li>Completed Form of Tender – <b>Section VIII of Standard Forms</b></li> </ul>	
Bid Security	The Bidder shall furnish as part of its bid, a bid security in form as specified under <b>Section I - Invitation to Tenders.</b>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<ul style="list-style-type: none"> <li>The Bidder shall furnish as part of its bid, a bid security in form as specified under <b>Section I - Invitation to Tenders;</b></li> <li>In the format of – <b>Section VIII – Standard Forms – Form of Tender Security</b> and clearly indicating validity period/period under which claims may be made.</li> </ul>	

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Site visit	The bidder must attend a site visit	<i>Must meet requirement</i>	<i>Must meet requirement</i>	N / A	N / A	<ul style="list-style-type: none"> <li>The bidder must provide a Signed copy of the site certificate</li> </ul>	
Sanctity of the bid document	Having the document intact, legible, sequential pagination/serialization of all pages including attachments, well bound, (not tempered with in any way and signed by the authorized person - granted by power of attorney)	<i>Must meet requirement</i>	<i>Must meet requirement</i>	N / A	N / A	<p>Properly prepared Bid which should :-</p> <ul style="list-style-type: none"> <li>Be sequentially serialized from front page to last page including all attachments;</li> <li>Stamping, signing, and dating where required within the document including the standard form.</li> </ul>	
<b>Bidding Forms and Other Requirements</b>							
Bidder Information	The bidder is to complete mandatory standard forms.	<i>Must meet requirement</i>	N / A	<i>Must meet requirement</i>	N / A	<p>Fully completed Standard Forms;</p> <ul style="list-style-type: none"> <li><b>Form of Tender;</b></li> <li><b>Qualification information form;</b></li> <li><b>Tender Questionnaire;</b></li> <li><b>Confidential Business Questionnaire;</b></li> <li><b>Details of Sub-Contractors</b></li> <li><b>Schedule of Plant and Equipment;</b></li> <li><b>Schedule of Particulars</b></li> </ul> <p><b>Section VIII – Standard forms</b></p>	

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Joint Venture Documents	Bids submitted by a JV shall include a Joint Venture Agreement entered into by all partners.	N / A	Must meet requirement	N/A	N / A	<ul style="list-style-type: none"> <li>Joint Venture Agreement properly executed by a commissioner of oaths;</li> <li><b>Completed Qualification Information Form - Section VIII – Standard Forms</b></li> </ul>	
Schedule of Unit Rates	The Schedules - the Bill of Quantities shall be prepared.	Must meet requirement	Must meet requirement	N / A	N / A	<ul style="list-style-type: none"> <li>Completed schedule of unit rates (The Bills of Quantities), with rates consistently applied for similar items within the Bills of Quantities;</li> <li>No frontloading from 1 above.</li> </ul>	
<b>Eligibility</b>							
<b>Historical Contract Non-Performance</b>							
Pending Litigation/Litigation History & Bidder debarment/Bidder ineligibility	<ul style="list-style-type: none"> <li>The bidder to declare pending litigation and the values of the cases citing whether these litigation could adversely affect going concern of the bidder or smooth delivery/completion of the project in question.</li> </ul>	Must meet requirement	N / A	Must meet requirement	N / A	<b>Completed Qualification Information Form - Section VIII – Standard Forms</b>	
<b>Financial Situation</b>							
Historical Financial Performance	Submission of audited reports for the last three financial years (2018, 2019 and 2020)	Must meet requirement	Must meet requirement	N/A	N / A	Audited financial reports for the last three years (2018, 2019 and 2020) certified by a CPA(K) auditor and consistent with	

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
						<b>Section VIII - Standard Form - Qualification Information Form</b>	
Average Annual Turnover	Minimum average annual turnover of Kenya Shillings at least KES 80 Million for the last three years as demonstrated by the audited financial statements	<i>Must meet requirement</i>	<i>Must meet requirement</i>	N/A	<i>Must meet requirement</i>	Audited financial reports for the last three years (2018, 2019 and 2020) certified by a CPA(K) auditor and consistent with <b>Section VIII - Standard Form - Qualification Information Form</b>	
<b>Experience</b>							
General Experience ( Years of Experience)	<b>The company must have been in operation for at least 5 years.</b>	<i>Must meet requirement</i>	<i>Must meet requirements</i>	<i>Must meet requirement</i>	N/A	Certificate of incorporation	
Specific Experience	Participation as contractor, management contractor, or subcontractor, in at least three (3) water works contracts each with a value of at least KShs 80million within the last five (5) years (2016 to 2020), or combined water works experience of KShs 50M over the same period. <b>The water works should have been</b>	<i>Must meet requirement</i>	<i>Must meet requirements</i>	N/A	N/A	<ul style="list-style-type: none"> <li>List of projects – Name, Contracting Authority, project/contract budget, when completed, and contract amounts in monetary terms. This information should be summarised under <b>Section VIII Standard Forms - Qualification Information Form;</b></li> <li>Corresponding <b>award letters,</b></li> </ul>	



Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
	successfully & fully completed and that are of the same nature to the proposed Works and should be supported by work completion & site handover certificate					project completion certificates, contracts etc. Mere listing without proofs – award/contract letters, completion and handover certificates will not be considered.	

NOTE: Tenderers/Bidders must meet all Mandatory Requirements to be considered for Technical Evaluation

**SECTION III (B) - APPENDIX TO INSTRUCTIONS TO TENDERERS – EVALUATION**

**1.1. Evaluation Criteria**

Evaluation criteria shall comprise two stages (1) Technical Evaluation and (2) Financial Evaluation

**1.1.1. Technical Evaluation Criteria**

**Technical Evaluation shall comprise scoring of bidders under various attributes in the table below – Table of Scoring Matrix.** To earn maximum scores, a bidder must (1) provide supporting documents as per criteria (2) provide very precise/specific and relevant information as per criteria (3) provide as many/much information as possible to earn more points. **A bidder must score a minimum of 70% points to be considered for Financial Evaluation**

**Table of Scoring Matrix**

**Summary of Technical Score**

<b>Sub-Factor</b>	<b>Requirement</b>	<b>Maximum score</b>	<b>Awarded score</b>
<b>Financial Situation</b>			
Current Ratio defined as how many times current assets cover current liabilities ( Current Assets Divided(/) by Current Liabilities	<b>Audited financial report for the last Two (2 number) years 2019 &amp; 2020 - (choose either of the qualification below):</b>		
	Average Current Ratio of Two (2Number) and above	7	
	Average Current Ratio of One(1) and below Two (2Number)	5	
Annual Turnover defined as Gross Sales/Gross revenue that does not include sale of Capital Assets	<b>Audited financial report for the last Two (2 number) years 2019 &amp; 2020(choose either of the qualification below):</b>		
	• Average Annual Turnover above 50 Million/Year	8	
	• Average Annual Turnover of up to 30 Million/Year	5	
	• Average Annual Turnover of up to 20Million/Year Average annual turnover for the two years above KES5Million	3	
<b>Financial Capacity</b>		<b>15</b>	
<b>EXPERIENCE</b>			
Contract implemented & completed in the past ten (5number) years related to building works and project inquestion (2016 to 20120)	Information on past completed works of similar nature, complexity and magnitude. Bidders MUST provide (1) Offers Letters or Contract Letters/LPOs clearly stipulatingthe contract value/amounts in question, (2) Work/Project Completion Certificates & completed Section IX – Standard Forms – Qualification Information Form (choose either of the qualification below):		
	Contracts value above KES100M	15	
	Contracts value up to KES_50M	8	
	Contracts value up to KES25M	4	
Experience in implementingbuilding works projects in difficulty to reach areas	Projects of similar nature, complexity and magnitude - atleast project(s) worth above KES30M single or combined	10	
	Projects of similar nature, complexity and magnitude - atleast project(s) worth KES12M single or combined	4	
<b>Past &amp; Specific Experience</b>		<b>25</b>	

<b>Key Personnel</b>			
<p><b>Schedule of Bidder's proposed personnel and their experience.</b> Attach CV describing the person, education background, years of experience, key experience as per the requirements column &amp; evidence of qualification (certificates, recommendations, service completion certificates etc.). <b>To earn maximum points, tenderers must make sure education qualification, experience in similar works and position are well described and backed with evidences. Tenderers must also complete section IX – Standard Forms</b></p>			
<b>Sub-Factor</b>	<b>Requirement</b>	<b>Maximum score</b>	<b>Awarded score</b>
Project Manager	I. Degree in Civil Engineering, Building Economics, Quantity Surveyor or Architectural Engineering field = 2 point. II. Diploma in Civil Engineering, Building Economics, Quantity Surveyor or Architectural Engineering field = 1 point	2	
	I. Similar Works Experience for recent 5 years(2016,2017,2018, 2019 and 2020). each year 1 point.	5	
	I. . Experience in position of team leader/project manager in similar projects (5 projects). Each projects = 1 point.	5	
Site Agent	I. Degree in Civil Engineering or Projects Management = 2 point, II. Diploma in Civil Engineering or Projects Management = 1 point,	2	
	I. Similar Works Experience (Over 5 years = 3 points). II. Similar Works Experience (Below 5 years = 2 points),	3	
	I. Experience in position of Site Agent in similar projects (More than 5 projects = 3 points). II. Experience in position of Site Agent in similar projects (Below 5 projects = 2 points)	3	
<b>KEY PERSONNEL</b>		<b>20</b>	
<b>Key Equipment</b>			
<p><b>Proof of equipment ownership</b> -Logbooks/lease agreements in the name of the bidder/or any other verifiable proofs including purchase receipts for im/mobile equipment without logbooks/registration documents. <b>To earn maximum points, tenderers must make sure that extra equipment/machinery is well supported with ownership/lease agreement documents.</b></p>			
Dump Truck	Schedule of contractor's Dump Truck ( <i>Attach proof or evidence of ownership/lease</i> )		
	• At least one (1) quantity	3	
Pick-Up Truck	Schedule of contractor's Pick Ups ( <i>Attach proof or evidence of ownership/lease</i> )		
	• At least one	2	
Key Equipment		<b>5</b>	
Properly filled bill of quantities		<b>5</b>	

### Summary of Technical Score

Item	Category	Maximum Score	Awarded Score
1	Financial Capacity	15	
2	Past and Specific Experience	25	
3	Key Personnel	20	
4	Equipment	5	
5	Properly filled bill of quantities	5	
	<b>TECHNICAL SCORE, Ts</b>	<b>70</b>	

**Bidder must score a minimum of 70% on technical evaluation to qualify for financial evaluation.**

Evaluation Notes:

1. Only Bidders meeting all Mandatory requirements will be considered for Technical evaluation.
2. Pass scores for the technical evaluation is 70%.
3. Financial evaluation will only apply to those who meet Technical requirements:
4. The lowest evaluated bidder that meets both technical and financial evaluation criteria shall be awarded the contract.

#### **1.1.2. Financial Evaluation**

All tenders that shall qualify from technical evaluation shall be considered for financial evaluation. Financial evaluation shall involve;

- Evaluation of completeness of the tender sum. The Form of Tender of Tender must be properly completed, amounts in words and figures and signed and stamped where appropriate;
- Bid Sum comparisons. All bids shall be compared and ranked according to their bid sums from the lowest bid sum to the highest.

#### **1.1.2 Award Criteria**

The lowest evaluated Tenderer that shall have attained the highest score in both technical and financial combined shall be awarded. After a successful tenderer due diligence whose essence shall be to confirm the correctness of information provided during the bidding process may be conducted. If the bidder is found to have given false information, the bidder shall be disqualified automatically without further reference to the bidder and in such a case the next second lowest bidder shall be considered subject to the same verification processes.

## SECTION IV - CONDITIONS OF CONTRACT

### 1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Project Manager”** is the person named in the Appendix to Conditions of Contract (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract and shall be an “Architect” or a “Quantity Surveyor” registered under the Architects and Quantity Surveyors Act Cap 525 or an “Engineer” registered under Engineers Registration Act Cap 530.

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

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

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

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

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

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

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

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

## **2. Interpretation**

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the Appendix to Conditions of Contract, reference in the Conditions of Contract to the Works, the Completion Date and the Intended Completion Date apply to any section of the Works (other than references to the Intended Completion Date for the whole of the Works).
- 2.3 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;
  - (1) Form of Agreement,
  - (2) Letter of Acceptance,
  - (3) Contractor’s Tender,
  - (4) Conditions of Contract,
  - (5) Appendix to Conditions of Contract,
  - (6) Specifications,

- (7) Drawings,
- (8) Bill of Quantities,
- (9) Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.

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

### **3. Language and Law**

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

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

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

### **5 Delegation**

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

### **6 Communications**

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

### **7 Subcontracting**

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

### **8 Other Contractors**

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

### **9 Personnel**

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

### **10 Works**

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

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

- 11.1 The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.
- 11.2 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent Works, shall be subject to prior approval by the Project Manager before they can be used.
- 11.3 The Contractor shall be responsible for the safety of all activities on the Site.

**12. Discoveries**

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

**13. Work Program**

- 13.1 Within the time stated in the Appendix to Conditions of Contract, the Contractor shall submit to the Project Manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works. An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining Work, including any changes to the sequence of the activities.

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

**Possession of Site**

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

**14. Access to Site**

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

**15. Instructions**

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

**16. Extension or Acceleration of Completion Date**

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



the Contractor asking the Project Manager in writing for a decision upon the effect of a Compensation Event or variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay caused by such failure shall not be considered in assessing the new (extended) Completion Date.

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

## **17. Management Meetings**

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

## **18. Early Warning**

- 18.1 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.
- 18.2 The Contractor shall cooperate with the Project Manager in making and considering proposals on how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the Work and in carrying out any resulting instructions of the Project Manager.

## **19. Defects**

- 19.1 The Project Manager shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a defect and to uncover and test any Work that the Project Manager considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor, However, if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.
- 19.2 The Project Manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.
- 19.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Project Manager's notice. If the Contractor has not corrected a defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

## **20. Bills Of Quantities**

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

- 20.2 If the final quantity of the Work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the Initial Contract price, the Project Manager shall adjust the rate to allow for the change.
- 20.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bills of Quantities.

## **21. Variations**

- 21.1 All variations shall be included in updated programs produced by the Contractor.
- 21.2 The Contractor shall provide the Project Manager with a quotation for carrying out the variations when requested to do so. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period as may be stated by the Project Manager and before the Variation is ordered.
- 21.3 If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the variation does not correspond with items in the Bills of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 21.4 If the Contractor's quotation is unreasonable, the Project Manager may order the variation and make a change to the Contract price, which shall be based on the Project Manager's own forecast of the effects of the variation on the Contractor's costs.
- 21.5 If the Project Manager decides that the urgency of varying the Work would prevent a quotation being given and considered without delaying the Work, no quotation shall be given and the variation shall be treated as a Compensation Event.
- 21.6 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 21.7 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.

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

- 22.1 The Contractor shall submit to the Project Manager monthly applications for payment giving sufficient details of the Work done and materials on Site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the monthly application and certify the amount to be paid to the Contractor within 14 days. The value of Work executed and payable shall be determined by the Project Manager.
- 22.2 The value of Work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed; materials delivered on Site, variations and compensation events. Such materials shall become the property of the Employer once the Employer has paid the Contractor for their value. Thereafter, they shall not be removed from Site without the Project Manager's instructions except for use upon the Works.
- 22.3 Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. If the Employer makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of

number of days delayed at a rate three percentage points above the Central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.

- 22.4 If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 22.5 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
- 22.6 The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Appendix to Conditions of Contract. If the Contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services the Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The Employer and the Project Manager shall be notified promptly by the Contractor of an changes in the expected foreign currency requirements of the Contractor during the execution of the Works as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.
- 23.7 In the event that an advance payment is granted, the following shall apply:-
- a) On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 10% (ten percent) of the original amount of the Contract. The advance shall not be subject to retention money.
  - b) No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.
  - c) Reimbursement of the lump sum advance shall be made by deductions from the Interim payments and where applicable from the balance owing to the Contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the Contract. It shall have been completed by the time 80% of this amount is reached.

The amount to be repaid by way of successive deductions shall be calculated by means of the formula:

$$R = \frac{A(x^1 - x^{11})}{80 - 20}$$

Where:

R = the amount to be reimbursed

A = the amount of the advance which has been granted

X<sup>1</sup> = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 20% but not exceed 80%.

X<sup>11</sup> = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80% but not less than 20%.

- d) With each reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.

### 23. Compensation Events

23.1 The following issues shall constitute Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Appendix to Conditions of Contract.
- (b) The Employer modifies the List of Other Contractors, etc., in a way that affects the Work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon the Work, which is then found to have no defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site investigation reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The effects on the Contractor of any of the Employer's risks.
- (j) The Project Manager unreasonably delays issuing a Certificate of Completion.
- (k) Other compensation events described in the Contract or determined by the Project Manager shall apply.

23.2 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.

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

23.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.

23.5 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.

23.6 The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

Provided always that should the event giving rise to the claim of continuing effect, the Contractor shall submit an interim claim within the said thirty days and a final claim within thirty days of the end of the event giving rise to the claim.

## 24. Price Adjustment

- 24.1 The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.
- 24.2 The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works. Unless otherwise stated in the Contract, if at any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case may be.
- 24.3 Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manner set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified thereunder;
- (i) The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other Emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C.) and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.
  - (ii) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.
  - (iii) No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.
- 24.4 The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the Works as determined by the J.B.C. and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.
- 24.5 Upon the J.B.C. determining that any of the said basic prices are increased or decreased then the Contract Price shall be increased or decreased by the amount to be assessed by the Project Manager based upon the difference between the price set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of the relevant materials which have not been taken into

account in arriving at the amount of any interim certificate under clause 23 of these Conditions issued before the date of publication of such increase or decrease.

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

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

## **25. Retention**

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

## **26. Liquidated Damages**

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

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

## **27. Securities**

27.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a reputable bank acceptable to the Employer, and denominated in Kenya Shillings. The Performance Security shall be valid until a date 30 days beyond the date of issue of the Certificate of Completion.

## **28. Day works**

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

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

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

## **29. Liability and Insurance**

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

(a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to;

(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or

- (ii) negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
  - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in Employer's design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.
- 29.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is the Employer's risk except loss or damage due to;
- (a) a defect which existed on or before the Completion Date.
  - (b) an event occurring before the Completion Date, which was not itself the Employer's risk
  - (c) the activities of the Contractor on the Site after the Completion Date.
- 29.3 From the Start Date until the Defects Correction Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risk are Contractor's risks.
- The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Appendix to Conditions of Contract for the following events;
- (a) loss of or damage to the Works, Plant, and Materials;
  - (b) loss of or damage to Equipment;
  - (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.
- 29.4 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.
- 29.5 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 29.6 Alterations to the terms of insurance shall not be made without the approval of the Project Manager. Both parties shall comply with any conditions of insurance policies.

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

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

### **31. Final Account**

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

Manager shall issue within 30 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate. The Employer shall pay the Contractor the amount due in the Final Certificate within 60 days.

### **32. Termination**

- 32.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;
- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been 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 Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.
  - (e) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
  - (f) The Contractor does not maintain a security, which is required.
- 32.2 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Clause 33.1 above, the Project Manager shall decide whether the breach is fundamental or not.
- 32.3 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 32.4 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible. The Project Manager shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

### **33. Payment Upon Termination**

- 33.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the Work done and materials ordered and delivered to Site up to the date of the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor.
- 33.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the Work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works.
- 33.3 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on the Site, plant, equipment and temporary works.
- 33.4 The Contractor shall, during the execution or after the completion of the Works under this clause remove from the Site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Employer may (without



being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor. Until after completion of the Works under this clause the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Project Manager shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

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

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

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

35.1 The Contractor shall not;

- a. Offer or give or agree to give to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for the Employer or for showing or forbearing to show favor or disfavor to any person in relation to this or any other contract for the Employer.
- b. Enter into this or any other contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer. Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement Regulations issued under The Exchequer and Audit Act Cap 412 of the Laws of Kenya.

#### **36. Settlement Of Disputes**

36.1 In case any dispute or difference shall arise between the Employer or the Project Manager on his behalf and the Contractor, either during the progress or after the completion or termination of the Works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of any of the following professional institutions;

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

On the request of the applying party. The institution written to first by the aggrieved party shall take precedence over all other institutions.

36.2 The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising thereunder or in connection therewith, including any matter or

thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

- 36.3 Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 36.4 Notwithstanding the issue of a notice as stated above, the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 36.5 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:
  - 36.5.1 The appointment of a replacement Project Manager upon the said person ceasing to act.
  - 36.5.2 Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
  - 36.5.3 Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
  - 36.5.4 Any dispute or difference arising in respect of war risks or war damage.
- 36.6 All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Employer and the Contractor agree otherwise in writing.
- 36.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 36.8 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 36.9 The award of such Arbitrator shall be final and binding upon the parties.

## SECTION V - APPENDIX TO CONDITIONS OF CONTRACT

Name of Employer: **COUNTY GOVERNMENT OF BARINGO**  
**P.O. BOX 53 - 30400, BARINGO.**

Name of Employer's Representative: COUNTY SECRETARY

Name of Project Manager: PUBLIC WORKS

The name of Contract is: **PROPOSED REHABILITATION OF KABARBESI WATER PAN**  
**BARINGO COUNTY**

Tender No: **BRCG/TNR/MOALF/877515/2020-2021**

The Tender Opening Date and Time shall be as described under **Invitation to Tenders**.

The Start Date shall be preferably 1 week after contract signing.

The Intended Completion period for the whole of the Works shall be at most **24 weeks** from the date of commencement.

The Site Possession Date shall be the date site is handed over to the Contractor by the Project Manager.

The Site is located at

The Defects Liability Period is **6 MONTHS**

Amount of **Tender Security** is as stated under **Invitation to Tenders**

The amount of Performance Security is 10% of CONTRACT PRICE in form of a Performance bank Guarantee, from a reputable Commercial Bank, acceptable to the Employer, 1 week after contract award and before signing of the final contract. **The period of the performance bond shall cover at least the project intended completion period as described by the employer under Appendix to Conditions of Contract**

Revised Works Program – **7 days after signing of contract**

Payments shall be based on;

- i. Advance payment SHALL NOT BE Granted**
- ii. 90% of the Contract Sum will be paid to the contractor in a maximum of 3 payments;
- iii. Retention Money will be 10% of the PAYMENT CERTIFICATE and shall be released to the contractor after defects liability period;
- iv. The VAT component shall not be paid to the contractor but the contractor shall be issued with a KRA Tax Credit Note/Withholding Tax certificate

### **LABOUR;**

Unskilled labor shall be sourced from the locality of the project.

At least 30% of the labor force shall comprise of youth, 30% women and at least one (1) person with disability

### **MATERIALS;**

The contractor is encouraged to use as much local available material as possible without compromising quality.

All materials delivered to site will be deemed to be the property of the employer and permission will be required from the employer before their removal from site.

### **SECURITY;**

Security of the materials on site will remain the responsibility of the contractor until the project is completed, tested, commissioned and handed over. All insurance costs shall be borne by the contractor and any loss of materials shall be replaced by the contractor.

### **INSURANCE;**

The tenderer shall ensure a workman compensation insurance policy is in place before commencement of work & shall also have all other mandatory/statutory insurances are in place before commencement of work the copies of which shall be shared with the employer before commencement

**CONCRETE;**

All reinforced concrete shall be vibrated.

**Supply and Install.**

It shall be assumed that all materials supplied shall be installed and used to construct the specified infrastructure to working condition. The contractor shall be deemed to have completed the contract works when they provide a “Working System”.

**Where Sub-contract agreements exist**, they shall be declared and shall form part of the contract. The County Government shall be the arbitrator in the event of any disputes between the Contractor and the Sub-Contractor and the decision of the arbitrator shall be final. The arbitrator can direct payments be made directly to sub-contractors, if need be.

The Contractor shall complete the project within the contract period. Any delay in completion shall attract the employer to charge for **Liquidated Damages. The penalties shall** be charged at Kes.20, 000perday.

Upon Completion of work the contractor shall prepare “as built” drawings that indicate the layout of the final installation.

Before commencement of work the contractor shall **submit work plans** for the project to be approved by the department before taking over the site.

**SECTION VI - DRAWINGS AND SPECIFICATIONS**

- Attached separately as Addendum A
- Hydrological survey attached separately as Addendum B

## SECTION VII- BILLS OF QUANTITIES

### Notes for preparing Bills of Quantities

1.0 The objectives of the Bills of Quantities are;

- (a) To provide sufficient information on the quantities of Works to be performed to enable tenders to be prepared efficiently and accurately; and
- (b) When a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.

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

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

**(a) Preliminaries.**

The preliminaries should indicate the inclusiveness of the unit prices, and should state the methods of measurement which have been adopted in the preparation of the Bill of Quantities and which are to be used for the measurement of any part of the Works.

The number of preliminary items to be priced by the tenderer should be limited to tangible items such as site office and other temporary works, otherwise items such as security for the Works which are primarily part of the Contractor's obligations should be included in the Contractor's rates.

**(b) Work Items**

(i) The items in the Bills of Quantities should be grouped into sections to distinguish between those parts of the Works which by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, or phasing of the Works, or considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities.

(ii) Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage or waste. Quantities should be rounded up or down where appropriate.

(iii) The following units of measurement and abbreviations are recommended for use.

<i>Unit</i>	<i>Abbreviation</i>	<i>Unit</i>	<i>Abbreviation</i>
cubic meter	m <sup>3</sup> or cu m	millimeter	mm
hectare			
hour	ha	month	mon
kilogram	h	number	nr
lump sum	kg	square meter	m <sup>2</sup> or sq m
meter	sum	square millimeter	mm <sup>2</sup> or sq mm
metric ton (1,000 kg)	m	week	wk
	t		

(iv) The commencing surface should be identified in the description of each item for Work involving excavation, boring or drilling, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for Work involving excavation for which the excavated surface is not also the final surface. The depths of Work should be measured from the commencing surface to the excavated surface, as defined.

**(c) Day work Schedule**

A Day work Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the Employer of the realism of rates quoted by the tenderers, the Day work Schedule should normally comprise:

(i) A list of the various classes of labor, and materials for which basic Day work rates or prices are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Work executed on a Day work basis; and

(ii) a percentage to be entered by the tenderer against each basic Day work Subtotal amount for labor, materials and plant representing the Contractor's profit, overheads, supervision and other charges.

**(d) Provisional Quantities and Sums**

(i) Provision for quantity contingencies in any particular item or class of Work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities, and *not* by increasing the quantities for that item or class of Work beyond those of the Work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a "Provisional Sum" in the Summary of the Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a "Provisional Sum" in the Summary of the Bill of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

(ii) Provisional sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialized Works should be included as a section of the main Bills of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name (s) of the specialized firms he proposes to engage to carry out the specialized Works as his approved domestic sub-contractors. Only provisional sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities.

**(e) Summary**

The Summary should contain a tabulation of the separate parts of the Bills of Quantities carried forward, with provisional sums for Day work, for physical (quantity) contingencies, and for price contingencies (upward price adjustment) where applicable.

**PRELIMINARIES**

<b>TENDER FOR THE REHABILITATION AND EXPANSION OF KABARBESI WATER PN</b>					
<b>KABARBESI WATER PAN REHABILITATION AND EXPANSION, EMINING WARD</b>					
<b>BILLS OF QUANTITIES: PROVISIONAL SUMS</b>				<b>BILL 1</b>	<b>PAGE 1</b>
<b>NO</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE KSH</b>	<b>AMOUNT KSHS</b>
<b>1</b>	<b>PRELIMINARIES AND GENERAL</b>				
<b>1.1</b>	<b>Signboards</b>				
	Provide publicity signboard on 2m x 1.2 m metal sheet GAUGE 16 appropriately secured on a 50mm steel frame at least 1.5m above the ground level and labeled and mounted as directed by RE and whole to the satisfaction of the engineer	No	2	40,000	80,000
<b>1.2</b>	<b>Project Supervision by Engineers</b>				
	Provide prime cost for Ksh.350,000 for, supervision to be expended as directed by Engineer to include checking levels, airtime, progress reports, photographs, publicity and community mobilization and sensitization	Item	1	350,000	350,000

1.3	Contingency fee to be directed by Engineer	Item	1	50,000	50,000
1.4	Environmental and Social Management Plan(ESMP)				
1.4.1	This shall consist of the following activities to be undertaken before, during & after the construction of the proposed water facility: Water Pollution, solid waste management, Management of water conflict, Restriction Access, occupation health safety, Water related diseases, Spread of COVID 19, Gender based violence, Increase in HIV AIDS & STDs, outbreak of livestock and Diseases, Undertake EIA & abstraction permits				
1.4.1	Allow for a sum of Ksh.1,027,000 for supervision by relevant departments officers to ensure that recommendations in the Environmental and Social Impact Management Plan are adhered to. This same shall include: NEMA, WRA, Lands, Environment, Water Dept., Veterinary, Public Health, KCSAP, GBV Expert DOSH, etc.	Item	1	1,027,000	1,027,000
1.5	Community Capacity Building				
	Undertake thorough community capacity building on operation and management, Environmental protection, of the project	Item	1	650,000	650,000
1.6	Add percentage on items 1.2., 1.4 and 1.5 above for overheads and profits	%	0.24	2,027,000	486,480
	<b>BILL 1 - TOTALS CARRIED TO SUMMARY PAGE</b>				2,643,480

<b>KABARBESI WATER PAN REHABILITATION AND EXPANSION, EMINING WARD</b>					
<b>GENERAL EARTH WORKS</b>				<b>BILL 2</b>	<b>PAGE 2</b>
	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE KSHS</b>	<b>AMOUNT KSHS</b>
<b>2</b>	<b>Mobilization and Demobilization</b>				
2.1	Allow for Mobilization and demobilization of earthmoving machines, personnel and setting up of camp.	Item	1		
<b>2.1.0</b>	<b>Setting Out Works</b>				
2.1.1	Provide for setting out the Pan reservoir, spillway, embankment and the gabions in the presence of the client's appointed Engineer.	Item	1		
<b>2.2</b>	<b>EXCAVATIONS AND BACKFILLING</b>				
2.2.0	Clear and strip the pan site of vegetable soil, loose stones to a maximum depth of 150mm and dispose of the debris n.e 100m or as directed by the PM	CM	200		
2.2.1	Excavate the pan area to a depth of 4.0m from the original ground level and use suitable material for building the embankment with side slopes of 2:1 upstream and 2:1 downstream. Compact in layers of 150mm; finish off the embankment with an extra height of 0.3m at the centre to allow for settlement. Dispose the excess material 100m away as directed by the supervising engineer	M3	20000		

2.2.3	Provide Gabions boxes, lay and stoned pack whole to check silt. Size 2x1x1	CM	10		
2.2.4	Provide and plant the entire downstream face of the embankment with a suitable grass to stabilize the soil against erosion immediately and during the settlement period. Water until fully established.	Item	1		
2.2.5	Excavate the spillway measuring 5 m wide at the bottom with a side slope of 1:1 and total length of 20m allowing for the flow of the excess water away from the pan at 1% slope at the inflow section and 0.5% slope at the outflow sections. Excavate two sills foundations as per the design drawings provided	CM	100		
2.2.6	Construct 2 sills measuring 5m x 0.3m x 0.6m deep with class 25 (Mix 1:2:4).	CM	1.5		
2.2.7	Stone pitch the indicated areas with 30 m <sup>2</sup> of 0.3m hardcore as directed by the Project Engineer	SM	30		
<b>BILL 2 TOTALS CARRIED TO THE SUMMARY PAGE</b>					

<b>KABARBESI WATER PAN REHABILITATION AND EXPANSION, EMINING WARD</b>					
3.0	<b>LIVESTOCK WATERING TROUGH AND HAND PUMP</b>			<b>BILL 3</b>	<b>PAGE 3</b>
	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE KSHS</b>	<b>AMOUNT KSHS</b>
3.1.0	Supply, install Solar panels, fabricate and mount above the 10m <sup>3</sup> plastic tank structure as directed by engineer	No	1		
3.1.1	Provide and install suitable solar driven submersible pump capable of delivering 3m <sup>3</sup> per hour against a total head of 20m. Include for sufficient solar panels and accessories and also panels steel support structure	Item	1		
3.1.2	Provide and install 10M <sup>3</sup> quality plastic tank elevated 5m high, including steel support structure, walk way and additional support above the tank for solar panels	Item	1		
3.1.3	Provide and Construct two adjacent livestock watering trough one for small stock ( External dimensions 10m by 1.2m by 0.3m and the other for large stock (External dimensions 10m by 1.2m by 0.45. It shall be complete with a ball valve and a 75mm thick reinforced concrete cover connected to the 100mm diameter pipe by a 50mm diameter pipe	No	2		



	<b>BILL 3 TOTALS CARRIED OVER TO THE SUMMARY PAGE</b>				
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<b>KABARBESI WATER PAN REHABILITATION AND EXPANSION, EMINING WARD</b>					
4.0	<b>FENCING WORKS (675M- PERIMETER) AND DRAW-OFF SYSTEM</b>			<b>BILL 4</b>	<b>PAGE 4</b>
	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE KSHS</b>	<b>AMOUNT KSHS</b>
4.1.0	Excavate for fencing concrete poles from existing ground level and not exceeding 0.6m deep (225 x 225x500mm deep holes)	NO	294		
4.2	<b>Concrete Work</b>	-			
4.2.1	50 mm blinding bed under holes for fencing posts	CM	1		
4.2.2	Reinforced Concrete 1:2:4 - 20mm gauge mix in 225x225x450 bases for treated wood posts	CM	6		
4.2.3	Provide and install concrete poles for fencing the water pan perimeter as shown in the design drawings.	LM	314		
4.2.4	Provide concrete poles for corner supports as well as in the steel gates	LM	20		
4.2.5	<b>Gates:</b> Supply and install high tensile steel gate as per the drawing	No	1		
4.3.0	<b>FENCING WIRE: High Tensile Wire (12.5G)</b>				
4.3.1	Supply and fix 6 strands of high tensile (4.5mm) galvanized iron wire on the concrete poles	KG	350		
4.4.0	<b>CHAINLINK</b>				
4.4.1	Supply and install on the fence of the pan a 2.4m high, (3mm chain-link wire) as per the drawing	SM	1000		

<b>KABARBESI WATER PAN REHABILITATION AND EXPANSION, EMINING WARD</b>					
3.0	<b>LIVESTOCK WATERING TROUGH AND HAND PUMP</b>			<b>BILL 3</b>	<b>PAGE 3</b>
	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE KSHS</b>	<b>AMOUNT KSHS</b>
4.5.0	<b>DRAW-OFF SYSTEM</b>				
4.5.1	Excavate trench 40m long x 2m wide x 4m deep through embankment and collars trench at every pipe joint point as per the given drawing	CM	320		
4.5.2	Supply and install the screening chamber, perforated intake 100mm diameter Galvanized steel pipe complete with an elbow and outlet and casting the concrete base (mix 1:2:4) as per the provided working drawings	NO	1		
4.5.3	Supply and lay 100mm diameter G.S draw-off pipe connected to the intake tower as per the drawing	LM	100		
4.5.4	Cast 300mm x 300mm x 300mm collars at all the pipe joints under the embankment using 1:2:4 mass concrete	CM	0.5		
4.5.5	Construct a sluice valve chamber 1250mm x 1100mm x 1300mm complete with 600mm x 600mm x 75mm reinforced concrete cover and filled with sand and ballast at the base	Item	1		
4.5.6	Supply and install 100mm diameter sluice valve in the valve chamber complete with the supply lines connections and wash out pipes (use the given drawing)	NO	1		
	<b>BILL 4 TOTALS CARRIED OVER TO THE SUMMARY PAGE</b>				

<b>KABARBESI WATER PAN REHABILITATION AND EXPANSION, EMINING WARD</b>					
5	<b>2 TOILETS AND 2 BATHROOMS FOR MEN AND WOMEN</b>			<b>BILL 5</b>	
	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE KSHS</b>	<b>AMOUNT KSHS</b>

5.1.	Excavation, including maintaining and supporting sides and keeping bottoms free from water and mud or other fallen material				
5.1.1	Excavate oversight to remove vegetable soil average 150mm deep; wheel and deposit on site n.e. 100M away in permanent spoils heaps	SM	24		
5.1.2	Excavate for strip footing not exceeding 1.50m deep.	CM	24		
5.2	<b>LATRINE</b>				
5.2.1	Excavate for pit latrine not exceeding 1.50m deep.	CM	10		
5.2.2	Ditto 1.50m-3.0m deep	CM	10		
5.2.3	Ditto 3.0m-4.5m deep	CM	10		
5.2.4	Extra over excavation for excavating in rock Class 1;not exceeding 1.5 m	CM	10		
5.2.3	Back filling selected excavated materials around foundation.	CM	12		
5.2.4	250mm thick filling: deposit, spread, level and compact: to receive blinding	SM	18		
5.2.5	50mm murrum blinding to surface of hardcore.	SM	18		
5.2.6.	Polythene sheet damp proofing;500gauge	SM	18		
5.3	<b>Anti-Termite Treatment</b>				
5.3.1	Chemical anti-termite treatment executed by Rentokil Laboratories Limited or equal and approved pest control firm under a ten year guarantee, applied to surface of excavation and floor	SM	18		
5.4	<b>Concrete 1:4:8 Mix in</b>				
5.4.1	50 mm blinding bed under strip footing and floor slab	CM	20		
	<b>BILL 4 TOTALS CARRIED OVER TO THE SUMMARY PAGE</b>				
<b>KABARBESI WATER PAN REHABILITATION AND EXPANSION, EMINING WARD</b>					
5	<b>2 TOILETS AND 2 BATHROOMS FOR MEN AND WOMEN</b>			<b>BILL 5</b>	
	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE KSHS</b>	<b>AMOUNT KSHS</b>
5.5	<b>Reinforced Concrete 1:2:4</b>				
5.5.1	150 mm floor slab	SM	24		
5.5.2	Strip Footing	CM	2		
5.5.3	Ground floor beams:	CM	2		

5.6	<b>Reinforcement: High Tensile Steel Reinforcement to B.S. 4483</b>				
5.6.1	Y8mm Bars	KG	44		
5.6.2	Y12mm Bars	KG	36		
5.6.3	Y10mm Bars	KG	30		
5.7	<b>Sawn formwork to</b>				
5.7.1	sides and soffits of beams	SM	4		
5.8	<b>SUPERSTRUCTURE: MASONRY</b>				
5.8.1	200mm walling in Foundation	SM	40		
5.8.2	200 mm walling	SM	40		
5.8.3	150mm walling	SM	14		
5.9	<b>ROOFING AND RAIN WATER</b>				
	<b>Sawn Treated Cypress</b>				
5.9.1	75mmx50mm Braces, ties, strut, and posts	LM	43		
5.9.2	100 x 50mm wall plate	LM	13		
	<b>Wrought Treated Cypress</b>				
5.9.3	225mm x38mm Fascia or barge board	LM	24		
5.9.4	<b>Roof Covering 28 Gauge Corrugated 'Resincot' Iron Sheeting and Accessories as Manufactured by Gal sheet K Ltd or equal and approved</b>				
5.9.5	Roofing Covering with 1 ½ Corrugation side laps nailed to timber Purlins with galvanized roofing nails with rubber washers (Measured out and allow for laps)	SM	18		
	<b>BILL 4 TOTALS CARRIED OVER TO THE SUMMARY PAGE</b>				

<b>KABARBESI WATER PAN REHABILITATION AND EXPANSION, EMINING WARD</b>					
5	<b>2 TOILETS AND 2 BATHROOMS FOR MEN AND WOMEN</b>			<b>BILL 5</b>	
	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE KSHS</b>	<b>AMOUNT KSHS</b>
	<b>VENT PIPES</b>				
5.9.6	110 mm Diameter Upvc Pipes	LM	12		
	<b>FINISHES</b>				
5.9.7	Single door; 50 mm thick ; 1000 x 2100 mm high	NO	4		
	<b>Cement and sand (1:4) paving: steel trowelled: on concrete</b>				
5.9.8	50mm thick floors screed	SM	24		
	<b>WALLING</b>				

	<b>12mm lime plaster: steel troweled finish: on block work:to</b>				
5.9.8	Walls(internals)	SM	48		
	<b>Prepare and apply three coats approved emulsion paint to:</b>				
5.9.9	Plastered walls	SM	48		
5.9.10	Extra over walling for medium chisel dressing	SM	48		
	<b>BILL 5. TOTALS CARRIED OVER TO THE SUMMARY PAGE</b>				
	<b>BILL 5. TOTALS (TOILETS) SUMMARY PAGE</b>				

NO	DESCRIPTION				TOTAL KSH.
	<b>SUMMARY PAGE-KABARBESI WATER PAN</b>				
1	<b>PROVISIONAL - SUMS BILL 1</b>				2,643,480
2	<b>GENERAL EARTH WORKS - BILL 2</b>				
3	<b>LIVESTOCK WATERING TROUGH AND HAND PUMP - BILL 3</b>				
4	<b>FENCING WORKS (675M- PERIMETER) AND DRAW-OFF SYSTEM - BILL 4</b>				
5	<b>2 TOILETS AND 2 BATHROOMS FOR MEN AND WOMEN BILL 5</b>				
	SUB-TOTAL KABARBESI WATER PAN				
	<b>GRAND TOTAL KABARBESI WATER PAN REHABILITATION AND EXPANSION</b>				

NAME OF TENDERER .....

ADDRESS.....

SIGNATURE.....

DATE.....

NAME OF WITNESS.....

ADDRESS.....

SIGNATURE.....

DATE.....

SECTION VIII - STANDARD FORMS

- 1.1. FORM OF TENDER
- 1.2. LETTER OF ACCEPTANCE
- 1.3. FORM OF AGREEMENT
- 1.4. FORM OF TENDER SECURITY
- 1.5. PERFORMANCE BANK GUARANTEE
- 1.6. BANK GUARANTEE FOR ADVANCE PAYMENT
- 1.7. QUALIFICATION INFORMATION
- 1.8. JOINT VENTURES
- 1.9. TENDER QUESTIONNAIRE
- 1.10. CONFIDENTIAL BUSINESS QUESTIONNAIRE
- 1.11. MANDATORY REQUIREMENT SELF DECLARATION FORM
- 1.12. ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE
- 1.13. DETAILS OF SUB-CONTRACTORS
- 1.14. LETTER OF NOTIFICATION OF AWARD
- 1.15. PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
- 1.16. SCHEDULE OF PLANT AND EQUIPMENT
- 1.17. SCHEDULE OF PARTICULARS
- 1.18. CERTIFICATE OF BIDDER'S PRE-BID SITE VISIT
- 1.19. COMMITMENT TO THE CODE OF ETHICS

1.1. FORM OF TENDER

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

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities/Schedule of Rates for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs. \_\_\_\_\_ [Amount in figures] Kenya Shillings \_\_\_\_\_ [Amount in words]
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Employer's Representative's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until at least after **One Hundred Twenty(120number) days) after the date of Tender Opening/stipulated submission Deadline**, and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive;
6. With our signature, we attest that we have not been debarred in the past by the Public Procurement Regulatory Authority in line with PPDA 2015, the procuring entity, the EU to participate in this tender and we have not been associated in the inception phase of this project.

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

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

duly authorized to sign tenders for and on behalf of \_\_\_\_\_ [Name of Tenderer] of \_\_\_\_\_ [Address of Tenderer]

Witness;

Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

*(Amend accordingly if provided by Insurance Company)*



**1.2. LETTER OF ACCEPTANCE**

[Letterhead paper of the Employer]

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

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

\_\_\_\_\_  
[address of the Contractor]

Dear Sir,

This is to notify you that your Tender dated \_\_\_\_\_

for the execution of \_\_\_\_\_

[name of the Contract and identification number, as given in the Tender documents] for the Contract Price of Kshs.

\_\_\_\_\_ [amount in figures][Kenya

Shillings \_\_\_\_\_ (amount in words) ] in accordance with the Instructions to Tenderers is hereby

accepted.

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

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

Name and Title of Signatory \_\_\_\_\_

**Attachment: Agreement**

**1.3. FORM OF AGREEMENT**

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ between \_\_\_\_\_ of [or whose registered office is situated at] \_\_\_\_\_ (hereinafter called "the Employer") of the one part AND \_\_\_\_\_ of [or whose registered office is situated at] \_\_\_\_\_ (hereinafter called "the Contractor") of the other part.

WHEREAS THE Employer is desirous that the Contractor executes

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

NOW THIS AGREEMENT WITNESSETH as follows:

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

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

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

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

Signed Sealed, and Delivered by the said \_\_\_\_\_

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

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

In the presence of;

[i] Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

[ii] Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

**1.4. FORM OF TENDER SECURITY**

WHEREAS ..... (hereinafter called "the Tenderer") has submitted his tender dated.....for the construction of .....(Name of Contract)

KNOW ALL PEOPLE by these presents that WE ..... having our registered office at .....(hereinafter called "the Bank"), are bound unto .....(hereinafter called "the Employer") in the sum of Kshs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this ..... Day of .....20.....

THE CONDITIONS of this obligation are:

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

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

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

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

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

\_\_\_\_\_  
[witness]

\_\_\_\_\_  
[seal]

**1.5. PERFORMANCE BANK GUARANTEE**

To: \_\_\_\_\_ (Name of Employer) \_\_\_\_\_ (Date)  
\_\_\_\_\_ (Address of Employer)

Dear Sir,

WHEREAS \_\_\_\_\_ (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. \_\_\_\_\_ dated \_\_\_\_\_ to execute \_\_\_\_\_ (hereinafter called "the Works");

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

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

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Kshs. \_\_\_\_\_ (amount of Guarantee in figures) Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words), and we undertake to pay you, upon your first written demand and without civil or argument, any sum or sums within the limits of Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

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

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

*(Amend accordingly if provided by Insurance Company)*

**1.6. BANK GUARANTEE FOR ADVANCE PAYMENT**

To: \_\_\_\_\_ *[name of Employer]* \_\_\_\_\_ *(Date)*

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

Gentlemen,

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

In accordance with the provisions of the Conditions of Contract of the above-mentioned Contract, We, \_\_\_\_\_ *[name and Address of Contractor]* (hereinafter called "the Contractor") shall deposit with \_\_\_\_\_ *[name of Employer]* a bank guarantee to guarantee his proper and faithful performance under the said Contract in an amount of Kshs. \_\_\_\_\_ *[amount of Guarantee in figures]* Kenya Shillings \_\_\_\_\_ *[amount of Guarantee in words]*.

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

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

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

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until \_\_\_\_\_ *(name of Employer)* receives full payment of the same amount from the Contract.

Yours faithfully,

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

Witness:

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

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

Signature: \_\_\_\_\_

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

**1.7. PERFORMANCE BOND**

By this Bond, We \_\_\_\_\_ of (or whose registered office is situated at]

\_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_ of[or whose registered office is situated at]\_\_\_\_\_

as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_ of [or whose registered office is situated at]\_\_\_\_\_

asObligee (hereinafter called “the Employer”) in the amount of Kshs. \_\_\_\_\_ [amount of Bond in figures]Kenya Shillings \_\_\_\_\_

[amount of Bond in words], for the payment of which sum well and truly, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a Contract with the Employer dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ for the execution of \_\_\_\_\_

[name of Contract] in accordance with the Contract documents, 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.

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 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 Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive tenderer, arrange for a Contract between such tenderer and Employer 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 the Employer to the Contractor under the

Contract, less the amount properly paid by the Employer to the Contractor; or

- (3) pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions 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 Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors and assigns of the Employer.



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 \_\_\_\_\_ SIGNED ON \_\_\_\_\_

On behalf of \_\_\_\_\_ On behalf of \_\_\_\_\_  
[name of Contractor] [name of Surety]

By \_\_\_\_\_ By \_\_\_\_\_

In the capacity of \_\_\_\_\_ In the capacity of \_\_\_\_\_

In the presence of; Name \_\_\_\_\_ In the presence of;

Name \_\_\_\_\_

Address \_\_\_\_\_ Address \_\_\_\_\_

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_

**1.8. QUALIFICATION INFORMATION**

(To complete parts 1, 2 and 3 where/as appropriate)

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

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

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

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

Power of attorney of signatory of tender

---

1.2 Total annual volume of construction work performed in the last ten years

YEAR	CURRENCY	Value

1.3 Work performed as Main Contractor on works of a similar nature and volume over the last ten years. Also list details of work under way or committed, including expected completion date – attach contracts, letters of completion & handover certificates.

Project Name	Name of client and contact person	Type of work performed and year of completion/Expected year of completion	Value of contract	Level of Completion (%)	Expected cash outlay to complete the remaining part

1.4 Major items of Contractor's Equipment proposed for carrying out the Works. List all information requested below.

Item of Equipment	Description, Make and age (years)	Condition(new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
<b>Tenderers to instead complete SCHEDULE OF PLANT AND EQUIPMENT form in part 1.14 of Standard forms.</b>			

1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract in line with **Section III (A) – Appendix to Instructions to Tenderers – Requirements**. Also attach biographical data.

Position	Name	Years of experience (general)	Years of experience in proposed position
Project Manager			

1.6 Financial reports for the last five years: balance sheets, profit and loss statements, auditor's reports, etc. List below and attach copies.

---

1.7 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of supportive documents.

---

1.8 Proposed Credit Period (In calendar days). This shall form part of the conditions of the contract.

---

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

---

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

*This has been deleted* \_\_\_\_\_

1.11 Proposed program (work method and schedule) for the whole of the Works in line with Section III (A) – Appendix to Instructions to Tenderers – Requirements. .

---

**1.6 Litigation History**

Name of Firm or Partner of a joint venture

Firms, including each of the partners of a joint venture, should provide information on any history of litigation or arbitration resulting from contracts executed in the last five years or currently under execution. A separate sheet should be used for each partner of a joint venture

Year	Award FOR or AGAINST Firm	Name of client, cause of litigation and matter in dispute	Disputed amount (current value, Kshs.)

**1.12 Joint Ventures**

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

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

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

2.4 Attach the Agreement among all partners of the joint venture ( and which is legally binding on all partners), which shows that:

- a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
- c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

**1.9. TENDER QUESTIONNAIRE**

Please fill in block letters.

1. Full names of tenderer;

.....

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

.....

3. Telephone number (s) of tenderer;

.....

4. Telex of tenderer;

.....

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

.....

6. Details of tenderer's nominated agent (if any) to receive tender notices. This is essential if the tenderer does not have his registered address in Kenya (name, address, telephone, telex);

.....

\_\_\_\_\_  
Signature of Tenderer

**1.10. CONFIDENTIAL BUSINESS QUESTIONNAIRE**

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

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

**Part 1 – General**

Business Name .....

Location of business premises;

Country/Town.....

Plot No ..... Street/Road .....

Postal Address..... Tel No .....

Nature of Business.....

Current Trade License No..... Expiring date .....

Maximum value of business which you can handle at any time: KES .....

Name of your bankers.....

Branch.....

**Part 2 (a) – Sole Proprietor**

Your name in full..... Age.....

Nationality..... Country of Origin.....

\*Citizenship details .....

**Part 2 (b) – Partnership**

Give details of partners as follows:

#	Name in full	Nationality	Citizenship	Details	Shares	
1						
2						

**Part 2(c) – Registered Company:**

Private or public.....

State the nominal and issued capital of the Company-

Nominal Kshs.....

Issued Kshs .....

Give details of all directors as follows:

#	Name in full	Nationality	Citizenship	Details	Shares
1					
2					

**Part 2(d) – Interest in the Firm:**

Is there any person / persons in ..... (*Name of Employer*) who has interest in this firm? Yes/No..... (*Delete as necessary*)

I certify that the information given above is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Attach proof of citizenship

**1.11 MANDATORY REQUIREMENT  
DECLARATION FORM**

Date \_\_\_\_\_

To \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The tenderer i.e. (name and address)

\_\_\_\_\_ declare the following:

Has not been debarred from participating in public procurement.

Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

\_\_\_\_\_ Title                      \_\_\_\_\_ Signature                      \_\_\_\_\_ Date

(To be signed by authorized representative and officially stamped

**1.12 ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE**

I/We/Messrs.....

of Street, Building, P O Box.....  
 .....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We .....

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender name.....

Tender No .....

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

**1.13 DETAILS OF SUB-CONTRACTORS**

*If the Tenderer wishes to sublet any portions of the works under any heading, he must give below the details of the sub-contractors he intends to employ for each portion.*

*Failure to comply with this requirement may invalidate the tender.*

<b>FULL NAME AND ADDRESS OF THE SUB-CONTRACTOR</b>	<b>PORTION OF WORKS TO BE SUB-CONTRACTED AND CONTRACT VALUE</b>	<b>SUB-CONTRACTOR'S EXPERIENCE IN SIMILAR WORKS</b>



--	--	--

**Note:** Attach relevant evidence.

*I certify that the above information is correct.*

.....  
**(Title)**

.....  
**(Signature)**

.....  
**(Date)**

**1.14 LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity \_\_\_\_\_

To: \_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.



1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

*(FULL PARTICULARS)*

\_\_\_\_\_  
SIGNED FOR ACCOUNTING OFFICER

1.15 SCHEDULE OF PLANT AND EQUIPMENT

PARTICULARS OF EACH UNIT	TYPE/RATING	SERIAL NO. & REG. NO.	YEAR OF MANUFACTURE	WHERE MADE	VALUE	OWNERSHIP				PRESENT LOCATION	WEEK WHEN AVAILABLE ON SITE
						OWNED <i>(Give SR. No. and Reg. No)</i>	TO HIRE <i>(Give name and address of Owner)</i>	HIRE PURCHASE <i>(Give details as stated in the Footnote)</i>	PURCHASE <i>(Give details as stated in the Footnote)</i>		

**Note**  
 \*Details of each machine/equipment in more than one of the same make or type must be given separately. Details of proposed hire or hire purchase to be submitted giving names and addresses of hiring/selling party and serial number/engines number. **ATTACH PICTURES. To earn more points, tenderers should provide more equipments& particulars of each**

\*\*Before the award of Contract, the Project Manager may carry out physical verification of the availability of the plant and equipment listed on the schedule

1.16 SCHEDULE OF PARTICULARS

**(A) PARTICULARS OF INSURANCE**

<i>Sn</i>	<i>Type of Insurance</i>	<i>Name of Company</i>	<i>Registered Address</i>
1	<i>Insurance of Works</i>		
2	<i>Plant and Machinery</i>		
3	<i>Public Liability</i>		
4	<i>Workmen's Compensation</i>		
5	<i>Employer's Liability</i>		
6	<i>Personal Accident</i>		
7	<i>Other statutory/mandatory insurances</i>		

**NOTE:**

- ***Certified photocopies of the relevant insurance policies should accompany these particulars;***
- Before the award of Contract, the Project Manager may carry out physical verification of the availability of all insurances. Even after award and signing of the contract, the contractor will not be allowed on site before obtaining all mandatory insurances as per the law

*Date:* .....

*Signed:* .....

**1.17 CERTIFICATE OF BIDDER'S PRE-BID SITE VISIT**

1. This is to certify that I .....  
*(Name of Bidder or his representative of the Firm)*  
of .....  
*(Name of Firm bidding)*  
visited the site in connection with bid for the.....  
Contract No..... No/Tender Reference  
No..... as described in these  
Tender Documents.
2. Having previously studied the Tender Documents, I carefully examined the Sites for the above works;
3. I have made myself familiar with the local conditions likely to influence the works and cost thereof;
4. I have raised all pertinent issues on site and I have been satisfactorily answered except for  
.....  
.....  
.....  
.....
5. I further certify that I am satisfied with the description of the work and that I understand perfectly the work to be done as specified and implied in the execution of the contract.

Signed at..... on this ..... day of ....., 2019

Signature .....

Name of Company.....

## 1.18 COMMITMENT TO THE CODE OF ETHICS

### PART I - Title - DECLARATION FOR CODE OF ETHICS

This code may be cited as the Code of Ethics for Suppliers in Public Procurement & Disposal

#### 1. Interpretation

In this codes, unless the context otherwise requires-

“The Act” MEANS The Public Procurement and Disposal Act, [2015](#) or any amendment or modification thereof

“Candidate” means a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity

“Code of Ethics” means a statement encompassing the set of rules based on values and the standards of conduct to which suppliers are expected to conform

“Consultant” is a person who provides services of predominantly intellectual, technical or advisory nature

“Contractor” means a person who enters into a procurement contract with a procuring entity to supply goods, works or services, and includes the main contractor

“Ethics” means values, customs, rules or principles, which govern right conduct

“Gift” has meaning assigned to it in the Leadership and Integrity Regulations, 2015

“Integrity” means the quality of being honest and having strong moral and ethical principles

“Persons” has meaning assigned to it in Article 260 of the Constitution and includes sole proprietorship

“Procuring Entity” means a public entity making a procurement to which the Public Procurement and Disposal Act, 2005 or any amendment or modification thereof applies

“Public Officer” has the meaning assigned to it in Article 260 of the Constitution

“Regulations” means regulations made under the Public Procurement and Disposal Act, [2015](#) or any amendment or modification thereof

“State Officer” has the meaning assigned to it in Article 260 of the Constitution.

“Supplier” means a candidate, bidder, and tenderer, Contractor, service provider or a consultant.

“Tenderer” means a person who submitted a tender pursuant to an invitation by a public entity

For purposes of this Code, all terms used, unless expressly defined herein, have the meaning assigned to them in the Act.

#### 2. Application of the Code

(i) This Code of Ethics is applicable to suppliers participating in public procurement or disposal of public assets.

(ii) The objective of the Code is to set minimum standards of ethical behavior for Suppliers to ensure compliance with the Act and the Regulations and the adoption of good business practices.

### PART II – REQUIREMENTS/OBLIGATIONS OF THE SUPPLIERS

#### 3. Laws and Regulations

(i) All public procurement & disposal shall be undertaken in accordance with the values and principles of the Constitution of Kenya, 2010 (Article 10)

(ii) All Suppliers shall comply with the rule of Law.

(iii) Suppliers shall observe other laws, regulations, rules and practices relating to taxation, labour, health and safety standards as well as environmental protection.

#### 4. Professionalism

(i) Suppliers are required to comply with professional standards of their industry or of any professional body of which they are members. Where a supplier is a member of a professional body, the Supplier shall uphold the code of ethics of the respective profession and be of good standing.

(ii) Suppliers shall maintain the highest standards of integrity and professionalism in their operations.

(iii) Suppliers in public procurement shall accord mutual respect and courtesy to the public officer(s) and other suppliers without compromising their independent and distinct roles.

- (iv) Public procurement & disposal activities shall be undertaken with the objective of meeting the closest public scrutiny.
5. **Impartiality**  
A supplier shall not engage in acts aimed at encouraging patronage, tribalism, cronyism and nepotism.
6. **Gifts, Favors and Corrupt practices**
- (i) A supplier shall not offer or give gifts of any kind to public entities and/or the employees.
  - (ii) No supplier shall contact, unduly influence or exert pressure on any member of a committee or any other employee of a procuring entity to take a particular action which favours or tends to favour them.
  - (iii) A supplier shall not engage in fraudulent, collusive, or corrupt practices, or inappropriate influences.
  - (iv) A supplier shall not act inappropriately by attempting to interfere with the procurement process
7. **Conflict of Interest**
- (i) A supplier shall not accept contracts which would constitute a conflict of interest with any prior or current contract. Suppliers shall disclose to all concerned parties those conflicts of interest that cannot be reasonably avoided.
  - (ii) A supplier shall not enter into a contract with a procuring entity if the supplier is:
    - o An employee of the procuring entity or a member of a board or committee of the procuring entity;
    - o A State Officer, public Officer or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Cabinet Secretary;
    - o A person, including a corporation, who is related to a person described in paragraph (i) or (ii). A relative has meaning assigned to it in section 33(2) of the Public Procurement and Asset Disposal Act, 2015 or any amendment or modification thereof applies;
    - o Debarred from participating in procurement proceedings.
8. **Performance of Duties**
- 8.1. A supplier shall:
- (i) Duly sign this code of ethics and include it in a tender, proposal or quotation submitted.
  - (ii) Obtain and submit bid documents in the manner prescribed in the tender notice and tender documents
  - (iii) Supply the right quantity and quality of the contracted item and deliver at the stipulated time(s) and shall not abandon the work that they have been contracted to do.
  - (iv) Perform the obligations of the contracts efficiently and effectively
- 8.2. Suppliers shall not participate in procurement proceedings without invitation to tender and understanding the instructions to tenderers.
- 8.3. While responding to tenders, quotations or request for proposals, bidders should not include unfair, discriminatory or unreasonable conditions in their bids.
- 8.4. Suppliers should
- (i) Ensure that their deliverables provide value for money in terms of cost, quality, quantity and timeliness of the delivered works, goods or services.
  - (ii) Ensure that competent persons carry out the contractual obligations of the supplier.
  - (iii) Accept full responsibility for all works, services or supplies provided
- 8.5. A supplier shall not
- (i) Obstruct or hinder an officer of the Authority or any other authorized person from carrying out a duty or function or exercising a power relating to procurement and disposal.
  - (ii) Knowingly or in collusion with others lie to or mislead a person carrying out a duty or function or exercising a power relating to procurement and disposal.
9. **Communication and Accuracy of Information**  
A supplier shall:
- (i) Observe strict communication limitations during the bidding process and as provided for in the Act

- (ii) Respond promptly and courteously to all proper requests for information, clarifications, complaints or enquiries from procuring entities, the Authority or any law enforcement agency.
- (iii) Ensure that all information provided to procuring entities is given in writing by Authorized Officers.
- (iv) Ensure that certified copies of all mandatory certificates are availed
- (v) Ensure that information given while participating in public procurement or disposal is true, accurate and fair, and not designed to mislead.

10. **Confidentiality**

Information obtained in the course of performance of a procurement contract in shall not be disclosed to unauthorized persons and shall not be used for the Supplier’s advantage or material gain or for furtherance of private interest. The obligation to preserve the confidential information continues even after the business/contractual relationship with the Procuring Entity ends.

11. **Duty to report impropriety/corruption**

A supplier shall reject and report to the [PPRA](#) and/or the relevant agency any procurement practice which might be deemed improper.

**PART III - OVERSIGHT BY THE [PPRA](#)**

- 12. [PPRA](#) shall assist in undertaking continuous training of the suppliers to eliminate malpractices which might arise due to ignorance of the public procurement system.
- 13. [PPRA](#) will exercise oversight in the enforcement of this Code of Ethics, including taking remedial measures where the Code of Ethics is breached
- 14. [PPRA](#) shall revise the code of ethics as appropriate in consultation with the relevant stakeholders

**PART IV - COMPLIANCE & MONITORING**

- 15. A Procuring Entity may conduct due diligence, on-site evaluations and inspections of suppliers’ facilities and/or project site, including those of their subcontractors and Joint Venture partners to review their compliance to this Code during execution of the Contract.
- 16. [PPRA](#) shall, on its own motion or upon receipt of a complaint, inquire into the allegation of the violation of the Code of Ethics and institute debarment proceedings in line with Regulation 90 of the Public Procurement And Disposal Regulations, [2020](#)
- 17. [PPRA](#) shall establish a complaints management system for reporting and receipt of complaints on alleged violations of the Code of Ethics
- 18. [PPRA](#) may collaborate and partner with other agencies, organizations and professional bodies in enforcement of this Code of Ethics.
- 19. All Procuring Entities shall submit a report to [PPRA](#), annually or upon request, of any breaches by suppliers, and any action taken against the breach, in such format as is provided by [PPRA](#).

**PART V - ENFORCEMENT OF THE CODE**

- 20. Any person may lodge a complaint alleging a breach of this code by a supplier to the Authority or a Procuring entity.
- 21. Upon receipt of the complaint, the Authority or the Procuring entity shall register and carry out investigations into the complaint, and may take action against the supplier in accordance with the Act and any Regulations
- 22. A breach of this Code shall be subject to a debarment process as stipulated in the Act which may attract a debarment for a period not less than five years. The breach may further be subjected to a Court process that may lead to the imposition of other penalties as stipulated in the Act and other Laws.
- 23. A Procuring Entity may disqualify a supplier from further participation in a procurement or disposal proceeding or terminate a contract if it establishes a breach of this Code
- 24. A breach of this Code shall lead to termination of registration of a supplier
- 25. A supplier who violate the law or engage in unethical business dealings may be subject to disciplinary proceedings.
- 26. Declaration and Signature



26.1. I ..... (Supplier) Confirm that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act 2015 and the Code of Ethics for Suppliers and my responsibilities under the Code.

26.2. I also certify that I am duly authorized to sign this Code on my own behalf and on behalf of my organization, and agree to comply with the Code of Ethics.

Name.....Sign.....

Position.....

Office address.....Telephone.....

E-mail.....

Name of the Firm.....

**(Company Seal/ Rubber Stamp where applicable)**

Sworn at.....

By the said .....

Deponent

This.....day of.....20.....

Before Me.....

**Commissioner for Oaths/Magistrate}**

REPUBLIC OF KENYA  
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...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical address.....Fax  
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. etc.

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

- 1.
- 2.etc

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

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on  
..... day of .....20.....

SIGNED  
Board Secretary