**ETHICS AND ANTI- CORRUPTION COMMISSION**



**TENDER DOCUMENT**

**FOR**

**PROPOSED EXTERNAL REPAINTING AND ASSOCIATED WORKS AT INTEGRITY CENTRE BUILDING - NAIROBI**

**TENDER NO. EACC/15/2020-2021**

**IFMIS NO.**

**CLOSING DATE:30th November 2020 at 10.00 A.M**

**IFMIS NO. …830693…………….**

Mandatory Pre-Tender meeting shall be held on 20th **November 2020** at 10:00 am at **Integrity Centre**.

***INTEGRITY CENTRE***

***Valley Rd/Jakaya Kikwete Rd Junction***

***P.O Box 61130-00200, Nairobi, Kenya***

***Tel: 2717318/310722 fax 254 (020) 2719757***

***Email:*** [***eacc@integrity.go.ke***](mailto:eacc@integrity.go.ke)

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# ABBREVIATIONS AND ACRONYMS

**CDS** Contract Data Sheet

**GCC** General Conditions of Contract

**IFT** Invitation for Tender

**ITT** Instruction to Tenderers

**PE** Procuring Entity

**PM** Project Manager

**PPADA 2015** Public Procurement and Asset Disposal Act, 2015

**PPADR 2020** Public Procurement and asset Disposal Regulations, 2020

**PPRA** Public Procurement Regulatory Authority

**STD** Standard Tender Documents

**SOR** Statement of Requirements

**SP** Service Provider

**TDS** Tender Data Sheet

**VAT** Value Added Tax

# INTRODUCTION

* 1. Procurement for works under public-financed projects is carried out in accordance with policies and procedures laid down in The Public Procurement and Disposal Act 2005 and The Public Procurement and Disposal Regulations 2006.
  2. This Standard Tendering Document (SBD) for procurement of works has been prepared for use by the Procuring Entities in Kenya in the procurement of Works through National Competitive Tendering (NCB) procedures.
  3. This SBD is mandatory for use in works contracts of a value not exceeding KKes200 million, as defined in The Public Procurement and Disposal Act 2005 and The Public Procurement and Disposal Regulations 2006.
  4. The following guidelines should be observed when using the document:

1. Specific details should be furnished in the Invitation for Tenders and in the Contract Data Sheet (where applicable). The Tender document issued to Tenderers should not have blank spaces or options;
2. The Instructions to Tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through the Tender Data Sheet and Contract Data Sheet respectively;
3. Information contained in the Invitation for Tenders shall conform to the data and information in the Tender documents to enable prospective Tenderers to decide whether or not to participate in the Tender and shall indicate any important Tender requirements;
4. The Invitation for Tenders shall be as an advertisement in accordance with the regulations or a letter of invitation addressed to Tenderers who have been prequalified following a request for prequalification.

1.5 The cover of the document shall be modified to include:

* 1. Tender number;
  2. Tender name;
  3. Name of Procuring Entity;
  4. Delete name of PPRA at front and address at the back

# Newspaper Advertisement



**INVITATION FOR TENDERS**

Tender reference No: EACC/ 15 /2020-2021

DATE: 13TH November 2020

|  |  |
| --- | --- |
| **TENDER NAME:** | **PROPOSED EXTERNAL REPAINTING AND ASSOCIATED WORKS AT INTEGRITY CENTRE BUILDING - NAIROBI** |

The Ethics and Anti-Corruption Commission invites sealed tenders for proposed **PROPOSED EXTERNAL REPAINTING AND ASSOCIATED WORKS AT INTEGRITY CENTRE BUILDING - NAIROBI**

Interested and eligible contractors who must be duly registered under Category NCA 5 and above with the National Construction Authority may obtain further information from and inspect the tender documents at the Supply Chain Management office, Ethics and Anti-Corruption Commission, ground Floor, Integrity Centre during normal working hours.

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A complete set of tender documents may be viewed and downloaded free of charge from the Commission’s website [www.eacc.go.ke](http://www.eacc.go.ke) IFMIS or IFMIS suppliers portal supplier.treasury.go.ke or Public Procurement Information portal

Prices quoted should be net inclusive of all taxes, must be in Kenya shillings and shall remain valid for 120 days from the closing date of tender and extra 30 days.

Completed tender documents **MUST** be submitted through the **IFMIS** system so as to reach

**The Secretary/Chief Executive Officer**

Ethics and Anti-Corruption Commission

P. O. Box 61130-00200

**NAIROBI**

On or before the Date and Time indicated in IFMIS.

Mandatory Pre-Tender meeting shall be held on 20th **November 2020** at 10:00 am at **Integrity Centre**.

Tenders must be accompanied by a tender Security **of Kes.100, 000.00** in the form of a Bank guarantee from a reputable bank authorized to operate in Kenya.

The System will automatically lock out at the time and date of tender closing.

**THE SECRETARY/CEO,**

**ETHICS AND ANTICORRUPTION COMMISSION**

# SECTION II: INSTRUCTIONS TO TENDERERS (ITT)

|  |  |  |
| --- | --- | --- |
| Introduction | | |
| 1. Scope of Tender | **1.1** | The Procuring Entity indicated in the **Tender Data Sheet** (TDS) invites Tenders for the construction of works as specified in the **Tender Data Sheet** and Sections VI (Technical Specifications) and VII (Drawings). |
| **1.2** | The successful Tenderer will be expected to complete the works by the required completion date specified in the **Tender Data Sheet.** |
| **1.3** | The objectives of the works are listed in the **Tender Data Sheet**. These are mandatory requirements. Any subsequent detail is offered to support these objectives and must not be used to dilute their importance. |
| 2. Source of Funds | **2.1** | The Government of Kenya has set aside funds for the use of the Procuring Entity named in the **Tender Data Sheet** during the Financial Year indicated in the **Tender Data Sheet.** It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the works as described in the **Tender Data Sheet.**  **Or**  The Government of Kenya through Procuring Entity named in the **Tender Data Sheet** has applied for/received/ intends to apply for a [loan/credit/grant] from the financing institution named in the **Tender Data Sheet** towards the cost of the Project named in the **Tender Data Sheet.** The Government of Kenya intends to apply a part of the proceeds of this [loan/credit/grant] to payments under the Contract described in the **Tender Data Sheet**. |
| **2.2** | Payments will be made directly by the Procuring Entity (or by financing institution specified in the **Tender Data Sheet** upon request of the Procuring Entity to so pay) and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring Entity. |
| 3. Eligible Tenderers | **3.1** | A Tenderer may be a natural person, private or public company, government-owned institution, subject to sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the **Tender Data Sheet**, all parties shall be jointly and severally liable. |
| **3.2** | The Invitation for Tenders is open to all suppliers as defined in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and asset Disposal Regulations, 2020 except as provided hereinafter. |
| **3.3** | National Tenderers shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya, such as the Ministry of Public Works or the Energy Regulatory Commission. |
| **3.4** | A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if they:   1. Are associated or have been associated in the past directly or indirectly with employees or agents of the Procuring Entity or a member of a board or committee of the Procuring Entity; 2. Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the Procuring Entity to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the works under this Invitation for Tenders; 3. Have controlling shareholders in common; or 4. Receive or have received any direct or indirect subsidy from any of them; or 5. Have the same legal representative for purposes of this Tender; or 6. Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or 7. Submit more than one Tender in this Tendering process, However, this does not limit the participation of subcontractors in more than one Tender, or as Tenderer and subcontractor simultaneously. |
| **3.5** | A Tenderer will be considered to have a conflict of interest if they participated as a consultant in the preparation of the design or technical specification of the project and related services that are the subject of the Tender. |
| **3.6** | Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the Government of Kenya in accordance with GCC sub-Clause 3.2. |
| **3.7** | Government owned enterprises in Kenya may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration board or authorities and if they are not a dependent agency of the Government. |
| **3.7** | Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request. |
| 4. One Tender per Tenderer | **4.1** | A firm shall submit only one Tender, in the same Tenderingprocess, either individually as a Tenderer or as a partner in a joint venture pursuant to ITT Clause 5. |
| **4.2** | No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process. |
| **4.3** | A firm, if acting in thecapacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity. |
| **4.4** | A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or incases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified. |
| 5. Alternative Tenders by Tenderers | **5.1** | Tenderers shall submit offers that comply with the requirements of the Tendering documents, including the basic Tenderer’s technical design as indicated in the specifications and Drawings and Bill of Quantities. Alternatives will not be considered, unless specifically allowed for in the **Tender Data Sheet**. If so allowed, sub-Clause 5.2 and 5.3 shall govern. |
| **5.2** | When alternative times for completion are explicitly invited, a statement to that effect will be included in the **Tender Data Sheet** as will the method of evaluating different times for completion. |
| **5.3** | If so allowed in the **Tender Data Sheet**, 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 specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity. |
| 6. Cost of Tendering | **6.1** | The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process. |
| 7. Site Visit and Pre-Tender Meeting | **7.1** | The Tenderer, at the Tenderer’s own responsibility and risk, is advised to visit and examine the Site of 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. |
| **7.2** | The Procuring Entity may conduct a site visit and a pre-Tender meeting. The purpose of the pre-Tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. |
| **7.3** | The Tenderer’s designated representative is invited to attend a site visit and pre-Tender meeting which, if convened, will take place at the venue and time stipulated in the **Tender Data Sheet**. |
| **7.4** | The Tenderer is requested as far as possible, to submit any questions in writing or by electronic means to reach the procuring Entity before the pre-Tender meeting. It may not be practicable at the meeting to answer all questions, but questions and responses will be transmitted in accordance with sub-Clause 7.5. |
| **7.5** | Minutes of the pre-Tender meeting, including the text of the questions raised and the responses given together with any responses prepared after the pre-Tender meeting will be transmitted within the time stated in the **Tender Data Sheet** to all purchasers of the Tendering documents. Any modification of the Tendering documents listed in sub-Clause 8.1 that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT sub Clause 10.2 and not through the minutes of the pre-Tender meeting. |
| **7.6** | Non attendance during the site visit or pre-Tender meeting will not be a cause for disqualification of a Tenderer unless specified to the contrary in the **Tender Data Sheet**. |
| Tendering Documents | | |
| 8. Content of Tendering Documents | **8.1** | The works required, Tendering procedures, and contract terms are prescribed in the Tendering Documents. In addition to the Section I Invitation for Tenders, Tendering documents which should be read in conjunction with any addenda issued in accordance with ITT sub Clause 10.2 include: |
|  | Section II Instructions to Tenderers  Section III Tender Data Sheet  Section IV General Conditions of Contract  Section V Contract Data Sheet  Section VI Specifications  Section VII Drawings  Section VIII Bill of Quantities  Section IX Forms of Tender   * Form of Tender * Appendix to Tender * Confidential Business Questionnaire * Integrity Declaration * Letter of Acceptance * Form of Contract Agreement   Section X Forms of Security   * Tender Security Form * Tender Securing Declaration * Performance Bank or Insurance Guarantee * Advance Payment Guarantee   Section XI Form RB 1 Application to Public Procurement Administrative Review Board |
| **8.2** | The number of copies to be completed and returned with the Tender is specified in the **Tender Data Sheet.** |
| **8.3** | The Invitation for Tenders (Section I) issued by the Procuring Entity is not part of the Tendering Documents and is included for reference purposes only. In case of discrepancies between the Invitation for Tenders and the Tendering Documents listed in sub-Clause 8.1 above, the said Tendering Documents will take precedence. |
| **8.4** | The Procuring Entity is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from the authorized staff of the Procuring Entity. |
| **8.5** | The Tenderer is expected to examine all instructions, forms, terms and specifications in the Tendering documents. Failure to furnish all information required by the Tendering Documents or to submit a Tender substantially responsive to the Tendering documents in every respect will be at the Tenderer’s risk and may result in the rejection of its Tender. |
| 9. Clarification of Tendering Documents | **9.1** | A prospective Tenderer requiring any clarification of the Tendering documents may notify the Procuring Entity in writing, e-mail or facsimile at the Procuring Entity's address indicated in the **Tender Data Sheet**. |
| **9.2** | The Procuring Entity will within the period stated in the **Tender Data Sheet** respond in writing to any request for clarification provided that such request is received no later than the period indicated in the **Tender Data Sheet** prior to the deadline for the submission of Tenders prescribed in sub-Clause 22.1. |
| **9.3** | Copies of the procuring entity's response will be forwarded to all Purchasers of the Tendering documents, including a description of the inquiry, but without identifying its source. |
| **9.4** | Should the Procuring Entity deem it necessary to amend the Tendering documents as a result of a clarification, it shall do so following the procedure under ITT Clause 10. |
| 10. Amendments of the Tendering Documents | **10.1** | Before the deadline for submission of Tenders, the Procuring Entity may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, modify the Tendering documents by issuing addenda. |
| **10.2** | Any addendum issued shall be part of the Tender documents pursuant to sub-Clause 8.1 and shall be communicated in writing, by e-mail or facsimile to all who have obtained the Tendering documents directly from the Procuring Entity. |
| **10.3** | In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity at its discretion shall extend, as necessary, the deadline for submission of Tenders, in accordance with sub-Clause 22.2 |
| Preparation of Tenders | | |
| 11. Language of Tender | **11.1** | The Tender, and all correspondence and documents related to the Tender exchanged by the Tenderer and the Procuring Entity shall be written in the Tender language stipulated in the **Tender Data Sheet**. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the above stated language, in which case, for purposes of interpretation of the Tender, the translation shall prevail. |
| 12. Documents Constituting the Tender | **12.1** | The Tender submitted by the Tenderer shall consist of the following components:   1. The Form of Tender (in the format indicated in Section IX) completed in accordance with ITT Clause 15, 16 and 17; 2. Information requested by Instructions to Tenderers ITT sub-Clause 13.2; 13.3 and 13.4; 3. Tender Security or Tender Securing Declaration in accordance with Instructions to Tenderers ITT Clause 19; 4. Priced Bill of Quantities; 5. Qualification Information Form and Documents; 6. Alternative offers where invited in accordance with Instructions to Tenderers ITT Clause 5; 7. Written confirmation authorizing the signatory of the Tender to commit the Tenderer in accordance with Instructions to Tenderers ITT sub Clause 19.2; and 8. And any information or other materials required to be completed and submitted by Tenderers, as specified in the **Tender Data Sheet**. |
| 13. Documents Establishing Eligibility and Qualifications of the Tenderer | **13.1** | Pursuant to ITT Clause 13, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer’s eligibility to Tender and its qualifications to perform the contract if its Tender is accepted. |
| **13.2** | 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 their Tenders with any information updating the 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. The update or confirmation should be provided in Section IX. |
| **13.3** | If the Procuring Entity has not undertaken pre-qualification of potential Tenderers, to qualify for award of the contract, Tenderers shall meet the minimum qualifying criteria specified in the **Tender Data Sheet**: |
| **13.4** | Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **Tender Data Sheet**:   1. The Tender shall include all the information listed in the **Tender Data Sheet** pursuant to sub-Clause 13.3 above for each joint venture partner; 2. The Tender shall be signed so as to be legally binding on all partners; 3. One of the partners will be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners; 4. The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of a joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge; 5. All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms and a statement to this effect shall be included in the authorization mentioned under (c) above as well as in the Tender and in the Agreement (in case of a successful Tender); and 6. A copy of the joint venture agreement entered into by all partner shall be submitted with the Tender. Alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful Tender shall be signed by all partners and submitted with the Tender, together with a copy of the proposed Agreement. 7. The Tender Security and Tender Securing Declaration as stated in accordance with ITT Clause 19, and in case of a successful Tender, the Agreement, shall be signed so as to be legally binding on all partners. |
| 14. Lots Package | **14.1** | When Tendering for more than one contract under the lots arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being tendered in regard to:   1. Average annual turnover; 2. Particular experience including key production rates; 3. Financial means, etc; 4. Personnel capabilities; and 5. Equipment capabilities. |
| **14.2** | In case the Tenderer fail to fully meet any of these criteria, it may be qualified only for those lots for which the Tenderer meets the above requirement. |
| 15. Form of Tender | **15.1** | The Tenderer shall fill the Form of Tender furnished in the Tendering Documents. The Form of Tender must be completed without any alterations to its format and no substitute shall be accepted. |
| 16. Tender Prices | **16.1** | The Contract shall be for the whole Works, as described in sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Tenderer. |
| **16.2** | 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 by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Bill of quantities. |
| **16.3** | All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 15 days prior to the deadline for submission of Tenders, shall be included in the rates, prices and total Tender price submitted by the Tenderer. |
| **16.4** | The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if provided for in the **Tender Data Sheet** and the provisions of the Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the **Contract Data Sheet**. |
| 17. Tender Currencies | **17.1** | The unit rates and prices shall be quoted by the Tenderer in the currency as specified in the **Tender Data Sheet.** |
| **17.2** | Tenderers shall indicate details of their expected foreign currency requirements in the Tender, if any. The rates of exchange to be used by the Tenderers in arriving at the local currency equivalent shall be the selling rates for similar transactions established by the authority specified in the **Tender Data Sheet** prevailing on the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Tenderer. In any case, payments will be computed using the rates quoted in the Tender. |
| **17.3** | Tenderers may be required by the Procuring Entity to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices and in the Contract Data Sheet are reasonable and responsive to sub-Clause 17.1. |
| 18. Tender Validity Period | **18.1** | Tenders shall remain valid for the period specified in the **Tender Data Sheet** after the Tender submission deadline prescribed by the Procuring Entity, pursuant to ITT Clause 22. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non responsive. |
| **18.2** | In exceptional circumstances, prior to expiry of the original Tender validity period, the Procuring Entity 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 or by cable. A Tenderer may refuse the request without forfeiting its Tender Security or causing to be executed its Tender Securing declaration. 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 its Tender Security or Tender Securing declaration for the period of the extension, and in compliance with ITT Clause 19 in all respects. |
| **18.3** | In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial Tender validity period, the contract price will be increased by a factor specified in the request for extension. The Tender evaluation shall be based on the Tender price without taking into consideration on the above correction. |
| 19. Tender Security and Tender Securing Declaration | **19.1** | Pursuant to ITT Clause 12, where required in the **Tender Data Sheet**, the Tenderer shall furnish as part of its Tender, a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet** .  A Tender Securing Declaration as specified in the **Tender Data Sheet** in the format provided in section X shall be provided as a mandatory requirement. |
| **19.2** | The Tender Security or Tender Securing Declaration is required to protect the Procuring Entity against the risk of Tenderer’s conduct which would warrant the security’s forfeiture, pursuant to ITT sub-Clause 19.9. |
| **19.3** | The Tender Security shall be denominated in the currency of the Tender and shall be in one of the following forms:   1. Cash; 2. A Bank Guarantee; 3. An Insurance Bond issued by an insurance firm approved by the PPRA located in Kenya; 4. An irrevocable letter of credit issued by a reputable bank. |
| **19.4** | The Tender Security shall be in accordance with the Form of the Tender Security included in Section X or another form approved by the Procuring Entity prior to the Tender submission. |
| **19.5** | The Tender Security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 19.8 are invoked. |
| **19.6** | Any Tender not accompanied by a Tender Security in accordance with sub-Clauses 19.1 or 19.3 shall be rejected by the Procuring Entity as non-responsive, pursuant to ITT Clause 28. |
| **19.7** | The Procuring Entity shall immediately release any Tender Security if:   1. The procuring proceedings are terminated; 2. The Procuring Entity determines that none of the submitted Tenders is responsive; 3. A contract for the procurement is entered into. |
| **19.8** | The Tender Security shall be forfeited and the Tender Securing Declaration executed if the Tenderer:   1. Withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which Tenders must remain valid; 2. Rejects a correction of an arithmetic error pursuant to sub-Clause 29.2; 3. Refuse to enter into a written contract in accordance with ITT Clause 40; 4. Fails to furnish the Performance Security in accordance with ITT Clause 41. |
| **19.9** | The Tender Security and Tender Securing Declaration of a joint venture must be in the name of the joint venture submitting the Tender. |
| **19.10** | A Tenderer shall be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time indicated in the Tender Securing Declaration:   1. If the Tenderer withdraws its Tender, except as provided in ITT sub-Clauses 18.2 and 29.2; or 2. In the case of a successful Tenderer, if the Tenderer fails within the specified time limit to: 3. Sign the contract; or   (ii) Furnish the required Performance Security. |
| Format and Signing of Tender | **20.1** | The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT Clause 12 of these Instructions to Tenderers, with the Form of Tender, and clearly marked **“ORIGINAL”**. In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **Tender Data Sheet**, and clearly marked as **“COPIES”**. In the event of discrepancy between them, the original shall prevail. |
| **20.2** | The original and all copies of the Tenders 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. This authorization shall consist of a written confirmation as specified in the **Tender Data Sheet** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender, except for un-amended printed literature, shall be initialled by the person or persons signing the Tender. |
| **20.3** | Any interlineations, erasures, or overwriting shall be valid only if they are initialled by the person or persons signing the Tender. |
| **20.4** | The Tenderer shall furnish information as described in the Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to contract execution if the Tenderer is awarded the contract |
| Submission of Tenders | | |
| 21. Sealing and Marking of Tenders | **21.1** | The Tenderer shall seal the original and each copy of the Tender in separate envelopes, duly marking the envelopes as **“ORIGINAL”** and **“COPY”**. The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected. |
| **21.2** | The inner and outer envelopes shall:   1. Be addressed to the Procuring Entity at the address given in the **Tender Data Sheet**; and 2. Bear the Project name indicated in the **Tender Data Sheet**, the Invitation for Tenders (IFB) title and number indicated in the **Tender Data Sheet**, and a statement: **“DO NOT OPEN BEFORE,”** to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to ITT sub-Clause 22.1. |
| **21.3** | In addition to the identification required in sub-Clause 21.2, the inner envelopes shall also indicate the name and address of the Tenderer to enable the Tender be returned unopened in case it is declared late, pursuant to sub-Clause 22.1 and for matching purpose under ITT Clause 23 |
| **21.4** | If the outer envelope is not sealed and marked as required by ITT sub clause 21.2, the Procuring Entity shall assume no responsibility for misplacement or premature opening of the Tender. |
| Deadline for Submission of Tenders | **22.1** | Tenders shall be received by the Procuring Entity at the address specified under ITT sub-Clause 21.2 no later than the date and time specified in the **Tender Data Sheet.** |
| **22.2** | The Procuring Entity may, in exceptional circumstances and at its discretion, extend the deadline for the submission of Tenders by amending the Tendering documents in accordance with ITT Clause 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline will thereafter be subject to the new deadline. |
| **22.3** | The extension of the deadline for submission of Tenders shall not be made later than the period specified in the **Tender Data Sheet** before the expiry of the original deadline. |
| Late Tenders | **23.1** | The Procuring Entity shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 22. |
| **23.2** | Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected and returned unopened to the Tenderer |
| 24. Modification, Substitution and Withdrawal of Tenders | **24.1** | A Tenderer may modify or substitute or withdraw its Tender after it has been submitted, provided that written notice of the modification, including substitution or withdrawal of the Tender, is received by the Procuring Entity prior to the deadline prescribed for submission of Tenders prescribed under ITT sub-Clause 22.1. |
| **24.2** | The Tenderer’s modification or substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 20 and 21 with the outer and inner envelopes additionally marked “**MODIFICATION**” or **SUBSTITUTION** or “**WITHDRAWAL”** as appropriate. The notice may also be sent by electronic mail and facsimile, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders. |
| **24.3** | No Tender may be withdrawn, replaced or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Tender Form. Withdrawal of a Tender during this interval shall result in the Tenderer’s forfeiture of its Tender Security or execution of Tender Securing Declaration, pursuant to the ITT sub-Clause 19.9. |
| **24.4** | Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the **Tender Data Sheet** or as extended pursuant to sub-Clause 22.2 shall result in the forfeiture of the Tender Security and execution of Tender Securing Declaration pursuant to ITT sub-Clause 19.9. |
| **24.5** | Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender modifications in accordance with this Clause, or included in the original Tender submission. |
| Opening and Evaluation of Tenders | | |
| 25. Opening of Tenders | **25.2** | Envelopes marked **“WITHDRAWAL”** shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 24 shall not be opened but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the “Power of Attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. Subsequently, all envelopes marked **"MODIFICATION"** shall be opened and the submissions therein read out in appropriate detail. Thereafter all envelopes marked or **"SUBSTITUTION"** opened and the submissions therein read out in appropriate detail. |
| **25.3** | All other envelopes shall be opened one at a time. 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, the presence or absence of Tender security, and such other details as the appropriate tender opening committee may consider appropriate, will be announced by the Secretary of the Tender Opening Committee at the opening. |
| **25.4** | Tenders or modifications that are not opened and not read out at Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further. |
| **25.5** | Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer’s representative shall indemnify the Procuring Entity against any claim or failure to read out the correct information contained in the Tenderer’s Tender. |
| **25.6** | No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 23. |
| **25.7** | The Secretary of the appropriate tender opening committee shall prepare minutes of the Tender opening. The record of the Tender opening shall include, as a minimum: the name of the Tenderers and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security or Tender Securing Declaration. |
| **25.8** | The Tenderers’ representatives who are present shall be requested to sign the record. The omission of a Tenderer’s signature on the record shall not invalidate the contents and affect the record. |
| **25.9** | A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request. |
| 26. Confidentiality | **26.1** | Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a 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. |
| **26.2** | Any effort by a Tenderer to influence the Procuring Entity’s processing of Tenders or award decisions may result in the rejection of his Tender. |
| **26.3** | Notwithstanding sub-Clause 26.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing. |
| 27. Clarification of Tenders | **27.1** | To assist in the examination, evaluation, comparison of Tenders and post-qualification of the Tenderer, the Procuring Entity may, at its discretion, ask a Tenderer for clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered. |
| **27.2** | The request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of Tenders in accordance with ITT Clause 29. |
| **27.3** | From the time of Tender opening to the time of Contract award if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tender it should do so in writing. |
| 28. Preliminary Examination of Tenders | **28.1** | Prior to the detailed evaluation of Tenders, the Procuring Entity will determine whether:   1. The Tender has been submitted in the required format; 2. Any Tender Security submitted is in the required form, amount and validity period; 3. The Tender has been signed by the person lawfully authorized to do so; 4. The required number of copies of the Tender have been submitted; 5. The Tender is valid for the period required; 6. All required documents and information have been submitted; and 7. Any required samples have been submitted. |
| **28.2** | The Procuring Entity will confirm that the documents and information specified under ITT Clause 12 and ITT Clause 13 have been provided in the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected. |
| **28.3** | The Procuring Entity may waive any minor informality, nonconformity, or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer |
| **28.4** | 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 that:   1. Affects in any substantial way the scope, quality, or execution of the Works; 2. Limits in any substantial way, inconsistent with the Tendering documents, the Procuring Entity's rights or the Tenderer’s obligations under the Contract; or 3. If rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders. |
| **28.5** | If a Tender is not substantially responsive, it will be rejected by the Procuring Entity, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation. |
| 29. Correction of Errors | **29.1** | Tenders determined to be substantially responsive will be checked by the Procuring Entity for any arithmetic errors. Errors will be corrected by the Procuring Entity as follows:   1. If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected; 2. If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and 3. Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern. |
| **29.2** | The amount stated in the Tender will, be adjusted by the Procuring Entity in accordance with the above procedure for the correction of errors and, with, the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and the Tender Security may be forfeited and the Tender Securing Declaration may be executed in accordance with sub-Clause 19.9. |
| 30. Conversion to Single Currency | **30.1** | To facilitate the evaluation and comparison, the Procuring Entity will convert all Tender prices expressed in the amounts in various currencies in which the Tender prices are payable to Kenya Shillings at the selling exchange rate established for similar transactions by the Central Bank of Kenya ruling on the date specified in the **Tender Data Sheet**. |
| 31. Comparison of Tenders | **31.1** | The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive in accordance with ITT Clause 28. |
| **31.2** | In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender price by adjusting the Tender price as follows:  Making any correction for errors pursuant to ITT Clause 29;  Excluding provisional sums and the provision, if any for contingencies in the Bill of Quantities, but including Day work , where priced competitively ; and  Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with sub-Clause 24.5. |
| **31.3** | The Procuring Entity may waive any minor informality or non-conformity, which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative standing of any Tenderer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the Tendering documents or otherwise result in unsolicited benefits for the Procuring Entity will not be taken into account in Tender evaluation. |
| 32. National Preference | **32.1** | In the evaluation of Tenders the Procuring Entity shall apply exclusive preference to citizens of Kenya where:   1. The funding is 100% from the Government of Kenya or a Kenyan body; 2. The amounts are below the prescribed threshold of KKes200 million; |
| **32.2** | To qualify for the preference the candidate shall provide evidence of eligibility by:   1. Proving Kenyan citizenship by production of a Kenyan Identity Card; or 2. Providing proof of being a “citizen contractor” in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya. |
| **32.3** | The Minister of Finance may prescribe additional preference and/or reservation schemes, for example for procurements above these thresholds. If such additional preference schemes apply, details will be given in the **Tender Data Sheet**. |
| 33. Determination of the Lowest Evaluated Tender | **33.1** | The Tender with the lowest evaluated price from among those which are eligible, compliant and substantially responsive shall be the lowest evaluated Tender. |
| 34. Post-qualification of Tenderer | **34.1** | If specified in the **Tender Data Sheet**, post-qualification shall be undertaken. |
| **34.2** | The Procuring Entity will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in sub-Clause 13.3. |
| **34.3** | The determination will take into account the Tenderer’s financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer’s qualifications submitted by the Tenderer, pursuant to sub-Clause 13.3, as well as such other information as the Procuring Entity deems necessary and appropriate. Factors not included in these Tendering documents shall not be used in the evaluation of the Tenderer’s qualifications. |
| **34.4** | An affirmative determination will be a prerequisite for award of the contract to the Tenderer. A negative determination will result in rejection of the Tenderer’s Tender, in which event the Procuring Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer’s capabilities to perform satisfactorily. |
| Award of Contract | | |
| 35. Criteria of Award | **35.1** | Subject to ITT Clause 35 and 36, the Procuring Entity will award the Contract 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:   1. Eligible in accordance with the provisions of ITT Clause 3; 2. Is determined to be qualified to perform the Contract satisfactorily; 3. Successful negotiations have been concluded. |
| **35.2** | If, pursuant to sub-Clause 14.1, this Contract is being awarded on a “lot and package” basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderer for award of more than one Contract. |
| 36. Clarifications | **36.1** | Clarifications may be undertaken with the lowest evaluated Tenderer relating to the following areas: |
|  | 1. A minor alteration to the technical details of the statement of requirements; 2. Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the Tendering documents; 3. A minor amendment to the Contract Data Sheet; 4. Finalizing payment arrangements; 5. Mobilization arrangements; 6. Agreeing final delivery or work schedule to accommodate any changes required by the Procuring Entity; 7. The methodology or staffing; or 8. Clarifying details that were not apparent or could not be finalized at the time of Tendering. |
| **36.2** | Clarifications shall not change the substance of the tender. |
| 37. Procuring Entity’s Right to Accept any Tender and to Reject any or all Tenders | **37.1** | Notwithstanding ITT Clause 35, the Procuring Entity 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. |
| **37.2** | Notice of the rejection of all Tenders shall be given promptly within 14 days to all Contractors that have submitted Tenders. |
| **37.3** | The Procuring Entity shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds. |
| 38. Procuring Entities Right to Vary Quantities at the Time of Award | **38.1** | The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of goods or related services originally specified in these Tendering documents (schedule of requirements) provided this does not exceed by the percentage indicated in the **Tender Data Sheet**, without any change in unit price or other terms and conditions of the Tender and Tendering documents. |
| 39. Notification of Award | **39.1** | The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to expiration of the Tender validity period by e-mail or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Contractor in consideration of the provision and maintenance of the Work(s) as prescribed by the Contract (hereinafter and in the Contract called the “Contract Price”). |
| **39.2** | The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security in accordance with ITT Clause 41 and signing the Contract in accordance with sub-Clause 40.2 |
| **39.3** | At the same time as the person submitting the successful Tender is notified, the Procuring Entity will notify each unsuccessful Tenderer, the name of the successful Tenderer and the Contract amount and will discharge the Tender Security and Tender Securing Declaration of the Tenderer pursuant to ITT sub Clause 19.7. |
| **39.4** | If, after notification of award, a Tenderer wishes to ascertain the grounds on which it’s Tender or application for pre-qualification was unsuccessful, it should address its request to the secretary of the Tender Committee that authorized the award of contract. The secretary of the Tender Committee shall, within fourteen days after a request, provide written reasons as to why the Tender, proposal or application to be pre-qualified was unsuccessful. However, failure to take this opportunity to clarify the grounds for rejection does not affect the Tenderer’s right to seek immediate review by the Public Procurement Administrative Review Board under Clause 45. |
| 40. Signing of Contract | **40.1** | Promptly, and in no case later than 14 days, after notification, Procuring Entity shall send the successful Tenderer the Agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations. |
| **40.2** | Within the period specified in the notification or Tender Data Sheet but not earlier than fourteen (14) days since notification of award of contract, the successful Tenderer shall sign and date the contract and return it to the Procuring Entity. |
| 41. Performance Security | **41.1** | Within thirty (30) days but after 14 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the Tender Data Sheet and the Contract Data Sheet, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract. |
| **41.2** | If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee or Insurance Bond, it shall be issued either:   1. At the Tenderer’s option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm through a correspondent bank or insurance firm located in Kenya; 2. With the consent of the Procuring entity, directly by a foreign bank acceptable to the Procuring entity. |
| **41.3** | Failure of the successful Tenderer to comply with the requirement of sub-Clause 41.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security, in which event the Procuring Entity may make the award to the next lowest evaluated Tenderer or call for new Tenders. |
| 42. Advance Payment | **42.1** | The Procuring Entity will provide an Advance Payment as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the Tender Data Sheet. |
| **42.2** | The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section X. For the purpose of receiving the Advance Payment, the Tenderer shall make an estimate of, and include in its Tender, the expenses that will be incurred in order to commence work. These expenses will relate to the purchase of equipment, machinery, materials, and on the engagement of labour during the first month beginning with the date of the Procuring Entity’s “Notice to Commence” as specified in the Contract Data Sheet. |
| 43. Adjudicator | **43.1** | The Procuring Entity proposes the person named in the Tender Data Sheet to be appointed as Adjudicator under the Contract, at an hourly fee specified in the Tender Data Sheet, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data Sheet at the request of either party. |
| Review of Procurement Decisions | | |
| 44. Right to Review | **44.1** | A Tenderer who claims to have suffered or risk suffering, loss or damage or injury as a result of breach of a duty imposed on a Procuring Entity or an Approving Authority by the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulations 2006, the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:   1. The choice of procurement method; 2. a decision by the Procuring Entity to reject all Tenders, proposals or quotations; 3. Where a contract is signed in accordance to Section 68 of the Public Procurement and Disposal Act,2005; 4. Where an appeal is frivolous. |
| 45. Time Limit on Review | **45.1** | The Tenderer shall submit an application for review in the number of copies and pay fees as prescribed by the Public Procurement and Disposal Regulations 2006 within fourteen (14) days of the time the Tenderer became or should have become aware of the circumstances giving rise to the complaint or dispute. |
| 46. Submission of Applications for Review by the Public Procurement Administrative Review Board | **46.1** | Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 at the address shown in the Tender Data Sheet. The secretary to the review board shall immediately after filing of the request, serve a copy thereof on the Procuring Entity or Director-General as the case may be. |
| **46.2** | The application for administrative review shall be in accordance with the requirements of Regulation 73 of the Public Procurement and Disposals Regulations,2006, including:   1. Reasons for the complaint ,including any alleged breach of the Act or Regulations; 2. An explanation of how the provisions of the Act and or Regulation has been breached or omitted, including the dates and name of the responsible public officer, where known; 3. Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request; 4. Remedies sought; 5. Any other information relevant to the complaint. |
| 47. Decision by the Public Procurement Administrative Review Board | **47.1** | The Administrative Review Board shall within thirty days after receipt of an application for administrative review deliver a written decision which shall indicate:   1. Annulling anything the Procuring Entity has done in the procurement proceedings, including annulling the procurement proceedings in their entirety; 2. Giving directions to the Procuring Entity with respect to anything to be done or redone in the procurement proceedings; 3. Substituting the decision of the Review Board for any decision of the Procuring Entity in the procurement proceedings; 4. Order the payment of costs as between parties to the review. |
| **47.2** | The decision made by the Review Board shall, be final and binding on the parties unless judicial review thereof commences within fourteen (14) days from the date of the Review Board’s decision. |
| 48. Appeal on the decision of the Review Board | **48.1** | Any party to the review aggrieved by the decision of the Review Board may appeal to the High Court and the decision of the High Court shall be final. |

# SECTION III: TENDER DATA SHEET

**Tender Data Sheet (TDS)**

**Instructions to Tenderers Clause Reference**

|  |  |  |  |
| --- | --- | --- | --- |
| **TDS Reference Number** | | **ITT Clause Number** | **Amendments of, and Supplements to, Clauses in the Instruction to Tenderers** |
| **A. Introduction** | | | |
| **1.** | **1.1** | | The Procuring Entity is ***Ethics and Anti-Corruption Commission*** |
| **2.** | **1.1** | | Name of Project is **Proposed External Repainting And Associated Works At Integrity Centre Building - Nairobi** |
| **3.** | **1.2** | | The expected completion date of the works is to be agreed with the project management team |
| **4.** | **1.3** | | The Objectives of the Project are **External Repainting And Associated Works At Integrity Centre Building - Nairobi** |
| **5.** | **2.1** | | Name of financing institution is EACC  Name of the Procuring is ***Ethics and Anti-Corruption Commission***  Financial Year 2020/2021.  Describe works under the contracts **External Repainting And Associated Works At Integrity Centre Building - Nairobi** |
| **6.** | **2.2** | | The loan/ credit number is N/a |
| **7.** | **5.1** | | Alternative Tenders are *not allowed* in this Tender*.* |
| **8.** | **5.2** | | Alternative time for completion to be agreed with the project management team |
| **9.** | **3.1** | | Only Tenderers registered with National Construction Authority (NCA 5 and above) with a valid Registration renewal.  This Tender is: for national contractors only |
| **10.** | **7.3** | | Pre-Tender meeting will take place at Integrity Centre on 20th November 2020 at 10.00 am at Integrity Centre. |
| **11.** | **7.5** | | The minutes of the pre-Tender meeting will be transmitted within [*2 days ]* |
|  | **7.6** | | Non-attendance at the pre-tender meeting will result in disqualification |

|  |  |  |
| --- | --- | --- |
| **B. Tendering Documents** | | |
| **12.** | **8.2** | The number of copies to be completed and returned with the Tender is (one original electronic copy through IFMIS and one original bid security through the tender box located at Integrity Centre ground floor. |
| **13.** | **8.1** | Address for clarification of Tendering Document is through email - [supply-chain@integrity.go.ke](mailto:supply-chain@integrity.go.ke) |
| **14.** | **8.2** | Period to Respond to request for clarification by the Procuring Entity *[2 days]*  Period Prior to deadline for submission of Tenders for Tenderers to request clarification [3 *days]* |

|  |  |  |
| --- | --- | --- |
| **C. Preparation of Tenders** | | |
| **15.** | **11.1** | Language of Tender and all correspondence shall be *English language]* |
| **16.** | **13.3** | Other information or materials required to be completed and submitted by Tenderers:   1. Certified copy of Incorporation Certificate/Firm registration 2. List of directors/ Copy of valid CR 12 3. Copy of valid Tax compliance certificate from Kenya Revenue Authority. 4. Form of tender in the format provided, dully completed, signed and stamped. 5. Audited accounts for each of the last three (3) years, (2019,2018 & 2017). 6. Copy of valid registration certificate and practicing license from NCA as building works contractor category NCA 8 and above 7. Current annual practicing license from NCA. 8. Original Bid Bond of Kes. 120,000.00 from a reputable bank valid for 150 days from the date of tender opening. To submitted to the tender box on or before the tender submission deadline. (a copy to accompany the electronically submitted document) 9. Power of attorney (of Tender signatories) 10. Signed and stamped statement of Verification that not debarred in matters of Public procurement and Disposal act. (Litigation history) 11. Duly filled, signed and stamped Business questionnaire. 12. Duly filled, signed and stamped Tender questionnaire 13. Submission of tender document on IFMIS. 14. Dully completed visit to site certificate by tenderer and signed and stamped by the client representative. 15. Priced bill of quantities rate amount completely filled, and stamped and incase of alterations, countersigned 16. Dully completed self-declaration form filled, and stamped 17. Name, Address and Telephone of Banks |
| **17.** | **13.4** | In the case of joint venture each partner shall submit information required under Clause ITT Clause 13.4. |
| **18.** | **16.4** | The price shall be  *fixed* |
| **19.** | **17.1** | The currency in which the prices shall be quoted shall be: *Kenyan Shilling* |
| **20.** | **17.2 30.2** | The authority for establishing the rates of exchange shall be Central Bank of Kenya.  The applicable date for exchange rates for tendering and evaluation purposes is 28 days earlier than the final deadline for the submission of tenders. |
| **21.** | **18.1** | The Tender validity period shall be …………….. days. |
| **22.** | **19.1** | The amount of Tender Security shall be kes 100,000 |
| **23.** | **20.1** | In addition to the original of the Tender, the Tenderer should submit  *only the original tender security in the tender box.* |
| **24.** | **20.2** | Written confirmation of authorization will be *power of attorney* |
|  | | |
| **D. Submission of Tenders** | | |
| **25.** | **21.2 a)** | Tenders shall be submitted through IFMIS |
| **26.** | **21.2 b)** | Project name. Proposed repainting of Integrity Centre  Tender number; EACC/15/2020-2021……....  Time and date for submission: …30th November 2020 |
| **27.** | **22.1** | The deadline for Tender submission is   1. Monday 30th 2. Date: 30th November 3. Time 10.00 am |
| **28.** | **22.3** | The extension of the deadline for submission of Tenders shall be made not later than 3 *days*  before the expiry of the original deadline. |
| **29** | **24.4** | Expiry of Tender validity is (150 days form the tender submission deadline). |
|  | | |
| **E. Opening and Evaluation of Tenders** | | |
| **29.** | **25.1** | The Tender opening shall take place at the IFMIS as indicated in the cover page of this document or ad will be indicated in any addendum issued ( No attendance of bidders on opening) |
|  | **29** | The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity. |
| **30.** | **32.3** | Additional Preference [not applicable] |
| **31.** | **34.1** | Post- qualification will *be undertaken* |
| **32.** | **38.1** | Percentage for quantities increase or decrease is (*as directed by the project management team in adherence to Section 134 of the PPADA.* |
| **F. Award of Contract** | | |
| **33.** | **41.1** | The amount of Performance Security shall be [*10% of the contract price]* |
| **34.** | **42.1** | The Advance Payment shall be zero |
| **35.** | **43.1** | The proposed adjudicator for the project is to be agreed by both parties |
| **G. Review of Procurement Decisions** | | |
| **37.** | **46.1** | The address for submitting appeals to Administrative Review Board :  The Secretary,  Public Procurement Administrative Review Board ,  The Public Procurement Regulatory Authority,  10th Floor, National Bank House,  P.O. Box 58583-00200,  NAIROBI, Kenya.  Tel: +254 (0) 20 3244000  Email: [info@ppra.go.ke](mailto:info@ppoa.go.ke)  Website: [www.ppra.go.ke](http://www.ppoa.go.ke) |

CLAUSE 5

# TENDER EVALUATION CRITERIA

After tender opening, the tenders will be evaluated in 3 stages, namely:

1. Preliminary examination;
2. Technical evaluation;
3. Financial Evaluation; and
4. Due Diligence

## STAGE 1: PRELIMINARY EXAMINATION

This stage of evaluation shall involve examination documents that are listed in the table below;

|  |  |  |
| --- | --- | --- |
| NO | REQUIREMENTS | RESPONSIVE OR NON-RESPONSIVE |
| MR1 | Certified copy of Incorporation Certificate/Firm registration |  |
| MR2 | List of directors/ Copy of valid CR 12 |  |
| MR3 | Copy of valid Tax compliance certificate from Kenya Revenue Authority. |  |
| MR4 | Form of tender in the format provided, dully completed, signed and stamped. |  |
| MR5 | Audited accounts for each of the last three (3) years, (2019,2018 & 2017). |  |
| MR6 | Copy of valid registration certificate and practicing license from NCA as building works contractor category NCA 5 and above |  |
| MR7 | Current annual practicing license from NCA. |  |
| MR8 | Must Upload Tender Security of Kes.100,000/= from a reputable Bank in IFIMIS and the original submitted to EACC valid for 150 days from the tender crossing date.  The original tender security to be dropped in the tender box at Integrity Centre, Ground Floor while a scanned copy to be attached to the bid documents and submitted through IFMIS. |  |
| MR9 | Power of attorney (of Tender signatories) |  |
| MR10 | Signed and stamped statement of Verification that not debarred in matters of Public procurement and Disposal act. (Litigation history) |  |
| MR11 | Duly filled, signed and stamped Business questionnaire. |  |
| MR12 | Duly filled, signed and stamped Tender questionnaire |  |
| MR13 | Submission of tender document on IFMIS. |  |
| MR14 | Dully completed visit to site certificate by tenderer and signed and stamped by the client representative. |  |
| MR15 | Priced bill of quantities rate amount completely filled, and stamped and incase of alterations, countersigned |  |
| MR16 | Dully completed self-declaration form filled, and stamped |  |
| Note that all requirement above and those in the technical evaluation **MUST** be attached in the **IFMIS** as ‘**form supplier technical’** | | |

The bidders’ who do not meet any of the above requirements shall be considered Non-Responsive and their tenders will not be evaluated further.

## STAGE 2: TECHNICAL EVALUATION

The award of points for the Technical Evaluation will be as follows: -

TABLE 1: Assessment for Eligibility

| Item | Description | Point Scored | Max. Point | |
| --- | --- | --- | --- | --- |
| 1 | 1 Key Personnel (Attach evidence)   * 1. **Director of the firm**   . Director of the firm  Holder of degree in relevant Engineering field --------- 6 marks Holder of diploma in relevant Engineering fiel----- 5 marks Holder of certificate in relevant Engineering field-- 3 marks Holder of trade test certificate in relevant Engineering field -2 marks  No relevant certificate ------------------------------------- 1 marks |  | 6 | 20 |
| **2. At least 1No. degree/diploma holder of key personnel in relevant field**  At least 1No. degree/diploma holder of key personnel in relevant field  A degree With over 5 years relevant experience ----- 6  A diploma With over 5 years relevant experience ---- 5  A degree With over 2 years relevant experience------ 4  A diploma With over 2 years relevant experience----- 3  A degree With under 2 years relevant experience ----- 2  A diploma with under 2 years relevant experience ---- 1  Less than 2 years---------------------------------0marks |  | 6 |
| **3. At least 1No certificate holder of key personnel in relevant field**  With over 10 years’ relevant experience--------------- 4 marks  With over 5 years’ relevant experience ---------------- 3 marks  With under 5 years relevant experience ----------…--------1 marks |  | 4 |
| 1. **At least 2No artisan (trade test certificate in relevant field)**   Artisan with over 5 years’ relevant experience ------ 4 marks  Artisan with under 5 years’ relevant experience ---- 2 marks  Non skilled worker with over 10 years relevant experience -1 marks |  | 4 |
| 2 | **Contract completed in the last five (5) years (Max of 5No. Projects)- Provide Evidence (Completion Certificates)**  Project of similar nature, complexity or magnitude --- 4marks each  Project of similar nature but of lower value than the one in consideration ---- 2 marks each  No completed project of similar nature --------------0 |  |  | 20 |
| 3 | **On-going projects – Provide Evidence**  No Project of similar nature, complexity and magnitude -- 0  Three and below Projects of similar, nature complexity and magnitude –---------3 marks  Four and above Projects of similar nature, complexity and magnitude --------------------------------------------------------2 marks |  |  | 3 |
| 4 | **Schedule of contractor’s equipment and transport (proof or evidence of ownership/Lease)**  **a) Relevant Transport**  Means of transport for materials Vehicle ------------- 2.5 marks  Means for transport for constriction team……….2.5 marks  No means of transport ------------------------------ 0  **( provide logbooks, lease etc.)** |  | 5 | 10 |
| **b) Relevant Equipment**  Has comprehensive relevant equipment for work being tendered ---5 marks  Non-comprehensive relevant equipment for work being tendered ---2.5 marks  No relevant equipment for work being tendered --------- 0  **( provide list of equipment owned by the contractor to undertake the project )** |  | 5 |
|  | **Financial report**  **Audited financial report (last three (3) years, 2019,2018 and 2017)**   * + 1. **Average Annual Turn-over**   Average Annual Turn-over of Kes 10,000,000 ---3 marks for each year  Average Annual Turn-over of Kes 5,000,00 - 10,000,000---2 marks for each year  Average Annual Turn-over of Kes 2,000,00 - 5,000,000---1 marks for each year   * 1. **Current ratio:**   Current ratio: Current Assets/Current Liabilities ratio of 2:1 2 marks for each  Current ratio: Current Assets/Current Liabilities ratio of 1:1 1 marks for each  Otherwise 0  State the ratio from your financial calculations |  |  | 15 |
|  | **Evidence of Financial Resources (cash in hand, lines of credit, over draft facility etc.)**   * Has financial resources to finance the projected monthly cash flow\* for three months ---------------------------20 * Has financial resources equal to the projected monthly cash flow\*--10 * Has financial resources less the projected monthly cash flow\*5   Has not indicated sources of financial resources ------------ 0 |  |  | 20 |
|  | **Litigation History**  Litigation by clients for uncompleted projects -------------- 0  No Litigation by clients for uncompleted projects ---------- 7 |  |  | 7 |
|  | DETAILED WORKS PROGRAMME OUTLINING THE METHODOLOGY OF COMPLETING AND DELIVERING THE CONTRACT WORKS ON OR BEFORE THE EXPIRY OF THE CONTRACT PERIOD   * Work program and work methodology provided---5 * No work program or methodology provided-----0 |  |  | 5 |
|  |  |  |  | 100 |
| Note that all requirement above and those in the technical evaluation **MUST** be attached in the **IFMIS** as ‘**form supplier technical’** | | | | |

Any bidder who scores 75 points and above in this Technical Evaluation shall be considered for further evaluation

## STAGE III: FINANCIAL EVALUATION

Bids that pass the Technical Evaluation shall be subjected to the Financial Evaluation in two stages, as follows: -

1. Tender Sums; and

The successful tender shall be the tender with the lowest evaluated price pursuant to Section 86. (1) of the Public Procurement and Asset Disposal Act, 2015.

## RECOMMENDATION FOR AWARD

The successful bidder shall be the tenderer with the lowest evaluated tender price.

# SECTION IV: GENERAL CONDITIONS OF CONTRACT

|  |  |
| --- | --- |
| General | |
| Definitions | 1.1 Boldface type is used to identify defined terms.  The Adjudicator is the person appointed jointly by the Procuring Entity and the Contractor to resolve disputes in the first instance, as provided for in Clauses 27 and 28 hereunder.  Bill of Quantities means the priced and completed Bill of Quantities forming part of the Tender.  Compensation Events are those defined in Clause 47 hereunder.  The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 58.1.  The Contract is the Contract between the Procuring Entity and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3 below.  The Contractor is a person or corporate body whose Tender to carry out the Works has been accepted by the Procuring Entity.  The Contractor’s Tender is the completed Tendering document submitted by the Contractor to the Procuring Entity.  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.  Dayworks are varied work inputs subject to payment on a time basis for the Contractor’s employees and Equipment, in addition to payments for associated Materials and Plant.  A Defect is any part of the Works not completed in accordance with the Contract.  The Defects Liability Certificate is the certificate issued by the Project Manager upon correction of defects by the Contractor.  The Defects Liability Period is the period named in the Contract Data Sheet 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.  The Procuring Entity 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 to construct the Works.  The Initial Contract Price is the Contract Price listed in the Procuring Entity’s Letter of Acceptance.  The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data Sheet. 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.  The Project Manager is the person named in the Contract Data Sheet (or any other competent person appointed by the Procuring Entity and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract 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.  The Site is the area defined as such in the Contract Data Sheet.  Site Investigation Reports are those that were included in the Tendering documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.  Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.  The Start Date is given in the Contract Data Sheet. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.  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 that are needed for construction or installation of the Works.  A Variation is an instruction given by the Project Manager that varies the Works.  The Works are what the Contract requires the Contractor to construct, install, and turn over to the Procuring Entity, as defined in the Contract Data Sheet.  “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances. |
| 2. Interpretation | 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way round. Headings have no significance. Words have their normal meaning under the language of the Contract 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 Contract Data Sheet, references 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 Completion Date and Intended Completion Date for the whole of the Works).  2.3 The documents forming the Contract shall be interpreted in the order of priority given in the Contract Data Sheet:  (1) Agreement;  (2) Letter of Acceptance;  (3) Contract Data Sheet;  (4) Conditions of Contract;  (5) Technical Specifications;  (6) Contractor’s Tender;  (7) Drawings;  (8) Bill of Quantities; and  (9) Any other document listed in the Contract Data Sheet as forming part of the Contract. |
| 3. Language, Law, Fraud and Corruption | 3.1 The language of the Contract and the law governing the Contract are stated in the Contract Data Sheet. |
| 3.2 The Government requires that Procuring Entities (including beneficiaries of Government funded projects) as well as Tenderers/Suppliers/Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. It is the responsibility of the Procuring Entity to ensure that Tenderers, suppliers, and contractors and their subcontractors observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy:  For the purpose of this provision, the following definitions are provided:    “Corruption” has the meaning assigned to it in the Anti Corruption and Economic Crime Act 2003 and includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;  “Fraudulent Practice” includes a misrepresentation of fact in order to influence a procurement or disposal process or the execution of a contract to the detriment of the Procuring Entity and includes collusive practices amongst Tenderers prior to or after Tender submission designed to establish Tender prices at artificial non competitive levels and deprive the Procuring Entity of the benefits of free and open competition;  “Collusive Practice” means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of the Procuring Entity prior to or after Tender submission , designed to establish Tender prices at artificial non competitive levels and to deprive the Procuring Entity of the benefit of free and open competition;  “Coercive Practice” means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of any of them to influence improperly the actions of a Procuring Entity;  “Obstructive Practice” means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and /or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.  A Procuring Entity has the right to require that Tenderers, suppliers, and contractors and their subcontractors permit persons duly appointed by KACC/PPRA/KNAO to inspect their accounts and records and other documents relating to the Tender submission and contract performance;  The Procuring Entity will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt, fraudulent practices or others stated under Clause 44.1.a in competing for the contract;  In pursuit of the policy defined in sub-Clause 44.1 the Procuring Entity will cancel the portion of the funds allocated to a contract for goods, works, or services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Procuring Entity or Approving Authority or of a beneficiary of the funds during the procurement or the execution of that contract;  In the event that the Procuring Entity or Approving Authority does not take timely and appropriate action satisfactory to the Government of Kenya to remedy the situation, then the Director-General may order an investigation of procurement proceedings for the purpose of determining whether there has been a breach of the Public Procurement and Asset Disposal Act, 2015. |
| 3.3 The Director-General may, on the advice of the Advisory Board, debar a person from participating in procurement proceedings on the ground that the person has committed an offence under the Public Procurement and Asset Disposal Act, 2015. A debarment shall be for a period of time of not less than five years. Before a person is so debarred, he/she will be given an opportunity to make representations to the Director-General and may request the Review Board to review the debarment. |
| 3.4 Any communication between the Tenderers and the Procuring Entity related to matters of alleged fraud or corruption must be made in writing. |
| 4. Confidentiality | 4.1 The Service Providers, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity’s business or operations without the prior written consent of the Procuring Entity. |
| 5. Project Manager’s Decisions | 5.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Procuring Entity and the Contractor in the role representing the Procuring Entity. |
| 6. Delegation | 6.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor. |
| 7. Communications | 7.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered. |
| 8. Subcontracting | 8.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Procuring Entity in writing. Subcontracting shall not alter the Contractor’s obligations. |
| 9. Other Contractors Personnel | 9.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the Schedule of Other Contractors, as referred to in the Contract Data Sheet. The Contractor shall also provide facilities and services for them as described in the Schedule. The Procuring Entity may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification |
| 11. Procuring Entity’s and Contractor’s Risks | 11.1 The Procuring Entity carries the risks which this Contract states are Procuring Entity’s risks, and the Contractor carries the risks which this Contract states are Contractor’s risks. |
| 12. Procuring Entity’s Risks | 12.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Procuring Entity’s risks:  The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:  (i) Use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or  (ii) Negligence, breach of statutory duty, or interference with any legal right by the Procuring Entity or by any person employed by or contracted to him except the Contractor.  The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity’s design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.  12.2 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 an Procuring Entity’s risk except loss or damage due to:  (a) A Defect which existed on the Completion Date;  (b) An event occurring before the Completion Date, which was not itself an Procuring Entity’s risk; or  (c) The activities of the Contractor on the Site after the Completion Date. |
| 13. Contractor’s Risks | 13.1 From the Starting 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 Procuring Entity’s risks are Contractor’s risks. |
| 14. Insurance | 14.1 The Contractor shall provide, in the joint names of the Procuring Entity and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the Contract Data Sheet for the following events which are due to the Contractor’s risks:  (a) Loss of or damage to the Works, Plant, and Materials;  (b) Loss of or damage to Equipment;  (c) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and  (d) Personal injury or death.  14.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager’s approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.  14.3 If the Contractor does not provide any of the policies and certificates required, the Procuring Entity may effect the insurance which the Contractor should have provided and recover the premiums the Procuring Entity has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.  14.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.  14.5 Both parties shall comply with any conditions of the insurance policies. |
| 15. Site Investigation Reports | 15.1 The Contractor, in preparing the Tender, shall rely on any Site Investigation Reports referred to in the Contract Data Sheet, supplemented by any information available to the Tenderers. |
| 16. Queries about the Contract Data Sheet | 16.1 The Project Manager will clarify queries on the Contract Data Sheet. |
| 17. Contractor to Construct the Works | 17.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. |
| 18. Commencement and Completion | 18.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date. |
| 19. Approval by the Project Manager | 19.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.  19.2 The Contractor shall be responsible for the design of Temporary Works.  19.3 The Project Manager’s approval shall not alter the Contractor’s responsibility for design of the Temporary Works.  19.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.  19.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before their use. |
| 20. Protection of the Environment | 20.1 The Contractors shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. |
| 20.2 The Contractors shall ensure that emissions, surface discharges and effluent from his activities shall not exceed prescribed values in the environmental laws. |
| Labour Laws | The Contractor shall comply with all the relevant labour laws applicable in the Country, including laws relating to workers employment, working hours, health, safety, welfare, and immigration, and shall allow them all their legal rights.  The Contractor shall require his employees to obey all applicable laws, including those concerning safety at work. |
| 22. Health and Safety | 22.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of his personnel.  22.2 The Contractor shall ensure that first aid facilities are available at all times at the site and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.  22.3 The Contractor shall notify the Procuring Entity details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to the property, as the Procuring Entity may reasonably require.  22.4 The Contractor shall conduct an HIV-Aids awareness programme, and shall take other such measures as specified in the Contract Data Sheet to reduce the risk of transfer of HIV virus between and among Contractor personnel, the Procuring Entity’s Staff and the surrounding community. |
| 23.Discoveries | 23.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Procuring Entity. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them. |
| 24. Possession of the Site | 24.1 The Procuring Entity shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data Sheet, the Procuring Entity will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event. |
| 25. Access to the Site | 25.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out. |
| 26. Instructions, Inspections and Audits | 26.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.  26.2 The Contractor shall permit the Kenya Government to inspect the Contractor’s accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Kenya Government, if so required by the Kenya Government |
| 27. Disputes | 27. 1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager’s decision. |
| 28. Procedure for Disputes | 28.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.  28.2 The Adjudicator shall be paid by the hour at the rate specified in the Tender Data Sheet and Contract Data Sheet, together with reimbursable expenses of the types specified in the Contract Data Sheet, and the cost shall be divided equally between the Procuring Entity and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator’s written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator’s decision will be final and binding. |
| 28.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Contract Data Sheet. |
| 29. Replacement of Adjudicator | 29.1 Should the Adjudicator resign or die, or should the Procuring Entity and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Procuring Entity and the Contractor. In case of disagreement between the Procuring Entity and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the Contract Data Sheet at the request of either party, within 14 days of receipt of such request. |
| Time Control | |
| 30. Programme | 30.1 Within the time stated in the Contract Data Sheet, the Contractor shall submit to the Project Manager for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works.  An update of the Programme shall be a programme 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.  30.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the Contract Data Sheet. If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the Contract Data Sheet from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.  30.4 The Project Manager’s approval of the Programme shall not alter the Contractor’s obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events |
| 31. Extension of the Intended Completion Date | 31.1 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.  31.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date. |
| 32. Acceleration | 32.1 When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.  32.2 If the Contractor’s priced proposals for acceleration are accepted by the Procuring Entity, they shall be incorporated in the Contract Price and treated as a Variation. |
| .33. Delays Ordered by the Project Manager | 33.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works. |
| 34. Management Meetings | 34.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.  34.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting. |
| 35. Early Warning | 35.1 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.  35.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager. |
| Quality Control | |
| 36. Identifying Defects | 36.1 The Project Manager shall check the Contractor’s work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor’s responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect. |
| 37. Tests | 37.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event. |
| 38. Correction of Defects | 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 Contract Data Sheet. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.  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 Procuring Entity’s notice, a penalty for lack of performance will be paid by the Contractor. The amount to be paid will be calculated as a percentage of the cost of having the defect correct, assessed as described in Clause 39. |
| 39. Uncorrected Defects | 39.1 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, and the Contractor will pay this amount. |
| Cost Control | |
| 40. Bill of Quantities | 40.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.  40.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work done at the rate in the Bill of Quantities for each item. |
| 41. Changes in the Quantities | 41.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.  41.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Procuring Entity.  41.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities. |
| 42. Variations | 42.1 All Variations shall be included in the updated Programmes produced by the Contractor. |
| 43.Payments for Variations | 43.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.  43.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work is above the limit stated in Sub-Clause 41.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.  43.3 If the Contractor’s quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager’s own forecast of the effects of the Variation on the Contractor’s costs.  43.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.  43.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning. |
| 44. Cash Flow Forecasts | 44.1 When the Programme is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates. |
| 45.Payment Certificates | 45.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.  45.2 The Project Manager shall check the Contractor’s monthly statement and certify the amount to be paid to the Contractor within twenty eight 28 days of receipt of the certificate from the contractor.  45.3 The value of work executed shall be determined by the Project Manager.  45.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed. |
| 45.5 The value of work executed shall include the valuation of Variations and Compensation Events.  45.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.  45.7 The Project Manager shall not be bound to certify any payment, if the net amount, after all retentions and deductions would be less than minimum amount of Interim Payment Certificate stated in the Contract Data Sheet. |
| 46. Payments | 46.1 Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Procuring Entity makes a late payment, the Contractor shall be paid interest on the late payment in the next payment Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made as indicated in the Contract Data Sheet..  If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.  46.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.  46.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Procuring Entity and shall be deemed covered by other rates and prices in the Contract. |
| 47. Compensation Events | 47.1 The following shall be Compensation Events:  (a) The Procuring Entity does not give access to a part of the Site by the Site Possession Date stated in the Contract Data Sheet.  (b) The Procuring Entity modifies the Schedule of Other Contractors 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 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 Procuring Entity, or additional work required for safety or other reasons.  (h) Other contractors, public authorities, utilities, or the Procuring Entity does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.  (i) The advance payment is delayed.  (j) The effects on the Contractor of any of the Procuring Entity’s Risks.  (k) The Project Manager unreasonably delays issuing a Certificate of Completion.  (l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.  47.2 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.  47.3 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.  47.4 The Contractor shall not be entitled to compensation to the extent that the Procuring Entity’s interests are adversely affected by the Contractor’s not having given early warning or not having cooperated with the Project Manager. |
| 48. Taxes | 48.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 50. |
| 49.Currencies | 49.1 Where payments are made in currencies other than the Kenya Shillings, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor’s Tender. |
| 50. Price Adjustment | 50.1 The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 45.1, shall be adjusted in respect of the rise or fall in the cost of labour, Contractor’s Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause based on the prevailing consumer price index obtained from the Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya. |
| 50.2 To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs. |
| 50.3 The adjustment to be applied to amount payable to the Contractor as certified in Payment Certificates shall be determined formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be as follows; |
| where;  Pn is a price adjustment factor to be applied to the amount in each specific currency for the payment of the work carried out in the subject month, where such variations and daywork are not otherwise subject to adjustment; |
| a is a constant, specified in the Appendix to Tender, representing the nonadjustable portion in contractual payments;  b, c, d, etc., are weightings or coefficients representing the estimated proportion of each cost element (labour, materials, equipment usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the Appendix to Tender; the sum of a, b, c, d, etc., shall be one;  Ln, Mn, En, etc., are the current cost indices or reference prices of the cost elements in the specific currency of origin for month “n,” determined pursuant to Sub-Clause 50.5, applicable to each cost element; and  Lo, Mo, Eo, etc., are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 50.5 |
| The value of net work done, certified by the Project Manager, in any monthly Interim or Final Certificate as payable by the Procuring Entity to the Contractor before deduction of any retention money shall be increased or decreased by an amount of ‘F’. |
| where;  The effective value Pc of work done which is to be subjected to increase or decrease shall be the difference between:  the amount which, in the opinion of the Project Manager, is due to the Contractor under Clause 45 (before deduction of retention money and before deducting sums previously paid on account) less:  any amount for payment or repayment of any advance payment;  any amount for materials on site (if any);  any amounts for nominated sub-contractors (if any)  any amounts for any other items based on actual cost or current prices; or  any sums for increase or decreases in the Contract Price paid under this Sub-Clause  and  the amount calculated in accordance with (i) above of this Sub-clause and included in the last preceding statement. |
| 50.4 The sources of indices shall be those listed in the Appendix to Tender, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor’s proposed source of supply of inputs on the basis of which his Contract Price and expected foreign currency requirements shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his Tender the tabulation of Weightings and Source of Indices in the Appendix to Tender, which shall be subject to approval by the Engineer. |
| 50.5 The base cost indices or prices shall be those prevailing on the day 28 days prior to the latest date for submission of Tenders. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available. |
| 50.6 If the Contractor fails to complete the Works within the time for completion prescribed under Clause 58 adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favourable to the Procuring Entity, provided that if an extension of time is granted pursuant to Clause 28, the above provision shall apply only to adjustments made after the expiry of such extension of time. |
| 50.7 The weightings for each of the factors of cost given in the Appendix to Tender shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced, or inapplicable as a result of varied or additional work already executed or instructed under Clause 43 or for any other reason. |
| 51. Retention | 51.1 The Procuring Entity shall retain from each payment due to the Contractor the proportion stated in the Contract Data Sheet until Completion of the whole of the Works.  51.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the other half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.  51.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” Bank guarantee. |
| 52. Liquidated Damages | 52.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the Contract Data Sheet for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data Sheet. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.  If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 46.1.  If the Contractor has not corrected a defects within the time specified in the Procuring Entity’s notice, the Procuring Entity will assess the cost of having the defect corrected, the Contractor will pay this amount, and a penalty for lack of performance calculated as described in Clause 38. |
| 53. Bonus | 53.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the Contract Data Sheet for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete. |
| 54. Advance Payment | 54.1 The Procuring Entity shall make advance payment to the Contractor of the amounts stated in the Contract Data Sheet by the date stated in the Contract Data Sheet, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procuring Entity in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.  54.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.  54.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages. |
| 55. Performance Securities | 55.1 The Performance Security shall be provided to the Procuring Entity no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond. |
| 56. Dayworks | 56.1 If applicable, the Dayworks rates in the Contractor’s Tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.  56.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.  56.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms. |
| 57. Cost of Repairs | 57.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor’s cost if the loss or damage arises from the Contractor’s acts or omissions. |
| Finishing the Contract | |
| 58. Completion Certificate | 58.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed. |
| 59. Taking Over | 59.1 The Procuring Entity shall take over the Site and the Works within seven days of the Project Manager’s issuing a certificate of Completion. |
| 60. Final Account | 60.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor’s account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate. |
| 61. Operating and Maintenance Manuals | 61.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data Sheet.  61.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data Sheet, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the Contract Data Sheet from payments due to the Contractor. |
| 62. Termination | 62.1 The Procuring Entity or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.  62.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:  (a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme 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 28 days;  (c) The Procuring Entity or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;  (d) A payment certified by the Project Manager is not paid by the Procuring Entity to the Contractor within 84 days of the date of the Project Manager’s certificate;  (e) The Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;  (f) The Contractor does not maintain a Security, which is required; and  (g) The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Contract Data Sheet.  (h) If the Contractor, in the judgment of the Procuring Entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.  For the purpose of this paragraph:  “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution and includes inter alia, bribery and extortion or coercion which involves threats of injury to person ,property or reputation, and.  “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.  62.3 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 Sub-Clause 62.2 above, the Project Manager shall decide whether the breach is fundamental or not.  62.4 Notwithstanding the above, the Procuring Entity may terminate the Contract for convenience.  62.5 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. |
| 63. Payment upon Termination | 63.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Contract Data Sheet. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity. |
| 63.2 If the Contract is terminated for the Procuring Entity’s convenience or because of a fundamental breach of Contract by the Procuring Entity, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, and less advance payments received up to the date of the certificate. |
| 64. Property | 64.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Procuring Entity if the Contract is terminated because of the Contractor’s default. |
| 65. Release from Performance | 65.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Procuring Entity or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made. |
| 66. Suspension of Financing | 66.1 In the event that the source of financing is suspended to the Procuring Entity, from which part of the payments to the Contractor are being made:  (a) The Procuring Entity is obligated to notify the Contractor of such suspension within 7 days of having received the financing agency’s suspension notice.  (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 46.1, the Contractor may immediately issue a 14-day termination notice. |

# SECTION V: CONTRACT DATA SHEET (CDS)

**Contract Data Sheet**

**Instructions for completing the Contract Data Sheet**

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| --- | --- | --- |
| **CDS**  **Clause** | **GCC**  **Clause** | **Description** |
| **1** | **1.1** | 1. **General**   **(Itemise Definitions to take the same numbering as per the General Conditions)**  The Procuring Entity is *[the secretary / chief executive officer*  The Adjudicator is *[to be agreed by both parties ]*.  The Defects Liability Period is *[182]* days.  The Project Manager is  **WORKS SECRETARY,**  **MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS**  (State Department for Public Works)  Address: P.O BOX 30743-00200 NAIROBI  Telephone: 020 – 2723101  Facsimile: 2716737  Email: www.publicworks.go.ke    The name and identification number of the Contract is *[insert name and number as indicated in the Invitation for Tenders (or Pre-qualification, if any)].*  The Works consist of External Repainting and Associated Works at Integrity Centre Building - Nairobi  The objectives of the contract are *[*External Repainting and Associated Works at Integrity Centre Building - Nairobi  .  The Start Date shall be *[to be agreed with the project management team].*    The Intended Completion Date for the whole of the Works shall be *to be agreed with the project management team].*  The following documents also form part of the Contract: Agreement,   1. Agreement, 2. Letter of Acceptance, 3. Contractor’s Tender, 4. Appendix to Conditions of Contract, 5. Conditions of Contract, 6. Specifications, 7. Drawings, 8. Bill of Quantities, 9. Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.   The Site is located at Roof top of Integrity center Jakaya Kikwete/Valley Road junction approximately 2.5km from Nairobi CBD, Nairobi County |
| **2.** | **2.2** | Indicate whether there is sectional completion [*not specified*].  *[If there is sectional completion, insert “The sections are:“*] |
| **3.** | **2.3(9)** | List other documents that form part of the contract if any:  a)…the bid submission ……………………………..  b)………………………………………………………………..  c)……………………………………………………………….. |
| **4.** | **3.1** | The language of the Contract documents is *[English language].*  The law that applies to the Contract is the Kenyan Law. |
| **5.** | **9.1** | Include the Schedule of Other Contractors, if any.  *[not applicable]* |
| **6.** | **10.1** | Include the Schedule of Key Personnel.  *[as requested in the evaluation criteria]* |
| **7.** | **14.1** | The minimum insurance covers shall be:  (a) loss of or damage to the Works, Plant, and Materials *[actual cost]*;  (b) loss of or damage to Equipment *[actual cost]*;  (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract *[actual cost]*; and  (d) personal injury or death *actual cost*. |
| **8.** | **15.1** | Site Investigation Reports available to the Tenderers are:  a)…………Not applicable ……………………………………..  b)………………………………………………………………..  c)……………………………………………………………….. |
| **9.** | **22.4** | The other measures include:   * 1. Minimising the number of migrant workers employed on the project and household in the site camp   2. Providing access to voluntary counselling and testing (VCT)   3. Providing psychological support and health care including prevention and treatment of opportunistic infections for workers infected and affected, as well as their families   4. Providing condoms (male and female) to workers |
| **10.** | **24.1 & 47.1** | The Site Possession Date shall be *[a date to be agreed}.* |
|  |  | Project Management cost shall be held and administered by the client |

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| **11.** | | **28.2** | | Hourly rate of Fees payable to the Adjudicator is to be agreed  Types of reimbursable expenses to be paid to the Adjudicator include: [*insert types of reimbursable expenses*]*.*  a)………………………………………………………………..  b)………………………………………………………………..  c)……………………………………………………………….. |
| **12.** | | **28.3** | | Arbitration will take place at *[insert the place]* in accordance with rules and regulations published by ………………………. [*state the institutions*] *and [insert rules and regulations]* |
| **13.** | | **29.1** | | Appointing Authority for the Adjudicator: *[to be agreed ]* |
| 1. **Time Control** | | | | |
| **14.** | | **30.1** | | The Contractor Shall Submit a Programme for the Works within [*number*] days of delivery of the Letter of Acceptance. |
| **15.** | | **30.3** | | The period between Programme updates is *[7]* days. |
| **16.** | | **30.3** | | The amount to be withheld by the Project Manager in the case the contractor does not submit an updated programme is **all withstanding payment** . |
| 1. **Quality Control** | | | | |
| **17.** | | **38.1** | | The Defects Liability Period is *[182]* days. |
| 1. **Cost Control** | | | | |
| **18.** | | **45.7** | | Minimum Amount of Interim Payment Certificate will be *[insert figure or percent of contract price]* |
| **19.** | | **46.1** | | The interest rate shall be ………..% above prevailing interest rate for commercial borrowing from the contractors bank |
| **20.** | | **47.1(a)** | | The Site Possession Date shall be *[to be agreed ].* |
| **21.** | | **50** | | The contract *is not* subject to price adjustment in accordance with Clause 50 of the General Conditions of Contract. |
| **22.** | | **51.1** | | The amount of retention is 10% of value of works of Interim Payment Certificate’. |
|  | |  | | Limit of retention will be *10%*  of contract price. |
| **23.** | **52.1** | | The rate of liquidated damages is *0.1 percent of contract price per day* | |
|  | **52.1**  **62.2 (g)** | | The maximum amount of liquidated damages is 10% of Contract Price | |
| **24.** | **53.1** | | The bonus for early completion is not applicable | |
| **25.** | **54.1** | | The amount of advance payment shall be zero. per cent of the contract sum payable by | |
|  |  | | Monthly Recovery of Advance Payment: zero. Percent of amount of Interim Payment Certificate. | |
| **26.** | **55.1** | | The Performance Security shall be 10 percent of the contract price]. | |
|  |  | | 1. **Finishing the Contract** | |
| **27.** | **61.1** | | As built drawings shall be supplied by the contractor as agreed.  Operating manual shall be supplied by the contractor as agreed | |
| **28.** | **61.2** | | The amount to be withheld by the Project Manager in the case the contractor does not submit as built drawings is:…………………. [*State amount if applicable*].  The amount to be withheld by the Project Manager in the case the contractor does not submit operating manual is:…………………. [*State amount if applicable*]. | |
| **29.** | **63.1** | | The percentage to apply to the value of the work not completed, representing the Procuring Entity's additional cost for completing the Works, is *[percent].* | |

# SECTION VI: TECHNICAL SPECIFICATIONS

***Insert here sets of precise and clear Technical Specifications to respond realistically and competitively to the requirements of the Procuring Entity.***

# SECTION VII: DRAWINGS

***Insert here a list of Drawings. The actual Drawings, including site plans, should be attached to this section or annexed in a separate folder.***

# SECTION VIII: BILL OF QUANTITIES

## . SPECIFICATIONS

**GENERAL**

### MATERIAL GENERALLY

All materials used on the works shall be new and of the qualities and kinds specified herein and equal to approved samples. Deliveries shall be made sufficiently in advance to enable samples to be taken and test if required. No materials shall be used until approved and all materials which are not approved or which are damaged, contaminated or have deteriorated in any way or do not comply in any way with the requirements of this specification shall be immediately removed from the site at the Contractor’s expense.

### MATERIALS FOR WHICH THERE IS A KENYA BUREAU OF STANDARDS SPECIFICATION

All materials used in the works for which a Kenya Bureau of Standard Specification has been published shall conform with the latest edition thereof in every way. The Project Manager reserves the right to demand that the Contractor shall obtain at his own expense a certificate in respect of any material to state that it is in accordance with the Kenya Bureau of Standard Specifications.

### MATERIALS FOR WHICH THERE IS NO KENYA BUREAU OF STANDARDS SPECIFICATION

All materials used in the works for which no Kenya Bureau of Standard Specification has been published shall conform with the British Standard Specifications for such material. If there are no published standard as specified for any materials, the quality of such materials shall be generally of a Standard equal to those for which there is a Kenya Bureau of Standard or British Standard Specification.

### **ALTERNATIVES TO PROPRIETARY BRANDS**

Where materials are specified by their proprietary names or where fittings are specified by catalogue numbers, or descriptions, the contractor may offer material or fittings of alternative manufacture which are of equal quality. Such alternatives must be approved before being used in the works and the contractor shall allow for this, but prior to tendering he may submit to the Project Manager for approval the names of any supplies or manufacturers whose products he intends to use, together with catalogue numbers and descriptions and/or samples but the decision of the Project Manager will be final.

### SAMPLES

The Contractor shall furnish for approval, with reasonable promptness all samples of material and workmanship required by the Project Manager. The Project Manager shall check and approve such for conformance with the design concept of the works and for compliance with the information given in the Contract Documents. The work shall be in accordance with approved samples.

1. All material samples shall be delivered to the Project Manager’s Office with all charges in connection therewith paid by the Contractor.
2. Duplicate final approved samples, in addition to any required for the Contractor’s use, shall be furnished to the Project Manager, one for office use and one for the site.
3. Samples shall be furbished so as not to delay fabrication, allowing the Project Manager reasonable time for consideration of the sample submitted.
4. Each sample shall be properly labeled with the name and quality of the material, manufacturer’s name, name of project, the Contractor’s name and the date of submission and the specification number to which the sample refers.

# DEMOLITIONS AND ALTERATIONS SPECIFICATIONS

### DEMOLITIONS

Demolitions, taking out and cutting away shall be carefully performed and every caution shall be taken to ensure the safety of the work. If damage should occur in the carrying out the demolitions or alterations the contractor shall reinstate and make good the same at this own expense.

## B. PROTECTION

Supply, erect and maintain during the cutting of openings etc, all necessary protection to the existing premises against damage by weather or other cases.

### LAYING THE DUST

Allow for laying the dust as far as possible during the alteration by watering with a hose or other means.

## D. MAKING GOOD

All making good of blockwork, building up of opening etc, shall be solid blockwork unless otherwise described, in cement mortar (1:4) properly cut, toothed and bonded and pinned up to existing work and pointed where necessary.

## E. CREDIT FOR MATERIALS

Unless otherwise specified materials arising from the demolitions and alterations will become the property of the contractor. If the Contractor wishes to allow a credit for any such materials the appropriate allowance should be included in the credit column of the Bills of Quantities. In the event that the Employer wishes to take possession of any such materials the contractor will only be entitled to receive compensation to the amount of credit indicated.

## GLAZING MATERIALS

### GENERAL

Glass used in glazing and for mirrors shall be best quality clear glass free from visible defects so as to afford uninterrupted vision or reflection as appropriate, and without obvious distortion.

### STANDARDS

Glass for glazing and mirrors shall be of approved manufacture and is to comply with B.S.952 in all respects free from flaws, bubbles, specks and other imperfections.

### CLEAR SHEET GLASS ETC.

The clear sheet glass shall be ordinary glazing (OG) quality.

### PLATE GLASS

To be of type described and as approved by the Project Manager.

### OBSCURED GLASS

To be of type described and as approved by the Project Manager.

###### I Putty

1. The putty for glazing to wood sashes is to be linseed oil putty all as B.S.544.
2. The putty for glazing to metal windows is to be gold size metal window putty specially designed for tropical use, or patent mastic putty if approved by the Project Manager.
3. All putty shall be delivered on site in the original manufacturer’s sealed cans or drums and used direct therefrom, with the addition only of pure linseed oil if necessary. No mineral or other oils may be used in the putty except genuine linseed oil.

### MIRRORS

Mirrors shall be polished float glass silverin quality, protected at back with electro-copper backing coated with shellac varnish and paint. The mirrors are to be fixed with chromium plated dome headed mirror screws with plastic or rubber distance pieces and washers unless otherwise stated and rates shall include for this.

## WORKMANSHIP

### GENERAL

Glazing of all types and in all locations shall be carefully executed by artisans skilled in this type of work and in conformance with recommendations of C.P.152. Glazing shall be carefully fitted so that it is not subject to pressure and stress imposed by being an overtight fit within the framing.

### MEASUREMENTS

Each element (door, window etc.) to receive glass shall be accurately measured to ensure a perfect fit subsequently.

### SINGLE GLAZING

Single glazing shall be executed with glass of the various types described herein. Ordinary (non –safety) glass may be pre-cut or cut on site.

### WIRED GLASS

Wired glass shall be cut so that the wires embedded are truly vertical and horizontal (i.e at right angles to the cut edges).

### SAFETY GLASS

Safety glass shall be factory cut before delivery to site. Site cutting will not be permitted.

### STORAGE AND HANDLING

Glass shall be delivered to site in stout containers and clearly marked. The containers shall incorporate sling attachment points for lifting bridles. Glass shall be stored under cover so that the panes are truly vertical.

### PROTECTION

After fixing glass shall be boldly marked with paper or whitewash so that it is clearly visible. In positions where damage due to construction traffic or activity is likely to occur stout screens composed of hardboard or fibreboard on battens shall be arranged to protect the glass.

### DAMAGE

Should any glass delivered to site be found to be damaged it shall not be incorporated into the works without the express permission of the Project Manager. Should glazing installed be damaged for any reason it shall be removed and replaced free of charge to the satisfaction of the Project Manager. Should any adjacent works be damaged this shall equally be reinstated free of charge to the satisfaction of the Project Manager.

### DEFECT WORK

All glass shall be checked before installation to ensure that defective glass is not installed. Notwithstanding this, if in the opinion of the Project Manager, any installed glazing is defective it shall be removed and replaced free of charge to the satisfaction of the Project Manager.

### GLAZING TO WOOD

Glazing shall be secured to wood framing with hardwood beads. Edges shall be wrapped in washleather so that the washleather finishes just below the surface of the bead. No adhesives shall be used.

### GLAZING TO METAL

Glazing shall be secured to metal framing with clip in butyl rubber gaskets.

### GLASS THICKNESS

Glass thickness shall conform to the recommendations of C.P.152 and the manufacturer’s recommendations for sizes of panes relative to the position in the building and the effects of wind pressure (both negative and positive).

### CLEANING

All window glazed panels and mirrors shall be cleaned both inside and out immediately prior to the handing over of the building to satisfaction of the Project Manager.

## PAINTING AND

## DECORATING

### MANUFACTURERS

Except where stated all materials shall be obtained from approved manufacturers. The contractor shall state the name and address of the manufacturer whose materials he proposes to use. Once approval has been given the contractor shall not obtain materials from other sources without the prior written agreement of the Project Manager.

### GENERAL

Each succeeding coat of priming, undercoating and finishing (pigment) or clear coating shall be sufficiently different in colour as to be readily distinguishable.

All primers and paints in one system upon a particular surface shall be obtained from the same manufacturer. The mixing of paints, etc, of difference brands before or during application will not be permitted.

### EMULSION PAINTS

Emulsion paints shall be matt to satin finish vinyl emulsion paint. The first (mist) coat shall be thinned in accordance with the manufacturer’s instructions.

### GLOSS PAINT

Gloss paint shall be hard gloss finish oil paint.

### LEAD BASED PAINT

The use of lead based paints will not be permitted.

### CLEAR FINISHES

Clear finishes internally shall be clear polyurethane varnish (one pack).

### PRIMERS AND UNDERCOATS

Unless otherwise specified, primers and undercoats shall be the type recommended by the manufacture of the finishing coats specified for a particular surface. Primer for external bare metalwork surfaces shall comply with B.S 2523.

### KNOTTING

Shellac knotting shall comply with B.S 1336

### WHITE SPIRIT

The white spirit shall comply with B.S. 245.

### TIMBER STAIN

Timber stain shall be oil based pigmented stain. The application of this materials shall be strictly in accordance with the manufacturers written instructions. Tint and degree of application shall be to the approval of the Project Manager.

### STOPPING

The stopping shall be as follows:-

* 1. plasterwork shall be plaster based filler.
  2. Concrete and brick work shall be similar material to the background and finished in a similar texture.
  3. Internal woodwork, plywood and blockboard shall be putty complying with B.S.544.
  4. External woodwork shall be white lead paste complying with B.S 2029.
  5. Internal clear wood finishes: the stopping shall be that recommended by the clear lacquer manufacturer.

### FILLERS

The fillers for internal joinery shall be the type recommended by the paint manufacturer for use with his type of paint or lacquer. Stopper and fillers shall be tinted to match the under coat, and shall be compatible with both undercoats and primers.

All materials shall be used strictly in accordance with manufacturer’s instructions.

### TEXTURED COATING

Textured coating is to be of proprietary manufacture approved by the Project Manager and of an approved colour.

Technical information concerning the coating is to be submitted to the Project Manager before ordering, but the minimum qualities of the coating are to as follows:-

* 1. Suitable for application internally and externally, plastered, rendered, concrete, block stone, brick, asbestos and timber surfaces.
  2. Minimum durability of 10 years even in exposed conditions
  3. Maintenance free
  4. Built- in mould resistant fungicide.

## WORKMANSHIP

### GENERAL

Workmanship generally shall be carried out in accordance with B.S.C.P 231, unless otherwise specified. Before painting is commenced floors shall be swept and washed over; surfaces to be painted shall be cleaned before applying paint as specified, and all precautions taken to keep down dust whilst work is in progress. No paint shall be applied to surfaces structurally or superficially damp and all surfaces must be ascertained to be free from condensation, efflorescence, etc.., before the application of each coat. No painting shall be carried out externally during humid, rainy, damp, foggy or freezing conditions, or conditions where surfaces have attained excessively high temperatures or during dust storms. No new primed or undercoated woodwork and metal work shall be left in an exposed or unsuitable situation for an undue period before completing the process.

No dilution of paint materials shall be allowed except strictly as detailed by the manufacturer’s own direction, either on the containers, or their literature, and with special permission of the Project Manager. For external work dilution of paints will not be allowed whatsoever. For internal work, where permitted by the Project Manager, undercoats may be thinned by the addition of not more than 5% thinners. Gloss finish shall not be thinned at all.

Metal fittings suchs as ironmongery etc., not required to be painted shall first be fitted and then removed before the preparatory processes are commenced. When all paining is completed the fittings shall be cleaned as necessary and refixed in position.

### BRUSHWORK

Unless otherwise specified, all primers and paints shall be brush applied. Written permission must be obtained from the Project Manager’s if an alternative method of application is to be used.

### STOPPING AND FILLING

Unless otherwise specified by the manufacturer all primers and undercoats shall be stopped flush and rubbed down to a smooth surface with an abrasive paper and all dust removed before each succeeding coat is applied. Care shall be taken to prevent burnishing of the surface.

### STIRRING

Unless otherwise specified by the paint manufacturer all paint materials shall be thoroughly mixed and/or stirred before and during use, and suitably strained as and when necessary.

### INSPECTION

No priming coats shall be applied until the surfaces have been inspected and the preparatory work has been approved by the Project Manager. No undercoats of finishing coats shall be applied until the previous coat has been similarly inspected and approved.

### PAINT APPLICATION

Each coat of paint shall be so applied as to produce a film of uniform thickness. All paint shall be applied in accordance with the manufacturer’s instructions. Special attention shall be given to ensure that all surfaces including edges, corners, crevices, welds and rivets receive a film thickness equivalent to that of adjacent painted surfaces.

### DRYING

All coats shall be thoroughly dried before succeeding coats are applied. Allow a minimum of 24 hours between application on any one surface, unless otherwise specified by the manufacturer.

### UPRIMED WOODWORKS

Unprimed woodwork scheduled to be painted shall be rubbed down with abrasive paper and dusted off. Care shall be taken to prevent ‘burnishing’ of the surface. All knots and resinous areas shall be coated with two coats of knotting. Pitch on large, open unseasoned knots and all other beads or streaks of pitch shall be scrapped off, or if still soft, shall be removed with white spirit before applying the knotting.

Apply one coat of priming to all surface, two coats to all end grain, to be subsequently painted. Backs of all wood frames in contact with concrete, brickwork, blockwork, and metalwork or similar materials shall be primed before fixing. After priming all joints, holes, cracks shall be stopped and filled, rubbed down and dusted off.

### PRIMED WOODWORK

Woodwork delivered primed shall be lightly rubbed down with abrasive paper, and dusted off. Touch up bare areas with a similar priming including open grained ends. After touch priming all joints holes, cracks and open grained ends shall be stopped and filled, rubbed down and dusted off.

### PLYWOOD AND BLOCKBOARD

Edges of exterior plywood and block board shall be sealed with two coats of aluminium primer and the backs treated with a lead primer.

### CLEAR FINISHED WOODWORK

All woodwork scheduled to receive a clear finish shall be well sanded with the grain removing all dirt etc.., to give as smooth a surface as possible. Resinous timber shall be swabbed down with white spirit and dried thoroughly.

Split or end grain shall be filled with suitable filler recommended by the clear lacquer manufacturer in accordance with their instructions, and of the appropriate shade.

### BARE METALWORK

Bare metalwork shall be thoroughly cleaned off all dirt, grease, rust and scale by means of chipping, scrapping and wire brushing; particular attentions should be given to the cleaning of welded, brazed and soldered joints. Wash down with white spirit and wipe dry with clean rags. Apply a coat of metal primer immediately the cleaned surfaces have been approved by the Project Manager.

### GALVANIZED METALWORK

Galvanized metalwork scheduled for painting shall be thoroughly cleaned of dirt, grease dusted and washed down with white spirit and wiped dry with clean rags. Any minor areas of rust shall be removed by wire brushing and spot primed with a zinc rich primer. Apply at least one coat of calcium plumbate primer at all surfaces subsequently to be painted.

### PRIMED METALWORK

If the priming coat of pre-primed metalwork has suffered damage in transit, or during erection on site, the affected areas shall be cleaned off by wire brushing abrading and dusting off, the bared patches touched up with a primer of a similar type to that already applied.

### COPPER

Copper scheduled for painting shall be lightly abraded with emery cloth, washed with white spirit and wiped dry with clean rags. Apply a coat of each primer immediately the cleaned surfaces have been approved.

### BRICKWORK, CONCRETE ETC.

All brickwork, blockwork, concrete, rendered and plaster surfaces scheduled to be painted shall be brushed down, all holes and cracks filled, all projections such as plaster or mortar splashes etc., removed to leave a suitable dust free surface. All traces of mould oil shall be removed from concrete surfaces by scrubbing with water, detergent and rinsing with clean water. All these surfaces shall be thoroughly dry before any primer or paints are applied. Apply a coat of alkali resisting primer where surfaces are to be finished with oil paints or alkyd type emulsion.

Asbestos cement surfaces scheduled for painting shall be brushed down to remove powdery deposits, and a coat of alkali resisting primer applied where such surfaces are to be finished with oil paints or alkyed resin type emulsion.

### COLOURS

The colour will, be selected by the Project Manager from the paint manufacturer’s standard colour range.

### TOXIC WASH

Concrete, blockwork, plaster and timber surfaces which are to be painted shall be washed down prior to painting with a toxic wash applied by brush or spray. A second wash shall be applied two days after the first wash. The surfaces shall be then allowed to dry out completely before application of paint.

### PROTECTION

Proper care must be taken to protect surfaces while still wet by use of screens and ‘wet paint’ signs where necessary.

### DAMAGE

Care must be taken when preparing surfaces, or painting etc., not to stain or damage other work. Dust sheets and covers to the satisfaction of the Project Managers shall be used to protect adjacent work. Any such stains or damage shall be removed and made good at the Contractor’s expense.

### CLEANLINESS

All brushes, tools ,pails, kettles and equipment shall be clean and free from foreign matter. They shall be thoroughly cleaned after use and before being used for different colours, types of classes of material. Painting shall not be carried out in the vicinity of other operations that may cause dust. Waste liquids , oil soaked rag etc., shall be removed from the building each day. Waste liquids shall not be thrown down in any sanitary fittings or drains.

### PERFORMANCE

If, while the work is in progress, the paint appears to be faulty, such as consistency of colour, drying time, or quality of finish, the work shall be stopped at once and the manufacturer consulted.

The manufacturer’s of the materials shall be given every facility for inspecting the work during progress in order to ascertain that the materials are being used in accordance to their directions, and to take samples of their products from the site if they so desire for tests.

The finishing coats of the various paints or surface finishings shall be free from sags, brush marks, runs, wrinkling, dust, bare or ‘starved patches, variations in colour and texture, and other blemishes.

When the work has been completed, the finished surfaces shall not be inferior in quality, colour and finish to the samples approved by the Project Manager, and imperfections in manufacture shall not be apparent through these finished surfaces.

In the event that the Project Manager is not satisfied that the quality of finish does not comply with the required standards and/or the sample panel the contractor will be required to repaint at his own expense, such work to the satisfaction of the Project Manager. If in the opinion of the Project Manager it is necessary to remove completely the unsatisfactory paintwork this shall also be done under the direction of the Project Manager at the expense of the contractor.

### Packaging, Delivery and Storage

All paints and surface coatings shall be delivered in sound sealed containers, labelled clearly by the manufacturers, the label or decorated container must state the following:-

* 1. The type of product
  2. The brand name and colour
  3. The use for which it is intended
  4. The manufacturer’s batch number
  5. The B.S number if applicable
  6. All labels shall be printed – containers bearing type written labels will not be acceptable

Materials shall be stored under cover in accordance with the manufacturer’s instructions, and with local fire and safety regulations. The store itself must be maintained at temperature of not less than 50 degrees f (10 degrees C) and must not be subjected to extreme changes of temperature.

### VINYL EMULSION PAINT

Surfaces to be painted shall receive one mist coat followed by two full coats of vinyl emulsion paint. Application may be by means of rollers or brushes.

### GLOSS FINISH PAINT

Surfaces to be painted shall be primed then painted with two undercoats followed by one coat gloss finish paint.

### CLEAR POLYURETHANE VARNISH

Surface to be clear varnished shall be treated with two coats polyurethane varnish

### TEXTURED COATING

The manufacturer’s instructions concerning application of the coating are to be strictly followed under the direction of the Project Manager.

All surfaces to receive textured coatings are to be clean and dry with surfaces scrapped and brushed before application of the coating.

Application of the coating is to be with textured roller or fibre brush as directed by the Project Manager with a minimum spreading capacity of 1 kilogramme per square metre. Under no circumstances is the coating to be thinned.

## 

# BILLS OF QUANTITIES FOR;

# PROPOSED EXTERNAL REPAINTING AND ASSOCIATED WORKS AT INTEGRITY CENTRE BUILDING - NAIROBI

## Preliminaries

|  |  |  |
| --- | --- | --- |
| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **B**  **C**  **D**  **E**  **F**  **G** | **The “Contractor”:**  The person or persons, partnership, firm or company whose tender for the work is accepted and who consequently enters into a written contract with the Employer to carry out the works.  **DESCRIPTION OF SITE**  The site where the works will be carried out is at Kenya Re Towers, Nairobi  **ACCESS TO SITE**  The site is accessed through tarmacked city roads. There is no restriction to the access except as may be imposed by the Local Authority and building management.  **DESCRIPTION OF WORK AND SCOPE OF CONTRACT.**  The work in this contract comprises waterproofing of flat roof slabs, expansion joints and ancilliary works and shall entail but not limited to the following:   * Demolitions * Hacking of concrete * Rain water goods - downpipes , fulboras etc * laying of APP, Sealants and concreting   The standards of workmanship and materials used are expected to be of the highest levels achievable to be commensurate with the best standards in the building industry in Kenya.  The Employer shall have the right to hire others to carry out work falling under the contract if the contractor fails to achieve the required standards of materials and workmanship.  **FORM OF CONTRACT**  The parties shall enter into a contract which shall be the Government of Kenya Conditions of Contract as issuedby the Ministry of Finance and Planning (2002).  **SUFFICIENCY OF TENDER**  The contractor shall be deemed to have satisfied himself before submitting his tender to the correctness and sufficiency of the tender for the works and of rates and prices stated in the priced bills of quantities, which rates and prices shall cover all his obligations under the contract and all matters and means necessary for the proper completion and maintenance of the Works. The rates and prices shall not be changed whatsoever after tender opening.  **SECURITY OF THE WORKS**  The Contractor shall be entirely responsible for the security of the works, materials, plant, and personnel. |  |
| **TOTAL CARRIED TO COLLECTION** | |  |

|  |  |  |
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| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **a b c**  **c**  **d e f g h i j k l**  **B**  **C** | **DEFINITIONS AND ABBREVIATIONS**  *Abbreviations used in these Bills of Quantities shall be interpreted as follows:-*  “Approved”: Shall mean approved by the Project Manager/Project manager  “As directed”: Shall mean as directed by the Project Manager/Project manager or the Engineer as appropriate.  “B.S.”: Shall mean the Current British Standard specifications published by the British Standards Institution, 389 Chiswick High Road London w4 4AL, United Kingdom  "K.S.": Shall mean the current Kenya Standard as Published by the Kenya Bureau of Standards  “Kg.”: Shall mean **Kilograms** “No.”: Shall mean **Number** “MM”: Shall mean **Millimetres**  “LM.”: Shall mean **Linear Metres** “SM.”: Shall mean **Square Metres** “C.M.”: Shall mean **Cubic Metres**  “M.S.”: Shall mean **Measured separately**  Words denoting the "Male" shall be deemed to represent the "Female" and vice versa. “Ditto”: Shall mean  **the whole of the preceding description except as qualified in the section in which it**  **occurs. Where it occurs in brackets it shall mean the whole of the preceding description which is contained in the appropriate brackets.**  **SAMPLES**  The Contractor shall furnish at the earliest possible opportunity before the relevant section of the work commences and at his cost, any samples of materials or workmanship that may be called for by the Project Manager/Project manager for his approval and any further samples in the case of rejection until they are approved. Such samples, when approved, shall be the minimum standard for the work to which they apply.  **SECURITY AND ACCESS TO SITE**  The contractor must include in his tender for all expenditure likely to be incurred in complying with the security arrangements in the building especially in relation to entry and exit from site of the works and movement within the site and the building. |  |
| **TOTAL CARRIED TO COLLECTION** | |  |

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| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **B**  **C**  **D**  **E**  **F** | **EXISTING SERVICES**  Prior to commencement of any work the contractor shall ascertain from the relevant authorities and from a keen observation of the building, the exact positions, depths and levels of all existing electric cables, water pipes and other services in the building and shall make whatever provisions may be necessary and those that may be required by the authorities concerned for the support and protection of such services. Any damage or disturbance caused to any service/installation shall be reported immediately to the Project Manager/Project manager, the Employer and the relevant authority and shall be made good to their satisfaction at the Contractor’s expense.  **MATERIALS, TOOLS, PLANT AND SCAFFOLDING**  The Contractor shall be responsible for the provision of all materials, scaffolding, tools, plant, transport and workmen required for the works except insofar as may be stated otherwise herein.  All materials and workmanship used in the execution of the works shall be of the best quality and description. Any materials condemned by the Project Manager/Project manager shall immediately be removed from the site at the Contractor’s cost.  All plant, tools and scaffolding shall comply with all regulations whether general or local which are in force throughout the period of the contract and shall be altered or adapted during the contract as may be necessary to comply with any amendments in or additions to such regulations.  All scaffolding shall be clean preferably steel and or a cradle for the purpose of keeping the openings and windows as free from obstruction as possible. The contractor should take this into consideration when pricing these bills of quantities. No extra claim will be considered for contractor's failure to price this item.  **LOCAL REGULATIONS AND BY-LAWS**  The contractor is to comply with all regulations and by-laws of the Municipal Council including serving of notices and paying of fees where applicable.  **SUPERVISION**  The works shall be executed under the direction and to the entire satisfaction of the Project Manager/Project manager who shall, at all times, have access to the works.  **TRANSPORT TO AND FROM THE SITE**  The Contractor shall allow in his rates and prices for the transport of materials, workmen etc., to and from the site for the proposed works, at such hours and by such routes and means as are permitted by the authorities.  **FAIR WAGES**  The Contractor shall pay rates and wages and observe hours and conditions of labour not less favorable than the minimum rates of remuneration and minimum conditions of employment applicable within the jurisdiction of the Local Authority as stipulated by the Minister for Labour. |  |
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| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **B**  **C**  **D** | The Contractor shall comply with the Regulation of Wages and Conditions of Employment Act, Building and Construction Industry Wages Council.  Should a claim be made to the Employer alleging the Contractor’s default in payment of Fair Wages of any Workman employed on the Contract and if proof thereof satisfactory to the Employer is furnished by the Labour Department, the Employer may, failing payment by the Contractor, pay the claim out of any money due or which may become due to the Contractor under the Contract.  **PUBLIC AND PRIVATE ROADS, PAVEMENTS ETC.**  The Contractor shall make good at his own expense any damage he may cause to public and / or private roads and pavements in the course of executing this contract.  **POLICE REGULATIONS**  The Contractor shall comply with all instructions and regulations of the police Authorities and shall pay any fines and costs arising from non-compliance of the same which may arise in the course of executing this contract.  **SPACE TO BE OCCUPIED BY THE CONTRACTOR**  The Contractor shall occupy the space in the building that shall be authorised by the Project Manager/Project manager. In case the available space within the site and the building is insufficient for the Contractor's needs, he shall make arrangements elsewhere for his storage requirements. Demolitions arisings must be removed from site immediately.The security of the works and the materials stored on site will be the responsibility of the Contractor.  **PROGRESS SCHEDULE**  Immediately after signing the contract, the Contractor is to prepare a Time and Progress Chart showing the time and order in which he proposes to carry out the works within the total construction time stated in the contract. The chart shall show in detail the order in which each section, element or activity of the works is to be carried out **with emphasis on the critical path**  The Contractor shall obtain the Project Manager/Project managers approval of the chart and then shall supply copies to the other consultants and the Employer, and he shall pin one copy upon the site where directed. He shall thereafter adhere strictly to the approved schedule. In the event of the work falling behind the approved programme for any reason whatsoever, the Contractor shall, within a week of the deviation becoming apparent, prepare a revised schedule showing how lost time would be made up within the overall Contract Period.  Upon commencement of the works, the Contractor shall be required, in addition to other requirements on the recording of progress contained herein, to compile and submit to the Project Manager/Project manager and the Employer Site Weekly reports upon which shall be recorded daily activities on site including the labour and machinery (if any) on site, deliveries of materials on site and the extent of work achieved at the close of the working day. The records shall be filed with the relevant parties not later than the Friday of the subsequent week. |  |
| **TOTAL CARRIED TO COLLECTION** | |  |

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| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **B**  **C**  **D**  **E** | The Contractor is required to execute the work with speed and dispatch to take as short a time on the project as possible. The Contractor may arrange overtime working with the Employer to achieve this. Any overtime payments should be allowed for in the rates and prices. No extra payment beyond the Contract Sum shall be allowed in connection thereto.  **OVERTIME**  Unless overtime is directed by the Project Manager/Project manager for reasons other than the Contractor’s own interest to complete the work within the contract period, the contractor will be responsible for any extra cost arising therefrom.  **WATER FOR THE WORKS**  The Contractor shall provide all water required for the works at his own cost.All water shall be fresh, clean, pure, and of potable quality, free of earthy, vegetable or other organic matter, acid or alkaline substances in solution or suspension. The water meter shall be transferred to the Employer on completion of the project after all bills have been settled.  **LIGHTING AND POWER**  The Contractor shall provide all temporary power as may be necessary from his own sources and at his own cost for the purpose of the works. He shall also pay all fees and costs and shall obtain all permits in connection therewith.  **SANITATION OF THE WORKS**  The Contractor shall make his own arrangements for sanitary conveniences for his workpeople. Any arrangements so made shall be in conformity with the Public Health requirements for such facilities. He shall be solely liable for any infringement of the requirements.  **PRIME COST SUMS**   1. The words “Prime Cost” (or the initials “PC”) wherever appearing in the Contract documents shall mean the net cost exclusive of any trade, cash or other discounts whatsoever but inclusive of the cost of packing, carriage and delivery. Such cost shall be the sums due to the Sub- Contractor or Supplier after adjustment where applicable in respect of the measurements or rates. 2. Any increases or decreases in these Prime Cost Sums resulting from the adjustments which are properly paid by the Contractor shall be added to or deducted from the Contract sum in the final account. In substantiation, the Contractor shall be required to produce to the Quantity Surveyor all quotations, invoices and corroborated accounts as shall be necessary to show details of the sums actually paid. 3. Any sum added by the Contractor to the Contract Sum in respect of profit upon any Prime Cost Sum shall be adjusted proportionately to the net amount properly expended and included in the final settlement of accounts. 4. Unless otherwise specified, amounts stated against the item(s) "Attendance" shall be subject to proportional adjustment of the Prime Cost Sums. |  |
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| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **B** | **NOMINATED SUB-CONTRACTORS**  The Contractor shall provide the following services for Nominated Sub-contractors:-  (i) General Attendance: The following services are described as “allow” for general attendance   1. Use, for the purpose of the Contract Works, of any scaffolding belonging to or provided by the Contractor while it remains erected upon the site, provided that no warranty or other liability on the part of the Contractor or of his Sub-Contractors shall be implied in regard to the fitness, condition or suitability of the said scaffolding. 2. Provision of water, lighting, watching and attendance for the purpose of the sub-contract Works; 3. Use of sanitary accommodation and welfare facilities that are provided for the Contractor’s workers; 4. Provision of space or spaces for storage of plant and materials. 5. Clearing away rubbish produced by the Sub-Contractors.   (ii) Special Attendance: The following services are stated under a separate item and where described shall have the meaning described hereunder.   1. Taking delivery: shall mean provision of unskilled labour necessary to attend upon the Sub- Contractor’s workmen for the purpose of unloading plant and materials when received upon the site and placing in position within the Sub-Contractor’s storage space or store; 2. Hoisting: shall mean the provision of unskilled labour and the use of any Contractor’s standing plant for the purpose of raising the Sub-Contractor’s plant, materials or components to the various levels but not placing in its final position 3. Providing power: shall mean the provision of power during the course of the works and during the period of Commissioning and Testing   **ADJUSTMENT OF PROVISIONAL SUMS**  In the final account all provisional sums shall be deducted and the value of the work properly executed in respect of them upon the Project Manager/Project managers's order added to the contract sum. Such work shall be valued as described for variations in the conditions of contract, but should any part of the work be executed by a nominated subcontractor, the value of such work or articles for the work to be supplied by a nominated supplier, the value of such work or articles shall be treated as P.C sum and profit and attendance comparable to that contained in the priced bills of quantities for similar items added. |  |
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| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **B**  **C**  **D** | **REMEASUREMENT OF WORK**  All work described in these bills of quantities is subject to remeasurement in order to ascertain the actual quantity executed for which payment will be made. All provisional and other work liable to adjustment under this contract shall be left uncovered for a reasonable time to allow all measurements needed for such adjustment to be taken by the Project Manager/Project manager.  Immediately the work is ready for measuring, the contractor shall give notice to the Project Manager/Project manager. If the contractor defaults in this respect he shall, if the Project Manager/Project manager so directs, uncover the work to enable all measurements to be taken and afterwards reinstate at his own expense. Other works which are not described provisional shall be remeasured if there is reasonable cause to do so.  **PROTECTING AND CLEANING THE WORK**  The Contractor shall cover up and protect all finished work liable to damage including provision of temporary roofs, gutters, drains, etc., as necessary until the completion of the works.  In the event of any damage occurring to the works, materials, sewers, drains, gullies, paths or other works on the site in temporary possession of the contractor for the purpose of this Contract, either from the weather, want of proper protection, defects or insufficiency of the works or any other cause whatsoever during the progress of the works, the Contractor alone shall be responsible and shall, without extra charge, make good all damage and pay all costs which may be levied.  The Contractor shall take all possible precautions to prevent any nuisance, inconvenience or injury to the occupiers/users of the building generally; users of the adjacent and neighboring properties, and to the public, and shall use proper precautions to ensure the safety of all wheeled traffic and pedestrians.  All work operations which may produce undue levels of noise, dust, vibration, welding flashes or any other discomfort to the occupiers of the neighboring buildings or the general public must be undertaken at suitable times which shall be determined in close liaison with the Project Manager/Project manager and the Employer.  **PREVENTION OF NOISE**  In addition to the above provision on nuisance, the Contractor shall keep the general noise emanating from the site operations at all times to a level that does not cause discomfort to the average person. He shall take all necessary measures to muffle the noise from his tools, equipment and workmen to the reasonable satisfaction of the Employer.  **REMOVAL OF PLANT, RUBBISH, ETC.**  The Contractor shall, upon completion of the Works, remove and clear away all plant, rubbish, cans and unused materials, and shall leave the building and generally the whole of the site of the works in a clean and tidy state to the satisfaction of the Project Manager/Project manager and the Employer. During site operations, he shall also remove from the site all rubbish and dirt as it is produced to maintain the tidiness of the premises and its immediate environs. |  |
| **TOTAL CARRIED TO COLLECTION** | |  |

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| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **B**  **C**  **D**  **E**  **F** | **VALUE ADDED TAX**  The Contractor’s attention is drawn to the V.A.T. Public Notice No. 6 of 5th August 1993 regarding the Finance Bill (1993) (and any subsequent amendments to-date) which requires the Contractor to pay Value Added Tax (V.A.T.) to the Government of Kenya for all Contracts entered into after 1st September 1993. P.C. and Provisional Sums shall be deemed to be inclusive of V.A.T. All tender rates shall be inclusive of VAT. Deductions for VAT will be made by the Employer and paid directly to Kenya Revenue Authority in every payment. The rate of VAT at the time of tendering is 16%.  **TRAINING LEVY**  The Contractor’s attention is drawn to Legal Notice No. 237 of October 1971, which requires payment by the Contractor of a Training levy on all contracts of more than Kes 50,000.00 in value and he should allow in this section of these Bills of Quantities for all costs arising or resulting therefrom.  **LABOUR AND PLANT RETURNS**  The Contractor shall deliver to the Project Manager/Project manager detailed weekly returns showing the supervisory staff and the numbers of the several classes of labour and plant employed on the Works.  **VISITORS BOOK AND SITE DIARY**  The Contractor shall keep on the site a visitors book for recording the names of all persons who visit the site for the purpose of the project. He shall also maintain on site a diary in which he shall record site activities on a daily basis and particularly any occurrence which bears on the progress of the works in any way. The visitors’ book and the diary shall be surrendered to the Project Manager/Project manager at the completion of the project or at any other time that the he may direct.  **SAFETY, HEALTH AND WELFARE OF WORK PEOPLE**  The Contractor shall allow for providing for the safety, health and welfare of workpeople and for complying with any relevant Ordinances, Regulations and Union Agreements.  **WARRANTY AND PERFORMANCE STANDARDS**  The Contractor shall furnish the Employer with a general written warranty covering qualities of workmanship, materials and equipment, and be compelled thereby for a five year period after practical completion of the Contract, except for latent defects which shall be warranted for ten years. The Contractor must make good, at his own expense, such repairs and replacements as may be required as a consequence of negligent workmanship or defective material. The Contractor must also procure such warranties and guarantees as described in the specification section of these Bills of Quantities and relevant Codes of Practice. The Contractor must also comply with all tests of materials as required and/or as directed by the Project Manager/Project manager. |  |
| **TOTAL CARRIED TO COLLECTION** | |  |

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| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **B**  **C**  **D**  **E**  **F** | **NATIONAL INSURANCE AND PENSIONS**  The Contractor shall allow for making any National Social Security Fund payments due in respect of workpeople.  **SITE MEETINGS**  The Contractor shall provide a convenient venue for site meetings. He shall provide a table and a set of 6 No. chairs, pin board for drawings and works program. The Contractor shall also provide a cabinet for keeping current and superceded drawings, site diary, site instructions book and any other such items necessary for the smooth administration of the site.  **PROTECTION OF WORKS AND PERSONS**  The Contractor shall allow for the protection of his own and his Sub-Contractor's work liable to damage, including provision of temporary roofs, gutters, drains, etc., if necessary and shall case- up, cover or in other suitable ways protect all finished work liable to injury, to the satisfaction of the Project Manager/Project manager until completion of the Contract. From the beginning to the completion of the works, the same shall be under the entire care and control of the Contractor, who shall take all possible precautions to prevent any nuisance, inconvenience or injury to the holders or occupiers of surrounding properties and to the public generally, and shall at all times keep all paths and roads affected by the works in a safe and clear state, and shall use proper precautions to ensure the safety of all wheeled traffic and pedestrians.  The Contractor shall allow for providing all watching, lighting, barriers, covering open trenches and protection of the works, including Sub-Contract works as may be necessary for the safety of the works and for the protection of the public and his own and Sub-Contractor's employees. In the event of any damage or loss occurring to the works or to materials or to any sewers, gullies, drains, paths, or other works on the site in temporary possession of the Contractor for the purpose of this Contract either from the weather, want of proper protection, defects, theft, insufficiency of the works or any other cause whatsoever during the progress of the works, or for any accident or damage to property or persons by reason of the said works, the Contractor alone shall be responsible and shall without extra charge, make good all damage and pay all costs incurred.  **TELEPHONE**  The contractor shall make arrangement to be reached on site by phone at all times. He will be responsible for all bills incurred  **HOLIDAYS AND TRANSPORT FOR WORK PEOPLE**  The contractor shall allow for providing holidays and transport for workpeople and for complying with any relevant Ordinances, Regulations or Union Agreements.  **NO WORKMEN TO BE HOUSED ON SITE**  No labour with the exception of a watchman may be housed on the site. The cost of transporting labour to and from the site or elsewhere will be deemed to be included in the tender. |  |
| **TOTAL CARRIED TO COLLECTION** | |  |

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| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **B**  **C**  **D** | **WORK TO BE OPENED UP AT THE REQUEST OF THE PROJECT MANAGER/PROJECT MANAGER**  The Contractor shall, on the instruction of the Project Manager/Project manager within such time as the Project Manager/Project manager shall name, open for inspection any work covered up, and, should the Contractor refuse or neglect to comply with such an instruction, the Project Manager/Project manager may employ workmen other than those employed by the Contractor to open up the same. If the said work has been covered up in contravention of the Project Manager/Project manager's instructions, or if, on being opened up, it is found not to be in accordance with the drawings or Bills of Quantities or an instruction of the Project Manager/Project manager, the expenses of opening and covering it up whether done by the Contractor or by the Project Manager/Project manager shall be borne by and be recoverable from the Contractor and may be deducted from any monies due to the Contractor.  If the work has not been covered up in contravention of an instruction and in accordance with the said drawings and Bills of Quantities, then the expenses aforesaid shall be borne by the Employer, and shall be added to the Contract Sum; provided always that, in the case of foundations or any other urgent work so opened up and requiring immediate attention, the Project Manager/Project manager shall within a reasonable time after the work has been opened, make or cause to be made the inspection thereof, and at the expiration of such time, if such inspection shall not have been made the Contractor may cover up the same and shall not be required to open it up again for inspection except at the expense of the Employer.  **HOARDING**  The Contractor will be required by the Employer or by the local bye-laws to enhance the seclusion of the works by providing hoarding as necessary. The exact location of the hoarding is to be negotiated with the Local Authority by the Contractor who will also be responsible for paying any fees or taxes in respect of the hoarding, fencing and gates. The Contractor shall allow for thoroughly maintaining the hoarding and gates throughout the Contract and clearing away and making good disturbed ground on completion. All materials arising will remain the property of the Contractor and he shall allow credit against this accordingly.  **SCAFFOLDING**  **The Contractor shall allow for providing, erecting and dismantling all scaffolding required for the works.**  **WORKS TO BE DELIVERED UP CLEAN**  On completion of the Contract, the site and the works shall be cleared of all plant, scaffolding, rubbish and unused materials and shall be delivered up clean and in perfect condition in every respect to the satisfaction of the Project Manager/Project manager. Particular attention is to be paid to leaving all walls, windows and floors clean and removing all paint and cement stains. |  |
| **TOTAL CARRIED TO COLLECTION** | |  |

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| ***Item*** | ***Description*** | ***Kes*** |
| **A**  **B**  **C**  **D**  **E**  **F** | **EXISTING PROPERTY**  The Contractor shall take every precaution to avoid damage to all existing property including roads, cables, drains and other services and he will be held responsible for all damage arising from the execution of this Contract to the aforesaid, and he shall make good all such damage where directed at his own expense to the satisfaction of the Project Manager/Project manager.  **TESTING**  Allow for all expenses in connection with the testing of materials as specified hereunder including the supply and preparation of materials to be tested, the cost of materials and their packing and conveyance to the nearest approved testing laboratory, laboratory charges, etc.  **WORK RE-MEASUREMENT FOR FINAL ACCOUNT**  All work in this contract shall be re-measured on completion and a final account of the contract prepared by the Quantity Surveyor. The contractor will be given the opportunity to be present for all re-measurements. The final account will be based on the final re-measurements. The Contractor is therefore cautioned against using the bills of quantities for ordering of materials as the quantities may change in the course of the contract. Neither should the contractor use the Quantities in the Bills of Quantities for executing work on site. The use of the bills of quantities by the contractor for the above purposes shall be at the contractors own risk and no claims arising from any losses arising therefrom shall be accepted.  **ALL OTHER EXPENSE**  The contractor should allow for any other expense that has not been specifically provided for under preliminaries but necessary for the execution of the works  **NATIONAL CONSTRUCTION AUTHORITY FEES**  The contractor shall allow for all charges incured in making an application and obtaining the necessary approvals and licences from the National Construction Authority as required by law on award of the construction contract until completion of the project. The contractor shall present invoices or demand notes from NCA and the employer shall make direct payments to NCA as invoiced.  **INSURANCE**  The contractor shall make sure that the works, plant and equipment , workers, vistors accessing the site and other property are insured during the construction period as stipulated in the conditions of contract. |  |
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| ***Item*** | ***Description*** | ***Kes*** |
|  | **SECTION NO. 1 - PRELIMINARIES SUMMARY**  From page no.  *1/1*  *1/2*  *1/3*  *1/4*  *1/5*  *1/6*  *1/7*  *1/8*  *1/9*  *1/10*  *1/11*  *1/12* |  |
|  | **TOTAL FOR SECTION NO. 1 CARRIED TO MAIN SUMMARY** |  |

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| **SCHEDULE OF WORKS: PROPOSED EXTERNAL REPAINTING AND ASSOCIATED WORKS TO INTEGRITY CENTRE- NAIROBI** | | | | | |
| **ITEM** | **DESCRIPTION** | **Unit** | **Qty** | **Rate** | **Amount** |
|  | **EXTERNAL SURFACES - *All provisional*** |  |  |  |  |
|  | **Prepare including scrubbing and sanding down previously painted surfaces and;** |  |  |  |  |
| A. | Knot, prime stop, prepare and spray two (2) coats aluminium paint as ‘crown paints’ or equal and approved to aluminium panel cladding. | SM | - |  |  |
| C. | Ditto but to general surfaces of casement windows cills and sashes externally | LM | 600 |  |  |
| D. | Ditto but to metallic louver blade surfaces | SM | 280 |  |  |
| E. | Ditto but first grade exterior paint to plastered soffits of cantilevered floor | SM | 105 |  |  |
| F. | Ditto but to mesh roof cover on basement parking | SM | 105 |  |  |
| G. | Ditto but permaplast long lasting exterior wall paint as crown or approved equivalent to rendered wall surfaces | SM | 233 |  |  |
| H. | Supply and fix 6mm laminated glass to replace broken panes on existing aluminium frames | SM | 10 |  |  |
|  | **PARKING (Open and Basement)** |  |  |  |  |
| J. | Prepare surfaces and apply approved reflectorized paint in100 mm wide yellow/white strips on the bays as directed | LM | 600 |  |  |
| K | Carefully remove faulty roller shutter and cart away | No | 2 |  |  |
|  | Total carried to next page |  |  |  |  |

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| **ITEM** | **DESCRIPTION** | **Unit** | **Qty** | **Rate** | **Amount** |
|  | **Total Brought forward from previous page** |  |  |  |  |
| A. | Supply and fix roller shutter steel door complete with accessories - overall size 3000x2400mm high | No | 2 |  |  |
| B. | Scrub down, wirebrush, degrease and wash down and prepare and apply two(2) coats first quality silk vinyl paint to previously painted column and wall surfaces in basement parking | SM | 1200 |  |  |
| C. | Ditto but reflectorized paint to reflective corner strips girth n.e 100mm | SM | 24 |  |  |
|  | **Insitu tamped concrete class 20/(20mm), vibrated and well compacted placed in different heights and surfaces as described in:-** |  |  |  |  |
| D. | 75mm thick in Basement parking including hacking in preparation of dented surfaces | SM | 10 |  |  |
|  | **U-shaped storm water drain** |  |  |  |  |
| E. | 600mm diameter U-shaped drain including steel grating comprising of 50x50x6mm mild steel angle framing infilled with 100x6mm mild steel flats at 20mm centres | LM | 10 |  |  |
|  | **PERIMETER WALL** |  |  |  |  |
| F. | Prepare and wire brush exterior rough concrete/ stone wall surfces and apply 3 coats of lacquer stone varnish | SM | 220 |  |  |
| G | Scrub down, wirebrush, wash down and prepare and apply two(2) coats first quality permaplast emulsion paint to previously painted walls surface externally | SM | 150 |  |  |
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| **ITEM** | **DESCRIPTION** | **Unit** | **Qty** | **Rate** | **Amount** |
|  | **Total Brought forward from previous page** |  |  |  |  |
| A | Knot,prime stop and prepare and apply two (2) coats super gloss paint to general surfaces of steel gates and metallic grilles to perimeter fence externally - measured flat overalll | SM | 380 |  |  |
| B. | Attend to walkways and parking surfaces to remove vegetative plants by spaying with approved herbicides |  | ITEM |  |  |
| C. | Carefully remove defective 80mm cabro blocks and cart away as directed |  | ITEM |  |  |
| D. | Supply and fix 80mm concrete blocks including compaction as necessary | SM | 30 |  |  |
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| **ITEM** | **DESCRIPTION** | **Unit** | **Qty** | **Rate** | **Amount** |
|  | **Total Brought forward from previous page** |  |  |  |  |
|  | **Pumps** |  |  |  |  |
| A | Allow for dismantling and removal of 2 defective waste water pumps including electrical connections and set aside as directed | Item |  |  |  |
| B | Supply, install, test and commission 2 No. Waste water pumps - as Pedrollo VX40/40 3kW 3PH Power Supply. Motor housing and pump body made of cast iron and AISI 304 stainless steel respectively. An electronic duplex control panel with terminals all set for duty/standby operation. The pump should be able to pump 20m3/h at 18m head.  Enclosure Class:  IPX8 , Insulation Class: F, Voltage: 415V; Speed: 2900rpm  OPERATING CONDITIONS  Pumped liquid: Thin, chemically non-aggressive liquids, containing suspended particles up to the specified size . Max. Fluid Temperature: +40 C               Max. Operating Depth: 10m | No | 2 |  |  |
| C | Supply, install, test and commission 2**No.   *Water Transfer from Sump to Main Tank -***1No. Pumpset that will include 2No. Pedrollo DM30 submersible waste water pump, complete with a 1.1kW 1ph 2900rpm Grundfos asynchronous motor, an electronic duplex control panel with terminals all set for duty/standby operation. Each pump will be capable of delivering up to **10m3/h at 15m** head.   Enclosure Class:  IP68 , Insulation Class: F, Voltage: 240V; Speed: 2900rpm | No | 2 |  |  |
| D | Allow for testing and commissioning | Item |  |  |  |
|  | **Total for Measured works carried to Grand Summary** |  |  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **Unit** | **Qty** | **Rate** | **Amount** |
|  | **PRIME COST & PROVISIONAL SUMS** |  |  |  |  |
|  | **Signages** |  |  |  |  |
| A. | Allow a prime cost sum of KES 400,000 to be expended on signages with written instruction from project manager |  | ITEM |  | 400,000 |
|  | **Landscaping** |  |  |  |  |
| B. | Allow a prime cost sum of KES 100,000 for soft landscaping works including; pruning of tree branches and flowers and gapping of flower hedges to be expended with written instruction from project manager |  | Item |  | 100,000 |
|  | **Contingencies** |  |  |  |  |
| B | Allow a provisional sum of KES 350,000 to be expended on contingencies with written instruction from project manager |  | ITEM |  | 350,000 |
|  | **Project Management and Stationery** |  |  |  |  |
| C. | Allow a provisional sum of KES 200,000 to be expended on Project management and stationery with written instruction from project manager |  | ITEM |  | 200,000 |
|  | **Total for Prime cost and Provisional Sums carried to Grand Summary** |  |  | Kes | 1,000,000 |
|  |  |  |  |  |  |
|  | **GRAND SUMMARY** |  |  |  |  |
|  |  |  |  |  |  |
| A | TOTAL FOR PRELIMINARIES |  |  |  |  |
| B. | TOTAL FOR MEASURED WORKS |  |  |  |  |
|  |  |  |  |  |  |
| C. | TOTAL FOR PRIME COST & PROVISIONAL SUMS |  |  |  | 1,000,000 |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | **GRAND TOTAL CARRIED TO FORM OF TENDER** |  |  | **Kes** |  |

**Note**

An amendment or a variation to a contract resulting from a procurement proceeding is effective only if —

The variation or amendment has been approved in writing by the respective tender awarding authority within a procuring entity; and

An accounting officer of a procuring entity, on the recommendation of an evaluation committee, may approve the request for the following, which request shall be accompanied by a certificate from the tenderer making a justification for such cost —

(a)extension of contract period;

(b)use of prime costs;

(c)use of contingencies;

(d)reimbursable costs; and

(e)use of provisional sums.

No contract price shall be varied upwards within twelve months from the date of the signing of the contract.

# SECTION IX: TENDER FORMS

## Form of Tender

*[date]*

To: *[name and address of Procuring Entity*]

We offer to execute the [*name and identification number of contract]* in accordance with the Conditions of Contract accompanying this Tender for the Contract Price of *[amount in numbers], [amount in words] [name of currency].*

The Contract shall be paid in the following currencies:

|  |  |  |  |
| --- | --- | --- | --- |
| **Currency** | **Percentage payable in currency** | **Rate of exchange: one foreign equals [*insert local]*** | **Inputs for which foreign currency is required** |
| (a) |  |  |  |
| (b) |  |  |  |

The advance payment required is:-

|  |  |
| --- | --- |
| **Amount Currency** | |
| (a) |  |
| (b) |  |

We accept the appointment of [*name proposed in Tender Data Sheet] as the* adjudicator.

***or***

We do not accept the appointment of [*name proposed in* Tender Data Sheet*]* as the Adjudicator, and propose instead that [*name*] be appointed as Adjudicator, whose daily fees and biographical data are attached.

We are not participating, as Tenders, in more than one Tender in this Tendering process other than alternative Tenders in accordance with the Tendering documents.

Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the contract has not been declared ineligible by the Kenya Government under Kenya’s laws or any other official regulations.

This Tender and your written acceptance of it shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any Tender you receive.

We hereby confirm that this Tender complies with the Tender validity and Tender Security required by the Tendering documents and specified in the Tender Data Sheet.

Authorized Signature:

Name and Title of Signatory:

Name of Tenderer:

Address:

|  |
| --- |
| Appendix to Tender |

**Schedule of Adjustment Data**

[In Tables A, B, and C, below, the Tenderer shall (a) indicate its amount of local currency payment, (b) indicate its proposed source and base values of indices for the different foreign currency elements of cost, (c) derive its proposed weightings for local and foreign currency payment, and (d) list the exchange rates used in the currency conversion. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.]

**Table A. Local Currency**

| **Index code** | **Index description** | **Source of index** | **Base value and date** | **Tenderer’s related currency amount** | **Range of weighting Proposed by the Procuring Entity** | **Tenderer’s proposed weighting** |
| --- | --- | --- | --- | --- | --- | --- |
|  | Nonadju-stable | **—** | **—** | **—** | **a: \***  **b: ------ to --------\***  **c: ------- to -------\***  **d: ------- to -------\***  **e: ------- to -------\***  **etc.** | **a: \***  **b:**  **c:**  **d:**  **e:**  **etc.** |
|  |  |  |  | **Total** |  | **1.00** |

**Table B. Foreign Currency**

**State type:** ....................... [If the Tenderer wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency.]

| **Index code** | **Index description** | **Source of index** | **Base value and date** | **Tenderer’s related source currency in type/**  **amount** | **Equivalent in Foreign Currency 1** | **Range of weighting Proposed by the Procuring Entity** | **Tenderer’s proposed weighting** |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | Nonadju-stable | **—** | **—** | **—** |  | **a: \***  **b: ------ to --------\***  **c: ------- to -------\***  **d: ------- to -------\***  **e: ------- to -------\***  **etc.** | **a: \***  **b:**  **c:**  **d:**  **e:**  **etc.** |
|  |  |  |  | **Total** |  |  | **1.00** |

**Table C. Summary of Payment Currencies**

For ………………………..[insert name of Section of the Works]

[Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The Procuring Entity should insert the names of each Section of the Works.]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of payment currency** | **A**  **Amount of currency** | **B**  **Rate of exchange**  **(local currency per unit of foreign)** | **C**  **Local currency equivalent**  **C = A x B** | **D**  **Percentage of  Net Tender Price (NBP)**  **100xC**  **NBP** |
| **Local currency** |  | **1.00** |  |  |
| **Foreign currency #1** |  |  |  |  |
| **Foreign currency #2** |  |  |  |  |
| **Foreign currency #** |  |  |  |  |
| **Net Tender Price** |  |  |  | **0** |
| **Provisional sums expressed in local currency** | **\*** | **\*** | \* |  |
| **TENDER PRICE** |  |  |  |  |

Authorized Signature:

Name and Title of Signatory:

Name of Tenderer:

Address:

## Tender-Securing Declaration (Mandatory)

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

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

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

To: *[insert* ***complete name of Procuring Entity****]*

We, the undersigned, declare that:

We understand that, according to your conditions, Tenders must be supported by a Tender-Securing Declaration.

We accept that we will automatically be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time of *[insert* ***number of months or years****]* starting on *[insert* ***date****],* if we are in breach of our obligation(s) under the Tender conditions, because we;

1. Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
2. Having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity,
   1. Fail or refuse to execute the Contract, if required, or
   2. Fail or refuse to furnish the Performance Security, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of;

1. Our receipt of your notification to us of the name of the successful Tenderer; or
2. Thirty days after the expiration of our Tender.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Tender Securing Declaration]*

Name: *[insert* ***complete name of person signing the Tender Securing Declaration****]*

Duly authorized to sign the Tender for and on behalf of: *[insert* ***complete name of Tenderer****]*

Dated on \_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_ *[insert* ***date of signing****]*

Corporate Seal (where appropriate)

**CONFIDENTIAL BUSINESS QUESTIONNAIRE**

***(Must be filled by all applicants or Tenderers’ who choose to participate in this tender) Name of Applicant(S)***

…………………………………………………………………………………………………………… You are requested to give the particulars in Part 1 and either Part 2 (a), 2 (b) or 2 (c), whichever applies to your type of business. **Part 2 (d) to part 2(i) must be filled.**

**You are advised that giving wrong or false information on this Form will lead to automatic disqualification/termination of your business proposal at your cost.**

***Part 1 – General***

Business Name:……………………………………………………………Certificate of Incorporation / Registration No. …………………………………………Location of business premises:

Country …………………………………..…Physical address …………………….………… Town ………………………………….……………………….Building………………………… Floor…………………………………………………………….Plot No. ……..……………… Street / Road ……..………………….……………………Postal Address ………..……… Postal / Country Code…………………………………….Telephone No’s…...…………

Fax No’s. ……………………….………………E-mail address ………………….………… Website ……………………………………………………………………………………….… Contact Person (*Full Names*) …………………………… Direct / Mobile No’s.…………

Title ……………………………………… Power of Attorney (**Yes / No**) If **Yes,** attach written document.

Nature of Business (*Indicate whether manufacturer, distributor, etc)*

………………..……….……

**(Applicable to Local Suppliers Only)**

Local Authority Trading License No. …………………… Expiry Date ……………………….. Value Added Tax No.…………………………………………….……………………………………………….

Value of the largest single assignment you have undertaken to date (***US$/KShs)***

…………………………………….……

Was this successfully undertaken? **Yes / No**. ………………………….(If **Yes**, attach reference)

Name (s) of your banker (s) ………………………………………………………………… Branches ………………………………………………… Tel No’s. …….…………………

***Part 2 (a) – Sole Proprietor***

Full names ……..………………………………………..……………………………………… Nationality……………………………………………….. Country of Origin……....………

***Part 2 (b) – Partnerships***

Give details of partners as follows:

**Full Names Nationality Citizenship Details Shares**

1. ………………………………………………………………………………………

2.…………………………………………………………………………………………

3……………………………………………………………………………………………

4. ……………………………………………………………………………………………

***Part 2 (c) – Registered Company***

Private or public ……………………………………………. Company Profile ……………………….(*Attach*

State the nominal and issued capital of the Company

Nominal KShs ……………………..…………………………. Issued KShs ………………………..………………………….

List of top ten (10) shareholders and distribution of shareholding in the company. Give details of all directors as follows:-

|  |  |  |  |
| --- | --- | --- | --- |
| **Full Names** | **Nationality** | **Citizenship Details** | **Shares** |
| 1.…………………………. | ……………… | …………………… | ……….……. |
| 2………………………… | ………………… | ………………… | .……..…..….. |
| 3………………………… | ………………… | ……………… ……..…..….. | |
| 4………………………… | ………………… | ………………… ………....….. | |

***Part 2 (d) – Debarment***

I/We declare that I/We have not been debarred from any procurement process and shall not engage in any fraudulent or corrupt acts with regard to this or any other tender by the Commission and any other public or private institutions.

FullNames …………………………………………………………………………………… Signature ……………………………………………………………………………………… Dated this …………………………………….……………day of ……………………2017.

In the capacity of ……………………………………………………………………………… Duly authorized to sign Tender for and on behalf of ………………………………… ***Part 2 (e) – Criminal Offence***

I/We, (Name (s) of Director (s)):-

a) ……………………………………………………………………….……….. b) ………………………………………………………………………..….…

c) …………………………………………………………………………………

have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three (3) years preceding the commencement of procurement proceedings.

Signed ……………………………………………………………………………………………

For and on behalf of M/s ………………………………………...…………………………… In the capacity of ……………………………………….……………………………………… Dated this ……………………………………………day of ……………………………2017. Suppliers’ / Company’s Official Rubber Stamp …………………………………………

***Part 2 (f) – Conflict of Interest***

I/We, the undersigned state that I / We have no conflict of interest in relation to this assignment:- a) ………………………………………………………………

b) …….…………………………………………………………………………… c) ………………………………………………………………………………… d) …………………………………………………………………………………

For and on behalf of M/s ……………………………………………………………………… In the capacity of ……………………………………………………………………………… Dated this ………………………………………day of …………………………………2017 Suppliers’ / Company’s Official Rubber Stamp……………………………………………

***Part 2 (g) – Interest in the Firm:***

Is there any person/persons in theCounty Government of Bometor any other public institution who has interest in the Firm? Yes/No ……………………….. (*Delete as necessary)* Institution ………………………….

……………………………………. ……………………………… ………………………

***(Title) (Signature) (Date)***

***Part 2(h) – Experience***

Please list here below similar projects accomplished or companies / clients you have provided with similar services in the last two (2) years.

**Company Name Country Contract/ Order No. Value**

|  |  |  |
| --- | --- | --- |
| 1.…………………… | ………………………. | ……..……. |
| 2..…………………………. ………………… | ………………………. | ……..……. |
| 3.…………………………. ………………… | ………………………. | ……..……. |

Contact person (Full Names) ………………………………………………………………

E-mail address……………………………………………………………………………………. Cell phone no …………………………………………………………………………………

***Part 2(i) – Declaration***

I / We, the undersigned state and declare that the above information is correct and that I / We give theCounty Government of Bometauthority to seek any other references concerning my / our company from whatever sources deemed relevant, e.g. Office of the Registrar of Companies, Bankers, etc.

Full names ……………………………………………………………………………………… Signature………………………………………………………………………………………… For and on behalf of M/s ……………………………………………………………………… In the capacity of ……………………………………………………………………………..

Dated this ……………………………………………day of ……………………………2017. Suppliers’ / Company’s Official Rubber Stamp …………………………………………

## Integrity Declaration

**UNDERTAKING BY TENDERER ON ANTI – BRIBERY POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME**

1. Each Tenderer must submit a statement, as part of the Tender documents, in either of the two given formats which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the Tendering company and, where relevant, of its subsidiary in the Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
2. Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the Tenderer may cover the subcontractors and consortium partners in its own statement, provided the Tenderer assumes full responsibility.
4. Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
5. Each Tenderer will make full disclosure in the Tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the Tender and, if successful, the implementation of the contract.
6. The successful Tenderer will also make full disclosure [quarterly or semi- annually] of all payments to agents and other third parties during the execution of the contract.
7. Within six months of the completion of the performance of the contract, the successful Tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that they are sufficient to establish the legitimacy of the payments made.
8. Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
   1. Tenders which do not conform to these requirements shall not be considered.
   2. If the successful Tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
      1. Cancellation of the contract;
      2. Liability for damages to the public authority and/or the unsuccessful competitors in the Tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated).
         1. Tenderers shall make available, as part of their Tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.
         2. The Government of Kenya has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by Tenderers for this contract, and to which in turn all Tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a Tenderer may be disclosed to another Tenderer or to the public).

## SELF-DECLARATION FORM

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

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of ………....………………………… (insert name of the Company) who is a Bidder in respect of Tender No. ………………….. for ……………………..(insert tender title/description) for ………………( insert name of the Procuring entity) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ……………………..( insert name of the Procuring entity) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ……………………..(name of the procuring entity)
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

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

Bidder’s Official Stamp

## Letter of Acceptance

***[Letter head paper of the Procuring Entity]***

[*date*]

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

This is to notify you that your Tender dated [*date*] for execution of the [*name of the Contract and identification number, as given in the Contract Data Sheet*] for the Contract Price of the equivalent of [*amount in numbers and works*] [*name of currency*], as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us.

We confirm that [*insert name proposed by the procuring entity]* to be the Adjudicator.

We accept that [*name proposed by Tenderer*] be appointed as Adjudicator.

Or

We do not accept that [*name proposed by Tenderer*] be appointed as adjudicator, and by sending a copy of this letter of acceptance to [*insert the name of the Appointing Authority*], we are hereby requesting [*name*], the Appointing Authority, to appoint the adjudicator in accordance with Clause 44.1 of the Instructions to Tenderers.

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

Please return the contract dully signed.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Form of Contract

## Form of Contract Agreement

This Agreement, made the [*day*] day of [*month*], [*year*] between [*name and address of Procuring Entity*] (hereinafter called “the Procuring Entity”) and [*name and address of Contractor*] (hereinafter called “the Contractor”) of the other part.

Whereas the Procuring Entity is desirous that the Contractor execute [*name and identification number of contract*] (hereinafter called “the Works”) with the objectives of *[insert functional objectives of the works]* and the Procuring Entity has accepted the Tender by the Contractor for the execution and completion of such works and the remedying of any defects therein in the sum of *[contract price in words and figures]* (hereinafter called “Contract Price”).

**NOW THIS AGREEMENT WITNESSES 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, and they shall be deemed to form and be read and construed as pert of this Agreement;
    2. In consideration of the payments to be made by the Procuring Entity to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Procuring Entity to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract;
    3. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein 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

In the presence of:

Tendering Signature of Procuring Entity

Binding Signature of Contractor

# SECTION X: FORMS OF SECURITY

## Tender Security (Bank or Insurance Guarantee)

**(Optional)**

*[If required, the* ***Bank or Insurance Company/Tenderer*** *shall fill in this Guarantee form in accordance with the instructions indicated in brackets.]*

*[insert bank’s or insurance company’s name, and address of issuing branch or office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

**Date:** *[insert date]*

**TENDER GUARANTEE No.:** *[insert number]*

We have been informed that *[insert name of the Tenderer; if a joint venture, list complete legal names of partners]* (hereinafter called "the Tenderer") has submitted to you its Tender dated *[insert date]* (hereinafter called "the Tender") for the execution of *[insert name of Contract]* under Invitation for Tenders No. *[insert IFT number]* (“the IFT”).

Furthermore, we understand that, according to your conditions, Tenders must be supported by a Tender Guarantee.

At the request of the Tenderer, we *[insert name of bank or insurance company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in the currency of the Purchaser’s Country or the equivalent amount in an international freely convertible currency]*  (*[insert amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer;

1. Has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender; or
2. Does not accept the correction of errors in accordance with the Instructions to Tenderers (hereinafter “the ITT”) of the IFT; or
3. Having been notified of the acceptance of its Tender by the Procuring Entity during the period of Tender validity;
   1. Fails or refuses to execute the Contract Form, if required, or
   2. Fails or refuses to furnish the Performance Security, in accordance with the ITT.

This Guarantee shall expire;

1. If the Tenderer is the successful Tenderer, upon our receipt of copies of the Contract signed by the Tenderer and of the Performance Security issued to you by the Tenderer; or
2. If the Tenderer is not the successful Tenderer, upon the earlier of;
   * 1. Our receipt of a copy of your notification to the Tenderer that the Tenderer was unsuccessful, or
     2. Thirty days after the expiration of the Tenderer’s Tender.

Consequently, any demand for payment under this Guarantee must be received by us at the office on or before that date.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*[signature(s) of authorized representative(s) ]*

## Performance Bank or Insurance Guarantee [Unconditional]

[The **Bank or Insurance Company/successful Tenderer** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if the Procuring Entity requires this type of security.]

*[insert bank’s or insurance company’s name, and address of issuing branch or office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

**Date:** *[insert date]*

**PERFORMANCE GUARANTEE No.:** *[insert Performance Guarantee number]*

We have been informed that *[insert name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Contractor, we *[insert name of Bank or Insurance Company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words])*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or 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 there under 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 expire not later than thirty days from the date of issuance of the Taking-Over Certificate.

*[signature(s) of an authorized representative(s) of the Bank or Insurance Company]*

## Bank or Insurance Guarantee for Advance Payment

*[Bank’s or Insurance Company’s Name and Address of Issuing Branch or Office]*

**Beneficiary:**            \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Name and Address of Procuring Entity]*

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

**ADVANCE PAYMENT GUARANTEE No.:**            \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We have been informed that  *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the contract]* dated \_\_\_\_\_\_ with you, for the execution of [*name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[amount in figures]* (          ) *[amount in words]* is to be made against an advance payment guarantee.

At the request of the Contractor, we  *[name of Bank or Insurance Company]*  hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (                    ) *[amount in words]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

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 Procuring Entity*] 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.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us.  This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_, whichever is earlier.  Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

Yours truly,

Signature and seal:

Name of Bank or Insurance Company:

Address:

Date:

# SECTION XI: APPLICATION TO PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

**FORM RB 1**

**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

## PRE-TENDER CONFERENCE/SITE VISIT

There will be a mandatory pre-tender conference/site visit to be held on….………. day of …………… Month, 2020 on............................................................................................

Failure to attend this pre-tender/site visit conference will lead to automatic disqualification of the tenderer.

Contractors representative’s name………………………………. Signature…………………………………………………………… Client or Project manager’s representative……………………

Signature and Stamp…………………Date………………...

**APPLICATION FORM (8)**

**LITIGATION HISTORY**

Name of Applicant or partner of a joint venture

*Applicants, including each of the partners of a joint venture, should provide information of any history of litigation or arbitration resulting from contracts executed in the last five years or currently under execution (Instructions to Applicants, para. 4.8). A separate sheet should be used for each partner of a joint venture.*

|  |  |  |  |
| --- | --- | --- | --- |
| Year | Award FOR  or AGAINST Applicant | Name of client, cause of litigation,  and matter in dispute | Disputed amount  (current value Kes.) |
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Name ………………………………Signature……………..Date ………………

Company Seal / Business Stamp

**SELF-DECLARATION FORM**

**ANTI-CORRUPTION DECLARATION**

We (insert the name of the company / supplier) ----------------------------------- declares and guarantees that no offer, gift or payment, consideration or benefit of any kind, which constitutes an illegal or corrupt practice, has been or will be made to anyone

by our organization or agent, either directly or indirectly, as an inducement or reward for the award or execution of this procurement.

In the event the above is contravened we accept that the following to apply —

a) The person shall be disqualified from entering into a contract for the procurement; or

b) If a contract has already been entered into with the person, the contract shall be voidable at the option of EACC.

c) The voiding of a contract by the procuring entity under subsection (b) does not

limit any other legal remedy That EACC may have.

Name …………………………Signature…………………. Date ………………

Company Seal / Business Stamp

**ANTI-FRAUDULENT PRACTICE DECLARATION**

We (insert the name of the company / supplier) -------------------------------------

declares and guarantees that no person in our organization has or will be involved in a fraudulent practice in any procurement proceeding.

Name …………………………Signature…………………..Date ………………

Company Seal / Business Stamp

**NON - DEBARMENT DECLARATION**

We (insert the name of the company / supplier) ------------------------------------- declares and guarantees that this company nor its directors or any person who has any controlling interest in our organization has been debarred from participating in a procurement proceeding.

Name …………………………Signature…………………..Date ………………

Company Seal / Business Stamp

The Public Procurement Regulatory Authority

10th Floor,

National Bank of Kenya Building, Harambee Avenue

P.O. Box 58535-00200, Nairobi.

Telephone:+254-(0)20-324 4000.

Email: [info@ppra.go.ke](mailto:info@ppoa.go.ke)

Website: www.ppra.go.ke