



# KenGen

**KENYA ELECTRICITY GENERATING COMPANY PLC**

**RFx: 5000008903**

**KGN-GDD-04-2022**

**TENDER FOR FENCING OF SITES AT EBURRU GEOTHERMAL  
FIELD**

*(Reserved for Women Enterprises)*

Kenya Electricity Generating Company PLC  
Stima Plaza Phase III, Kolobot Road, Parklands  
P.O. BOX 47936-00100  
NAIROBI.

Website: [www.kengen.co.ke](http://www.kengen.co.ke)

January, 2022

## INVITATION TO TENDER

PROCURING ENTITY: KENYA ELECTRICITY GENERATING COMPANY PLC

CONTRACT NAME AND DESCRIPTION: TENDER FOR FENCING OF SITES AT EBURRU GEOTHERMAL FIELD

KenGen PLC invites sealed tenders from eligible candidates for the TENDER FOR FENCING OF SITES AT EBURRU GEOTHERMAL FIELD, whose specifications are detailed in the Tender Document.

Tendering will be conducted under open competitive method (**Women**) using a standardized tender document. Tendering is open to all qualified and interested Tenderers.

The tender is specific to **Women**.

Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours between 8am and 5pm starting at the date of advert at the office of:

Supply Chain Director

Tel: (254) (020) 3666000

Email: [tenders@kengen.co.ke](mailto:tenders@kengen.co.ke); [POnyango1@kengen.co.ke](mailto:POnyango1@kengen.co.ke);

The document can be viewed and downloaded for free from the website [www.kengen.co.ke](http://www.kengen.co.ke) and/or on E-procurement <https://eprocurement.kengen.co.ke:50001/irj/portal>. Tenderers who download the tender document must forward their particulars immediately to ([tenders@kengen.co.ke](mailto:tenders@kengen.co.ke), 0711036000 and P.O.BOX 47936-00100 postal address) to facilitate any further clarification or addendum

Bidders who are unable to download the tender documents from the website may collect them from any KenGen Supply Chain Office upon payment of a non-refundable fee of **KShs.1, 000.00** paid via Mpesa, pay bill no. **400200 and account no. 01120069076000**, then share the MPesa message to KenGen Finance office staff for receipt and issuance of official receipt or through a banker's cheque and payable to the address given below.

All Tenders must be accompanied by a “**tender Security Securing Declaration**” as part of the bid document. All tender securities submitted shall be subject to authentication by KenGen.

**There shall be a Mandatory site Visit on 19<sup>th</sup> January 2022 at 10.00 a.m. at Geothermal Plaza Starting at 10.00 a.m.**

The Tenderer shall chronologically serialize all pages of the tender documents submitted. Completed Tender **must** be submitted **online** on or before: **2<sup>nd</sup> February 2022 at 2.00 p.m.**

*Electronic submission shall be permitted through our e-procurement platform found at [www.kengen.co.ke](http://www.kengen.co.ke) (<https://eprocurement.kengen.co.ke:50001/irj/portal>) on or before: **2<sup>nd</sup> February 2022 at 2.00 p.m.** Internet Explorer and Firefox Mozilla are the preferred web browsers.*

Tenders will be opened immediately after the deadline date and time specified above or any dead line date and time specified later.

The addresses referred to above are:

A. Address for obtaining further information and for purchasing tender documents

Physical address for hand Courier Delivery to an office or Tender Box (City, Street Name, Building, Floor Number and Room)

Kenya Electricity Generating Company PLC  
Stima Plaza Phase III, Kolobot Road, Parklands  
P.O. BOX 47936-00100  
[Tenders@kengen.co.ke](mailto:Tenders@kengen.co.ke); cc

**B. Address for Opening of Tenders.**

Supply Chain Director  
Kenya Electricity Generating Company PLC  
Stima Plaza Phase III, Kolobot Road, Parklands  
P.O. BOX 47936-00100  
Ground Floor

*KenGen adheres to high standards of integrity in its business operations.  
Report any unethical behavior immediately to any of the provided anonymous hotline service.*

- 1) Call Toll Free: 0800722626;
- 2) Free-Fax: 00800 007788;
- 3) Email: [kengen@tip-offs.com](mailto:kengen@tip-offs.com)
- 4) Website: [www.tip-offs.com](http://www.tip-offs.com)

**SUPPLY CHAIN DIRECTOR**

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## **PART 1 ~ TENDERING PROCEDURES**

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## SECTION I: INSTRUCTIONS TO TENDERERS

### A General Provisions

#### 1 Scope of Tender

- 1.1 The Procuring Entity as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The name, identification, and number of lots (contracts) of this Tender Document are **specified in the TDS.**

#### 2 Fraud and Corruption

- 2.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.
- 2.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.
- 2.3 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.
- 2.4 Unfair Competitive Advantage -Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender being tendered for. The Procuring Entity shall indicate in the TDS firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

#### 3 Eligible Tenderers

- 3.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.7 or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. Public employees and their close relatives (*spouses, children, brothers, sisters and uncles and aunts*) are not eligible to participate in the tender. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process

and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the **TDS**.

- 3.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 3.3 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:
- a) Directly or indirectly controls, is controlled by or is under common control with another tenderer; or
  - b) Receives or has received any direct or indirect subsidy from another tenderer; or
  - c) Has the same legal representative as another tenderer; or
  - d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process; or
  - e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender; or
  - f) any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as Engineer for the Contract implementation; or
  - g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document or
  - h) Has a close business or family relationship with a professional staff of the Procuring Entity who:
    - i. are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or
    - ii. would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.
- 3.4 A tenderer shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. A tenderer that is proven to have been involved any of these practices shall be automatically disqualified.

- 3.5 A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender.
- 3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.8.A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub- consultants for any part of the Contract including related Services.
- 3.7 Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA [www.ppra.go.ke](http://www.ppra.go.ke)
- 3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are accredited by PPRA to be (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.
- 3.9 A Firms and individuals may be ineligible if their countries of origin (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
- 3.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in *“SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9”*.
- 3.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan Citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.

- 3.12 The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before such award and signature of contract. Application for registration with National Construction Authority may be accessed from the website [www.nca.go.ke](http://www.nca.go.ke)
- 3.13 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke)
- 3.14 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority

#### 4 **Eligible Goods, Equipment, and Services**

- 4.1 Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not eligible under ITT 3.9. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.
- 4.2 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

#### 5 **Tenderer's Responsibilities**

- 5.1 The tenderer shall bear all costs associated with the preparation and submission of his/her tender, and the Procuring Entity will in no case be responsible or liable for those costs.
- 5.2 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.
- 5.3 The Tenderer and any of its personnel or agents will be granted permission by the Procuring Entity to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify the Procuring Entity against all liability arising from death or personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the inspection.



- 5.4 The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.

**B Contents of Tender Documents**

**6 Sections of Tender Document**

- 6.1 The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITT 8.

**PART 1 Tendering Procedures**

- i) Section I - Instructions to Tenderers (ITT)
- ii) Section II - Tender Data Sheet (TDS)
- iii) Section III - Evaluation and Qualification Criteria
- iv) Section IV - Tendering Forms

**PART 2 Works Requirements**

- i) Section V - Drawings
- ii) Section VI - Specifications
- iii) Section VII - Bills of Quantities

**PART 3 Conditions of Contract and Contract Forms**

- i) Section VIII - General Conditions of Contract (GCC)
- ii) Section IX - Special Conditions of Contract (SC)
- iii) Section X - Contract Forms

- 6.2 The Invitation to Tender Document (ITT) issued by the Procuring Entity is not part of the Contract documents.

- 6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 8. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document and to furnish with its Tender all information and documentation as is required by the Tender document.

**7 Site Visit**

- 7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. The costs of visiting the Site shall be at the Tenderer's own expense.

**8 Pre-Tender Meeting**

- 8.1 The Procuring Entity shall specify in the **TDS** if a pre-tender meeting will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged

pretender site visit will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

- 8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.
- 8.3 Minutes of the pre-Tender meeting and the pre-arranged pretender site visit of the site of the works, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.

The Procuring Entity shall also promptly publish anonym zed (*no names*) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-tender meeting and the pre-arranged pretender site visit, shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

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

- 9.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre-arranged pretender visit of the site of the works if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 8.4.

## 10 **Amendment of Tendering Document**

- 10.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.
- 10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.4.
- 10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 25.2 below.

- C                    **Preparation of Tenders**
- 11                   **Cost of Tendering**
- 11.1                The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 12                   **Language of Tender**
- 12.1                The Tender, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring Entity, shall be written in the English Language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate and notarized translation of the relevant passages into the English Language, in which case, for purposes of interpretation of the Tender, such translation shall govern.
- 13                   **Documents Comprising the Tender**
- 13.1                The Tender shall comprise the following:
- a) Form of Tender prepared in accordance with ITT 14;
  - b) Schedules including priced Bill of Quantities, completed in accordance with ITT 14 and ITT 16;
  - c) Tender Security or Tender-Securing Declaration, in accordance with ITT 21.1;
  - d) Alternative Tender, if permissible, in accordance with ITT 15;
  - e) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;
  - f) Qualifications: documentary evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
  - g) Conformity: a technical proposal in accordance with ITT 18;
  - h) Any other document required in the **TDS**.
- 13.2                In addition to the requirements under ITT 11.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement. The Tenderer shall chronologically serialize pages of all tender documents submitted.
- 13.1                The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.
- 14                   **Form of Tender and Schedules**
- 14.1                The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested.
- 15                   **Alternative Tenders**
- 15.1                Unless otherwise specified in the **TDS**, alternative Tenders shall not be considered.

- 15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **TDS**, and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.
- 15.3 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price the Procuring Entity's design as described in the Tender Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by the Procuring Entity. When specified in the **TDS**, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the **TDS**, as will the method for their evaluating, and described in Section VII, Works' Requirements.

## 16 **Tender Prices and Discounts**

- 16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements specified below.
- 16.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Procuring Entity. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.
- 16.3 The price to be quoted in the Form of Tender, in accordance with ITT 14.1, shall be the total price of the Tender, including any discounts offered.
- 16.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT 14.1.
- 16.5 It will be specified in the **TDS** if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, except in cases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Procuring Entity may require the Tenderer to justify its proposed indices and weightings.
- 16.6 Where tenders are being invited for individual lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be

submitted in accordance with ITT 16.4, provided the Tenders for all lots (contracts) are opened at the same time.

- 16.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

17 **Currencies of Tender and Payment**

- 17.1 Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer in the Bill of Quantities, entirely in Kenya shillings. A Tenderer expecting to incur expenditures in other currencies for inputs to the Works supplied from outside Kenya shall device own ways of getting foreign currency to meet those expenditures.

18 **Documents Comprising the Technical Proposal**

- 18.1 The Tenderer shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Tender Forms, in sufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.

19 **Documents Establishing the Eligibility and Qualifications of the Tenderer**

- 19.1 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance with ITT 4.
- 19.2 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Tender Forms.
- 19.3 A margin of preference will not be allowed. Preference and reservations will be allowed, individually or in joint ventures. Applying for eligibility for Preference and reservations shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.
- 19.4 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 19.5 The purpose of the information described in ITT 19.4 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity

as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

- 19.6 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 19.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 19.8 If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 19.9 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) if the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
  - ii) if the contract has been awarded to that tenderer, the contract award will be set aside,
  - iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 19.10 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

## 20 **Period of Validity of Tenders**

- 20.1 Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 24). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested

in accordance with ITT 21.1, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 20.3.

- 20.3 If the award is delayed by a period exceeding the number of days to be specified in the **TDS** days beyond the expiry of the initial tender validity period, the Contract price shall be determined as follows:
- a) in the case of **fixed price** contracts, the Contract price shall be the tender price adjusted by the factor specified in the **TDS**;
  - b) in the case of **adjustable price** contracts, no adjustment shall be made; or in any case, tender evaluation shall be based on the tender price without taking into consideration the applicable correction from those indicated above.

## 21 **Tender Security**

- 21.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the TDS, in original form and, in the case of a Tender Security, in the amount and currency specified in the TDS. A Tender-Securing Declaration shall use the form included in Section IV, Tender Forms.
- 21.2 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:
- a) an unconditional Bank Guarantee issued by reputable commercial bank); or
  - b) an irrevocable letter of credit;
  - c) a Banker's cheque issued by a reputable commercial bank; or
  - d) another security specified **in the TDS**,
- 21.3 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 20.2.
- 21.4 If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.
- 21.5 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the **TDS**. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined nonresponsive or a bidder declines to extend tender validity period.
- 21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security, and any other documents required in the TDS.
- 21.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:

- e) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension thereto provided by the Tenderer; or
- f) if the successful Tenderer fails to:
  - i) sign the Contract in accordance with ITT 50; or
  - ii) furnish a Performance Security and if required in the **TDS**, and any other documents required in the **TDS**.

21.8 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.

21.9 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.

21.10 A tenderer shall not issue a tender security to guarantee itself.

22 **Format and Signing of Tender**

22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13 and clearly mark it “ORIGINAL.” Alternative Tenders, if permitted in accordance with ITT 15, shall be clearly marked “ALTERNATIVE.” In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS** and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.

22.2 Tenderers shall mark as “CONFIDENTIAL” all information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

22.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.

22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D **Submission and Opening of Tenders**

23 **Sealing and Marking of Tenders**



- 23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- a) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, as described in ITT 11; and
  - b) in an envelope or package or container marked “COPIES”, all required copies of the Tender; and
  - c) if alternative Tenders are permitted in accordance with ITT 15, and if relevant:
    - i) in an envelope or package or container marked “ORIGINAL – ALTERNATIVE TENDER”, the alternative Tender; and
    - ii) in the envelope or package or container marked “COPIES- ALTERNATIVE TENDER”, all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) bear the name and address of the Procuring Entity.
- b) bear the name and address of the Tenderer; and
- c) bear the name and Reference number of the Tender.

- 23.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

## 24 **Deadline for Submission of Tenders**

- 24.1 Tenders must be received by the Procuring Entity at the address specified in the **TDS** and no later than the date and time also specified in the **TDS**. When so specified in the **TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the **TDS**.
- 24.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## 25 **Late Tenders**

- 25.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT 24. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## 26 **Withdrawal, Substitution, and Modification of Tenders**

- 26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 22.3, (except that withdrawal notices do not require copies). The corresponding substitution or

modification of the Tender must accompany the respective written notice. All notices must be:

- a) prepared and submitted in accordance with ITT 22 and ITT 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and
- b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 24.

26.2 Tenders requested to be withdrawn in accordance with ITT 26.1 shall be returned unopened to the Tenderers.

26.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

27

### **Tender Opening**

27.1 Except in the cases specified in ITT 23 and ITT 26.2, the Procuring Entity shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified in the **TDS**, in the presence of Tenderers' designated representatives who chooses to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 24.1, shall be as specified in the **TDS**.

27.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelopes with the corresponding Tender shall not be opened, but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

27.3 Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

27.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed by the members of the tender opening

committee attending the opening. The number of representatives of the Procuring Entity to sign shall be specified in the **TDS**.

27.7 At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 25.1).

27.8 The Procuring **Entity shall prepare minutes of the Tender Opening that shall include, as a minimum:**

- a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
- b) the Tender Price, per lot (contract) if applicable, including any discounts;
- c) any alternative Tenders;
- d) the presence or absence of a Tender Security, if one was required.
- e) number of pages of each tender document submitted.

27.9 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall be distributed to all Tenderers upon request.

## E **Evaluation and Comparison of Tenders**

### 28 **Confidentiality**

28.1 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 46.

28.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.

28.3 Notwithstanding ITT 28.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any **matter related to the tendering process, it shall do so in writing.**

### 29 **Clarification of Tenders**

29.1 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the tenders, in accordance with ITT 33.

29.2 If a tenderer does not provide clarifications of its tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

### 30 **Deviations, Reservations, and Omissions**

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

31 **Determination of Responsiveness**

- 31.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the tender itself, as defined in ITT 13.
- 31.2 A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, **reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:**
- a) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
  - b) limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights or the tenderer's obligations under the proposed contract; or
  - c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.
- 31.3 The Procuring Entity shall examine the technical aspects of the tender submitted in accordance with ITT 18, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.
- 31.4 If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

32 **Non-material Non-conformities**

- 32.1 Provided that a tender is substantially responsive, the Procuring Entity may waive any non-conformity in the tender.
- 32.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the tenderer submit the necessary information or documentation, within a reasonable period, to rectify nonmaterial non-conformities in the tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to comply with the request may result in the rejection of its tender.
- 32.3 Provided that a tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS**.

33 **Arithmetical Errors**

- 33.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.
- 33.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:
- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
  - b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, and subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
  - c) if there is a discrepancy between words and figures, the amount in words shall prevail
- 33.3 Tenderers shall be notified of any error detected in their bid during the notification of a ward.

34 **Currency provisions**

- 34.1 Tenders will be priced in Kenya Shillings only. Tenderers quoting in currencies other than in Kenya shillings will be determined non-responsive and rejected.

35 **Margin of Preference and Reservations**

- 35.1 No margin of preference shall be allowed on contracts for small works.
- 35.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of **women** who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to those specified groups are the only ones eligible to tender. Otherwise if no so stated, the invitation will be open to all tenderers.

36 **Nominated Subcontractors**

- 36.1 Unless otherwise stated in the **TDS**, the Procuring Entity does not intend to execute any specific elements of the Works by subcontractors selected in advance by the Procuring Entity.
- 36.2 Tenderers may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the **TDS**. Subcontractors proposed by the Tenderer shall be fully qualified for their parts of the Works.
- 36.3 The subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works unless their specialized parts of the Works were previously designated by the Procuring Entity in the **TDS** as can be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Tenderer may be added to the qualifications of the Tenderer.

### **Evaluation of Tenders**

- 37.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Best Evaluated Tender in accordance with ITT 40.
- 37.2 To evaluate a Tender, the Procuring Entity shall consider the following:
- a) price adjustment due to discounts offered in accordance with ITT 16;
  - b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 39;
  - c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 30.3; and
  - d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.
- 37.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.
- 37.4 In the case of multiple contracts or lots, Tenderers shall be allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) combinations, including any discounts offered in the **Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.**

### **Comparison of Tenders**

- 38.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 38.2 to determine the Tender that has the lowest evaluated cost.

### **Abnormally Low Tenders**

- 39.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.
- 39.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.
- 39.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

### **Abnormally High Tenders**

- 40.1 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that



the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

- 40.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:
- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
  - ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.
- 40.3 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

#### 41 **Unbalanced and/or Front-Loaded Tenders**

- 41.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.
- 41.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:
- a) accept the Tender; or
  - b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price; or
  - c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
  - d) reject the Tender,

#### 42 **Qualifications of the Tenderer**

- 42.1 The Procuring Entity shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 42.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 19. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (other than

Specialized Subcontractors if permitted in the Tender document), or any other firm(s) different from the Tenderer.

- 42.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.
- 42.4 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.
- 42.5 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.
- 42.6 After evaluation of the price analyses, if the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

43 **Best Evaluated Tender**

- 43.1 Having compared the evaluated prices of Tenders, the Procuring Entity shall determine the Best Evaluated Tender. The Best Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined to be:
- a) Most responsive to the Tender document; and
  - b) the lowest evaluated price.

44 **Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders.**

- 44.1 The Procuring Entity reserves the right to accept or reject any Tender and to annul the Tender process and reject all Tenders at any time prior to Contract Award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenderers shall be notified with reasons and all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

F **Award of Contract**

45 **Award Criteria**

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

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

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



- a) the name and address of the Tenderer submitting the successful tender;
- b) the Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
- d) the expiry date of the Standstill Period; and
- e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

47 **Standstill Period**

- 47.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.
- 47.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter **into a Contract with the successful Tenderer**.

48 **Debriefing by the Procuring Entity**

- 48.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 46, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.
- 48.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending **such a debriefing meeting**.

49 **Letter of Award**

- 49.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

50 **Signing of Contract**

- 50.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.
- 50.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.
- 50.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period

51 **Appointment of Adjudicator**

- 51.1 The Procuring Entity proposes the person named in the **TDS** to be appointed as Adjudicator under the Contract, at the hourly fee specified in the **TDS**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in his Tender. If, in the Letter of Acceptance, the Procuring Entity does not agree on the appointment of the Adjudicator, the Procuring Entity will request the Appointing Authority designated in the Special Conditions of Contract (SCC) pursuant to Clause 23.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator.

52 **Performance Security**

- 52.1 Within twenty-one (21) days of the receipt of the Letter of Acceptance from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the **TDS**, in accordance with the General Conditions of Contract, subject to ITT 40.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent bank is not required.
- 52.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the **TDS**, or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.
- 52.3 Performance security shall not be required for contracts estimated to cost less than Kenya shillings five million shillings.

53 **Publication of Procurement Contract**

- 53.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:
- a) name and address of the Procuring Entity;
  - b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
  - c) the name of the successful Tenderer, the final total contract price, the contract duration.
  - d) dates of signature, commencement and completion of contract;
  - e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

54 **Procurement Related Complaints and Administrative Review**

- 54.1 The procedures for making Procurement-related Complaints are as specified in the **TDS**.
- 54.2 A request for administrative review shall be made in the form provided under contract forms.

## SECTION II - TENDER DATA SHEET (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<b>A. General</b>
ITT 1.1	The name of the contract is for <b>TENDER FOR FENCING OF SITES AT EBURRU GEOTHERMAL</b>  The reference number of the Contract is <b>KGN-GDD-04-2022</b>
<b>B. Contents of Tender Document</b>	
8.1	(A) Pre-Tender conference shall not take place:  (B) A pre-arranged pretender visit of the site of the works “shall” take place at the following date, time and place:  <i>There shall be a mandatory site visit at Geothermal Plaza</i>  Date: <b>19<sup>th</sup> January 2022</b> Day: Wednesday Time: 10.00am Place: <b>Geothermal Plaza</b>  <i>The Contractor shall visit the sites and acquaint himself with its nature and position, the nature of the local conditions, positions of existing power, water and other services, access roads or any other limitations that might affect his cost or progress. No claims for extras shall be considered on account of lack of knowledge in this respect.</i>  <i>Tenderers shall bare their own cost of the site visit.</i>
ITT 8.2	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than 7 days
ITT 8.4	The Procuring Entity’s website where Minutes of the pre-Tender meeting and the pre-arranged pretender site visit will be published is <a href="http://www.kengen.co.ke">www.kengen.co.ke</a>
ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity’s address is:  Supply Chain Director Kenya Electricity Generating Company PLC Stima Plaza Phase III, Kolobot Road, Parklands P.O. BOX 47936-00100 Ground Floor <a href="mailto:tenders@kengen.co.ke">tenders@kengen.co.ke</a>
<b>C. Preparation of Tenders</b>	
ITT 15.1	Alternative Tenders <i>shall not be</i> considered.
ITT 16.5	The prices quoted by the Tenderer shall be <i>fixed</i>
ITT 20.1	The Tender validity period shall be <b>126</b> days.

ITT 20.3 (a)	<p>a) The delayed to exceeding _____ number of days.</p> <p>b) The Tender price shall be adjusted by the following percentages of the tender price:</p> <p>i. By _____% of the local currency portion of the Contract price adjusted to reflect local inflation during the period of extension, and</p> <p>ii. By _____% the foreign currency portion of the Contract price adjusted to reflect the international inflation during the period of extension.</p>
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**ITT 21.1** Tender security not Required for this tender However, the tenderer will be required to complete a **Tender Securing Declaration form** attached in the standard forms of this tender document valid for 30 days beyond the tender validity period and stamped

**ITT 21.5** On the Performance Security, other documents required shall be 1% of the contract price.


**D. Submission and Opening of Tenders**

**ITT 24.1** (A) For Tender submission purposes only, the Procuring Entity’s address is:


*The tender MUST be submitted through our e-procurement platform found at [www.kengen.co.ke](http://www.kengen.co.ke) (<https://eprocurement.kengen.co.ke:50001/irj/portal>)*

**SUBMISSION OF TENDERS:**


For suppliers registering for the first time using the link [https://supplierregistration.kengen.co.ke:4302/slc\\_selfreg](https://supplierregistration.kengen.co.ke:4302/slc_selfreg) ensure the “Public Tender” checkbox is ticked so that the login details are sent to suppliers automatically.



It is a mandatory requirement that all documents are uploaded to the **c-folder** of the SRM System through the link <https://eprocurement.kengen.co.ke:50001/irj/portal> ‘**Technical RFX response**’. Responses documents attached to the ‘**notes and attachments**’ tab will not be considered for evaluation.



Prices **MUST** be entered under item tab of the RFX and **MUST** be similar to the prices in the price/BoQ Schedule.




Bidders should confirm on the supplier portal that the status of their RFX response shows “Submitted” and not “Saved” to ensure their RFX response is submitted.

Event Number	Event Description	Event Type	Event Status	Start Date	End Date	Response Number	Response Status
500000****	Test Bid Invite ..... to Bidders	Open Tendering	Published		22.09.2022	6000000****	Saved <input checked="" type="checkbox"/>
5000000****	Test 4 ..... in sus portal	Open Tendering	Published		15.02.2022	6000000****	Submitted <input checked="" type="checkbox"/>

Bidders who have submitted their bids should not click on WITHDRAW but click on EDIT to amend their bid response with appropriate changes if they desire to do so.

Manuals to guide on the bidding process are accessible via the KenGen Tenders Portal.



Bidders to note that **system challenges/support** related to bid submission issues shall be **addressed 48 hours before** tender opening date and time.

Date and time for submission of Tenders **2<sup>nd</sup> February 2022 at 2.00 p.m.**

Tenders Must **submitted** tenders electronically.

<p><b>ITT 27.1</b></p>	<p>The Tender opening shall take place at the time and the address for Opening of Tenders provided below:</p> <p style="text-align: center;"><b>Kenya Electricity Generating Company PLC, 6<sup>th</sup> Floor, KenGen Pension Plaza II, Kolobot Road, Parklands, P.O. Box 47936, 00100 NAIROBI.</b></p> <p>Note; In an effort to curb the spread of the COVID-19 pandemic the following measures shall apply: <b>Bidders can request for the tender opening minutes of the tender opening session through the following email address <a href="mailto:tenders@kengen.co.ke">tenders@kengen.co.ke</a></b></p> <p>(3) State date and time of tender opening.</p> <p><b>TIME AND DATE FOR TENDER OPENING:</b></p> <hr/> <p><b>DATE: -2<sup>nd</sup> February 2022</b> <b>TIME: 2.00 p.m.</b> <b>VENUE: - KENYA ELECTRICITY GENERATING COMPANY PLC; STIMA PLAZA, KOLOBOT ROAD, NAIROBI</b></p>
<p><b>ITT 27.1</b></p>	<p>If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures <b>Specified below</b></p> <p>The tender <b>MUST</b> be submitted through our e-procurement platform found at <a href="https://eprocurement.kengen.co.ke:50001/irj/portal">www.kengen.co.ke (https://eprocurement.kengen.co.ke:50001/irj/portal</a></p> <ol style="list-style-type: none"> <li>1. Tender documents must be submitted online through KenGen E-Procurement website found on the KenGen website (<a href="http://www.kengen.co.ke">www.kengen.co.ke</a> )</li> <li>2. Bidders who are interested in this tender <b>MUST</b> ensure that they are registered in E-Procurement Portal. Please ensure compliance to the following;       <ol style="list-style-type: none"> <li>a) For suppliers registering for the first time ensure the “Public Procurement” checkbox is ticked so that the login details are sent to supplier automatically</li> <li>b) It is a mandatory requirement that all documents are uploaded to the <i>c-folder</i> of the System through the link ‘<b>Technical RFX response</b>’. No responses/documents shall be attached to the ‘<b>notes and attachments</b>’ tab as they will not be considered for evaluation</li> <li>c) Prices to be entered under item of the RFX shall be similar to the prices in the price schedule.</li> </ol> </li> </ol> <p><b>Note;</b> Those Bidder who have submitted their bids and wish to amend them further should not click on <b>WITHDRAW</b> but click on <b>EDIT</b> to enable them amend their bid response and make appropriate changes.</p> <p>Bidders who require any form of assistance on how to bid via the system are advised to download a manual from the website or may contact <a href="mailto:eprocurement@kengen.co.ke">eprocurement@kengen.co.ke</a> before the <b>tender closing date and time.</b></p>
<p><b>E. Evaluation, and Comparison of Tenders</b></p>	

<b>ITT 35.2</b>	<b>ELIGIBLE TENDERERS</b>  The Invitation for Tenders is reserved for enterprises owned by <b>WOMEN</b> who meet qualification criteria pursuant to PPADA 2015 and other relevant Government of Kenya regulations
<b>ITT 37.2 (d)</b>	Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.
<b>ITT 54.1</b>	The procedures for making a Procurement-related Complaints are detailed in the “Regulations” available from the PPRA Website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a> . If a Tenderer wishes to make a Procurement-related

## SECTION III - EVALUATION AND QUALIFICATION CRITERIA

### 1 General Provisions

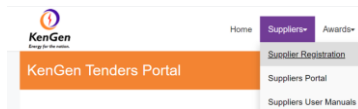
Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

- For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
- Value of single contract - Exchange rate prevailing on the date of the contract signature.
- Exchange rates shall be taken from the publicly available source identified in the ITT 14.3. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

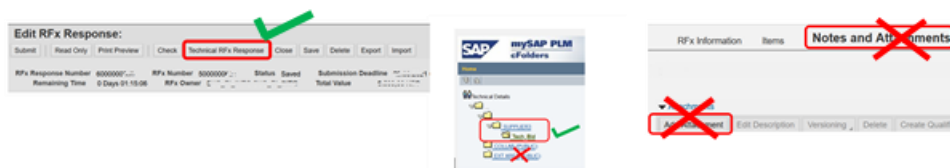
This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Document for Goods and Works for evaluating Tenders.**

### REGISTRATION AND BIDDING PROCESS

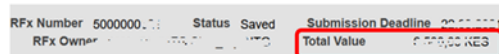
- For suppliers registering for the first time using the link [https://supplierregistration.kengen.co.ke:4302/slc\\_selfreg\(bD11biZjPTMwMCZkPW1pbg==\)/bspwdapplication.do#VIEW\\_ANCHOR-ROS\\_TOP](https://supplierregistration.kengen.co.ke:4302/slc_selfreg(bD11biZjPTMwMCZkPW1pbg==)/bspwdapplication.do#VIEW_ANCHOR-ROS_TOP) ensure the “Public Tender” checkbox is ticked so that the login details are sent to suppliers automatically.



- It is a mandatory requirement that all documents are uploaded to the *c-folder* of the SRM System through the link <https://eprocurement.kengen.co.ke:50001/irj/portal> ‘*Technical RFX response*’. Responses documents attached to the ‘*notes and attachments*’ tab will not be considered for evaluation.



- Prices **MUST** be entered under item tab of the RFX and **MUST** be similar to the prices in the price/BoQ Schedule.



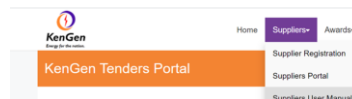
- Bidders should confirm on the supplier portal that the status of their RFX response shows “Submitted” and not “Saved” to ensure their RFX response is submitted.



Event Number	Event Description	Event Type	Event Status	Start Date	End Date	Response Number	Response Status
5000000000	Test Bid Invite Documents to Bidders	Open Tendering	Published		22.09.2022	6000000000	Saved
5000000000	Test 4 Bid Invite Documents in sus portal	Open Tendering	Published		15.02.2022	6000000000	Submitted

- Bidders who have submitted their bids should not click on WITHDRAW but click on EDIT to amend their bid response with appropriate changes if they desire to do so.

- Manuals to guide on the bidding process are accessible via the KenGen Tenders Portal.



- Bidders to note that **system challenges/support** related to bid submission issues shall be **addressed to [eprocurement@kengen.co.ke](mailto:eprocurement@kengen.co.ke)** tender closing date and time.

### Evaluation and contract award Criteria

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

## 2 Preliminary examination for Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements of “Part 2 – Procuring Entity’s Works Requirements”, including checking for tenders with unacceptable errors, abnormally low tenders, abnormally high tenders and tenders that are front loaded. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered irresponsive and will not be considered further.

### STAGE 1: MANDATORY REQUIREMENTS

The following mandatory requirements must be met notwithstanding other requirements in the tender document:

No	Requirements
MR 1	Valid copy of Registration Certificate /Certificate of Incorporation.
MR 2	Valid copy of the business permit.
MR 3	Valid Tax Compliance Certificate.
MR 4	Valid AGPO certificate ( <i>Women</i> )



MR 5	Copy of Registration with National Construction Authority, Class <b>NCA 7</b> and above (Roads Contractors)
MR 6	Copy of a valid CR 12 issued within 6 months of tender closure (where applicable)/Not Applicable to sole Proprietors.
MR 7	Tender validity duration 126 days from the date of opening.
MR 8	Confidential Business Questionnaire dully filled, signed & stamped.
MR 9	Tender security not Required for this tender However, the tenderer will be required to complete a <b>Tender Securing Declaration form</b> attached in the standard forms of this tender document.
MR 10	Duly filled and signed and stamped price schedule.
MR 11	Duly filled and signed and stamped form of tender.
MR 12	Duly filled and stamped Addendum(s)/Clarification(s) issued must be attached (Where Applicable).
MR 13	The Tender <b>MUST</b> be submitted be in the required format and serialized on each page of the bid submitted, <b>Sec.74.1.i. of the PPADA, 2015.</b>
MR 14	The tender has been dully signed by the person lawfully authorized to do so through the power of Attorney. Not applicable to a Sole Proprietor.
MR 15	Tender documents Must be submitted through our e-procurement platform found at <a href="https://eprocurement.kengen.co.ke:50001/irj/portal">www.kengen.co.ke(https://eprocurement.kengen.co.ke:50001/irj/portal</a> All documents shall be uploaded to the <i>c-folder</i> of the SRM System through the link ' <i>Technical RFX response</i> '. No responses/documents shall be attached to the ' <i>notes and attachments</i> ' tab as they will not be considered for evaluation. . <b>As per the tender Registration and Submission process stated above.</b>
MR 16	Dully filled signed and stamped Self Declaration form that the tenderer is not debarred in the matter of PPADA 2015.
MR 17	Dully filled signed and stamped Self Declaration form that the tenderer will not engage in any corrupt or Fraudulent Practice.
MR 18	All items in the schedule must be quoted in <b>COMPLETE</b> in order to qualify as responsive.
<b>MR 19</b>	Attach Acknowledged and Signed Mandatory Site Visit Certificate.

## TECHNICAL EVALUATION ON CAPACITY TO DELIVER THE CONTRACT

Technical evaluation\_carried out only if the tender is determined to be responsive to the preliminary examination.

Bidder must demonstrate conformance to the all the technical specifications and requirements as per SECTION V

No	Technical Requirements
T1	Provide details of their Technical personnel and their CVs to be provided in accordance to CV Template in this tender document.
T2	Provide List of major items of Construction Plant, Tools and Equipment; Essential equipment to be made available during execution of this Contract
T3	Provide Works Methodology for construction.
T4	Provide Program of Works / Works Schedule – Indicative of the timelines as provided in this tender
T5	Provide 6 Months bank Statements. The Bank Statements shall be certified by the issuing bank and shall be current within the last 6 months prior to closing date of this tender document.
T6	Demonstrate <b>sufficient funding</b> by providing:-  a. Duly Signed most recent audited financial accounts for the last 3 years (these shall be used to determine financial ratios, turn over and profitability that shows a firm's capability to finance the contract). The audited financial accounts must demonstrate a current ratio of 1:1 [OR]  b. a valid financing <b>tender-specific</b> commitment letter ( i.e line of credit or letter of access to credit facility or line of credit) issued by a recognized financial institution in KENYA (Including Banks, SACCOs and/or Youth Enterprise fund) demonstrating willingness to finance at least 50% of the project cost.

## STAGE 3. FINANCIAL EVALAUATION

Financial evaluation shall involve checking completeness of financial bids

- Financial evaluation shall involve checking completeness of financial bids.
- Award shall be based on the **total lowest evaluated price in all schedules**.
- Tender sum as submitted and read out during tender opening as per the form of tender is absolute and final and shall not be subject to correction, adjustment or amendment.
- All prices must be inclusive of all the applicable taxes.

#### STAGE 4. DUE DILLIGENCE

KenGen shall prior to award of the tender determine to its satisfaction whether the selected bids will qualify to perform the contract satisfactorily by carrying out a due diligence visit as required

6 **Margin of Preference *is not applicable***

7 **Post qualification and Contract ward (ITT 39), more specifically,**

- a) **In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.**
- b) **In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.**
  - i. The Tenderer shall demonstrate that it has access to lines of credit, and other financial means (independent of any contractual advance p a y m e n t) sufficient to meet t h e construction cash flow of Kenya Shillings Forty Million (**KShs. 40,000,000.00**).
  - ii. Contractors key equipment listed on the table “Contractor's Equipment” below and more specifically listed as [specify requirements for each lot as applicable]
  - iii. Other conditions depending on their seriousness.
    - a) **History of non-performing contracts:**

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last **four (4) years**. The required information shall be furnished in the appropriate form.
    - b) **Pending Litigation**

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.
    - c) **Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last **four (4) years**. All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

## 8. QUALIFICATION FORM SUMMARY

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
1	Nationality	Nationality in accordance with ITT 3.6	Forms ELI – 1.1 and 1.2, with attachments	
2	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by the the Kenya Revenue Authority in accordance with ITT 3.14.	Form of Tender	
3	Conflict of Interest	No conflicts of interest in accordance with ITT 3.3	Form of Tender	
4	PPRA Eligibility	Not having been declared ineligible by the PPRA as described in ITT 3.8	Form of Tender	
5	State- owned Enterprise	Meets conditions of ITT 3.7	Forms ELI – 1.1 and 1.2, with attachments	
6	Goods, equipment and services to be supplied under the contract	To have their origin in any country that is not determined ineligible under ITT 4.1	Forms ELI – 1.1 and 1.2, with attachments	
7	History of Non-Performing Contracts	Non-performance of a contract did not occur as a result of contractor default since 1 <sup>st</sup> January [.....]/.	Form CON-2	
8	Suspension Based on Execution of Tender/Proposal Securing Declaration by the Procuring Entity	Not under suspension based on-execution of a Tender/Proposal Securing Declaration pursuant to ITT 19.9	Form of Tender	

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
9	Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer.	Form CON – 2	
10	Litigation History	No consistent history of court/arbitral award decisions against the Tenderer since <b>1<sup>st</sup> January 2017</b> .	Form CON – 2	
11	Financial Capabilities	<p>(i) The Tenderer shall demonstrate that it has access to lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as <b>Kenya Shillings Forty Million (KShs. 40,000,000.00)</b> equivalent for the subject contract(s) net of the Tenderer's other commitments.</p> <p>(ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.</p>	Form FIN – 3.1, with attachments	

## QUALIFICATION FORMS

### 1. FORM EQU: EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Tenderer.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

**Contractor's Representative and Key Personnel Schedule**

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

**Contractor' Representative and Key Personnel**

1.	<b>Title of position: Contractor’s Representative</b>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment: for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
2.	<b>Title of position:</b>	
	<b>Name of candidate:</b>	

<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
<b>Time commitment: for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>3.</b>	<b>Title of position:</b>
	<b>Name of candidate:</b>
<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
<b>Time commitment: for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>



	Expected time schedule for this position:	<p><i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i></p> <hr/> <hr/> <hr/>
4.	Title of position: <i>[insert title]</i>	
	Name of candidate:	
	Duration of appointment:	<p><i>[insert the whole period (start and end dates) for which this position will be engaged]</i></p> <hr/> <hr/> <hr/>
	Time commitment: for this position:	<p><i>[insert the number of days/week/months/ that has been scheduled for this position]</i></p> <hr/>
	Expected time schedule for this position:	<p><i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i></p> <hr/>
5.	Title of position: <i>[insert title]</i>	
	Name of candidate	
	Duration of appointment:	<p><i>[insert the whole period (start and end dates) for which this position will be engaged]</i></p> <hr/>
	Time commitment: for this position:	<p><i>[insert the number of days/week/months/ that has been scheduled for this position]</i></p> <hr/>
	Expected time schedule for this position:	<p><i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i></p> <hr/>

Resume and Declaration - Contractor's Representative and Key Personnel.

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

<b>Name of Tenderer</b>
-------------------------

Position [# 1]: [ <i>title of position from Form PER-1</i> ]											
Personnel information	<table border="1" style="width: 100%;"> <tr> <td style="width: 40%;">Name:</td> <td style="width: 60%;">Date of birth:</td> </tr> <tr> <td>Address:</td> <td>E-mail:</td> </tr> <tr> <td colspan="2">Professional qualifications:</td> </tr> <tr> <td colspan="2">Academic qualifications:</td> </tr> <tr> <td colspan="2">Language proficiency: [<i>language and levels of speaking, reading and writing skills</i>]</td> </tr> </table>	Name:	Date of birth:	Address:	E-mail:	Professional qualifications:		Academic qualifications:		Language proficiency: [ <i>language and levels of speaking, reading and writing skills</i> ]	
Name:	Date of birth:										
Address:	E-mail:										
Professional qualifications:											
Academic qualifications:											
Language proficiency: [ <i>language and levels of speaking, reading and writing skills</i> ]											
Details	<table border="1" style="width: 100%;"> <tr> <td colspan="2">Address of Procuring Entity:</td> </tr> <tr> <td style="width: 40%;">Telephone:</td> <td style="width: 60%;">Contact (manager / personnel officer):</td> </tr> <tr> <td>Fax:</td> <td></td> </tr> <tr> <td>Job title:</td> <td>Years with present Procuring Entity:</td> </tr> </table>	Address of Procuring Entity:		Telephone:	Contact (manager / personnel officer):	Fax:		Job title:	Years with present Procuring Entity:		
Address of Procuring Entity:											
Telephone:	Contact (manager / personnel officer):										
Fax:											
Job title:	Years with present Procuring Entity:										

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

<b>Project</b>	<b>Role</b>	<b>Duration of involvement</b>	<b>Relevant experience</b>
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

**Declaration**

I, the undersigned

\_\_\_\_\_ *[insert either “Contractor's Representative” or “Key Personnel” as applicable]*, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

Commitment	Details
Commitment to duration of contract:	<i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i>
Time commitment:	<i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

- a) be taken into consideration during Tender evaluation;
- b) result in my disqualification from participating in the Tender;
- c) result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel:  
 \_\_\_\_\_ *[insert name]*

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

Date: (day month year): \_\_\_\_\_

Counter signature of authorized representative of the Tenderer: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: (day month year): \_\_\_\_\_

4 TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

4.1 FORM ELI -1.1

**Tenderer Information Form**

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

ITT No. and title: \_\_\_\_\_

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information
<b>Name:</b>
<b>Address:</b>
<b>Telephone/Fax numbers:</b>
<b>E-mail address:</b>
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.6 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing: <ul style="list-style-type: none"><li>• Legal and financial autonomy</li><li>• Operation under commercial law</li><li>• Establishing that the Tenderer is not under the supervision of the Procuring Entity</li></ul>
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

4.2 FORM ELI -1.2

**Tenderer's JV Information Form**  
(to be completed for each member of Tenderer's JV)

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

ITT No. and title: \_\_\_\_\_

Tenderer's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information
Name: _____
Address: _____
Telephone/Fax numbers: _____
E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.6. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 3.8.
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

**4.3 FORM CON – 2**

**Historical Contract Non-Performance, Pending Litigation and Litigation History**

Tenderer’s Name: \_\_\_\_\_

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

JV Member’s Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> Contract non-performance did not occur since <b>1<sup>st</sup> January 2017</b> specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed since <b>1<sup>st</sup> January 2017</b> specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
Year	Non- performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i>	<i>[insert amount]</i>
		Name of Procuring Entity:	
		Address of Procuring Entity:	
		Reason(s) for nonperformance:	
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.			
<input type="checkbox"/> Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		<p>Contract Identification:</p> <p>Name of Procuring Entity: _____</p> <p>Address of Procuring Entity: _____</p> <p>Matter in dispute: _____</p> <p>Party who initiated the dispute: _____</p> <p>Status of dispute: _____</p>	



		<p><u>Contract Identification:</u></p> <hr/> <p><u>Name of Procuring Entity:</u></p> <hr/> <p><u>Address of Procuring Entity:</u></p> <hr/> <p><u>Matter in dispute:</u></p> <hr/> <p><u>Party who initiated the dispute:</u></p> <hr/> <p><u>Status of dispute:</u></p> <hr/>	
<p>Litigation History in accordance with Section III, Evaluation and Qualification Criteria</p>			
<p><input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.</p> <p><input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.</p>			

Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	<p data-bbox="613 287 1122 386">Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i></p> <hr/> <p data-bbox="613 558 1101 625">Name of Procuring Entity: <i>[insert full name]</i></p> <hr/> <p data-bbox="613 798 1076 865">Address of Procuring Entity: <i>[insert street/city/country]</i></p> <hr/> <p data-bbox="613 1003 1130 1071">Matter in dispute: <i>[indicate main issues in dispute]</i></p> <hr/> <p data-bbox="613 1209 1146 1276">Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i></p> <hr/> <p data-bbox="613 1449 1159 1516">Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i></p> <hr/>	<i>[insert amount]</i>

**4.4 FORM FIN – 3.1:**

**Financial Situation and Performance**

Tenderer’s Name: \_\_\_\_\_

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

JV Member’s Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

**4.4.1 Financial Data**

Type of Financial information in _____ (currency)	Historic information for previous _____ years, (amount in currency, currency, exchange rate*, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

\*Refer to ITT 15 for the exchange rate

#### 4.4.2 Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

No.	Source of finance	Amount (Kenya Shilling equivalent)
1		
2		
3		

#### 4.4.3 Financial documents

The Tenderer and its parties shall provide copies of financial statements for \_\_\_\_\_ years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent company or group member).
- b) be independently audited or certified in accordance with local legislation.
- c) be complete, including all notes to the financial statements.
- d) correspond to accounting periods already completed and audited.

Attached are copies of financial statements<sup>1</sup> for the \_\_\_\_\_ years required above; and complying with the requirements

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<sup>1</sup> If the most recent set of financial statements is for a period earlier than 12 months from the date of Tender, the reason for this should be justified.

4.5 FORM FIN – 3.2

Average Annual Construction Turnover

Tenderer's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

		Annual turnover data (construction only)	
Year	Amount Currency	Exchange rate	Kenya Shilling equivalent
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Construction Turnover *			

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

**4.6 FORM FIN – 3.3:**

**Financial Resources**

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in Section III, Evaluation and Qualification Criteria

<b>Financial Resources</b>		
<b>No.</b>	<b>Source of financing</b>	<b>Amount (Kenya Shilling equivalent)</b>
1		
2		
3		

4.7 FORM FIN – 3.4:

**Current Contract Commitments / Works in Progress**

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

<b>Current Contract Commitments</b>					
No.	Name of Contract	Procuring Entity's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month]
1					
2					
3					
4					
5					

**4.8 FORM EXP - 4.1**

**General Construction Experience**

Tenderer's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Starting Year	Ending Year	Contract Identification	Role of Tenderer
		Contract name: _____  Brief Description of the Works performed by the Tenderer:  Amount of contract: _____  Name of Procuring Entity: _____  Address: _____	
		Contract name: _____  Brief Description of the Works performed by the Tenderer:  Amount of contract: _____  Name of Procuring Entity: _____  Address: _____	
		Contract name: _____ _____	



		<p>Brief Description of the Works performed by the Tenderer:</p>	
		<p>Amount of contract: _____</p> <p>Name of Procuring Entity: _____</p> <p>Address: _____</p>	

**4.9 FORM EXP - 4.2(a)**

**Specific Construction and Contract Management Experience**

Tenderer's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount			<b>Kenya Shilling</b>	
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				

4.10 FORM EXP - 4.2 (a) (cont.)

Specific Construction and Contract Management Experience (cont.)

Similar Contract No.	Information
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:	
1. Amount	
2. Physical size of required works items	
3. Complexity	
4. Methods/Technology	
5. Construction rate for key activities	
6. Other Characteristics	

**4.11 FORM EXP - 4.2(b)**

**Construction Experience in Key Activities**

Tenderer's Name: \_\_\_\_\_

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

Tenderer's JV Member Name: \_\_\_\_\_

Sub-contractor's Name (as per ITT 34): \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: \_

Information				
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount	<b>Kenya Shilling</b>			
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				

	<b>Information</b>
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	

- 2. Activity No. Two
- 3. ....

## OTHER FORMS

### FORM OF TENDER

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

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

Name and description of Tender \_\_\_\_\_ *[Insert as per ITT)*

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

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

Dear Sirs,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct and complete the Works and remedy any defects therein for the sum of Kenya Shillings *[Amount in figures]* \_\_\_\_\_ Kenya Shillings *[amount in words]*

\_\_\_\_\_

The above amount includes foreign currency amount (s) of *[state figure or a percentage and currency]* *[figures]* \_\_\_\_\_ *[words]*

\_\_\_\_\_.

The percentage or amount quoted above does not include provisional sums, and only allows not more than two foreign currencies.

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Special Conditions of Contract.
3. We agree to adhere by this tender until \_\_\_\_\_ *[Insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us. We further understand that you are not bound to accept the lowest or any tender you may receive.
5. We, the undersigned, further declare that:
  - i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;

ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;

iii) Tender-Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's Country in accordance with ITT 19.8;

iv) Conformity: We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the \_\_\_\_\_ following \_\_\_\_\_ Works:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ *[insert a brief description of the Works];*

v) Tender Price: The total price of our Tender, excluding any discounts offered in item 1 above is: \_\_\_\_\_ *[Insert one of the options below as appropriate]*

vi) Option 1, in case of one lot: Total price is: \_\_\_\_\_  
 \_\_\_\_\_ *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies];*

Or

Option 2, in case of multiple lots:

a) Total price of each lot \_\_\_\_\_  
 \_\_\_\_\_ *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies];* and

b) Total price of all lots (sum of all lots) \_\_\_\_\_  
 \_\_\_\_\_ *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];*

vii) Discounts: The discounts offered and the methodology for their application are:

viii) The \_\_\_\_\_ discounts \_\_\_\_\_ offered \_\_\_\_\_ are:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ *[Specify in detail each discount offered.]*

ix) The exact method of calculations to determine the net price after application of discounts is \_\_\_\_\_ shown \_\_\_\_\_ below:  
 \_\_\_\_\_  
 \_\_\_\_\_ *[Specify in detail the method that shall be used to apply the discounts];*

- x) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- xi) Performance Security: If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;
- xii) One Tender Per Tender: We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;
- xiii) Suspension and Debarment: We, along with any of our subcontractors, suppliers, Project Manager, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.
- xiv) State-owned enterprise or institution: \_\_\_\_\_ [select the appropriate option and delete the other] [We are not a state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITT 3.8];
- xv) Commissions, gratuities, fees: We have paid, or will pay the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: [insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity].

Name of Recipient	Address	Reason	Amount

*(If none has been paid or is to be paid, indicate “none.”)*

- xvi) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- xvii) Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;
- xviii) Fraud and Corruption: We hereby certify that we have taken steps to ensure that no



person acting for us or on our behalf engages in any type of Fraud and Corruption;

- xix) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent Tender Determination” attached below.
- xx) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from \_\_\_\_\_ (*specify website*) during the procurement process and the execution of any resulting contract.
- xxi) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
  - a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
  - b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
  - c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
  - d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in “**Appendix 1- Fraud and Corruption**” attached to the Form of Tender.

**Name of the Tenderer:** \*

---

**Name of the person duly authorized to sign the Tender on behalf of the Tenderer:** \*\*

---

**Title of the person signing the Tender:**

---

**Signature of the person named above:**

---

**Date signed**

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**Notes**

*\* In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer*

*\*\* Person signing the Tender shall have the power of attorney given by the Tenderer to be attached with the Tender.*

**A TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE**

**Instruction to Tenderer**

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV*. Tenderer is further reminded that it is an offence to give false information on this Form.

**a) Tenderer's details**

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country _____ 2. City _____ 3. Location _____ 4. Building _____ 5. Floor _____ 6. Postal Address _____ 7. Name and email of contact person. _____ _____
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address ( <i>postal and physical addresses,</i>	

	email, and telephone number) of state which stock exchange	
--	--	--

**General and Specific Details**

**b) Sole Proprietor**, provide the following details.

Name in full \_\_\_\_\_ Age \_\_\_\_\_

Nationality \_\_\_\_\_ Country of Origin \_\_\_\_\_

Citizenship \_\_\_\_\_

**c) Partnership**, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

**d) Registered Company**, provide the following details.

i) Private or public Company \_\_\_\_\_

ii) State the nominal and issued capital of the Company \_\_\_\_\_

Nominal Kenya Shillings (Equivalent).....

Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

**e) DISCLOSURE OF INTEREST- Interest of the Firm in the Procuring Entity.**

i) Are there any person/persons in .....  
 (Name of Procuring Entity) who has/have an interest or relationship in this firm?  
 Yes/No.....

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

ii) **Conflict of interest disclosure**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

f) **Certification**

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name \_\_\_\_\_

Title or Designation \_\_\_\_\_

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

## B CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the \_\_\_\_\_ [Name of Procuring Entity] for: \_\_\_\_\_ [Name and number of tender] in response to the request for tenders made by: \_\_\_\_\_ [Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of \_\_\_\_\_ [Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) has been requested to submit a Tender in response to this request for tenders;
  - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable:
  - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a) prices;
  - b) methods, factors or formulas used to calculate prices;
  - c) the intention or decision to submit, or not to submit, a tender; or
  - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5)(b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;
8. the terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise

required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

*[Name, title and signature of authorized agent of Tenderer and Date].*

C. SELF-DECLARATION FORMS

FORM SD1

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

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

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of ..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.** ..... for..... (*insert tender title/description*) for..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder Official Stamp



FORM SD2

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

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

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

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

Bidder's Official Stamp

**FORMAT OF POWER OF ATTORNEY**

We..... (name and address of the registered office) do hereby constitute, appoint and authorize Mr. / Mrs. / Ms ..... (name and residential address) who is presently employed with us and holding the position of ..... as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our proposal for the project/goods/works/services“ .....”, including signing and submission of all documents and providing information / responses to the Kenya Electricity Generating Company PLC, ("KenGen"), representing us in all matters before KenGen, and generally dealing with KenGen in all matters in connection with our Proposal for the said project/goods/works/services.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us

..... (Signature) (Name, Title and Address)

Accepted

..... (Signature) (Name, Title and Address of the Attorney)

**DECLARATION AND COMMITMENT TO THE CODE OF ETHICS**

I ..... (person) on behalf of *(Name of the Business/ Company/Firm)* ..... declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....Sign.....

Position.....

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

E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

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

Date.....

## D APPENDIX 1- FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

### 1 Purpose

2 The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

### 3 Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior: -

- 1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
- 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
  - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
  - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
  - a) shall not take part in the procurement proceedings;
  - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
  - i. "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - ii. "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - iii. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party
  - iv. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v. "obstructive practice" is:
    - deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
    - acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.

- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

- c) Rejects a proposal for award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

*<sup>1</sup>For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.*

*<sup>2</sup>Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee] -NOT APPLICABLE

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

Request forTenders No: \_\_\_\_\_

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

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

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

- 1) We have been informed that \_\_\_\_\_ (*hereinafter called "the Applicant"*) has submitted or will submit to the Beneficiary its Tender (*hereinafter called" the Tender"*) for the execution of \_\_\_\_\_ under Request for Tenders No. ("the ITT").
- 2) Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
- 3) At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
  - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
  - (b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
- 4) This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
- 5) Consequently, any demand for payment under this guarantee must be received by us at the office indicated above onor before that date.

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

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

**FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee] NOT APPLICABLE**

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

1) 1. Whereas ..... *[Name of the tenderer]*  
(hereinafter called “the tenderer”) has submitted its tender dated .....  
*[Date of submission of tender]* for the  
.....  
..... *[Name and/or description of the tender]* (hereinafter called “the Tender”) for the  
execution of under Request for Tenders No.  
..... (“the ITT”).

2) KNOW ALL PEOPLE by these presents that WE ..... of ..... **[Name of Insurance Company]** having our registered office at .....  
*(hereinafter called “the Guarantor”)*, are bound unto  
..... *[Name of Procuring Entity]* (hereinafter called “the  
Procuring Entity”) in the sum of  
..... *(Currency and guarantee amount)* for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

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

- 3) NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
- a. has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
  - b. having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (“ITT”) of the Procuring Entity's Tendering document.

then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

- 4) This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
- 5) Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.



---

*[Date ]*

---

*[Signature of the Guarantor]*

---

*[Witness]*

---

*[Seal]*

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

**TENDER-SECURING DECLARATION FORM**

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

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

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

To:..... *[insert complete name of Purchaser]*

I/We, the undersigned, declare that:

- 1) I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
- 2) I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [Two years] starting on [Closing date], if we are in breach of our obligation(s) under the bid conditions, because we – (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
- 3) I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
  - a. our receipt of a copy of your notification of the name of the successful Tenderer; or
  - b. thirty days after the expiration of our Tender.
- 4) I/We understand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:.....

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

Name: .....

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

Dated on ..... day of ..... *[Insert date of signing]*

Seal or stamp.....

**APPENDIX TO TENDER**

**Schedule of Currency requirements**

Summary of currencies of the Tender for \_\_\_\_\_ *[insert name of Section of the Works]*

<i>Name of currency</i>	<i>Amounts payable</i>
Local currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	
Provisional sums expressed in local currency _____	[To be entered by the Procuring Entity]

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## **PART II ~ WORK REQUIREMENTS**

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## SECTION V – TECHNICAL EVALUATION REQUIREMENTS

The following MUST be provided in the bid document: -

- i. Provide details of their technical personnel and their CVs to be provided in accordance to CV Template in this tender document;
- ii. Provide List of major items of Construction Plant, Tools and Equipment; Essential equipment to be made available during execution of this Contract
- iii. Provide Works Methodology for construction.
- iv. Provide Program of Works / Works Schedule – Indicative of the timelines as provided in this tender
- v. Provide 6 Months bank Statements. The Bank Statements shall be certified by the issuing bank and shall be current within the last 6 months prior to closing date of this tender document.
- vi. Demonstrate **sufficient funding** by providing: -
  - a. Duly Signed most recent audited financial accounts for the last 3 years (these shall be used to determine financial ratios, turn over and profitability that shows a firm's capability to finance the contract). The audited financial accounts must demonstrate a current ratio of 1:1 [OR]
  - b. a valid financing **tender-specific** commitment letter ( i.e line of credit or letter of access to credit facility or line of credit) issued by a recognized financial institution in KENYA (Including Banks, SACCOs and/or Youth Enterprise fund) demonstrating willingness to finance at least 50% of the project cost.

## SECTION VI - SPECIFICATIONS

### Notes for preparing Specifications

- 1 Specifications must be drafted to present a clear and precise statement of the required standards of materials, and workmanship for tenderers to respond realistically and competitively to the requirements of the Procuring Entity and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other supplies to be permanently incorporated in the Works be new, unused, of the most recent or current models, and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsible for the design of any part of the permanent Works, the extent of his obligations must be stated.
- 2 Specifications from previous similar projects are useful and may not be necessary to re-write specifications for every Works Contract.
- 3 There are considerable advantages in standardizing **General Specifications** for repetitive Works in recognized public sectors, such as highways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions, although not necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General Specifications to the particular Works.
- 4 Care must be taken in drafting Specifications to ensure they are not restrictive. In the Specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized international standards may also be used.
- 5 The Procuring Entity should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in tender documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential tenderers.
- 6 The Procuring Entity should provide a description of the selected parts of the Works with appropriate reference to Drawings, Specifications, Bills of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and Specifications.

Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the Procuring Entity each on its own merits and independently of whether the tenderer has priced the item as described in the Procuring Entity's design included with the tender documents.

## TECHNICAL SPECIFICATIONS

6.11	Scope Of Works	<p>The scope of these works shall include but not limited to: -</p> <p>Construction of a chainlink perimeter fence at Eburru Geothermal field as detailed in the Bill of Quantity</p>
6.12	Location and Extent Of Project Site (S)	<p>a) The works shall be undertaken at Eburru Geothermal Field. The terrain is characterized by valleys and seasonal flood water crossings. The soil is loose volcanic ash and is very susceptible to erosion. The vegetation on the site consists of short shrubs and thorny trees. There is a gravel road access to the area. The monthly distribution of rainfall borrows largely from the national bimodal pattern of rainfall distribution with long rains in March, April and May while the short rains are received in the months of October and November.</p> <p>b) The Contractor shall visit the sites and acquaint himself with its nature and position, the nature of the local conditions, positions of existing power, water and other services, access roads or any other limitations that might affect his cost or progress. No claims for extras shall be considered on account of lack of knowledge in this respect. The Contractor shall be required to pay KFS Park Entry Fees for the purpose of the site visit.</p> <p>c) The site shall be accessed through Kenya Forest Park is controlled and administered by the Kenya Forest Service (KFS). Hence, all Works associated with project shall comply fully with the requirements of KFS where it impacts upon operation of the Forest. The Contractor's vehicles and staff will be exempt from park entry fees for the purposes of performing their duties under this Contract. This is subject to the Contractor informing KFS and the Employer in advance regarding the regular vehicles that shall be in use. The Contractor's vehicles should be conspicuously labelled for ease of identity. This will facilitate efficient prior arrangements for free entry into the Forest. The contractor's staff shall bear names tags indicating their names and ID Numbers and is signed by both the Contractor's superintendence and the employee. A copy of the contractor's updated staff list shall be kept by KenGen</p> <p>In addition, the contractor is required to observe all rules of the Kenya Forest Service.</p>

6.13	<b>Mobilization and Demobilization</b>	<p>The Contractor shall provide and mobilize to site all labour, equipment, tools, materials, temporary offices and stores required to carry out the Works. The Contractor shall ensure that all possible means of protection are given to the labour force at all times. Such protection shall include provision of high visibility clothing or vests, overalls, safety boots, helmets goggles and masks for workers. They shall provide safe drinking water to staff at all times. The Contractor shall also maintain first aid kits that meet OSH requirements. KenGen shall provide a non-residential laydown area for equipment, tools and material storage. However, the contractor shall be responsible for fencing, security, sanitation facilities and water supply for this laydown area.</p> <p>On Completion of the Works, all temporary housing, equipment, materials, signs and tools shall be removed from the site. The site shall be rehabilitated to its original status or better.</p>
6.14	<b>Quality Control Tests</b>	<p>The contractor shall carry out quality control tests in a government approved facility to check materials and standards of workmanship, against the Specifications. Where such tests indicate defective standards the Employer's Representative shall instruct the Contractor to rectify the defects to the Employer's Representative's satisfaction and at the Contractor's expense.</p>
6.15	<b>Setting Out</b>	<p>This section covers the activities required in the re-establishment of the horizontal alignment of the road including setting out the centre line, cross section widths, drainage and road structures. The Contractor shall set out the centreline and all the new structures to follow the existing road alignment unless instructed otherwise by the employer's representative.</p> <p>The contractor surveyor shall liaise with KenGen in establishment of benchmarks and identification of services for this project.</p> <p><b>Quality Control:</b> The employer's representative shall ensure that;</p> <ul style="list-style-type: none"> <li>• Centreline pegs shall be set at 20m intervals on straight sections</li> <li>• Cross section widths shall be checked at 20m intervals and shall have maximum tolerances of +/- 25mm</li> <li>• All levels for structures and drainage meet the design standards</li> <li>• Provision of existing and final road levels</li> <li>• Provision of as-built drawings for road structures</li> </ul>
6.16	<b>Site Clearance</b>	<p>Site Clearance shall be carried out as directed by the Engineer.</p>
6.17	<b>Removal Of Structures, Fences And Obstructions</b>	<p>When instructed by the Engineer, the Contractor shall demolish or remove structure</p>



TYPICAL PICTORAL OF FENCE TO BE ERECTED









## CONTRACTUAL REQUIREMENTS AND OBLIGATIONS

<p><b>6.21</b></p>	<p><b>Instructions and Undertaking Works</b></p>	<p>The contractor and or his representative should not execute any work until and unless it is authorized by the Employer's representative. Care should be taken not to damage any property/equipment by improper handling etc. the contractor shall be responsible for any damage or theft and shall have to make good to its original shape and description as and when damage/theft etc. takes place / is noticed.</p> <p>Care should be taken not to damage any property/equipment by improper handling etc. the contractor shall be responsible for any damage or theft and shall have to make good to its original shape and description as and when damage/theft etc. takes place / is noticed.</p>
<p><b>6.22</b></p>	<p><b>Working Hours</b></p>	<p>Working hours shall be 8:00am to 5:00pm from Monday to Friday. KenGen may normally require works to be execute on Saturdays, Sundays, public holidays and extra hours during the weekdays in case of circumstances requiring such instructions. Works shall not be carried out in following public holidays except where expressly advised by KenGen Engineers.</p> <ol style="list-style-type: none"> <li>a. New Year's Day (1st January)</li> <li>b. Good Friday</li> <li>c. Easter Monday</li> <li>d. International Labour day (1st May)</li> <li>e. Madaraka day (1st June)</li> <li>f. Idd-Ul-Fitr</li> <li>g. Idd Ul Adha</li> <li>h. Moi Dai (10<sup>th</sup> October)</li> <li>i. Mashujaa day (20th October)</li> <li>j. Jamhuri day (12th December)</li> <li>k. Christmas day (25th December)</li> <li>l. Boxing Day (26th December)</li> </ol> <p>Any other gazetted Public holidays (Assume 2 per year)</p> <p>None of the permanent work shall be carried out between 5:00 PM and 8:00 AM or on Sundays or on Public Holidays without the express authority of the Employer's appointed Engineer;</p> <p>In the event of the Client Representative consenting to work being carried out outside normal working hours, the contractor shall be responsible for payment of any additional costs for his staff.</p> <p>Working hours are 8:00am to 5:00pm from Monday to Friday</p>
<p><b>6.23</b></p>	<p><b>Administrative facilities for the Contractor</b></p>	<p>The Contractor shall establish a site office. KenGen shall provide a location where the Contractor will construct at his own cost (or as may be provided within the BOQ), a temporary operation site office in order to provide effective services. He will also meet all costs for connecting electricity, telephone, or any other mode of communication. However, the water to the office will be available to the Contractor free of charge</p>

		provided the Contractor will meet the cost of connection from the nearest available point. KenGen will not guarantee the quality or be responsible for any consequences arising from the use of the water.
6.24	<b>Publicity Sign Board</b>	Where so required and as provided for in the BOQ, the Contractor shall provide a Sign Board as specified on the Drawing. The Sign Board shall be placed at the beginning section covered by this Contract. The Sign Board shall be maintained for the duration of the Works and removed on completion
6.25	<b>Site and Progress Meetings</b>	<p>After signing the contract by both parties, KenGen’s representative shall call a Project Kick-Off Meeting to initiate commencement of the works where the contractor shall provide a detailed work program.</p> <p>It is a condition of this contract that site meetings shall be held regularly in the contract period on a date as agreed on. The Contractor and KenGen must be represented in those meetings. Other people may be co-opted to attend the meeting depending on the agenda.</p> <p>At the end of the project, there shall be a Project Hand over meeting</p>
6.26	<b>Contract Administration</b>	The Contractor shall always endeavour to carry out the contract as detailed in this tender document. In order to minimize disputes especially those that emanate from failure to follow the specifications, both the Contractor’s and KenGen’s representative must visit daily all the areas under this contract and sign in a log book that everything is in order. Any adverse comments must be put in the log for future reference and both supervisors shall sign the log to signify that they are party to the comments inserted therein. In case any party does not agree with the comments put in the log by the other party, then he is at liberty to write his opinion and sign it.
6.27	<b>Management of the construction site</b>	The Contractor shall not use the Site for any purpose other than that of carrying out the Works. Where the Contractor is advised of limits of land available around the area of the main construction site, the Contractor shall have no rights to use areas outside these limits except for short periods and/or by such arrangements with the owners as he shall elect to make.
6.28	<b>Security, Watching and Lighting</b>	<p>The Contractor shall take all necessary precautions such as temporary fencing, screens, etc., for the safe custody of the Works, materials and public and employer’s property on the site.</p> <p>The Contractor shall employ competent watchmen and guard the works both by day and night. Uncovered areas and materials dump or other obstructions likely to cause injury to any person or animals shall be suitably fenced off or guarded to ensure that such incidences do not occur.</p> <p>The Contractor shall be responsible for any injury or loss to the Contractor, the Employer and any third parties or anyone else resulting from the contractor’s actions or omissions in respect to safety and security.</p>



		The Contractor shall provide at his own risk and cost all watching and lighting as necessary to safeguard the works, plant and materials against damage and theft.
6.29	<b>Protection of Works from Rain</b>	The works shall be so executed that should it be necessary to suspend work due to rain, no part thereof is left in such a state as to be liable to damage thereby. No claim by the Contractor arising out of the reinstatement of any damage caused by or incidental to rain shall be accepted.
6.210	<b>Protection of Existing Services</b>	<p>a) There are overhead, surface and underground services at the site including roads, water pipelines, sewage lines, electricity cable, telephone cables and fences. The contractor is advised to take due care while carrying out the work. The contractor shall also be responsible for identifying these services from the surface providers</p> <p>b) The Contractor shall acquaint himself with the position of all existing services on or adjacent to the site before commencing the works.</p> <p>c) Various above ground and underground services such as pipelines, cables and power lines may exist within the confines of the various areas of the Site. Whenever the Contractor has been advised of the approximate positions of such services and has to execute work adjacent to or concerning them, he shall be entirely responsible for locating the exact position of the services, either diverting or temporarily supporting them as agreed with the Client Representative, protecting them during the work and making good afterwards.</p> <p>d) He shall at his own expense ascertain in writing from the Statutory undertakers and other public bodies, companies and other persons who may be affected, the positions and depth of their respective ducts, cables, mains, pipes or other services. He shall thereupon search for and locate such service.</p> <p>e) If the works will interrupt any service passing through the Site, the Contractor shall provide a satisfactory alternative service in full working order to the satisfaction of the owner of the service and the Client Representative before cutting off the existing service.</p> <p>f) Except that such services are required to be removed or altered by virtue of the layout of the permanent work and not the manner in which the work is carried out shall be so removed or altered at the direction and at the expenses of the Employer.</p> <p>g) Client Representative must be informed in writing of any services exposed during repairs and the Contractor will be required to adequately support, restore and make good any services disturbed in the course of the works and shall be further liable for any damage which may be shown during the period of maintenance, to have arisen through the execution of these works.</p>

6.211	<b>Surface to be inspected</b>	<p>During the construction of any works and from the time of completion of the works, the contractor shall inspect the surfaces and if from whatever cause the surface is found to, have subsided the contractor shall make good the same at his own expense to Client Representative 's instructions.</p> <p>The Contractor shall at his own expense take every precaution to prevent slips and falls of materials or equipment in the works. In the event of any slips or falls occurring, the contractor shall restore the works and reinstate any parts of the works affected at his own expense.</p>
6.212	<b>Material suitability</b>	<p>Materials shall strictly comply with the Employer’s Design unless the use of an alternative material has been explicitly requested by the Contractor and approved by the Engineer. All materials and equipment furnished shall:</p> <p>be new, unused, and undamaged when installed or otherwise incorporated in the Works and properly identified by appropriate stampings and markings and shall be accompanied with original manufacturer’s documentation where appropriate,</p> <p>All material shall be new unless otherwise directed or permitted by the Engineer and, in all cases where the quality of goods or materials is not described or otherwise specified, is to be the best quality obtained in the ordinary meaning of the word ‘best’ and not merely a trade signification of the word.</p> <p>All materials and workmanship shall, unless otherwise specified or described, conform to the appropriate British Standard Institution Specification or other authoritative standard ensuring equal or higher quality current at the time of tender and in accordance with the requirements of local statutory authorities.</p> <p>The Works throughout shall be executed by skilled workmen well versed in their respective trades.</p> <p>The Contractor is responsible for the location, provision and supply of all materials for the work, which shall comply with Appropriate Clauses in the specification. All materials shall be of approved manufacture and origin and the best quality of their respective kind</p> <p>The Contractor is at liberty to propose to the Engineer the use of material other than those specified but may use such materials subject to Engineer's written Approval.</p> <p>A sample of each type of material shall be delivered to site for approval by the Engineer. Where a sample may be difficult to deliver to site due to its nature, the Contractor may request the Engineer to inspect the materials at the Contractor’s warehouse or factory. The Engineer may take such samples as he may wish for testing and approval and the Contractor shall furnish any information required by the Engineer as to the origin, quality, weight, strength, and description etc. of materials</p>

		The contractor shall use no materials of any description without prior sanction and any condemned as unfit for use in the works shall be removed immediately from the site at contractor's cost.
6.215	<b>Packaging and shipment</b>	<p>Where so applicable, the Contractor shall order materials to be obtained from overseas immediately after the contract is signed and shall also order materials to be obtained from local sources as early as necessary to ensure that such materials are on Site when required for use in the Works.</p> <p>The Contractor shall ensure that all Materials shall be adequately packaged and/or preserved so that they can be safely shipped to the Site and stored there for the duration as the construction programme requires without risking corrosion damage or other deterioration.</p> <p>The Contractor shall be responsible for and shall replace or make good at his own expense any materials lost or damaged.</p>
6.216	<b>Material Storage</b>	Unless specified otherwise, the contractor shall be responsible for constructing their own storage facilities and shall meet the cost of construction of such storage facility and upon completion of the project, decommission the storage facility.
6.218	<b>Samples and testing</b>	<p>Samples of materials shall be submitted as soon as possible after the contract is let.</p> <p>No deliveries in bulk shall be made until the samples are approved by the Engineer.</p> <p>All condemned materials shall be removed from the site within 72 hours.</p> <p>Every facility shall be provided to enable the Engineer to obtain samples and carry out tests on the materials for construction. If these tests show that any of the materials do not comply with the requirements of this specification, the Contractor will be responsible for the costs or construction of the tests and the replacement of defective materials and/or construction.</p>
6.216	<b>Proprietary Materials</b>	<p>Where proprietary materials are specified hereinafter the Contractor may propose the use of materials of other manufacture but of equal or higher quality for approval by the Engineer.</p> <p>All materials and goods, where specified to be obtained from a particular manufacturer or supplier are to be used and fixed strictly in accordance with their instruction.</p>
6.217	<b>Rejected Workmanship and Materials</b>	Any workmanship or materials not complying with the specific requirements or approved samples or which have been damaged, contaminate or have deteriorated must immediately be removed from the Site and replaced at the Contractor's expense, as required.
6.218	<b>Contractor's Superintendence</b>	The Contractor shall constantly keep on the Works a literate English-speaking agent or representative, competent and experienced in the kind of work involved, who shall give his whole time to the superintendence



		of the Works. Such agent or representative shall receive on behalf of the Contractor directions and instructions from the Client Representative, and such directions and instructions shall be deemed to be given to the Contractor in accordance with the Conditions of Contract. The agent shall not be replaced without approval.
6.219	<b>Provision of Labour</b>	<p>The Contractor shall provide casual labour services required for the execution of works described herein.</p> <p>The contractor shall note that works should be taken up in its true spirit, therein promptness, punctuality and professionalism are of utmost significance and which cannot be compromised upon. The workmen employed on the job shall be of polite nature and well-mannered. In case it is observed that one or more workmen are felt to impolite or badly behaved the Employer's representative is liable to issue notices to the contractor in writing directing immediate replacement such workmen.</p>
6.220	<b>Labour Act and other governing laws of Kenya</b>	The contractor shall ensure full and total compliance with the Labour Act in the employment of his staff. Other governing laws of Kenya shall also apply to the letter.
6.221	<b>Gender Rule</b>	Subject to governing laws of Kenya, the contractor shall ensure compliance with the 1/3 rule regarding gender.
6.222	<b>Employment of Staff</b>	<p>During the execution of this contract, the Contractor shall be mandated to offer employment opportunities to members of the local community upon advertisement at the KenGen's Liaison Office.</p> <p>Such persons may be skilled, semi-skilled or unskilled and shall be treated fairly and in the similar manner with regard to remuneration and work conditions as any other employee of the contractor.</p> <p>The Contractor is at his discretion to employ the <b>best</b> talent from the local community.</p>
6.223	<b>Payment of Wages, Salary and other benefits</b>	<p>The Contractor shall make prompt payment of wages, salary or other benefit to his employees every on a predetermined date of every month without delay</p> <p>The contractor shall keep updated register of salaries, wages or any benefit as paid out to their employees.</p> <p>The payroll records shall be available at all times for inspection by the Client Representative and authorized Government officers at all times</p>
6.224	<b>Minimum Wage</b>	Subject to governing laws of Kenya, the contractor shall make payment to his staff ensuring that the Minimum Wage is adhered to.

6.225	<b>Delayed or Non-payment of wages, salaries and other benefits</b>	<p>Where the contractor fails to make timely payment of wages, salary or other benefits as has been determined, and an employee (ies) makes such complaint (s) known to KenGen through writing, the Contractor shall be instructed to write a written explanation as to why this arise.</p> <p>Where the Contractor severely delays or does not pay his employees, KenGen shall have the right to withhold their payments until all dues payments are made in full.</p>
6.226	<b>Documentations of employees and their payments</b>	<p>A. Register of Employees The Contractor shall keep and maintain an updated register of all its employees, including name, ID number, address, designation, and days worked at all times. Shall register <b>MUST</b> be available for inspection and scrutiny by KenGen and Government Officers as may be required by them.</p> <p>B. Register of Employees' Payments The Contractor shall keep and maintain an updated register of all its employees, payments of wages, salary and/or any other benefit at all times. These must be signed by the employees noting acceptance of such payments.</p>
6.227	<b>Contractor's accommodation and transport</b>	<p>a) The Contractor shall be responsible for all accommodation and transport needs of the Contractor's Personnel, taking note of any restrictions imposed by the Contract.</p> <p>b) The Contractor <b>MUST</b> provide adequate arrangements and provisions for the feeding and housing of the Contractor's personnel.</p> <p>c) The Contractor shall be responsible for the provision of housing for his own labour, including the land on which such housing is located. The Employer will not make available any land for the construction of a labour camp.</p> <p>d) The Contractor shall also be responsible for provision of all services including, but not limited to, the staff facilities.</p> <p>e) The Contractor shall not be permitted to construct any camp providing sleeping accommodation within site area</p> <p>f) The Contractor is responsible for staff entry and exit from the Site and <b>MUST</b> provide a means of transport to the staff.</p> <p>g) The use of open Lorries or pickup trucks for the transport of Contractor's labour <b>SHALL NOT</b> be allowed under this Contract.</p> <p>h) The Contractor's attention is drawn to the requirements that they shall use buses/vans etc. fitted with safety belts (for all occupants) and speed limiting devices to 80km/hr. and that all persons travelling in vehicles must be seated.</p>

		i) The Contractor shall comply with the Kenyan traffic laws and regulations and shall obtain the approval of the Transport Licensing Board in respect of the transportation of labour for the Contract.
6.228	<b>Drinking Water for Staff</b>	The Contractor shall be required to provide safe, portable drinking water to staff at all times when they are in the field.
6.229	<b>Safety and Environment Requirements</b>	<p>The Contractor shall at all times execute the works in a safe and secure manner and actively practice safety through the term of the Contract and shall comply with the applicable legal and other requirements including the KenGen-KFS Memorandum of Understanding. This will include having a standby vehicle at the site to serve in case of an emergency.</p> <p>The contractor will report all the accidents/incidents and near misses to safety offices for necessary actions.</p> <p>The formulation and enforcement of an adequate safety and environmental management program shall be the obligation of the Contractor with respect to all the Works under this Contract, regardless of whether performance by the Contractor or his subcontractors. The Contractor shall, within 14 days after commencement of the works, meet the Client Representative to present and discuss his plan for the establishment of such safety and environmental protection measures as may be necessary to provide against accidents, unsafe acts and so forth. Within 28 days after commencement of the works, the Contractor shall submit a written safety and environmental management program to the KenGen covering the overall Works and based on the laws and regulations of Kenya. In addition, he shall prepare special safety programs for working within electricity generating and geothermal exploration facilities.</p> <p>The Contractor shall dispose waste in compliance with the Environmental Management and Coordination (Waste Management) Regulations, 2006.</p>
6.230	<b>Safety at site</b>	<p>The Contractor shall be responsible for the safety of all activities and his employees on the Site.</p> <p>Work is to be executed in a safe and responsible manner and the construction is to proceed in accordance with the provision of the appropriate legislation.</p>
6.231	<b>Occupational, Health and safety requirements; Safety Precautions and First Aid</b>	<p>The Contractor shall provide adequate and easily accessible First Aid Equipment on site.</p> <p>The Contractor shall be responsible for the management of health and safety of his employees on the construction site.</p>
6.232	<b>Personal Protective Equipment</b>	The Contractor shall be required to comply with all safety regulations and provide his staff with adequate and required <b>PPE's</b> which he shall ensure that are worn at all times his staff are working in the field.

		KenGen shall continuously monitor to ensure that all safety regulations are adhered to and deviations from these safety regulations shall prompt KenGen to take action accordingly.
6.235	<b>Environmental Protection</b>	<p>The Contractor shall ensure so far as is reasonably practicable and to the satisfaction of the Client Representative; that the impact of the construction on the environment shall be kept to a minimum and that appropriate measures are taken to mitigate any adverse effects during the construction.</p> <ul style="list-style-type: none"> <li>a) After extraction of materials, all borrows pits shall be backfilled to the satisfaction of the Client Representative. In particular, borrow pits near the project road shall be backfilled in such a way that no water collects in them.</li> <li>b) Spilling of bitumen fuels Oils and other pollutants shall be cleared up.</li> <li>c) Including removal of excavated material from the pavement to spoil.</li> </ul>
6.234	<b>Materials &amp; Waste Disposal; Disposal of construction wastes</b>	<ul style="list-style-type: none"> <li>a) The contractor shall sort out and dispose construction and domestic wastes in accordance to the employer's guidelines. The contractor shall consult the employer project Client Representative for guidelines</li> <li>b) Existing equipment, fittings and materials such as electrical fittings, pipes etc. to be removed for replacement or relocation belong to the Employer. The contractor shall remove them carefully and hand them over to the Employer.</li> <li>c) Very little waste is expected during performance of this contract. The Contractor shall dispose waste according to the laws of Kenya. The contractor may request the Employer to provide a disposal yard for rubbish collected when clearing the site and during construction of work and also for any surplus material not required on site.</li> </ul>
6.235	<b>Protection of Completed Work and Clearing upon Completion</b>	The Contractor shall allow in his rates for protecting completed work from subsequent operations, making good of all damage to completed work, clearing away all rubbish as it accumulates and leaving the site in a tidy condition to the satisfaction of the Engineer.
6.236	<b>Leave Works Clean</b>	On completion of the Works, the Contractor shall carefully restore to the original condition of the ground, and other structures that may have been interfered with in any way by him or his employees and shall remove all rubbish, tools and materials which are not required, so as to leave the works and site in clean and orderly condition, such work being carried out by the Contractor without extra charge over and above his scheduled rates for the execution of the works.

6.237	<p><b>Items to Be Supplied by the Employer</b></p>	<p><b>Water</b>  KenGen shall provide non-portable water suitable for use in construction works at no cost to the Contractor. The water will be used strictly for works within KenGen premises but not outside. Contractors' staff living outside KenGen premises should provide their own domestic water.</p> <p>Water shall be available at designate water points along water supply pipeline.</p> <p>It shall be the contractor's responsibility to ensure such water is available at his area of need through piping or by water bowser(s) and KenGen takes no responsibility to provide the water to the contractor on site.</p> <p><b>Measurement: Daily Monitoring and Control</b>  The contractor shall document all volumes of KenGen water used in the project</p> <p>In case the contractor pipes the water to site, the contractor shall provide for a flow meter to measure volumes of water used. Daily use shall be recorded and submitted to KenGen</p> <p>In case the contractor uses a water bowser to deliver the water to site, the contractor shall provide for documentation detailing the volume of water used daily by the water bowser on the site.</p> <p>All original documentations for water use shall be submitted to KenGen on a daily basis. The contractor shall keep copies of the same.</p> <p>The water shall be used strictly for KenGen works and particularly for this project unless instructed otherwise by the Engineer in Charge.</p> <p><b>Non-Availability of KenGen Water</b>  In the event that KenGen water is not available through the designated watering points, it shall be the contractor's responsibility to source for such water elsewhere, thus, ensuring steady continuance of works.</p> <p>Water sourced elsewhere shall not be subjected to daily volume recording.</p> <p><b>Electricity</b>  KenGen shall not provide electricity to the Contractor. Contractor shall be required to make his own arrangements for electricity provision, including use of portable generators where applicable.</p>
6.238	<p><b>Insurance</b></p>	<p>The Contractor shall be responsible for and shall take out appropriate cover against, among other risks, personal injury; loss of or damage to the Works, materials and plant; and loss of or damage to property.</p> <p>All the workmen engaged for the work shall be group insured during the period of contract. In case, the contract is extended beyond the period stipulated in the agreement, the contractor shall extend the group insurance to the extended period of contract.</p>

		<p>The contractor shall be fully responsible for settling all claims and indemnify the Employer against any claims arising out of any accidents to the hired staff/labours.</p>
6.239	<b>Indemnity</b>	<p>The Contractor shall indemnify and keep indemnified KenGen, its servants or agents against loss of or damage to property or bodily injury sustained by it or them by reason of any act, omission or neglect of the Contractor its servants or agents whilst performing their duties within the scope of their employment with the Contractor and against the dishonesty of such security officers or personnel whilst performing their duties within the scope of their employment, which shall include any loss, damage, injury or any consequential or indirect loss sustained by KenGen its servants or agents or third parties lawfully on the premises by reason of any act or omission or neglect of the Contractor its servants or agents.</p>
6.240	<b>Supervision Vehicle</b>	<p>Where so required and as provided for in the Bill of Quantity, the Contractor shall provide, fuel and maintain in good working conditions, with driver, 1 (ONE) NO 4WD double cabin vehicle (Odometer: 0-50,000km) diesel engine capacity 2,500-3,000 cc or equivalent, all fully loaded with air conditioning (AC) system and air bags; for use for supervision purposes of the Client Engineer and his Staff throughout the Contract</p> <p>The Contractor shall insure comprehensively the vehicle and shall provide a competent driver.</p> <p>Should the vehicle supplied not be in road worthy condition at any time of the contract period, the Contractor shall provide equivalent replacement vehicle within 7 days and until such time as the original vehicle is repaired and returned for use. Otherwise, the contractor shall permanently and within 14 days replace the vehicle if it is found to be unserviceable.</p> <p>Payment for the vehicle shall be per month.</p> <p>The rate shall be inclusive of fuelling, lubricants, servicing, insurance, maintenance, drivers and repairs. The rate shall include any overtime the driver might be due or any other allowance to the normal working hours.</p> <p>The vehicle provided under this clause shall revert to the Contractor</p> <p><b><u>When to provide supervision vehicle.</u></b></p> <p>The supervision vehicle shall be provided immediately the Client's Engineer issue Order to Commence Works and no later than 21 days after project commencement date.</p> <p><b><u>Delay Damages in case the contractor delays to provide a supervision vehicle.</u></b></p> <p>In the event the contractor delays to provide a supervision vehicle within stated timelines, the contractor shall incur delay damages at the rate of 75% of the contractor's daily rate per day until such a time he provides the vehicle or until project closure.</p>

		<p><b>Project Delay</b></p> <p>In the event that the Contractor delays and/or prolongs the contractual period, and where such delays are not caused by the Employer, and extension of time is not approved, the Contractor shall continue to provide the supervision vehicle at the rate approved in the BOQ during the delay period.</p> <p>Any extra cost arising due to delay of project period shall be borne by the contractor and the contractor shall not make any claims to the Client with regard to such costs.</p> <p><b>Delay Damages for delay in providing supervision vehicle in case of project delay.</b></p> <p>The Contractor shall continue to provide a supervision vehicle during execution of contract in the delay period. In the event the contractor fails to provide a supervision vehicle, the contractor shall incur delay damages at the rate of 100% of the contractor's daily rate per day until such a time they provide the vehicle or until project closure in the delay duration.</p> <p><b>Project Extension Of time</b></p> <p>In the event the contractual duration is formally extended, the Contractor shall continue provide supervision vehicle at the approved BOQ Hourly rate. The extra cost shall be drawn from Contingency Amount and only for the approved extended duration.</p>
6.241	<b>Clerk of Works</b>	<p>Where so required and as provided for in the Bill of Quantity, the client shall second to the contractor a Client Clerk of Works, who shall be paid in accordance with the rate provided in the BOQ Element. This rate shall be net of all applicable taxes, (PAYE, NHIF, NSSF and any other statutory charges), and paid promptly on day to be agreed upon and without delay.</p> <p>The said clerk of works shall be the employer's representative on site and shall receive direct instructions from and shall report directly to the Employer's Engineer. His/her role shall be to assist the employer keep a daily track record of all and every activity on site and ensure the Contractor works as per Engineers instructions and ensure quality is achieved at all times</p> <p><b>When to Engage Clerk of Works</b></p> <p>The Clerk of Works shall be engaged within 14 Days the Client's Engineer issue Order to Commence Works.</p> <p><b>Project Delay</b></p> <p>In the event that the Contractor delays and/or prolongs the contractual period, and where such delays are not caused by the Employer and extension of time is not approved, the Contractor shall continue to pay the clerk of works at the approved BOQ Hourly rate.</p>

		<p>Any extra cost arising due to delay of project period or temporary abandonment of site shall be borne by the contractor and the contractor shall not make any claims to the Client with regard to such costs.</p> <p>If the Contractor fails to pay the Clerk of Works, such costs incurred shall be deducted from the Contractors' interim payment Certificate and Reimbursed to the Clerk of Works.</p> <p><b>Project Extension Of time</b></p> <hr/> <p>In the event contractual duration is formally extended, the Contractor shall continue to engage and pay the clerk of works at the approved BOQ Hourly rate. The extra cost shall be drawn from Contingency Amount and only for the approved extended duration.</p>
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**PREAMBLE TO BILL OF QUANTITIES**

6.31	<b>Local Legislation</b>	The Bidder's attention is drawn to the requirement of <b>THE FACTORIES (BUILDING OPERATIONS AND WORKS OF ENGINEERING CONSTRUCTION) RULES, 1978, CAP 514, of the Laws of Kenya</b> (and as amended from time to time), which are to be strictly complied with at all times.
6.32	<b>Bidder's Obligations</b>	<ul style="list-style-type: none"> <li>a) The Bidder shall treat the contents of these documents as private and confidential. <b>The Bidder shall acknowledge receipt of the Tender Documents.</b></li> <li>b) The copyright of these Bills of Quantities is vested upon the Client and no part thereof may be reproduced without their express written permission.</li> <li>c) The Bidder shall neither insert additional items in to the Bill of Quantities nor make any alterations to the item descriptions and quantities, unless where expressly authorized.</li> <li>d) The Bidder shall not alter or otherwise qualify the text of this Tender Document/BOQ. Any unauthorized alternations or qualifications shall be ignored and the text of the documents as printed will be adhered to. Any comments which the Bidder desires to make shall not be placed in the annexed documents but shall take the form of a separate statement in English language as briefly as possible and giving reference to page, clause or item number of the tender documents.</li> <li>e) The Bidder shall be presumed to have made allowance in his prices generally to cover items of preliminaries or additions to prime cost sums or other items if these have not been priced against the respective items.</li> <li>f) All items of measured work shall be priced in detail and tenders containing lump sums to cover trades or groups of work shall be broken down during execution to show prices of each item before they will be accepted. Lump sums to cover items of preliminaries shall likewise be broken down if so required.</li> </ul>
6.33	<b>Site Conditions and Visit</b>	Notwithstanding the fact that surveys have been made, each Bidder must make local and independent examination and inquiries as to the physical conditions prevailing at the Site and each Bidder shall obtain his own information regarding all matters and things that may in any way influence him in making a tender and fixing the prices to be inserted in these documents. Each Bidder shall satisfy himself as to the risks, obligations and responsibilities to be undertaken in the Contract to be entered into by him should his tender be accepted. The costs and charges incurred by the Bidder in connection with the above-mentioned visit to the Site shall be borne by the Bidder.
6.34	<b>Complementary Documents</b>	The attention of the Contractor is explicitly directed to the <b>Conditions of Contract, Technical Specifications, Scope and Description of Works and Tender Drawings</b> that are to be read in conjunction with the Bills of Quantities and its Preamble. No other external documents shall be used for any references.
6.35	<b>Method of Measurement</b>	The Bills of Quantities have been prepared in accordance with the general principles of the 2 <sup>nd</sup> Ed. Method of Measurement of Building Works for

		<p>East Africa, Chapter of Quantity Surveyors, and applies equally to the Measurement of proposed works and of variations.</p> <p>The Works as executed shall be measured for payment in accordance with the method adopted in the Bills of Quantities and under the item as therein set forth.</p> <p><b>The Contractor shall be responsible for furnishing the Employer Representative with exact quantities of Works and/or materials he has executed per day or per specific work. The Employer Representative shall verify these works and approve.</b></p> <p>The contractor's rate shall include for the complete execution of the works as depicted on drawings and as specified in Technical Specifications.</p> <p>The net measurement or weight of the finished work in place shall always be taken and except where otherwise stated or where separate items are provided, no allowance shall be made for cutting, waste, laps, circular work, etc. and no deductions shall be made for grout nicks, joggle holes, rounded arises or for linkages for fitting ironwork and the like.</p> <p>Payment shall be effected only for those materials that are incorporated in the permanent works and taken over as stipulated in the specifications</p> <p>Any surplus materials delivered to the site shall become the property of the Contractor and the Contractor shall reimburse any money that was paid by the Employer on account of these materials.</p> <p>Unless specific items have been provided for in the Bill of Quantities, no separate measurement shall be made in respect of items whether specified or not requiring mortar/sealant, assembling, building in or fixing to concrete, block-works, metal work or timber, painting and protective treatment, welding, drilling, bolting inclusive of bolts, nuts and washers, screws, nails and plugs, jointing and joint materials, box out and filling thereof, grouting, packing, bedding, insulation between different metals, making good, conduits and fittings, cutting, waste, labour materials and all incidental work to the items concerned and their surroundings.</p>
6.36	<b>Units of Bill of Quantities</b>	All sizes and quantities provided in the Bill of Quantities are in metric units,
6.37	<b>Extent of Works</b>	<p>Notwithstanding any limits that may be implied by the wording of the individual items and /or explanation provided in this preamble, it is to be clearly understood by the contractor that the rates and sums that are entered in the Bills of Quantities shall be for the work <b><u>FINISHED WORKS COMPLETE</u></b> in every respect, without compromise or otherwise.</p> <p>The bidder shall be deemed to have taken full account of all requirements and obligations whether expressed or implied, covered by all parts of this Tender and to have priced the items herein accordingly.</p> <p>The <b><u>rates and sum shall therefore be included for all incidental and contingent expenses and risks</u></b> of every kind necessary to construct, protect</p>

the works (including curing of all concrete works etc. and protection from accidental damage) complete works and maintain the whole of works in accordance with the Contract.

Full allowance shall be made in the rates and/or sums inter alias that are referred to and/or specified herein.

- Compliance with all Local Authority / County / Country regulations
- Paying fees and giving notice to authorities, public etc.
- Payment of all patent rights and royalties
- Safety precautions and all measures to prevent and suppress fire and other hazards during implementation
- Reinstatement of the site on completion of works
- Maintenance of access to the existing roads in a motor-able status and waterways during the period of construction
- Cost of design based on tender drawings, preparation of working drawings and related data for materials, steel works, electrical works, mechanical works, pipe works and equipment all ancillary parts, minor fittings, bolts, nuts, gaskets, washers, fixing, etc., joining materials, protective coatings and sleeveings and other relevant items not specifically listed but necessary for proper installation of the materials, pipe works and equipment (applicable to materials supplied by the contractor)
- site investigations that may be necessary for proper and complete execution
- all setting out and survey works
- Provision of temporary services such as water supply, electricity, fencing, watching, lighting; etc.
- Interference to the works by persons, vehicles, vessels and the like using the existing land and water facilities
- works in connection with the protection and safety of adjacent structures
- supplying, maintaining and removing on completion contractor's own accommodation, offices, stores, workshops, transport, welfare services and all charge in connection therewith
- working in dry conditions including dewatering if required except where otherwise permitted by the specification maintaining public roads and footpaths, and maintaining access upon existing roads or recognized routes
- Supply, inspection, sampling and testing of materials and of the Works under construction including the provision and use of equipment.
- except where separate items are provided for bringing plant to the site and removing on completion, for providing transporting to site, setting to work operating (including all fuel and consumable stores), maintaining and removing from the site upon completion all construction plant and equipment necessary for the execution of the work including the cost of all tests and other requirements in respect to such plant and equipment

		<ul style="list-style-type: none"> <li>recruitment, bringing to and repatriate from the site, accommodating and feeding and all other incidental costs and expenses involved in the provision of all necessary skilled and unskilled labour and supervision</li> <li>Supporting faces of excavation temporary or permanent shoring, shuttering and scaffolding etc.</li> <li>costs of packing, protection, storage, insurance and related documentation for shipment to Kenya for materials, pipes, fittings, equipment, etc. cost of unloading at port, road transport to site, offloading, stacking and storage in suitable sheds, double handling as needed at site for materials, pipes, fittings, equipment, etc.</li> </ul> <p>No claim shall be considered for further payment in respect of any work or method of execution, which may be described in the Contract or is inherent in the construction of the work and detailed on the drawings on account of;</p> <ul style="list-style-type: none"> <li>✓ items that have been omitted from the Bill of Quantities, but depicted on the drawings</li> <li>✓ any omission from the wording of the items or from a clause in the Preamble or</li> <li>✓ no mention of such work or method of execution having been in the Preamble Items against which no rates or sum is entered by the contractor whether quantities are stated or not shall not be paid for when executed but will be regarded as covered by other rates in the Bill of Quantities.</li> </ul> <p>The contractor shall be deemed to have taken into account all of the following in his tender prices and his construction programmes.</p> <ul style="list-style-type: none"> <li>all recognized holidays, festivals, religious and other local customs</li> <li>any stoppage of work or delays due to adverse weather conditions</li> </ul>
6.38	<b>Additional Work</b>	The relevant Clauses of this Preamble shall be deemed to apply equally to any work subsequently ordered for execution by the Contractor either under Provisional Sum or Variation Orders, except where specifically varied therein.
6.39	<b>RATES AND PRICES</b>	
6.310	<b>Rates and Sums</b>	<p>The rates and sums entered by the contractor against all items in the Bill of Quantities shall bear a proper relationship to the cost of carrying out the work described in the Contract.</p> <p>All costs and similar charges that are applicable to the Contract as a whole shall be spread over all items in the Bill of Quantities whilst those that are applicable only to particular sections of the Contract shall only to be spread over the relevant items in particular sections.</p>

6.311	<b>Taxes and Duties</b>	<p>The contractor shall include all local taxes except VAT for the materials and services to be procured locally in his unit rate for various item of works included in the Bill of Quantities.</p> <p>The unit rate for materials, goods and equipment to be imported from overseas shall include VAT and other import duties such as custom duties, cess, excise duty, etc.</p> <p>The Employer is not responsible to pay any VAT or custom duty for any imported items to be incorporated in the permanent works.</p>
6.312	<b>Value Added Tax</b>	<p>As set out in the “Instruction to Bidders”, VAT payable to the Government of Kenya shall be calculated separately and the total VAT amount shall be inserted in the space provided in the Summary Page of the Bills of Quantities.</p> <p>VAT shall not be included in the unit rate for various items of work. However, the total VAT component be carried over to the <b>Form of Tender</b>.</p> <p>The applicable rate for VAT in the BOQ items for civil engineering works set by Government Kenya and the contractor shall authenticate this rate and include in the Summary Bill of Quantities.</p>
6.313	<b>Provisional Sum</b>	<p>Provisional sums items shall be dealt with as provided for in the Conditions of Contract/FIDIC Clause 13.5.</p>
6.314	<b>Provisional Quantity</b>	<p>Certain items in the Bill of Quantities are designated as “Provisional Quantity” in the description column to indicate that the quantities for the work covered by such items are the best possible estimates that can be made in advance of the execution of the work or that the provision of such facilities as are described in the items may not in the event be required under the contract.</p> <p>All items so designated shall executed only as approved and if not used either wholly or in part shall, as to the amount not used, be deducted from the Contract Price.</p>
6.315	<b>Provisional Item</b>	<p>Any item that is designated as “Provisional Item” in the description column of the Bill of Quantity is to indicate that the provision of such facilities of work is uncertain at the time of document preparation.</p> <p>The unit rate if any quoted by the contractor shall be applicable for the amount of work executed under such items.</p> <p>All items so designated shall be used as approved and if not used either wholly or in part shall, as to the amount not used, be deducted from the Contract Price.</p>
6.316	<b>Lump Sum</b>	<p>Certain items in the Bill of Quantities are designated as “Lump Sum (LS)” in the unit column to indicate that the payment will be effected as a sum on satisfactory completion of that particular work.</p>

		<p>Lump sum items stipulated in Bill of Quantities that are related to a specific work shall be paid on the basis of the proportion of actual work done to the total work of that specific item</p> <p>Items with quantities and units shall be paid against number of units used and/or incorporated in the works.</p>
6.317	<b>Withholding tax</b>	Applicable Withholding tax shall apply
6.318	<b>Contingency Amount</b>	Contingency amount herein is used to refer to reserve or backup money allocated by percentage of the cost of works. It is an amount that will only be used or spent upon approval of the client and only in situations to managed or cater for noted and documented omissions, risks or uncertainties during the execution of the project.
6.319	<b>Protection of Completed Work and Clearing upon Completion</b>	The Contractor shall allow in his rates for protecting completed work from subsequent operations, making good of all damage to completed work, clearing away all rubbish and construction wastes as it accumulates and leaving the site in a tidy condition
6.320	<b>SITE WORKS</b>	
6.321	<b>Earthworks</b>	<p>Excavation in all Material except Rock:-</p> <p>The rates and prices for earth excavations including dredging shall be for all types of ground conditions encountered except rock but including ground situation above or below water level. The contractor shall make allowances for the possibility of permission not being granted to the use of explosives for blasting and other operations.</p> <ul style="list-style-type: none"> <li>• Quantity of material excavated as the product of the horizontal area of the base of permanent work to be constructed and the mean depth below ground level or measured as the volume to be occupied by permanent work below ground level, whichever is the greater. In no case shall any of the following quantities be included in the measurement for payment. <ul style="list-style-type: none"> <li>○ material excavated outside the vertical planes of neat outline of foundation structures unless shown otherwise on the drawings</li> <li>○ excavation and/or backfill for pipeline, storm sewers and under drains except as allowed for in pipeline construction as specified in pipe work, valves and fittings laying &amp; installation</li> <li>○ excavations work performed prior to the taking of measurements of the undisturbed natural ground</li> <li>○ additional excavation required due to the swelling of the foundation when driving piles</li> <li>○ removal of slides, cave-ins, silting or filling due to the action of the elements or whether and/or carelessness of the Contractor</li> <li>○ volume of excavated unsuitable material shall be measured as the actual volume of material removed</li> <li>○ excavation for trenches of pipeline is described elsewhere in this Preamble</li> </ul> </li> </ul>

		<p>No allowance is made for any bulking or for any extra transport required due to bulking. The rates shall include but not by way of limitation for:</p> <ul style="list-style-type: none"> <li>▪ excavation to the correct depth and preserving the bottoms of excavations in a state suitable for the reception of concrete, pipes or pipe bedding, and no payment shall be made for any concrete or pipe bedding required for filling of over-excavated volumes or disturbed areas to the net dimensions as indicated on the Drawings</li> <li>▪ any additional excavation required for shuttering, working space, temporary or permanent shoring, and subsequent refilling and ramming and disposal of surplus</li> <li>▪ provision of land areas for the temporary storage of any material required for backfilling that cannot be stored alongside the excavation for any reason, together with the cost of transporting, loading including disposal of surplus and unloading such material and all other charges incurred in this respect</li> <li>▪ trimming the bottoms of excavations including bottoming to falls and trimming to sloping surfaces where required or indicated on the Drawings</li> <li>▪ taking all precautions by supporting faces of excavation to ensure the safety of the workmen and to prevent damage to adjacent walls, building and all other structures and services and to prevent damage to road and other surfaces by slip or breaking away or trench sides or other cause including permanent and/or temporary shoring of trenches</li> <li>▪ keeping the site and trenches and all other excavations free from water arising from whatever cause</li> <li>▪ for clearing any scrub or other vegetable growth including all trees and for disposing of the whole of the cleared material to top provided by the Contractor</li> <li>▪ all temporary and permanent measures required to protect and support all existing pipes, cables and services including all chambers, gullies and foundations thereto, or repair or replace them should they become damaged due to the Contractor's activities</li> <li>▪ all barriers, lighting, warning signs and any other measures necessary to ensure complete safety around the area of the works</li> <li>▪ reinstatement of all affected surfaces and structures except where separate items are included for permanent reinstatement of roads</li> </ul>
6.322	<b>CONCRETE WORKS</b>	
6.323	<b>General</b>	<p>Concrete required for major structural construction shall be ready mix concrete and subject to approved specifications. The unit rates for provision and placing of concrete shall include but not limited to following items: -</p> <ul style="list-style-type: none"> <li>• All costs incurred in determining the mixes to satisfy the Specification including application any admixtures as required</li> </ul>

		<ul style="list-style-type: none"> <li>• excavation as required below previously filled levels and backfilling except where separate items are provided</li> <li>• roughening the surface of previously executed or existing work as required in order to providing the necessary bond with new concrete</li> <li>• Realizing the required quality of finishes within the specified tolerance</li> <li>• forming slops, falls and the like as specified in the contract</li> <li>• incorporating holes or box out for pipes, bolts, frames for covers and other steel work as required</li> <li>• Building in cable conduits, pipes, junction boxes etc.</li> <li>• forming 25mm chamfers on all external arises to exposed concrete</li> <li>• <b>allowing for all construction joints, keys, stop ends, temporary stops and shuttering of other than permanently exposed faces\</b></li> <li>• <b>provision and removal all shuttering/ form work, scaffolding as required</b></li> <li>• curing of the concrete and all other measures to protect freshly poured concrete beating from direct sunlight and wave action</li> <li>• trawling, rubbing down etc. and making good the concrete surfaces to provide the specified finishes</li> <li>• cost of control testing throughout the period of concreting and for the testing of concrete and remedial work consequent to the results of control tests falling below the minimum specified</li> <li>• extra working hours of personnel to maintain continuity of casting</li> <li>• daily return showing the quantities of cement and the number of mixing of each class of concrete used in each section of the works as well as for temporary works</li> </ul> <p>The measurement of concrete shall be either by cubic metre (CM), square metre (SM) or linear metre (LM) of completed structure as stipulated in the BOQ. In the event of volumetric measure is used, no deductions shall be made for channels recesses or rebates less than 600mm girth, for splays or chamfers less than 300mm measured on the splay, for holes or ducts formed in the concrete less than 300mm girth. Fillets less than 300 mm on the splay shall be measured.</p>
6.324	Shuttering / Form work	<p><b>The unit rate for supply and placing of concrete shall include the cost of preparing, fitting, fixing of shuttering/formworks (metallic plates or sawn timbers) and shall also include scaffolding where necessary and in all cases <u>no</u> separate item would be included in the Bill of Quantities for measurement and payment of form work.</b></p> <p><b>Supply of necessary materials, equipment for preparing fitting fixing of formworks, scaffolding materials shall be procured by contractor and shall be include in the unit rate of concrete works</b></p> <p><b>Hence, the cost thereof for supply of necessary materials, equipment for preparing fitting fixing of formworks, scaffolding shall be deemed to be included in the rates for concrete work.</b></p>





		<ul style="list-style-type: none"> <li>• cm / CM                      Cubic metre</li> <li>• No.                              Number</li> <li>• kg                                Kilogram</li> <li>• tonne (t)                      Tonne (1000 Kilograms)</li> <li>• litre                             Litre</li> <li>• Hrs.                             Hours</li> <li>• L.S. / SUM                    Lump Sum / Sum</li> <li>• P.S.                             Provisional Sum</li> </ul>
6.331	Provision of facilities:	<p>Separate items, where otherwise not provided for in the BOQ, are deemed to be included in the Contract Price: -</p> <ol style="list-style-type: none"> <li>a) Construction and maintenance of contractor's office and storage facilities and equipping the same.</li> <li>b) Construction and maintenance of any deviation or access roads and all expenses incurred due to passing of the traffic through or around the Site;</li> <li>c) Cost of negotiations for any land required by the Contractor in addition to that made available to him free of charge;</li> <li>d) The subsequent removal of the Contractor's site accommodation as required and quarrying facilities and the reinstatement of the area on completion of the Contract;</li> <li>e) Protection of the Site and Works from water, rain, theft &amp; from any other source;</li> <li>f) Setting out and verification of all survey details and dimensions;</li> <li>g) Provision and preservation of survey control points;</li> <li>h) Provision of all samples and test certificates: and</li> <li>i) Water supply and services.</li> <li>j) Electrical Supply Services</li> <li>k) Measures to reduce emissions and temporary protection of the environment.</li> <li>l) Provision of Protection Equipment to Staff</li> <li>m) Staff wages and salaries</li> <li>n) Fees for approvals and Licences from local authorities and the government to carry out the works</li> <li>o) Any other costs implied for the successful completion of these works</li> </ol>
6.332	SCHEDULES	<ol style="list-style-type: none"> <li>a) All relevant items in the Bills of Quantities must be priced in indelible Ink. No alterations of the Quantities or descriptions made by the Bidder will be allowed.</li> <li>b) The Bidder shall complete all the schedules entirely. The schedules shall be read in conjunction with the specifications and the drawings.</li> <li>c) The total prices in the main summary of price schedules shall be deemed to include all obligations under the Contract including and not limited to labour, supply of materials, equipment, apparatus, fittings, spares, tools, all construction works, wastages insurance, delivery to site, storage, installation, testing, V.A.T, Withholding Tax, commissioning etc. in accordance with specification</li> <li>d) Any prices omitted from any section or part of price schedule shall be deemed to have been included in another item, section or part and no clarification shall be sort from the Bidder with regard to the noted</li> </ol>

		<p>omission during evaluation stage and the Bidder <b>cannot</b> and <b>shall not</b> make claim against such omission in case he is the successful bidder.</p> <p>e) All prices shall be in local Kenya currency, shall be duty paid and shall also be inclusive of all taxes current at the time of tendering</p> <p>f) The quantities set out in the Bill of Quantities are the estimated quantities of the works and they <b>shall not</b> be taken as the actual and correct magnitude of the works to be executed by the contractor in fulfilment of his obligation under the Contract.</p> <p>g) The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his tender for the Works and of the 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 things necessary for the proper completion and maintenance of the Works.</p>
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**SECTION VII- BILLS OF QUANTITIES**

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
<b>BILL 1</b>	<b>PRELIMINARIES</b>				
1.01	Allow for Prime Sum for mobilization and demobilization of equipment and works resources, provision of site facilities such as office space, storage facilities, serviceable and clean pit latrine.	<b>Lump Sum</b>	1		
1.02	Allow a prime cost of KES. 200,000 for material testing	<b>PC Sum</b>	1	200,000.00	200,000.00
1.03	Extra over item 1.02 for contractor's overheads, profits, and expenses	<b>PERCENT (%)</b>	200,000	%	
<b>BILL 2</b>	<b>SITE CLEARANCE AND ACCESS</b>				
2.01	Clear site of all bushes along the fence perimeter including levelling, grubbing, clearing of vegetation, grass, debris, bushes, scrubs, undergrowth, boulders, stones, stumps, roots and cart away spoil material to approved dump sites	<b>SM</b>	3,200		
2.02	Excavate in soft soil and hard rock to receive fencing posts foundations; Cart away excavated material nearby for use during backfilling (not measured separately and cost to be included in this rate)	<b>CM</b>	250		
2.03	Excavate in soft soil and hard rock to reduce levels and for surface preparation of areas to receive the ground beam as shall be directed by Employer Engineer. Cart away excavated material.		100		
<b>BILL 3</b>	<b>FENCING POSTS</b>				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
3.01	Supply and Install 125mm x 100mm pre-cast reinforced concrete posts, (mix 1:2:4), 12ft high at 3m intervals; Fencing post to be angled / Chamfered at the top to allow for fixing of barbed wire at the top of the fence (Measured Separately)	NOS	550		
3.02	Extra over ditto for 100 x 100mm pre-cast concrete struts 2600mm long	NOS	350		
<b>BILL 4</b>	<b>MASS AND REINFORCED CONCRETING</b>				
4.01	Cast Mass Concrete Class 20 (1:2:4) to fencing post foundations; Fencing post to be installed during casting	CM	250		
4.02	Cast Plain Insitu Blinding Concrete Class 15 Mix (1:4:8) on prepared ground surfaces to receive RC Ground Beam along the whole length of the fence;		50		
4.03	Cast concrete class 20/20 to RC Ground Beam along the entire perimeter of the fence.	CM	200		
4.04	<i>Provide and Place High yield tensile steel reinforcement to BS 4461 including cutting , bending, overlaps as applicable and tying wire for the RC Ground Beam as described in:-</i>				
4.05	- Assorted reinforcement (12mm main bars and 8mm rings) to ground beam;	KG	21,000		
<b>BILL 5</b>	<b>CHAIN LINK FENCING</b>				
5.01	Supply and install 4mm x 7ft galvanized iron Chain-link Fence including 4mm x 4Nos strands strainer wire spaced equally; tied fit using binding wire	LM	1,600		
5.02	Provide and fix along the fence 3MM Barbed Wire x 3 Nos Strands spaced equally	LM	1,600		

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
<b>BILL 6</b>	<b>GATE</b>				
6.01	Fabricate, Supply and install to position 5000MM wide x 1900MM high, double leaf gate (each leaf 2500m); complete with pedestrian gate size 1000 x 1900mm high; all made of mild steel galvanized sections of channels, joists, angles, flats, plates, pipes, SHS, RHS, sheets, etc, all as applicable; including stiffeners, bracings, fabricated hinges, MS Aldrops with locking arrangement, tempered steel pivot, guide track of MS Tee, ball bearing arrangements, castor wheels, etc. The gate to be installed complete with 600mm high GI barbed wire fencing at top. The gate to be Painted complete in 2 coats of zinc chromate primer and 3 coats of synthetic enamel/gloss paint. The gate to be fixed complete to 8MM SHS / CHS mortised in a 350mm x 350mm reinforced concrete gate post. All works complete to specification and as directed;	NO	1		
<b>BILL 7</b>	<b>SIGNAGES</b>				
7.01	Supply and install information and warning signs (in heavy plastic) as per clause 2004 of the standard specifications for road and bridge construction for information and warning signs write-up to be provided by the client. Dimensions of the signages shall be 1M Length X 0.8M Wide. Rate to include for reinforced plastic supports (2nos be sign post), excavation and concrete haunching of the supports.	NO	5		
	<b>Sub-Total 1</b>				
	Add 10% Contingencies				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	<b>Sub-Total 2</b>				
	Add 16% VAT				
	<b>GRAND TOTAL</b> <i>(Taken to Form of Tender)</i>				

**SIGNED: BILL OF QUANTITIES**

*To be filled in block letters*

Currency of Tender ).....

Total Tender Price in Figures: ).....

Total Tender Price in Words:  
(Carried to Form of Tender) ).....

).....

).....

).....

Company Name ).....

).....

COMPANY ADDRESS:  
Physical ).....

).....

).....

Email ).....

Phone ).....

NAME OF REPRESENTATIVE ).....

Sign ).....

Email ).....

Phone ).....

Date (DD-MM-YYYY) ).....

Company/Firm Stamp ).....





**SITE VISIT CERTIFICATE**

*This is to certify that (IN BLOCK LETTERS)*

**Name:** .....

**Cell Phone No:** .....

**Email:** .....

Being the authorized representative of **(IN BLOCK LETTERS)**

**M/S [Firm/Company]** .....

**Official Tel No** .....

**Official Email:** .....

Participated in the organized inspection visit of the site of the works for:

**KGN-GDD-04-2022-TENDER FOR FENCING OF SITES AT EBURRU GEOTHERMAL FIELD**

Held on ..... Day of ..... 20 .....

**To be filled by KenGen Representative**

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.....  
*(Name of KenGen's Representative)*

.....  
*(Designation)*

.....  
**DATE**  
*(Signature KenGen's Representative)*

**NOTE:** *This form is to be completed at the time of the organized site visit; Bidder to bring along with him duly filled site visit certificate during the site visit*

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## **PART III ~ CONDITIONS OF CONTRACT AND CONTRACT FORMS**

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## SECTION VIII - GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both smaller admeasurement contracts and lump sum contracts.

### GENERAL CONDITIONS OF CONTRACT

#### A General

#### 1 Definitions

1.1 Bold face type is used to identify defined terms.

- a) **The Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- b) **The Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- c) **The Adjudicator** is the person appointed jointly by the Procuring Entity and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
- e) **Compensation Events** are those defined in GCC Clause 42 hereunder.
- f) **The Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 53.1.
- g) **The Contract** is the Contract between the Procuring Entity and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- h) **The Contractor** is the party whose Bid to carry out the Works has been accepted by the Procuring Entity.
- i) **The Contractor's Bid** is the completed bidding document submitted by the Contractor to the Procuring Entity.
- j) **The Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- k) **Days are calendar days**; months are calendar months.
- l) **Day works** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- m) **A Defect** is any part of the Works not completed in accordance with the Contract.
- n) **The Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.
- o) **The Defects Liability Period** is the period named in the SCC pursuant to Sub-Clause 34.1 and calculated from the Completion Date.

- p) **Drawings** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Procuring Entity in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- q) **The Procuring Entity** is the party who employs the Contractor to carry out the Works, as specified in the SCC, who is also the Procuring Entity.
- r) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- s) "In writing" or "written" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- t) **The Initial Contract Price** is the Contract Price listed in the Procuring Entity's Letter of Acceptance.
- u) **The Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the SCC. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- v) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- w) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- x) **The Project Manager** is the person named in the SCC (or any other competent person appointed by the Procuring Entity and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- y) **SCC** means Special Conditions of Contract.
- z) **The Site** is the area of the works as defined as such in the SCC.
- aa) **Site Investigation Reports** are those that were included in the bidding document and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- bb) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- cc) **The Start Date** is given in the SCC. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- dd) **A Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- ee) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- ff) **A Variation** is an instruction given by the Project Manager which varies the Works.
- gg) **The Works** are what the Contract requires the Contractor to construct, install, and turn over to the Procuring Entity, as defined in the SCC.

## 2

### Interpretation

#### 2.1

In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.

- 2.2 If sectional completion is specified in the SCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
- a) Agreement,
  - b) Letter of Acceptance,
  - c) Contractor's Bid,
  - d) Special Conditions of Contract,
  - e) General Conditions of Contract, including Appendices,
  - f) Specifications,
  - g) Drawings,
  - h) Bill of Quantities<sup>6</sup>, and
  - i) any other document **listed in the SCC** as forming part of the Contract.

### 3 **Language and Law**

- 3.1 The language of the Contract is English Language and the laws governing the Contract are the Laws of Kenya.
- 3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Procuring Entity's Country when
- a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
  - b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

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

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

### 5 **Delegation**

- 5.1 Otherwise **specified in the SCC**, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.

### 6 **Communications**

- 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

### 7 **Subcontracting**

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

8

## **Other Contractors**

- 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the Schedule of Other Contractors, as **referred to in the SCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Procuring Entity may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

9

## **Personnel and Equipment**

- 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 9.3 If the Procuring Entity, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in Fraud and Corruption during the execution of the Works, then that employee shall be removed in accordance with Clause 9.2 above.

10

## **Procuring Entity's and Contractor's Risks**

- 10.1 The Procuring Entity carries the risks which this Contract states are Procuring Entity's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

11

## **Procuring Entity's Risks**

- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Procuring Entity's risks:
- a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
    - i. use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
    - ii. negligence, breach of statutory duty, or interference with any legal right by the Procuring Entity or by any person employed by or contracted to him except the Contractor.
  - b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is a Procuring Entity's risk except loss or damage due to
- a) aa) a Defect which existed on the Completion Date,

- b) bb) an event occurring before the Completion Date, which was not itself a Procuring Entity's risk, or
- c) cc) the activities of the Contractor on the Site after the Completion Date.

12

### **Contractor's Risks**

From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Procuring Entity's risks are Contractor's risks.

13

### **Insurance**

13.1

The Contractor shall provide, in the joint names of the Procuring Entity and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the SCC** for the following events which are due to the Contractor's risks:

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

13.2

Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3

If the Contractor does not provide any of the policies and certificates required, the Procuring Entity may effect the insurance which the Contractor should have provided and recover the premiums the Procuring Entity has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

13.4

Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5

Both parties shall comply with any conditions of the insurance policies.

14

### **Site Data**

14.1

The Contractor shall be deemed to have examined any Site Data **referred to in the SCC**, supplemented by any information available to the Contractor.

15

### **Contractor to Construct the Works**

15.1

The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

16

### **The Works to Be Completed by the Intended Completion Date**

16.1

The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

- 17                   **Approval by the Project Manager**
- 17.1                The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.
- 17.2                The Contractor shall be responsible for design of Temporary Works.
- 17.3                The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 17.4                The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 17.5                All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
- 18                   **Safety**
- 18.1                The Contractor shall be responsible for the safety of all activities on the Site.
- 19                   **Discoveries**
- 19.1                Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Procuring Entity. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
- 20                   **Possession of the Site**
- 20.1                The Procuring Entity shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the SCC**, the Procuring Entity shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
- 21                   **Access to the Site**
- 21.1                The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
- 22                   **Instructions, Inspections and Audits**
- 22.1                The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2                The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub-consultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.
- 22.3                The Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, the Procuring Entity and/or persons appointed by the Public Procurement Regulatory Authority to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Public Procurement Regulatory Authority. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 25.1



(Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Public Procurement Regulatory Authority's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Public Procurement Regulatory Authority's prevailing sanctions procedures).

23

### **Appointment of the Adjudicator**

23.1 The Adjudicator shall be appointed jointly by the Procuring Entity and the Contractor, at the time of the Procuring Entity's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Procuring Entity does not agree on the appointment of the Adjudicator, the Procuring Entity will request the Appointing Authority designated in the SCC, to appoint the Adjudicator within 14 days of receipt of such request.

23.2 Should the Adjudicator resign or die, or should the Procuring Entity and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Procuring Entity and the Contractor. In case of disagreement between the Procuring Entity and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the SCC at the request of either party, within 14 days of receipt of such request.

24

### **Settlement of Claims and Disputes**

#### **24.1 Contractor's Claims**

24.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.

24.1.2 If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

24.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

24.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

24.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the

extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- a) this fully detailed claim shall be considered as interim;
- b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
- c) the Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

24.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

24.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause

24.1.8 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

24.1.9 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

24.1.1  
0 If the Project Manager does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 24.4 [Arbitration].

24.1.1  
1 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 24.3.

## 24.2 **Amicable Settlement**

24.2.1 Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 24.1 above should move to commence arbitration after the fifty-sixth day from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

## 24.3 **Matters that may be referred to arbitration**

- 24.3.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:
- a) The appointment of a replacement Project Manager upon the said person ceasing to act.
  - b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
  - c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
  - d) Any dispute arising in respect of war risks or war damage.
  - e) All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

#### 24.4 **Arbitration**

- 24.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 24.3 shall be finally settled by arbitration.
- 24.4.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 24.4.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 24.4.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 24.4.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 24.4.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.
- 24.4.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.
- 24.4.8 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the Works.

24.4.9 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

#### 24.5 **Arbitration with National Contractors**

24.5.1 If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

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

24.5.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

#### 24.6 **Alternative Arbitration Proceedings**

24.6.1 Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

#### 24.7 **Failure to Comply with Arbitrator's Decision**

24.7.1 The award of such Arbitrator shall be final and binding upon the parties.

24.7.2 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

#### 24.8 **Contract operations to continue**

24.8.1 Notwithstanding any reference to arbitration herein,

- a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- b) the Procuring Entity shall pay the Contractor any monies due the Contractor.

### 25 **Fraud and Corruption**

25.1 The Government requires compliance with the country's Anti-Corruption laws and its prevailing sanctions policies and procedures as set forth in the Constitution of Kenya and its Statutes.

25.2 The Procuring Entity requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the bidding process or execution of the Contract. The information disclosed

must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

**B Time Control**

**26 Program**

26.1 Within the time stated in the SCC, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.

26.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

26.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the SCC. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the SCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

26.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

**27 Extension of the Intended Completion Date**

27.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

27.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

**28 Acceleration**

28.1 When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.

28.2 If the Contractor's priced proposals for an acceleration are accepted by the Procuring Entity, they are incorporated in the Contract Price and treated as a Variation.

- 29                   **Delays Ordered by the Project Manager**
- 29.1               The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 30                   **Management Meetings**
- 30.1               Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 30.2               The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 31                   **Early Warning**
- 31.1               The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 31.2               The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.
- C                   **Quality Control**
- 32                   **Identifying Defects**
- 32.1               The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 33                   **Tests**
- If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 34                   **Correction of Defects**
- 34.1               The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the SCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

34.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

35 **Uncorrected Defects**

35.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

D **Cost Control**

36 **Contract Price<sup>7</sup>**

36.1 The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

37 **Changes in the Contract Price<sup>8</sup>**

37.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Procuring Entity.

37.2 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

38 **Variations**

38.1 All Variations shall be included in updated Programs<sup>9</sup> produced by the Contractor.

38.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

38.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

38.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

<sup>7</sup>In lump sum contracts, replace GCC Sub-Clauses 36.1 as follows:

*36.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which*

*basis the Contractor will be paid. If payment for materials on site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.*

*<sup>8</sup>In lump sum contracts, replace entire GCC Clause 37 with new GCC Sub-Clause 37.1, as follows:*

*The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.*

*<sup>9</sup>In lump sum contracts, add "and Activity Schedules" after "Programs." <sup>10</sup>In lump sum contracts, delete this paragraph.*

- 38.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning
- 38.6 If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 39.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work
- 38.7 Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;
- a) the proposed change(s), and a description of the difference to the existing contract requirements;
  - b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and
  - c) a description of any effect(s) of the change on performance/functionality.
- 38.8 The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:
- a) accelerate the contract completion period; or
  - b) reduce the Contract Price or the life cycle costs to the Procuring Entity; or
  - c) improve the quality, efficiency, safety or sustainability of the Facilities; or
  - d) yield any other benefits to the Procuring Entity, without compromising the functionality of the Works.
- 38.9 If the value engineering proposal is approved by the Procuring Entity and results in:
- a) a reduction of the Contract Price; the amount to be paid to the Contractor shall be the **percentage specified in the SCC** of the reduction in the Contract Price; or
  - b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.



- 39                                   **Cash Flow Forecasts**
- 39.1                                When the Program<sup>11</sup>, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- 40                                   **Payment Certificates**
- 40.1                                The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 40.2                                The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 40.3                                The value of work executed shall be determined by the Project Manager.
- 40.4                                The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed<sup>12</sup>.
- 40.5                                The value of work executed shall include the valuation of Variations and Compensation Events.
- 40.6                                The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 40.7                                Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (which would be the tender price), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: *(corrected tender price – tender price)/tender price X 100*.
- 41                                   **Payments**
- 41.1                                Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of each certificate. If the Procuring Entity makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- 41.2                                If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 41.3                                Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

41.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Procuring Entity and shall be deemed covered by other rates and prices in the Contract.

## 42 Compensation Events

42.1 The following shall be Compensation Events:

- a) The Procuring Entity does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
- 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 bidders (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.

42.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

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

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

*<sup>12</sup>In lump sum contracts, replace this paragraph with the following: "The value of work executed shall comprise the value of completed activities in the Activity Schedule."*

42.4 The Contractor shall not be entitled to compensation to the extent that the Procuring Entity's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

- 43                   **Tax**
- 43.1               The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 30 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.
- 44                   **Currency of Payment**
- 44.1               All payments under the contract shall be made in Kenya Shillings
- 45                   **Price Adjustment**
- 45.1               Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies:
- $P = A + B I_m / I_o$**   
where:  
P is the adjustment factor for the portion of the Contract Price payable.  
A and B are coefficients **specified in the SCC**, representing the non-adjustable and adjustable portions, respectively, of the Contract Price payable and  
I<sub>m</sub> is the index prevailing at the end of the month being invoiced and  
I<sub>o</sub> is the index prevailing 30 days before Bid opening for inputs payable.
- 45.2               If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.
- 46                   **Retention**
- 46.1               The Procuring Entity shall retain from each payment due to the Contractor the proportion stated in the **SCC** until Completion of the whole of the Works.
- 46.2               Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 53.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” Bank guarantee.
- 47                   **Liquidated Damages**
- 47.1               The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the **SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.
- 47.2               If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall

be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 41.1.

48

### **Bonus**

48.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the SCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

49

### **Advance Payment**

49.1 The Procuring Entity shall make advance payment to the Contractor of the amounts stated in the **SCC** by the date stated in the **SCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procuring Entity in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

49.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

49.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

50

### **Securities**

50.1 The Performance Security shall be provided to the Procuring Entity no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the SCC**, by a bank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 day from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

51

### **Dayworks**

51.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

51.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

- 51.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.
- 52 **Cost of Repairs**
- 52.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.
- E **Finishing the Contract**
- 53 **Completion**
- 53.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.
- 54 **Taking Over**
- 54.1 The Procuring Entity shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.
- 55 **Final Account**
- 55.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- 13The sum of the two coefficients A and B should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the non-adjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other non-adjustable components. The sum of the adjustments for each currency are added to the Contract Price.*
- 56 **Operating and Maintenance Manuals**
- 56.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the SCC.
- 56.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC pursuant to GCC Sub-Clause 56.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the SCC** from payments due to the Contractor.
- 57 **Termination**
- 57.1 The Procuring Entity or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 57.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- a) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
- c) the Procuring Entity or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- d) a payment certified by the Project Manager is not paid by the Procuring Entity to the Contractor within 84 days of the date of the Project Manager's certificate;
- e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- f) the Contractor does not maintain a Security, which is required;
- g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**; or
- h) if the Contractor, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix A to the GCC, in competing for or in executing the Contract, then the Procuring Entity may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel him from the Site.

57.3 Notwithstanding the above, the Procuring Entity may terminate the Contract for convenience.

57.4 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

57.5 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

## 58 **Payment upon Termination**

58.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as specified in the SCC. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.

58.2 If the Contract is terminated for the Procuring Entity's convenience or because of a fundamental breach of Contract by the Procuring Entity, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

## 59 **Property**

59.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Procuring Entity if the Contract is terminated because of the Contractor's default.

60 **Release from Performance**

60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Procuring Entity or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

**SECTION IX - SPECIAL CONDITIONS OF CONTRACT**

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

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
A. General	
GCC 1.1 (q)	<p>The Procuring Entity is</p> <p><b>KENYA ELECTRICITY GENERATING COMPANY LTD</b>  <b>Stima Plaza Phase III, Kolobot Road,</b>  <b>P.O. Box 47936, 00100</b>  <b>NAIROBI, KENYA.</b>  <b>Tel: +254 2 3202000.</b>  <b>Fax: +254 2 248848</b></p>
GCC 1.1 (u)	<p>The Intended Completion Date for the whole of the Works shall be <b>9 CONSECUTIVE CALENDAR MONTHS UPON ISSUANCE OF ENGINEER'S ORDER TO COMMENCE;</b></p>
GCC 1.1 (x)	<p>The Project Manager is</p> <p><b>GEOHERMAL DEVELOPMENT DIRECTOR</b>  <b>KENYA ELECTRICITY GENERATING COMPANY PLC</b>  <b>Stima Plaza Phase III, Kolobot Road,</b>  <b>P.O. Box 47936, 00100</b>  <b>NAIROBI, KENYA.</b>  <b>Tel: +254 2 3202000.</b>  <b>Fax: +254 2 248848</b></p>
GCC 1.1 (z)	<p>The Site is located at Eburru Geothermal Field</p> <p>a) The works shall be undertaken at Eburru Geothermal Field. The Contractor shall visit the sites and acquaint himself with its nature and position, the nature of the local conditions, positions of existing power, water and other services, access roads or any other limitations that might affect his cost or progress. No claims for extras shall be considered on account of lack of knowledge in this respect.</p> <p>b) The site location is controlled and administered by the Kenya Forest Service (KFS). Hence, all Works associated with project shall comply fully with the requirements of KFS where it impacts upon operation of the Forest Reserve. The Contractor's vehicles and staff will be exempt from park entry fees for the purposes of performing their duties under this Contract. This is subject to the Contractor informing KFS and the Employer in advance regarding the regular vehicles that shall be in use. The Contractor's vehicles should be conspicuously labelled for ease of identity. This will facilitate efficient prior arrangements for free entry into the Forest Area. The contractors staff shall bear names tags indicating their names and ID Numbers and is signed by both the Contractor's superintendence and the employee. A copy of the contractor's updated staff list shall be kept by KenGen</p>



Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	In addition, the contractor is required to observe all rules of the Eburru Forest
GCC 1.1 (cc)	<b>Commencement date shall be Engineers Order to Commence after contract signing and shall be decided during kick off meeting.</b>
GCC 5.1	The Project manager <b>MAY</b> delegate any of his duties and responsibilities.
GCC 9.1	<p><b>Key Personnel</b> GCC 9.1 is replaced with the following:</p> <p>Key Personnel are the Contractor’s personnel named in this GCC 9.1 of the Special Conditions of Contract. The Contractor shall employ the Key Personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of Key Personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.</p> <p><b>The following Key Project Personnel shall be applicable.</b></p> <ul style="list-style-type: none"> <li>a) A Contractor’s <b>Civil Engineer</b> with a minimum of 2 years specific experience in building construction or works of an equivalent nature and volume, with a minimum of degree in Civil Engineering or equivalent from a recognized institution.</li> <li>b) A Contractor’s <b>Site Agent</b> with a minimum of 4 years specific experience in building construction or works of an equivalent nature and volume, with a minimum of Ordinary Diploma in Civil Engineering or equivalent from a recognized institution.</li> <li>c) A Contractor’s <b>Site Supervisor</b> with a minimum of 2 years specific experience in building construction or works of an equivalent nature and volume, with a minimum of Ordinary Diploma in Civil Engineering or equivalent from a recognized institution.</li> <li>d) A Contractor’s <b>Environment and Safety Officer</b> with a minimum of 2 years specific experience of in the field, with a minimum of Ordinary Diploma.</li> <li>e) Skilled unskilled laborers with specific experiences and certificates.</li> </ul>
GCC 13.1	<p>The Contractor shall be responsible for and shall take out appropriate cover against, among other risks, personal injury; loss of or damage to the Works, materials and plant; and loss of or damage to property.</p> <p><b>MINIMUM AMOUNT OF THIRD-PARTY INSURANCE</b></p> <p>A. Evidence of Insurance Contractor’s All Risks.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	B. Relevant policies Contractor's All Risks
GCC 20.1	The Site Possession Date(s) shall be:  <b>Upon Issuance to Commence after Kick-off meeting.</b>
<b>B. Time Control</b>	
GCC 26.1	The Contractor shall submit for approval a Program for the Works within 14 days from the date of kick off meeting.
GCC 26.3	The period between Program updates is 21 days. The amount to be withheld for non-submission of an updated Program is FULL CERTIFICATE
<b>C. Quality Control</b>	
GCC 34.1	The Defects Liability Period is: <i>6 Consecutive Calendar Months</i>
<b>D. Cost Control</b>	
GCC 38.9	N/A
GCC 40	<b>PAYMENTS:</b> Payment shall be made based on completed milestones as shall be agreed upon with the contractor during kick off meeting. Minimum amount of each Interim Payment Certificate shall be <b>5%</b> of contract amount.  The following documents shall form part of interim payment certificates: -  <ol style="list-style-type: none"> <li>1. Detailed valuation to date</li> <li>2. Valuation estimates due for the focus period for only completed works</li> <li>3. Detailed Progress Report</li> <li>4. Updated program of works</li> </ol> The amount to be withheld for non-or late submission of these vital documents is <b>FULL CERTIFICATE.</b>
GCC 44.1	The currency of the Procuring Entity's Country is: <b><i>KENYA SHILLINGS.</i></b>
GCC 45.1	The Contract is subject to price adjustment in accordance with GCC Clause 45.
GCC 46.1	The proportion of payments retained is: <i>10% of each Interim payment Certificate</i>
GCC 47.1	The liquidated damages for the whole of the Works are <b><i>/0.05%</i></b> / per day that the actual Completion Date is later than the Intended Completion Date. The Employer may deduct liquidated damages from payments due to the Contractor. Deductions of liquidated damages shall not affect the Contractor's liabilities.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	The maximum amount of liquidated damages for the whole of the Works is <b>[10%]</b> of the final Contract Price.
GCC 49.1	Advance payment shall not be applicable.
GCC 50.1	The Performance Security is NOT APPLICABLE.
<b>E. Finishing the Contract</b>	
GCC 56.1	<p>The date by which operating and maintenance manuals are required is <b><i>IMMEDIATELY UPON CONTRACT COMPLETION.</i></b></p> <p>The date by which “as built” drawings are required is <b><i>IMMEDIATELY UPON CONTRACT COMPLETION.</i></b></p>
GCC 56.2	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is <b><i>FULL RETENTION AMOUNT.</i></b>

**FORM No 1: NOTIFICATION OF INTENTION TO AWARD**

This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

-----

**FORMAT**

1 For the attention of Tenderer's Authorized Representative

i) Name: \_\_\_\_\_

ii) Address: \_\_\_\_\_

iii) Telephone: \_\_\_\_\_

iv) Email Address: \_\_\_\_\_

*[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]*

2 Date of transmission: \_\_\_\_\_ [email] on \_\_\_\_\_ [date] (local time)

This Notification is sent by (Name and designation) \_\_\_\_\_

3 Notification of Intention to Award

i) Procuring Entity: \_\_\_\_\_

ii) Project: \_\_\_\_\_

iii) Contract title: \_\_\_\_\_

iv) Country: \_\_\_\_\_

v) ITT No: \_\_\_\_\_

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

4 Request a debriefing in relation to the evaluation of your tender

Submit a Procurement-related Complaint in relation to the decision to award the contract.

- a) The successful tenderer
  - i. Name of successful Tender \_\_\_\_\_
  - ii. Address of the successful Tender \_\_\_\_\_
  - iii. Contract price of the successful Tender Kenya Shillings \_\_\_\_\_  
\_\_\_\_ (in words \_\_\_\_\_)

b) Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out. For Tenders not evaluated, give one main reason the Tender was unsuccessful.

SNo	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5 How to request a debriefing

- a) DEADLINE: The deadline to request a debriefing expires at midnight on \_\_\_\_\_ [insert date] (local time).
- b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
  - i) Attention: \_\_\_\_\_ [insert full name of person, if applicable]
  - ii) Title/position: \_\_\_\_\_ [insert title/position]
  - iii) Agency: \_\_\_\_\_ [insert name of Procuring Entity]
  - iv) Email address: \_\_\_\_\_ [insert email address]
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.
- e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract

Award Notice.

6 **How to make a complaint**

- g) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, \_\_\_\_\_ [insert date] (local time).
- h) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
  - i) Attention: \_\_\_\_\_ [insert full name of person, if applicable]
  - ii) Title/position: \_\_\_\_\_ [insert title/position]
  - iii) Agency: \_\_\_\_\_ [insert name of Procuring Entity]
  - iv) Email address: \_\_\_\_\_ [insert email address]
- i) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.
- j) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website [info@ppra.go.ke](mailto:info@ppra.go.ke) or [complaints@ppra.go.ke](mailto:complaints@ppra.go.ke). You should read these documents before preparing and submitting your complaint.
- k) There are four essential requirements:
  - i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
  - ii) The complaint can only challenge the decision to award the contract.
  - iii) You must submit the complaint within the period stated above.
  - iv) You must include, in your complaint, all of the information required to support your complaint.

7 **Standstill Period**

- i) DEADLINE: The Standstill Period is due to end at midnight on \_\_\_\_\_ [insert date] (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the Procuring Entity:

**Signature:** \_\_\_\_\_ **Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**FORM NO. 2 - REQUEST FOR REVIEW**

**FORM FOR REVIEW(r.203(1))**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO.....OF.....20.....**

**BETWEEN**

.....**APPLICANT**

**AND**

.....**RESPONDENT (Procuring Entity)**

Request for review of the decision of the..... (Name of the Procuring Entity of .....dated the...day of .....20.....in the matter of Tender No.....of .....20..... for .....(Tender description).

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical address.....P. O. Box No..... Tel. No.....Email ....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

- 1.
- 2.

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

- 1.
- 2.

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

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FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of .....20.....

**SIGNED**

**Board Secretary**

**FORM NO 3: LETTER OF AWARD**

*[letterhead paper of the Procuring Entity] [date]*

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

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by ..... *(name of Procuring Entity)*.

You are requested to furnish the Performance Security within 30 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature:.....

Name and Title of Signatory:.....

Name of Procuring Entity.....

Attachment: *Contract Agreement*.....



**FORM NO 4: CONTRACT AGREEMENT**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between \_\_\_\_\_ of \_\_\_\_\_ (hereinafter “the Procuring Entity”), of the one part, and \_\_\_\_\_ of \_\_\_\_\_ (hereinafter “the Contractor”), of the other part:

WHEREAS the Procuring Entity desires that the Works known as \_\_\_\_\_ should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - a. the Letter of Acceptance
  - b. the Letter of Tender
  - c. the addenda Nos (if any)
  - d. the Special Conditions of Contract
  - e. the General Conditions of Contract;
  - f. the Specifications
  - g. the Drawings; and
  - h. the completed Schedules and any other documents forming part of the contract.
3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Procuring Entity to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the Laws of Kenya on the day, month and year specified above.

Signed and sealed by \_\_\_\_\_ (for the Procuring Entity)

Signed and sealed by \_\_\_\_\_ (for the Contractor).

**FORM NO. 5 - PERFORMANCE SECURITY**

**[Option 1 - Unconditional Demand Bank Guarantee]**

*[Guarantor letterhead]*

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

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**Guarantor:** \_\_\_\_\_ *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with (*name of Procuring Entity*) \_\_\_\_\_ (the Procuring Entity as the Beneficiary), for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (*in words*),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the ..... Day of ....., 20....., and any demand for payment under it must be received by us at the office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months/ one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

*[Name of Authorized Official, signature(s) and seals/stamps].*

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

<sup>1</sup>*The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.*

<sup>2</sup>*Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

**FORM No. 6 - PERFORMANCE SECURITY**

**[Option 2– Performance Bond]**

*[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]*

*[Guarantor letterhead or SWIFT identifier code]*

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

**Date:** \_\_\_\_\_ *[Insert date of issue].*

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

**Guarantor:** \_\_\_\_\_ *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond \_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_ as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_ as Obligee (hereinafter called “the Procuring Entity”) in the amount of \_\_\_\_\_ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for \_\_\_\_\_ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:
  - 1) complete the Contract in accordance with its terms and conditions; or
  - 2) obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
  - 3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.
6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day \_\_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_\_ .

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

FORM NO. 7 - ADVANCE PAYMENT SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: \_\_\_\_\_ [Insert name and Address of Procuring Entity]

Date: \_\_\_\_\_ [Insert date of issue]

ADVANCE PAYMENT GUARANTEE No.: \_\_\_\_\_ [Insert guarantee reference number]

Guarantor: \_\_\_\_\_ [Insert name and address of place of issue, unless indicated in the letterhead]

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ (in words) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (in words) upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
  - a. has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
  - b. has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number \_\_\_\_\_ at \_\_\_\_\_.
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

[Name of Authorized Official, signature(s) and seals/stamps]

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

*1The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

*2Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

**FORM NO. 8 - RETENTION MONEY SECURITY**

[Demand Bank Guarantee]

*[Guarantor letterhead]*

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

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**Advance payment guarantee no.** \_\_\_\_\_ *[Insert guarantee reference number]*

**Guarantor:** \_\_\_\_\_ *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that \_\_\_\_\_ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ *[insert reference number of the contract]* dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and payment of *[insert the second half of the Retention Money]* is to be made against a Retention Money guarantee.
3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ *[insert amount in figures]* \_\_\_\_\_ *(insert amount in words)* I upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Contractor on its account number \_\_\_\_\_ at \_\_\_\_\_ *[insert name and address of Applicant's bank]*.
5. This guarantee shall expire no later than the ..... Day of ....., 2.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed \_\_\_\_\_ *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

*[Name of Authorized Official, signature(s) and seals/stamps]*

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

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

<sup>2</sup>Insert a date that is twenty-eight days after the expiry of retention period after the actual completion date of the contract. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.

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

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

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

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

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

Tender Reference No.: \_\_\_\_\_ *[insert identification no]*

Name of the Assignment: \_\_\_\_\_ *[insert name of the assignment]*

to: \_\_\_\_\_ *[insert complete name of Procuring Entity]*

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

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

**Details of beneficial ownership**

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

OR

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

OR

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

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

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

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

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

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

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

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