

# BARINGO COUNTY GOVERNMENT



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Tender Document

For

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**TENDER NO.**

**BRCG/TNR/W&I/755577/2019/2020**

**TENDER NAME: - GRAVITY MAIN FOR  
NAROSURA PIPELINE PROJECT**

***FINANCIAL YEAR 2019/2020***

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**OFFICE OF THE GOVERNOR,  
BARINGO COUNTY GOVERNMENT**

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**CLOSING DATE: 20<sup>TH</sup> November, 2019**

**TIME: As Indicated in IFMIS**

## **Contents**

<b>SECTION I. INVITATION FOR BIDS.....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>SECTION II. INSTRUCTIONS TO TENDERERS .....</b>	<b>3</b>
<b>APPENDIX TO INSTRUCTIONS TO TENDERERS.....</b>	<b>25</b>
<b>SECTION III. CONDITIONS OF CONTRACT, PART I – GENERAL CONDITIONS .....</b>	<b>30</b>
<b>SECTION IV. CONDITIONS OF CONTRACT, PART II – (CONDITIONS OF PARTICULAR APPLICATION) .....</b>	<b>32</b>
<b>SECTION V: SPECIFICATIONS .....</b>	<b>65</b>
<b>SECTION VI: DRAWINGS .....</b>	<b>66</b>
<b>SECTION VII – BILLS OF QUANTITIES .....</b>	<b>67</b>
<b>SECTION VIII – STANDARD FORMS.....</b>	<b>72</b>

## **Section II. Instructions to Tenderers**

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## Table of Clauses

### Contents

<b>A. GENERAL .....</b>	<b>6</b>
1. Definitions .....	6
2. Eligibility and Qualification Requirements .....	6
3. Cost of Tendering .....	9
4. Site Visit .....	9
<b>B: TENDER DOCUMENTS .....</b>	<b>9</b>
5. Tender Documents .....	9
6. Inquiries by Tenderers.....	10
7. Amendment of Tender Documents .....	10
<b>C. PREPARATION OF TENDERS .....</b>	<b>11</b>
8. Language of Tender .....	11
9. Documents Comprising the Bid .....	11
10. Tender Prices.....	11
11. Currencies of Tender and Payment.....	13
12. Tender Validity.....	13
13. Tender Security .....	14
14. No alternative offers.....	14
15. Pre-tender Meeting.....	15
16. Format and Signing of Tenders.....	15
<b>D. SUBMISSION OF BIDS .....</b>	<b>15</b>
17. Sealing and Marking of Bids .....	16
18. Deadline for Sub-mission of Bids .....	16
19. Modification and Withdrawal of Bids .....	17
<b>E. TENDER OPENING AND EVALUATION .....</b>	<b>18</b>

---

20	Tender Opening.....	18
21.	Process to Be Confidential.....	18
22	Clarification of Tenders.....	18
23	Determination of Responsiveness.....	19
24	Correction of Errors.....	19
25	Conversion to Single Currency.....	20
26	Evaluation and Comparison of Bids.....	21
F.	AWARD OF CONTRACT.....	23
27	Award Criteria.....	23
28	Notification of Award.....	23
29	Performance Guarantee.....	23
30	Advance Payment.....	24
	APPENDIX TO INSTRUCTIONS TO TENDERERS.....	25

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## **Instructions to Tenderers**

### **A. GENERAL**

#### **1. Definitions**

- a. “Tenderer” means any persons, partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications, Drawings and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative.
- b. “Approved tenderer” means the tenderer who is approved by the Employer.
- c. Any noun or adjective derived from the word “tender” shall be read and construed to mean the corresponding form of the noun or adjective “bid”. Any conjugation of the verb “tender” shall be read and construed to mean the corresponding form of the verb “bid.”
- d. “Employer” means Baringo County Government

#### **2. Eligibility and Qualification Requirements**

##### **2.1 Eligibility requirements**

This invitation to tender is open to all tenderers who are qualified as stated in the appendix.

##### **2.2 Qualifications Requirements**

To be qualified for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility under Sub clause 2.1. above and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to update the following information already submitted during prequalification:-

- (a) Details of experience and past performance of the tenderer on the works of a similar nature and details of current work on hand and other contractual commitments.
- (b) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site.
- (c) Major items of construction plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and

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material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.

- (d) Details of sub contractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Condition of Contract.
- (e) A draft Program of Works in the form of a bar chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Engineer.
- (f) Details of any current litigation or arbitration proceedings in which the tenderer is involved as one of the parties.

### **2.3 Joint Ventures**

Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements:-

- (a) The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners
- (b) One of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners
- (c) The partner in charge shall be authorized to incur liabilities and receive instructions for an on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender)
- (e) A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

### **3. Cost of Tendering**

- 3.1 The Tenderer shall bear all costs associated with the preparation and submission of his tender and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.2 The price to be charged for the tender document shall not exceed Kshs.3,000/=
- 3.3 The procuring entity shall allow the tenderer to view the tender document free of charge before purchase.

### **4. Site Visit**

- 4.1 The tenderer is advised to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the Site shall be the tenderer's own responsibility
- 4.2 The tenderer and any of his personnel or agents will be granted permission by the Employer to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, his personnel or agents, will release and indemnify the Employer from and against all liability in respect of, and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.
- 4.3 The Employer shall organize a site visit at a date to be notified. A representative of the Employer will be available to meet the intending tenderers at the Site.

Tenderers must provide their own transport. The representative will not be available at any other time for site inspection visits.

Each tenderer shall complete the Certificate of Tenderer's Visit to the Site, whether he in fact visits the Site at the time of the organized site visit or by himself at some other time.

## **B: TENDER DOCUMENTS**

### **5. Tender Documents**

- 5.1 The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 7 of these instructions to tenderers.
  - a. Form of Invitation for Tenders
  - b. Instructions to Tenderers
  - c. Form of Tender



- d. Appendix to Form of Tender
- e. Form of Tender Surety
- f. Statement of Foreign Currency Requirements
- g. Tender and Confidential Business Questionnaires
- h. Details of Sub contractors
- i. Schedules of Supplementary Information
- j. General Conditions of Contract – Part I
- k. Conditions of Particular Application – Part II
- l. Specifications
- m. Bills of Quantities
- n. Drawings
- o. Declaration Form

5.2 The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 22 of Instructions to Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.

5.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (whether they submit a tender or not) shall treat the details of the documents as "private and confidential".

## **6. Inquiries by Tenderers**

6.1 A tenderer making an inquiry relating to the tender document may notify the Employer in writing or by telex, cable or facsimile at the Employer's mailing address indicated in the Invitation to Tender. The Employer will respond in writing to any request for clarification which he receives earlier than 7 days prior to the deadline for the submission of tenders. Written copies of the Employer's response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased the tender documents.

6.2 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

## **7. Amendment of Tender Documents**

7.1 At any time prior to the deadline for submission of tenders the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.

7.2 Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them.

7.3 In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Employer may, at his discretion, extend the deadline for the submission of tenders.

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## **C. PREPARATION OF TENDERS**

### **8. Language of Tender**

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

### **9 Documents Comprising the Bid**

- 9.1 The tender to be prepared by the tenderer shall comprise:
- i. the Form of Tender and Appendix thereto,
  - ii. Tender Security
  - iii. the Priced Bills of Quantities and Schedules
  - iv. the information on eligibility and qualification
  - v. any other materials required to be completed and submitted in accordance with the Instructions to Tenderers.

The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 13.2 regarding the alternative forms of Tender Surety).

### **10. Tender Prices**

- 10.1 All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Bills of Quantities shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialled by the person or persons signing the tender.
- 10.2 A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not. Items against which no rate or price is entered by the tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.

The prices and unit rates in the Bills of Quantities are to be the full [all-inclusive] value of the Work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause 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.

Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.

Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.

- 10.3 Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Bills of Quantities for Contingencies and Variation of Prices[V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.
- 10.4 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of basic unit rates for the supply of items listed in the Conditions of Contract clause 70 where appropriate. The Employer may require the tenderer to justify such rates so obtained from the suppliers or manufacturers.
- 10.5 The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the Provisions of the Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other supporting information as required under clause 70 of the Conditions of Contract Part II.
- 10.6 Contract price variations shall not be allowed within the first 12 months of the contract.
- 10.7 Where quantity contract variation is allowed, the variation shall not exceed 15% of the original contract quantity.
- 10.8 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## **11 Currencies of Tender and Payment**

- 11.1 Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.
- 11.2 Tenderers are required to indicate in the Statement of Foreign Currency Requirements, which forms part of the tender, the foreign currency required by them. Such currency should generally be the currency of the country of the tenderer's main office. However, if a substantial portion of the tenderer's expenditure under the Contract is expected to be in countries other than his country of origin, then he may state a corresponding portion of the contract price in the

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currency of those other countries. However, the foreign currency element is to be limited to two (2) different currencies and a maximum of 30% (thirty percent) of the Contract Price.

- 11.3 The rate or the rates of exchange used for pricing the tender shall be the selling rate or rates of the Central Bank ruling on the date thirty (30) days before the final date for the submission of tenders.
- 11.4 Tenderers must enclose with their tenders, a brief justification of the foreign currency requirements stated in their tenders.

## **12 Tender Validity**

- 12.1 The tender shall remain valid and open for acceptance for a period of sixty (60) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 7.4 here above) whichever is the later.
- 12.2 In exceptional circumstances prior to expiry of the original tender validity period, the Employer may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing or by cable, telex or facsimile. A tenderer may refuse the request without forfeiting his Tender Surety. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Surety correspondingly.

## **13 Tender Security**

- 13.1 The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix to Instructions to Tenderers.
- 13.2 The tender security shall not exceed 2 percent of the tender price.
- 13.3 The Tender Security shall be valid at least thirty (30) days beyond the tender validity period.
- 13.4 Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive.
- 13.5 The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible but not later than twenty eight (28) days after expiration of the tender validity period. The Tender Surety of the successful tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.
- 13.6 The Tender Surety may be forfeited:
- a) if a tenderer withdraws his tender during the period of tender validity; or
  - b) in the case of a successful tenderer, if he fails, within the specified time limit
    - i. to sign the Agreement, or

- ii. to furnish the necessary Performance Security
- c) if a tenderer does not accept the correction of his tender price pursuant to clause 24.

## **14 No alternative offers**

- 14.1 The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix.

Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture. A tenderer who submits or participates in more than one tender will be disqualified.

- 14.2 The tenderer shall not attach any conditions of his own to his tender. The tender price must be based on the tender documents. The tenderer is not required to present alternative construction options and he shall use without exception, the Bills of Quantities as provided, with the amendments as notified in tender notices, if any, for the calculation of his tender price. Any tenderer who fails to comply with this clause will be disqualified.

## **15. Pre-tender Meeting**

- 15.1 If a pre-tender meeting is convened, the tenderer's designated representative is invited to attend at the venue and time in the Invitation to Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

- 15.2 The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than seven (7) days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:

- (a) Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in – Clause 9 which may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting.
- (b) Non attendance at the pre-bid meeting will not be cause for disqualification of a bidder.

## **16 Format and Signing of Tenders**

- 16.1 The tenderer shall prepare his tender as outlined in clause 9 above and mark appropriately one set "ORIGINAL" and the other "COPY".

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- 16.2 The copy of the tender and Bills of Quantities shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender.
- 16.3 The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## **D. SUBMISSION OF BIDS**

### **17**

**17.1 DULLY FILLED TENDER DOCUMENTS SHALL BE SUBMITTED ONLINE THROUGH IFMIS**

**17.2 NO MANUAL SUBMISSION WILL BEACCEPTED**

### **18 Deadline for Sub-mission of Bids**

- 18.1 Tenders must be received by the Employer at the address specified in clause 17.2 and on the date and time specified in the Letter of Invitation, subject to the provisions of clause 7.4, 18.2 and 18.3.
- 18.2 The Employer may, at his discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline shall thereafter be subject to the new deadline as extended.
- 18.3 The System will automatically close at the time indicated and will not accept any more submission

### **19 Modification and Withdrawal of Bids**

- 19.1 The tenderer may modify or withdraw his tender after tender submission, provided that written notice of the modification or withdrawal is received by the Employer prior to prescribed deadline for submission of tenders.
- 19.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of tenders, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.

- 19.3 No tender may be modified subsequent to the deadline for submission of tenders.
- 19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the period of tender validity specified on the tender form. Withdrawal of a tender during this interval will result in the forfeiture of the Tender Surety.
- 19.5 Subsequent to the expiration of the period of tender validity prescribed by the Employer, and the tenderer having not been notified by the Employer of the award of the Contract or the tenderer does not intend to conform with the request of the Employer to extend the period of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Surety.

## E. TENDER EVALUATION

### 20

#### Evaluation Criteria

Evaluation criteria shall comprise three stages (1) Mandatory Evaluation/Requirements, (2) Technical Evaluation and (3) Financial Evaluation;

#### 1.1. Mandatory Evaluation/Requirements;

Tenderers **MUST** meet all requirements under Mandatory Requirements – under the Table of Mandatory Requirements to qualify for Technical and Financial Evaluation. This sections shall be a YES/NO section.

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



Sub-Factor	Requirement	Bidder				Documentation Required	Provided (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Registration by National Construction Authority	At least category <b>NCA8 for building works</b>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<i>Must meet requirement.</i>	<ul style="list-style-type: none"> <li>• Current and valid NCA categorization as per requirements column;</li> <li>• Current and valid annual practising certificate for the above two – valid as of deadline of submission;</li> </ul>	
Tender Sum and Tender Validity Period	Bidder shall quote the Tender Sum and Validity period and as per Invitation for Tenders	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<ul style="list-style-type: none"> <li>• Completed Form of Tender – <b>Section IX - Standard Forms</b>;</li> <li>• Completed form of Tender Securing Declaration - <b>Section IX - Standard Forms</b></li> </ul>	

Sub-Factor	Requirement	Bidder				Documentation Required	Provided (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Bid Security	The Bidder shall furnish as part of its bid, a bid security in form as specified under Invitation for Tenders/Tender Data Sheet	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<ul style="list-style-type: none"> <li>In original, unconditional bank guarantee or banker's cheque or hard cash and in the amounts and currency as specified under Invitation for Tenders/Tender Data Sheet;</li> <li>If not in the form of cash or bankers cheque, in the format of – <b>Section IX – Standard Forms – Form of Tender Security</b></li> </ul>	
<b>Bidding Forms and Other Requirements</b>							
Bidder Information	The bidder is required to provide all details in the format as specified as Section IX - Standard forms	<i>Must meet requirement</i>	<i>N/A</i>	<i>Must meet requirement</i>	<i>N/A</i>	<b>Fully completed Standard Forms;</b> <ul style="list-style-type: none"> <li>Qualification information form;</li> <li>Confidential Business Questionnaire;</li> <li>Details of Sub-Contractors (if any)</li> </ul>	

Sub-Factor	Requirement	Bidder				Documentation Required	Provided (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Schedule of Unit Rates	Completed priced Bills of Quantities	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<ul style="list-style-type: none"> <li>Completed Bill of Quantities - Section VIII– Standard Forms Schedule of Unit Rates - (The Bills of Quantities), with rates consistently applied for similar items within the Bills of Quantities;</li> <li>No frontloading from 1 above.</li> </ul>	
<b>Eligibility</b>							
<b>Financial Situation</b>							
Historical Financial Performance	Submission of audited reports for the last two financial years (2017, and 2018).	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	Audited financial reports for the last two years 2017 and 2018 certified by a CPA(K) auditor and consistent with Section IX - Standard Form - Qualification Information Form	
<b>Experience</b>							
Specific Experience	Participation as contractor, management contractor, or subcontractor, in at least four (4) contracts each with a value of at least KShs 5 million within the last five (5) years (2013 to 2018),	<i>Must meet requirement</i>	<i>Must meet requirements</i>	<i>N/A</i>	<i>N/A</i>	<ul style="list-style-type: none"> <li>List of projects – Name, Contracting Authority, project/contract budget, when completed, and contract amounts in monetary terms. This information should be summarised under Section XI Standard Forms -</li> </ul>	

Sub-Factor	Requirement	Bidder				Documentation Required	Provided (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
	or combined works experience of KShs 25M over the same period. <b>The works should have been successfully &amp; fully completed and that are of the same nature to the proposed Works</b> and should be supported by work completion & site handover certificates					<b>Qualification Information Form;</b> <ul style="list-style-type: none"> <li>The above <b>MUST</b> be supported by (1)Contract/ Award clearly stipulating the contract value/amounts in question, (2)Project Completion certificates.</li> </ul>	
<b>Key Personnel</b>							
Project Manager	At least a diploma in Civil Engineering , Building Economics, Quantity Survey or Architectural Engineering , <b>3 years specific works experience and held the position of project manager/ Team Leader in at least three</b>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>Must meet requirement</i>	<ul style="list-style-type: none"> <li><b>Section IX Standard Forms - Qualification Information Form</b> properly completed;</li> <li>CV describing the person, education background, years of experience, key experience as per the requirements column;</li> <li>Copies of Education/Qualification Certificates.</li> </ul>	

Sub-Factor	Requirement	Bidder				Documentation Required	Provided (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
	projects of similar nature and scope						
<b>Key Equipment (AT LEAST CONFIRM OWNERSHIP OR LEASE)</b>							

## 1.2. Technical Evaluation Criteria

Technical Evaluation shall comprise scoring of bidders under various attributes in the table below – **Table of Scoring Matrix**. To earn maximum scores, a bidder must (1) provide supporting documents as per criteria (2) provide very precise/specific and relevant information as per criteria (3) provide as many/much information as possible to earn more points. **A bidder must score a minimum of 40 points to be considered for Financial Evaluation**

**Table of Scoring Matrix**

Sub-Factor	Requirement	Maximum score	Awarded score
<b>Financial Situation</b>			
Current Ratio defined as how many times current assets cover current liabilities ( Current Assets Divided(/) by Current Liabilities	<b>Audited financial report for the last Two (2 number) years 2017, 2018 - (choose either of the qualification below):</b>		
	Average Current Ratio of Two (2Number) and above	7	
	Average Current Ratio of One(1) and below Two (2Number)	5	
Annual Turnover defined as Gross Sales/Gross revenue that does not include sale of Capital Assets	<b>Audited financial report for the last Two (2 number) years 2017 &amp; 2018 (choose either of the qualification below):</b>		
	• Average Annual Turnover above 10Million/Year	8	
	• Average Annual Turnover of up to 5Million/Year	5	
	• Average Annual Turnover of up to 3Million/Year Average annual turnover for the two years above KES5Million	3	
<b>Financial Capacity</b>		<b>15</b>	
<b>EXPERIENCE</b>			
Contract implemented & completed in the past ten (5 number) years related to building works and project in question (2013 to 2018)	Information on past completed works of similar nature, complexity and magnitude. Bidders MUST provide (1) Offers Letters or Contract Letters/LPOs clearly stipulating the contract value/amounts in question, (2) Work/Project Completion Certificates & completed Section IX – Standard Forms – Qualification Information Form (choose either of the qualification below):		
	Contracts value above KES30M	15	
	Contracts value up to KES20M	10	
	Contracts value up to KES10M	15	
Experience in implementing building works projects in difficulty to reach areas	Projects of similar nature, complexity and magnitude - at least project(s) worth above KES30M single or combined	10	
	Projects of similar nature, complexity and magnitude - at least project(s) worth KES12M single or combined	4	
<b>Past &amp; Specific Experience</b>		<b>25</b>	
<b>Key Personnel</b>			
<b>Schedule of Bidder's proposed personnel and their experience.</b> Attach CV describing the person, education background, years of experience, key experience as per the requirements column & evidence of qualification (certificates, recommendations, service completion certificates etc.). <b>To earn maximum points, tenderers must make sure education qualification, experience in similar works and position are well described and backed with evidences. Tenderers must also complete section IX – Standard Forms</b>			
Project Manager	i. More than a diploma in Civil Engineering, Building Economics, Quantity Surveyor or Architectural Engineering field = 1 point	2	

Sub-Factor	Requirement	Maximum score	Awarded score
	ii. Similar Works Experience (Over 5 years = 2 points, 4-5years = 1 point.)	5	
	iii. Experience in position of team leader/project manager in similar projects ( More than 5 projects = 2 points, 4-5 projects = 1 point.)	5	
Site Agent	i. More than a diploma in Civil Engineering or Projects Management = 1 point,	2	
	ii. Similar Works Experience (Over 5 years = 2 points, 4-5years = 1 point.	3	
	iii. Experience in position of Site Agent in similar projects (More than 5 projects = 2 points, 4-5 projects = 1 points)	3	
<b>KEY PERSONNEL</b>		<b>20</b>	
<b>Key Equipment</b>			
<p><b>Proof of equipment ownership</b> -Logbooks/lease agreements in the name of the bidder/or any other verifiable proofs including purchase receipts for im/mobile equipment without logbooks/registration documents. <b>To earn maximum points, tenderers must make sure that extra equipment/machinery is well supported with ownership/lease agreement documents. Mere MoUs will earn no points.</b></p> <p><b>Tenderers must also complete section VIII – Standard Forms</b></p>			
Dump Truck	Schedule of contractor's Dump Truck ( <i>Attach proof or evidence of ownership/lease</i> )		
	• At least one (1) quantity	3	
Pick-Up Truck	Schedule of contractor's Pick Ups ( <i>Attach proof or evidence of ownership/lease</i> )		
	• At least one	2	
Key Equipment		<b>5</b>	
Properly filled bill of quantities		<b>5</b>	

#### Summary of Technical Score

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

#### 1.3. Financial Evaluation

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

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

## 21. Process to Be Confidential

- 21.1 After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenderers or other persons not officially concerned with such process until the award of Contract is announced.
- 21.2 Any effort by a tenderer to influence the Employer in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender.

## **22 Clarification of Tenders**

- 22.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 24.
- 22.2 No tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

## **23 Determination of Responsiveness**

- 23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.
- 23.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.
- 23.3 Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.
- 23.4 A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.



## **24 Correction of Errors**

Tenders determined to be substantially responsive shall be checked by the Employer for any arithmetic errors in the computations and summations. Errors will be corrected by the Employer as follows:

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error.
- (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bills of Quantities, the amount as stated in the Form of Tender shall prevail.
- (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected builder's work (i.e. corrected tender sum less Prime Cost and Provisional Sums).
- (e) The Error Correction Factor shall be applied to all builder's work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuations of variations.
- (f) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 13.

## **25 Conversion to Single Currency**

25.1 For compensation of tenders, the tender price shall first be broken down into the respective amounts payable in various currencies by using the selling rate or rates of the Central Bank of Kenya ruling on the date twenty one (21) days before the final date for the submission of tenders.

25.2 The Employer will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Dayworks where priced competitively) to Kenya Shillings at the selling rates stated in clause 25.1.

## **26 Evaluation and Comparison of Bids**

- 26.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 23.
- 26.2 In evaluating tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:
- (a) Making any correction for errors pursuant to clause 24.
  - (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.
- 26.3 The Employer reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Employer, shall not be taken into account in tender evaluation.
- 26.4 Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.
- 26.5 If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 29 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.
- 26.6 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding provisional sums to a non-indigenous sub-contractor.
- 26.7 Preference where allowed in the evaluation of tenders shall not exceed 15%
- 26.8 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 26.9 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 26.10 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

- 26.11 Poor past performance shall not be used as an evaluation criteria unless specifically provided for in the appendix.

## **F. AWARD OF CONTRACT**

### **27 Award Criteria**

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

### **28 Notification of Award**

- 28.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, telefax or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.
- 28.2 At the same time that the Employer notifies the successful tenderer that his tender has been accepted, the Employer shall notify the other tenderers that the tenders have been unsuccessful.
- 28.3 Within fourteen [14] days of receipt of the Form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.
- 28.4 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

### **29 Performance Guarantee**

- 29.1 Within twenty eight [28] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in the amount stated in the Appendix to Instructions to Tenderers and in the format stipulated in the Conditions of Contract.
- 29.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by a reputable Bank approved by the Employer and located in the Republic of Kenya and shall be

divided into two elements namely, a performance security payable in foreign currencies (based upon the exchange rates determined in accordance with clause 60(5) of the Conditions of Contract) and a performance security payable in Kenya Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.

- 29.3 Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract. The Employer may award the Contract to the next ranked tenderer.

### **30 Advance Payment**

An advance payment, if approved by the Employer, shall be made under the Contract, if requested by the Contractor, in accordance with clause 60(1) of the Conditions of Contract. The Advance Payment Guarantee shall be denominated in the proportion and currencies named in the form of foreign currency requirements. For each currency, a separate guarantee shall be issued. The guarantee shall be issued by a Bank located in the Republic of Kenya, or a foreign Bank through a correspondent Bank located in the Republic of Kenya, in either case subject to the approval of the Employer.

### **31 Corrupt or Fraudulent Practices**

- 31.1 The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

## APPENDIX TO INSTRUCTIONS TO TENDERERS

### Notes on the Appendix to Instructions to Tenderers

The following appendix to instructions to tenderers shall complement or amend the provisions of the instructions to tenderers (Section II). Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

Instructions to Tenderers Reference	Particulars of appendix to instructions to tenderers	
1 (d)	The Employer is: BARINGO COUNTY GOVERNMENT	
2.1	<b>Valid Registration with National Construction Authority (NCA) as a contractor is mandatory and documentary evidence MUST be provided with the tender.</b>	
2.2	The following qualification requirements MUST be FULLY met by the tenderers:	
	Criteria	Requirements
a)	Experience as Main Contractor or Sub – Contractor in the construction of at least two (2) projects similar in nature and complexity equivalent to the works in Kenya within the last 5 years (to comply with this requirement, works cited should be at least 70 percent complete if it's on-going or its successfully completed.  (Documentary evidence in form of Employer's reference or Certificate of Completion ONLY MUST be provided)	i. 2NO. WORKS ii. CERTIFICATE OF COMPLETION OF WORKS
b)	Key personnel (The qualifications and experience of key personnel proposed for specified roles in the administration and execution of the contract both on and off site in line with the tender requirements) ( CVs of proposed personnel , signed by both the tenderer's authorized representative and the personnel MUST be provided)	i) 1 No. Contract Manager, with Bsc or HND in Engineering (Civil, Agric/Water) qualification, 7 years general experience and 5 years specific experience ii) 1 No. Site Engineer with Bsc or HND in Engineering (Civil, Agric/Water) qualification, 5 years general experience and 3 years specific experience iii) 1 No. Survey Technicians with Diploma in Surveying qualification, 5 years general experience and 3 years specific experience

		iv) 1 No. General Foreman, 5 years general experience and 3 years specific experience v) 1 No. Clerk of Works with Dip in Engineering qualification, 5 years general experience and 3 years specific experience
c)	Ownership or hire of the essential equipment listed as required for the works;  (Documentary evidence through log books MUST be provided for owned equipment, Agreements for lease or hire MUST be provided and the source of the equipment MUST be supported by documentary evidence of log books).	i) 1No. 140 HP Hydraulic Excavator ii) 1No. 7-8 ton Lorry iii) 1 No. 10-15 l/s Portable dewatering pump iv) 1 No. Concrete mixer v) 1 No. 1 ton pick-up vehicle vi) Voker vibrater
d)	Financial capacity in form of Liquid assets and/or credit facilities available for execution of this project (line of credit or commitment by a bank to lend the contractor on entering into a contract, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract.	Minimum Ksh. 1.00 Million
e)	Average Annual volume of construction work in the last three years	Minimum Ksh. 20.00 million
f)	Proposed methodology/method statement, site organization, mobilization schedule, construction schedule or programme of entire assignment/works in form of bar chart,	Methodology Statement MUST be provided with the tender
3.2	The price for the tender document shall be non –refundable: Ksh. 1,000.00	
5.1	The following documents shall not be part of the tender document:  f) Statement of foreign currency requirements.	
6.1	The Employer will respond in writing to any request for clarification which he receives earlier than SEVEN (7) days prior to the deadline for the submission of tenders	
7.2	<b>All Addenda shall</b> be notified by e-mail using the e-mail addresses provided by the participating tenderers in their <b>letters of application for purchase of the tender documents.</b>	
10.3	NOT APPLICABLE	
10.4	Tender must provide the written confirmation from his suppliers/manufacturers of unit rates for items.	

11.2	All prices and requirements shall be in Kenya Shillings.
11.3 & 11.4	This will not be applicable as tenders shall be priced in Kenya Shillings only.
12.1	Tenders shall remain valid for a period of 120 calendar days after date of opening.
12.2	The request for extension of tender validity shall be made by e-mail using the e-mail addresses provided by the participating tenderers in their tender submission letters/letter of bid
13.1	The tender security shall be applicable. Tenders shall complete and sign Tender Securing Declaration Form.
13.2	Tender security SHALL BE AT 2% OF CONTRACT SUM
14.1	Alternative offers shall not be permitted.
15.1	There will be a pre-tender briefing at ..... on ..... hours local time and thereafter a <b>mandatory</b> site visit of the project site will follow.
15.2 (b)	Copy of minutes of pre-bid meeting and Addendum shall be transmitted to all tenderers by e-mail using the e-mail addresses provided by the participating tenderers in their applications letters.
16.1	The tenderer shall prepare ONE ORIGINAL and THREE COPIES of the Tenders
16.2	The power of attorney for person (s) signing the tender(s) must be provided.
17.2	ADDRESS:  TENDER NAME: TENDER FOR GRAVITY MAIN OF NAROSURA WATER PROJECT  TENDER NUMBER: BRCG/TNR/W&I/755577 /2018-2019
18.1	ADDRESS: The Office of The Governor, Baringo County Government, P. O. Box 53-30400, Kabarnet  DATE: 20 <sup>th</sup> November 2019  TIME: Time indicated in IFMISTENDERS WILL BE SUBMITTED ONLY THROUGH IFMIS PORTAL
19.1	Notice of modification, withdrawal or substitution must be signed by the person having the power of attorney and power of attorney attached.

award22.1	The request for clarification and response shall be through e-mail
23.1 & 23.2	The substantial responsiveness of the tender shall be determined through preliminary examination, eligibility and qualification requirements specified in the Appendix to ITB 2.1 & 2.2
23.4	Tenders not meeting the minimum qualification requirements specified in the Appendix to ITB 2.2 shall be declared non-responsive and REJECTED
25.1	All tender prices shall be in Kenya Shillings (Ksh.)
26.6 & 26.7	NO PREFERENTIAL BIAS SHALL BE ALLOWED AS THIS TENDER IS RESERVED FOR KENYAN CITIZEN CONTRACTORS
26.11	Poor past performance on contracts awarded by the Employer and other parties will be considered in evaluation of the tenders.
28.4	Signing of contract by parties shall take place after lapse of 14 days from date of notification of contract award
29.1	Within 14 calendar days  Performance security in an amount equivalent to 5% of the contract price in the form of an irrevocable and unconditional bank guarantee from a local bank. The currency shall be in Kenya Shillings.
30	Advance payment – THERE SHALL BE NO ADVANCE PAYMENTS



**SECTION III. CONDITIONS OF CONTRACT, PART I –  
GENERAL CONDITIONS**  
**CONDITIONS OF CONTRACT, PART I – GENERAL CONDITIONS**

The Conditions of Contract, Part I – General Conditions, shall be those forming Part I of the “Conditions of Contract for works of Civil Engineering Construction, Fourth Edition 1987, re-printed in 1992 with further amendments, prepared by the Federation Internationale des Ingenieurs – conseils (FIDIC). The Conditions are subject to variations and additions set out in Part II hereof entitled “Conditions of Contract, Part II - Conditions of Particular Application”.

**Note**

- i. The standard text of the General Conditions of Contract must be retained intact to facilitate its reading and interpretation by tenderers. Any amendments and additions to the General Conditions, specific to a given Contract, should be introduced in the Conditions of Particular Application or in the Appendix to Form of Tender.
- ii. The Conditions of Particular Application take precedence over the General Conditions of Contract.

**SECTION IV. CONDITIONS OF CONTRACT, PART II –  
(CONDITIONS OF PARTICULAR APPLICATION)**

**GENERAL**

The Conditions of Contract Part II – Conditions of Particular Application, modify and compliment like-numbered clauses in the Conditions of Contract Part I – General Conditions. Both Parts shall be read together, with the Conditions of Particular

Application prevailing in case of conflict or discrepancy. Clauses of the General Conditions not specifically modified and supplemented shall remain in effect.

**Clause No.**

**Definitions and Interpretation**

- 1.1 (a) (i) The said “Employer” shall be BARINGO COUNTY GOVERNMENT represented by COUNTY IRRIGATION OFFICER
- (iv) The said “Engineer” shall be SUB-COUNTY IRRIGATION OFFICER or any other competent person appointed by the Employer, and notified to the Contractor, to act in replacement of the Engineer.
- (b)(i) Insert in line 2 after “the Bills of Quantities”, the following, ”the rates entered by the Contractor (whether or not such rate be employed in computation of the Contract Price)”.

Add the following sub-clause;

**Engineer’s Duties and Authority**

- 2.1 (b) The Engineer shall obtain specific approval of the Employer before taking any of the following actions specified in Part I:
- (i) Consenting to the sub-letting of any part of the Works under clause 4.
  - (ii) Certifying additional cost determined under Clause 12
  - (iii) Determining an extension of time under Clause 44
  - (iv) Issuing a variation under Clause 51 except in an emergency situation as reasonably determined by the Engineer.
  - (v) Fixing rates or prices under clause 52

#### 4 Assignment and Subcontracting

##### 4.1 Delete the second and third sentence and substitute:

No single subcontract may be for more than 10 percent of the Contract Price nor shall the sum of all subcontracts exceed 25 percent of the Contract price. No one subcontractor may be awarded subcontracts to a total value greater than 10 percent of the Contract Price. All subcontracts greater than 2 percent of the Contract Price are to have the prior consent of the Engineer. The Contractor shall however, not required such consent for purchases of materials or to place contracts for minor details or for any part of the Works of which the manufacturer of supplier is named in the Contract. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

#### 5 Contract Documents

##### 5.1 (a) The language governing this Contract shall be English.

The “Ruling Language” which shall be used to interpret this Contract shall be English. Communication between the Contractor and Engineer or Engineer’s representative shall be in English.

##### (b) The law applicable to this Contract shall be the laws of the Republic of Kenya. Except to the extent otherwise provided by the Contract, the Kenyan courts shall have exclusive jurisdiction to hear and to determine all actions and proceedings in connection with and arising out of the Contract, and the Contractor shall submit to the jurisdiction of Kenyan courts for the purpose of any such actions and proceedings.

##### 5.2 Delete the documents listed 1-6 and substitute:

- (1) The Contract Agreement;
- (2) The Notification of Award;
- (3) Tender and Appendix to Form of Tender;
- (4) The Conditions of Contract Part II;
- (5) The Conditions of Contract Part I (FIDIC);
- (6) The Special Specifications;
- (7) Clarifications and rectifications accepted by the Employer;  
and
- (8) The Drawings;
- (9) The priced Bills of Quantities; and
- (10) Schedules and other documents forming part of the Contract.

8.1 Add to sub clause 8.1 the following:

- (a) Within 21 calendar days after receipt of the Engineer's order to commence the Works, the Contractor shall establish an office at the Site duly equipped for the Contractor's representative and his supervisory personnel.

The Contractor shall maintain this office throughout the Contract period. The said office shall be the legal domicile of the Contractor, and all correspondence sent to this office shall be deemed to have been sent to the Contractor's head office.

- (b) A foreign Contractor or a Kenya-foreign joint venture, if not registered in Kenya under the applicable laws of Kenya, shall undertake registration upon receipt of the letter of acceptance and prior to signing of the Contract.

### **10.1 Performance Security**

In lines 1,2 and 3 delete the words "If the Contract... within 28 days" and substitute "The Contractor shall obtain a Performance Security within 21 calendar days ....."

Add the following at the end of this Sub-Clause:-

The Performance Security shall be issued by a Bank incorporated in Kenya. The amount of guarantee shall be as stated in the Appendix to Form of Tender.

The bank guarantee shall be issued either (a) by an established and reputable bank approved by the Employer and located in Kenya .The performance security shall be in Kenya Shillings.

The performance security may, subject to the approval of the Engineer, be adjusted at the end of each period of 12 months to reflect the residual value of the Contract Works.

10.2 The performance guarantee shall be valid until a date 28 days after the date of issue of the Taking-Over Certificate. The security shall be returned to the Contractor within 28 days of the expiration.

10.3 Delete sub-clause 10.3

## **11.1 Inspection of Site**

Add the words “and the Contractor shall be deemed to have based his tender on all the aforementioned” after the words “affect his tender”.

Delete the last paragraph completely and replace with the following:

“The Employer in no way guarantees completeness nor accuracy of the soil, materials, subsurface and hydrological information made available to the Contractor at the time of tendering or at any other time during the period of the Contract, and the Contractor shall be responsible for ascertaining for himself all information as aforesaid for the execution of Works and his tender shall be deemed to have been priced accordingly.

## **14.1 Programme to be Submitted**

The time within which the Programme shall be submitted shall be twenty one (21) days. This detailed Programme shall be based upon the programme submitted by the Contractor as part of his tender and shall, in no material manner, deviate from the said programme.

The Contractor shall allow in his Programme for the following 11 public holidays per calendar year in Kenya upon which the Contractor shall not be permitted to work

New Year’s Day	(1st January)
Good Friday	April
Easter Monday	April
Labour Day	(1 <sup>st</sup> May)
Madaraka Day	(1 <sup>st</sup> June)
Mashujaa Day	(20 <sup>th</sup> October)
Jamhuri Day	(12 <sup>th</sup> December)
Christmas Day	(25 <sup>th</sup> December)
Boxing Day	(26 <sup>th</sup> December)

## **14.2 Add the following at the end of this sub clause:-**

The Employer shall have the right to withhold payment at any time if the Contractor fails to submit the contractual construction programmes in accordance with sub clause 14.1 above or revise construction programmes due to his negligence, failure or omission.

## **14.3 Cash Flow Estimate to be Submitted**

The time limit within which a detailed cash flow estimate is to be submitted shall be twenty eight (28) days.

In preparing the estimates, the Contractor shall make provision for Advance payment,

repayment of advance, retention, payment for services provided by the Employer and timing implications of sub clause 60 – Certificates and Payments.

## **15 Contractor's Superintendence**

Add the following at the end of the first paragraph of sub-clause 15.1:

**15.1** The Contractor shall, within seven (7) days of receipt of the Engineer's order to commence the Works, inform the Engineer in writing, the name of the Contractor's representative and the anticipated date of his arrival on Site.

Add the following sub-clause 15.2:

**15.2** The Contractor's agent or representative on the Site shall be an Engineer registered by the Engineer's Registration Board of Kenya in accordance with the Laws of Kenya cap. 530 or have equivalent status approved by the Engineer and shall be able to read, write and speak English fluently.

## **16.2 Engineer at Liberty to object**

At the end of this clause add "by a competent substitute approved by the Engineer at the Contractor's own expense".

The Contractor is encouraged to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications who are Kenyan citizens.

## **Safety, Security and Protection of the Environment**

**19.1** Add at the end of sub clause 19.1 the following: -

The formulation and enforcement of an adequate safety program shall be the obligation of the Contractor with respect to all the Works under this Contract, regardless of whether performed by the Contractor or his subcontractors. The Contractor shall, within 14 days after commencement of the Works, meet the Engineer to present and discuss his plan for the establishment of such safety 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 program to the Engineer covering the overall Works and based on the laws and regulations of Kenya. In addition, he shall prepare special safety programs for blasting and handling of explosives as stipulated in the General and Special Specifications.

Notwithstanding the foregoing, the Contractor shall observe the following measures with a view to reducing or eliminating adverse environmental effects by the Site Works:

- (i) All queries and borrow pits shall be filled and landscaped to their original state after extraction of construction material
- (ii) Soil erosion due to surface runoff or water from culverts or other drainage structures should be avoided by putting in place proper erosion control measures that shall include, but not limited to grassing , planting of trees, gabions etc.
- (iii) Long traffic diversion roads shall be avoided so as to minimize the effect of dust on the surrounding environment. In any case all diversions shall be kept damp and dust free at the Contractor's expense.
- (iv) Spillage of oils, fuels and lubricants shall be avoided and if spilt, shall be collected and disposed off in such a way as not to adversely affect the environment.
- (v) Rock blasting near settlement areas shall be properly coordinated with the relevant officers of the Government so as to minimize noise pollution and community interference.
- (vi) Dumping shall be done only at designated dumping areas and not haphazardly on surroundings.

### **Insurance of Works & Contractor's Equipment**

- 21.1 (a) Delete the first sentence of this clause and replace with the following:

“Prior to commencement of the Works the Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 20, insure to the satisfaction of the Employer.”

- (b) Add the following words at the end of sub - paragraph (a) and immediately before the last word in (b)

“it being understood the insurance shall provide for compensation to be payable in the types and proportions of the currencies required to rectify the loss or damage incurred.”

In sub clause 21.1(b), delete the words “or as may be specified in Part II of these Conditions”.

- 21.2 (a) Delete the words “from the start of Work at the Site” and substitute with the words “from the first working day after the commencement date”

(c) Add the following sub-clause: “It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract”.

**23.1 Third Party Insurance**

Add the following at the beginning of this sub-clause:-

“Prior to commencement of the Works .....

**23.2 Minimum Amount of Insurance**

Add the following at the end of this sub-clause:-

“ ..... with no limits to the number of occurrences.”

25.1 Insert the words “as soon as practicable after the respective insurances have been taken out but in any case” before the words “Prior to the start of Work at the Site”

Add the following sub-clauses 25.5 to 25.7

**25.5 Insurance Notices**

Each policy of insurance effected by the Contractor for the purpose of the Contract shall include a provision to the effect that the Insurer shall have a duty to give notice in writing to the Contractor and Employer of the date when a premium becomes payable not more than thirty (30) days after the giving of such notice.

**25.6 Re-insurance in Kenya**

The risks against which the Contractor is obliged to insure under the Contract shall be insured through established and reputable companies approved by the Employer and located in Kenya and any cover against risks which the Contractor may enjoy shall be reinsured in Kenya by an approved Kenyan Insurance Company In respect of the Contractor’s obligations under the Contract.

25.7 It shall be the responsibility of the Contractor to notify the insurers under any of the insurances referred or event which by the terms of such insurances are required to be so notified and the Contractor shall indemnify and keep indemnified the Employer against all losses, claims, demands, proceedings, costs, charges and expenses whatsoever arising out of or in consequence of any default by the Contractor in complying with the requirements of this sub clause whether as a result of avoidance of such insurance or otherwise.



## 26. **Compliance with Statutes, Regulations**

Add the following sub-clause 26.2;-

The Employer will repay or allow to the Contractor all such sums as the Engineer shall certify to have been properly payable and paid by the Contractor in respect of such fees. Provided always that, without prejudice to sub clause, nothing contained in this clause shall be deemed to render the Employer liable to all claims which may be considered to fall within the provisions of clause 22.1.

### **Royalties**

28.2 Add the following at the end of this sub-clause;

“The Contractor shall also be liable for all payments or compensation, if any, that are levied in connection with the dumping of part or all of any such material.”

### **Interference with Traffic and Adjoining Properties**

29.2 Add new sub-clause 29.2;

The Contractor shall reinstate all properties whether public or private which are damaged in consequence of the construction and maintenance of the Works to a condition at least equal to that prevailing before his first entry on them.

If in the opinion of the Engineer the Contractor shall have failed to take reasonable and prompt action to discharge his obligations in the matter of reinstatement, the Engineer will inform the Contractor in writing of his opinion, in which circumstances the Employer reserves the right to employ others to do the necessary work of reinstatement and to deduct the cost thereof from any money due or to become due to the Contractor.

The Contractor shall promptly refer to the Employer all claims, which may be considered to fall within the provisions of Clause 22.1.

## **Labour**

### 34.2 **Conditions of Employment of Labour**

The Contractor shall be responsible for making all arrangements for and shall bear all costs relating to recruitment, obtaining of all necessary visas, permits or other official permission for movements of staff and labour.

### 34.3 Fair Wages

The Contractor shall, in respect of all persons employed anywhere by him in the execution of the Contract, observe and fulfill the following conditions:

- (a) The Contractor shall pay the rates of wages, observe hours of labour and provide conditions, housing amenities and facilities not less favorable than those required by the Regulation of wages (Building and Construction Industry) Order 1998, and any subsequent amendments thereto, or in any ministry of labour or other government department in consultation with the district whose general circumstances in the trade or industry in which the Contractor is engaged are similar. The Contractor shall at all times during the continuation of the Contract display, for the information of his employees, a notice setting out the general rates of wages, hours and conditions of labour of his employees and a copy of this clause.
- (b) In the absence of any rates for wages, hours or conditions of labour so established, the Contractor shall pay rates or wages and observe hours and conditions for labour which are not less favourable than the general circumstances in the trade or industry in which the Contractor is engaged.
- (c) Where the absence of established rates of wages, hours and conditions of labour or the dissimilarity of the general circumstances in the trade or industry in which the Contractor is engaged prevent the Contractor from observing rates of wages, hours and conditions of labour ascertained under sub-paragraph (a) or (b) above, the Contractor in fixing the rates of wages, hours and conditions of labour of his employees shall be guided by the advise of the labour department.
- (d) The Contractor shall recognize the freedom of his employees to be members of trade unions.
- (e) The Contractor shall maintain records of the times worked by, and the wages paid to his employees. The Contractor shall furnish to the Employer, if called upon so to do, particulars of the rates of wages, hours and conditions of labour as the employer may direct.
- (f) The Contractor shall be responsible for observance by his sub-Contractors of the foregoing provisions.

### 34.4 Breach of Fair Wages Clause

Should a claim be made to the Employer alleging the Contractor's default in payment of fair wages to any workman employed on the Contract and if proof thereof satisfactory to the Employer is furnished by the labour department, the Employer may, failing payment by the Contractor, pay the claims out of any monies due or which may become due to the Contractor under the Contract.

#### 34.5 **Recruitment of Unskilled Labour**

Any additional unskilled labour which may be required by the Contractor for the Works and which is not in his employ at the time of the acceptance of the tender shall be recruited by the Contractor from the labour office nearest to the Site of the Works.

#### 34.6 **Compensation for injury**

The Contractor shall, in accordance with the Workman's Compensation Act Chapter 236 of the laws of Kenya and any other regulations in force from time to time in Kenya, pay compensation for loss or damage suffered in consequence of any accident or injury or disease resulting from his work to any workman or other person in the employment of the Contractor or any sub-contractor.

#### 34.7 **Labour Standards**

- a) The Contractor shall comply with the existing local labour laws, regulations and labour standards.
- b) The Contractor shall formulate and enforce an adequate safety program with respect to all Work under this Contract, whether performed by the Contractor or his sub-contractors. The Contractor has assurance from the Employer of cooperation where the implementation of these safety measures requires joint cooperation.
- c) Upon written request of the Employer the Contractor will remove or replace any of his employees employed under this Contract.

#### 34.8 **Recruitment**

The Contractor shall not induce personnel of the employer or the Engineer to leave their regular employment and shall not, without the prior consent in writing of the Employer, employ personnel who have resigned from such service within the preceding twelve months.

35 Add the following sub-clauses 35.2 and 35.3:-

35.2 The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Engineer may from time to time prescribe.

35.3 The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means. The Contractor shall also notify the relevant authority(s) whenever such report is required by the law.

#### 41.1 **Commencement and Delays**

Insert immediately after the word Works----- “on Site within 28 days” and before the word -----after

#### 41.2 **Definition of Commencement**

For the purposes of this clause, the Works shall be deemed to have commenced when all of the following conditions are satisfied;

- a) The approved competent and authorized agent or representative of the Contractor is resident in the project area and is giving his whole time to the superintendence of the Works.
- b) The provision by the Contractor of evidence that all insurances required by the Contract are in force.
- c) The Contractor has an established office in the project area with postal address for receipt of correspondence.
- d) The principal items of constructional plant have been brought to Site and put to work in the execution of the permanent Works.

#### 42.4 **Possession of Site and Access Thereto**

Add the following to this clause 42.4;

The Contractor shall not enter any part of the Site until he has requested and received permission to do so from the Employer or the Engineer.

The Contractor shall not use any portion of the Site for any purpose not connected with the Works.

#### 44.1 Add at the end of sub-clause 44.1 the following:

Neither rains falling between 1<sup>st</sup> November and 31<sup>st</sup> December (inclusive) and between 1<sup>st</sup> February and 31<sup>st</sup> May (inclusive) nor floods caused by such rains shall be deemed exceptional weather conditions such as may fairly entitle the Contractor to an extension of time for the completion of the Work.

#### 45 **Working Hours**

Delete sub-clause 45.1 and substitute:

“subject to any provision to the contrary contained in the Contract, the Contractor shall have the option to work continuously by day and by night and on locally recognized days of rest.

If the Contractor requests for permission to work by day and night and if the Engineer shall grant such permission, the Contractor shall not be entitled to any additional payment for so doing. All such work at night shall be carried out without unreasonable noise or other disturbance and the Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while or in carrying out night work and from and against all claims, demands, proceedings, costs, charges and expenses whatsoever in regard or in relation to such liability. In addition, the Contractor shall be required to provide, for any work carried out by night or recognized days of rest, adequate lighting and other facilities so that the Work is carried out safely and properly. In the event of the Engineer granting permission to the Contractor to work double or rotary shifts or on Sundays, the Contractor shall be required to meet any additional costs to the Employer in the administration and supervision of the Contract arising from the granting of this permission.

#### **47.2 Reduction of Liquidated Damages**

There shall be no reduction in the amount of liquidated damages in the event that a part or a section of the Works within the Contract is certified as completed before the whole of the Works comprising that Contract.

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

The sum stated in the Appendix to Form of Tender as liquidated damages shall be increased by a sum equivalent to any amount payable by the Employer to the Contractor under clause 70.1 in respect of an increase in costs in such period that would not have been incurred by the Contractor if the Works had been completed by the due date for completion prescribed by clause 43.

### **Defects Liability**

49.2 Add at the end of this sub-clause the following sentence:-

Any work ordered to be executed under this clause shall be done at a time and in a manner as directed by the Engineer so as to interfere as little as possible with the operations of the Employer or of other contractors and no extension(s) of the defects liability period will be allowed for the execution of this Work.

Add the following sub-clause 49.5 to this Clause:-

### **52 Variations**

52.1 Add the following final sentence to this subclause:-

The agreement, fixing or determination of any rates or prices as aforesaid shall include any foreign currency and the proportion thereof.

### **52.4 Day work**

Add the following at the end of this sub-clause:

The Work so ordered shall immediately become part of the Works under the Contract. The Contractor shall, as soon as practicable after receiving the Daywork Order from the Engineer undertake the necessary steps for due execution of such Work. Prior to commencement of any work to be done on a Daywork basis, the Contractor shall give a notice to the Engineer stating the exact time of such commencement.

#### 54 **Plant, Temporary Works and Materials**

Delete Sub-Clauses 54.3 to 54.4 entirely.

For the purpose of these Clauses, the term "Equipment" shall be read as "Contractor's Equipment" where the context so requires.

- 54.1 Line 5: - Add "written" between "the" and "consent".

#### **Quantities**

- 55.1 Delete sub-clause 55.1 and substitute with the following;

The quality and quantity of the Work included in the Contract Price shall be deemed to be that which is set out in the Contract Bills. The Bills, unless otherwise expressly stated therein, shall be deemed to have been prepared in accordance with the principles of the latest edition of the Civil Engineering Standard Method of Measurement.

Any error in description or in quantity or any omission of items from the Contract Bills or Specifications shall not vitiate this Contract but shall be corrected and deemed to be a variation required by the Engineer. Subject to the foregoing, any error whether arithmetical or not in the computation of the Contract Price shall be deemed to have been accepted by the parties hereto.

The Contract Price shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these Conditions.

- 55.2 Add as a new sub-clause:

"Items of Work described in the Bills of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Employer.

#### **Measurement**

- 56.1 Delete sub clause 56.1 and replace with the following:-

The Contractor shall prepare and submit to the Engineer all necessary field notes and other records taken and computations made for the purpose of quantity measurements, of which the forms shall be approved by the Engineer, for the

monthly progress payment under clause 60. The measurement of work quantities made by the Contractor shall be verified and certified by the Engineer based on the above-mentioned documents.

The Contractor shall furnish all personnel, equipment and materials to make such surveys and computations as necessary to determine the quantities of work performed. Unless otherwise prescribed in the specifications or the drawings, all measurements for payment shall be made by the dimensions, lines and grades as shown on the drawings or by direct survey of which the methods shall be approved by the Engineer.

The documents submitted for measurement and payment shall become the property of the Employer and shall be used to the extent necessary to determine the monthly progress payment to be made to the Contractor under the Contract. Direct survey, if done, shall be subject to checking and verification by the Engineer and all errors in the said survey work and related computations as found during such checking shall be immediately corrected by the Contractor.

- 57.1 Delete sub clause 57.1 and substitute with the following:-  
The Works shall be measured net with deductions made in accordance with the principles of the latest edition of the Civil Engineering Standard Method of Measurement. All measurements shall be given in metric (SI) units.

## **Provisional Sums**

### **58.4 Prime Cost sum**

Wherever an item in the Bills of Quantities has been referred to as a "P.C. Sum" (Prime Cost Sum), that item shall be construed as a Provisional sum and the provisions of Sub-clauses 58.1 to 58.3 will apply.

- 59.5 Add the following paragraph at the end of sub clause 59.5:-

If the Engineer desires to secure final payment to any nominated sub-contractor before final payment is due to the Contractor and if such sub-contractor has satisfactorily indemnified the Contractor against any latent defects, the Engineer may, in an interim certificate, include an amount to cover the said final payment, and thereupon the Contractor shall pay to such nominated sub-contractor the amount so certified. Upon such final payment, the amount named in the Appendix to Form of Tender as Limit of Retention Money shall be reduced by the sum which bears the same ratio to the amount as does the subcontract and sub-contractor shall be discharged from all liability for the Work, materials or goods executed or supplied by such subcontractor under the Contract to which the payment relates.

## **Certificates and Payment**

Delete Sub-clauses 60.1 to 60.10 entirely and substitute with the following:-

### **60.1 Advance Payment**

In the event that an advance payment is granted, the following shall apply:-

- a) On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 20% (twenty percent) of the original amount of the Contract. The advance shall not be subject to retention money.
- b) No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or of a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.
- c) Reimbursement of the advance shall be effected by deductions from monthly interim payments.
- d) Reimbursement of the lump sum advance shall be made by deductions from the Interim payments and where applicable from the balance owing to the Contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the Contract. It shall have been completed by the time 80% of this amount is reached.

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

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

Where:

R = the amount to be reimbursed

A = the amount of the advance which has been granted

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

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

- (e) with each reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.

## 60.2 Interim Payment Certificate

The Contractor shall submit to the Engineer, in the manner required by the Engineer after the end of each month a statement showing the estimated total value of permanent Work properly executed and materials or goods for permanent works brought to Site up to the end of the previous month (if the value shall justify the issue of an interim certificate) together with any adjustments under clause 70 and any outstanding claims and sums the Contractor considers may be due to him. The



Contractor shall amend or correct his estimate as directed by the Engineer and the latter shall not accept it until he is satisfied that it is fair and reasonable. With respect to the said materials and goods, no payment for them shall be made unless :-

- (i) The materials are in accordance with the specifications for the Works;
- (ii) The materials have been delivered to Site and are properly stored and protected against loss, damage or deterioration;
- (iii) The Contractor's record of the requirements, orders, receipts and use of materials are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;
- (iv) The Contractor has submitted a statement of his cost of acquiring and delivering the materials and goods to the Site, together with such documents as may be required for the purpose of evidencing such cost;
- (v) The materials are to be used within a reasonable time.

The Contractor will be paid on the certificate of the Engineer the amount due to him on account of the estimated total value of the permanent Work executed up to the end of the previous month together with such amount (not exceeding 75% of the value) as the Engineer may consider proper on account of materials and goods for permanent Work delivered by the Contractor on Site and in addition, such amount as the Engineer may consider fair and reasonable for any Temporary Works for which separate amounts are provided in the Bill of Quantities, all of which shall be subject to a retention of the percentage named in the Appendix to Form of Tender until the amount retained (hereinafter and in all Contract documents called the "Retention Money") shall reach the "Limit of Retention Money" named in the said Appendix. Provided always that no interim certificate shall be issued for a sum [such sum always being the net amount thereof after all deductions for retention etc) less than that named in the Appendix to Form of Tender as "Minimum Amount of Interim Certificate" at one time.

Within 14 days after receiving a statement from the Contractor as aforesaid, and subject to the Contractor having made such further amendments and corrections as the Engineer may require, the Engineer shall issue a Certificate of Payment to the Employer showing the amount due, with a copy to the Contractor.

The Engineer shall not unreasonably withhold certifying an Interim Payment Certificate and where there is a dispute regarding an item for payment, the Engineer may delete this disputed item from the Interim Payment Certificate and certify the remainder for payment provided the said payment is in accordance with the preceding paragraph. In cases of difference in opinion as to the value of any item, the Engineer's view shall prevail.

### 60.3 Final Account and Final Payment Certificate

As soon as possible after the issue of Taking - Over Certificate or the termination of the Contract and not later than the time of issue of Defects Liability Certificate, the Contractor shall prepare and submit to the Engineer (with a copy to the Employer), a Statement of Final Account showing in detail the total value of work done in accordance with the Contract together with all sums paid in previous payments. Within thirty(30) after receipt of such further information as may be reasonably required from the Contractor for its verification, the Engineer shall check the said statement, prepare and submit a Final Payment Certificate to the Employer (with a copy to the Contractor).

The Final Payment Certificate shall state;

- (a) The (final) total value of all Work done in accordance with the Contract;
- (b) After giving credit to the Employer for all amounts previously paid to the Contractor, the balance, if any, due from the Employer to the Contractor or the Contractor to the Employer, as the case may be.

Unless the Contractor notifies the Engineer of his objection to the Final Payment Certificate within twenty eight [28] days of delivery thereof , he shall be deemed to have agreed that he accepts the total Contract Price as set out in the Final Payment Certificate as full settlement for all work done under the Contract including any claims, variations and omissions thereof.

However, a Final Certificate of Payment shall not be conclusive:

- a) to the extent that fraud or dishonesty relates to or affects any matter dealt with in the Certificate, or
- b) if any arbitration or court proceedings under the Contract have been commenced by either party before the expiry of 84 days after the issue of the Final Certificate of Payment.

### 60.4 Payment of Certificates

Payment upon each of the Engineer's Certificates for Interim Payments shall be made by the Employer within the time stated in the Appendix to Form of Tender from the date of issue of each Certificate of Payment.

Payment upon the Engineer's Final Payment Certificate shall be made by the Employer within the time stated in the Appendix to Form of Tender from the date of issue of the Final Certificate of Payment signed by the Engineer and countersigned by the Contractor or his authorised agent or representative.

Making of a payment by the Employer shall be considered to have been duly executed on the day that the Employer has issued a cheque.

#### **60.5 Payment of Retention Money**

One half of the retention money shall become due upon the issue of a Taking – Over Certificate and shall be paid to the Contractor when the Engineer shall certify in writing that the last section of the whole of the Works has been substantially completed and the other half shall be paid to the Contractor after the expiration of the Defects Liability Period and the issue of a Certificate under Clause 62. Provided always that if such time there shall remain to be executed by the Contractor any Works ordered during such period pursuant to Clauses 49 and 50 thereof ,the Employer

shall be entitled to withhold payment [until the completion of such Works] of so much of the second half of the Retention Money as shall in the opinion of the Engineer represent the Costs of the Works so remaining to be executed. Provided further that in the event of different Defects Liability Periods having become applicable to different parts of the Works pursuant to clause 48 hereof the expression “expiration of the Defect Liability Period” shall for the purpose of this Sub-clause be deemed to mean the expiration of the latest of such periods.

#### **60.6 Currency of Payment**

The Contract price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya shillings and foreign currency(s) in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate[s] of exchange for the calculation of the amount of foreign currency payment[s] shall be the rate of exchange indicated in the Tender. If the Contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services, the Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The Employer and the Engineer shall be notified promptly by the Contractor of any changes in the expected foreign currency requirements of the Contractor during the execution of the Works as indicated in the Statement of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.

#### **60.7 Overdue Payments**

Unless otherwise stated in the appendix interest shall be paid on the overdue amounts and the interest to be paid shall be in accordance with prevailing commercial bank rates.

#### **60.8 Correcting and With-holding**

The Engineer may by any interim certificate or through the final account make any correction or modification to any previous certified sum and shall have authority, if any work or part thereof is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

## **60.9 Completion by Sections.**

If a Taking-Over Certificate shall be issued for any section or part of the Works separately, the payments herein provided for on or after issue of such a Certificate shall be made in respect of such section or part and references to the Contract Price shall mean such part of the Contract Price as shall in the absence of agreement be apportioned thereto by the Engineer.

## **60.10 Proportion of Foreign Currency**

Subject to the provision of sub clause 60.5 the proportion of foreign currency in any amount due to the Contractor or Employer shall be determined in the following manner:-

- a) For all measured Work, the percentages of foreign currency for the appropriate section of the Bill of Quantities as stated in the schedule of foreign currency requirements shall be applied.
- b) Variations in the cost of imported materials shall be paid in foreign currency.
- c) Variations in the cost of locally purchased materials and those due to changes of legislation shall be paid in local currency.
- d) For Day works labour and plant, the respective percentages of foreign currency stated in the schedule shall be applied.
- e) For Day works materials and materials on site, payment in foreign currency will only be made for imported materials.
- f) The provisions for the deduction and release of Retention Money and the payment of interest shall be applied similarly to both the local and foreign portions.
- g) The advance mobilization loan, its repayment thereof and liquidated damages shall all be apportioned on the basis of the ratio between local and foreign currency indicated in the Contract Price.
- h) In the event that the payment is for an item not covered in the foregoing paragraphs, the Engineer shall determine the proportion of foreign and local currency based on the information given in the Schedule of Foreign Currency Requirements, together with any additional information he may request the Contractor to provide.

## **60.11 Statement at Completion**

Not later than 14 days after the issue of the Taking-Over Certificate in respect of the whole of the works, the Contractor shall submit to the Engineer a statement at completion showing in detail, in a form approved by the Engineer;

- (a) The final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate.
- (b) Any further sums which the Contractor considers to be due; and
- (c) An estimate of amounts, which the Contractor considers, will become due to him under the Contract.

Estimate amounts shall be shown separately in the Statement at Completion. The Contractor shall amend and correct the Statement as directed by the Engineer who shall issue a Certificate at Completion to be processed in accordance with sub-clause 60.4.

#### **60.12 Final Statement**

Not later than 56 days after the issue of the Defects Liability Certificate, the Contractor shall submit to the Engineer for consideration a draft final statement with supporting documents showing in detail, in the form approved by the Engineer;

- (a) The final value of all work done in accordance with the Contract;
- (b) Any further sums which the Contractor considers to be due to him.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonable require and shall make such changes in the draft as may be required.

#### **60.13 Discharge**

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment under the Final Payment Certificate issued pursuant to Sub-clause 60.14 has been made and the Performance Security referred to in Sub-clause 10.1 has been returned to the Contractor.

#### **60.14 Final Payment Certificate**

Upon acceptance of the Final Statement as given in Sub-clause 60.12, the Engineer shall prepare a Final Payment Certificate which shall be delivered to the Contractor's authorized agent or representative for his signature. The Final Payment Certificate shall state:

- (a) The final value of all work done in accordance with the Contract;

- (b) After giving credit to the Employer for all amounts previously paid by the Employer, the balance, if any, due from the Employer to the Contractor or the Contractor to the Employer as the case may be

Final Certificate shall be issued for any sum due to the Contractor even if such is less than the sum said named in the Appendix to the Form of Tender.

#### **60.15 Cessation of Employer's Liability**

Unless the Contractor notifies the Engineer of his objection to the Final Certificate within fourteen days of delivery thereof he shall be deemed to have agreed that he accepts the total Contract Price as set out in the Final Certificate as full settlement for all work done under the Contract including any variations and omissions thereof.

#### **62.1 Defects Liability Certificate**

Delete the last sentence of this Sub-Clause beginning "Provided that the issue.....in Sub-Clause 60.3".

### **Remedies**

#### **63.4 Assignment of Benefit of Agreement**

Add the following at the end of this sub-clause:-

"But on the terms that a supplier or sub-contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Employer and the Employer may pay the supplier or sub-contractor for any such materials supplied or Works executed under such agreement, whether the same be assigned as aforesaid or not, before or after the said determination, the amount due by such arrangement in so far as it has not already been paid by the Contractor".

#### **65 Special Risks**

Add sub clause 65.9 as follows:

- (a) In the event of the Employer unilaterally ordering the final cessation of performance of the Contract for reasons not specified elsewhere in the Conditions of Contract the Contract shall be considered to be frustrated and the Contractor shall be indemnified as provided for under clause 65.1.
- (b) In the event of the Employer ordering the adjournment of the Contract before or after commencement of the Works for

reasons not specified elsewhere in the Conditions of Contract, the Contractor shall be entitled to indemnity for any injury which he may have suffered as a consequence of such adjournment. The Engineer shall award the Contractor payment of such sum as in his opinion shall be reasonable giving regard to all material and relevant factors including the Contractor's on costs and overheads, and the nature of the instruction to adjourn the Contract.

## **Settlement of Disputes**

### **67.3 Arbitration**

For the purposes of this Clause, the Arbitrator shall be a person to be agreed between the parties or failing agreement, the Arbitrator shall be appointed by the appointer designated in the Appendix to the Form of Tender.

Add the following paragraph after the last paragraph of sub-clause 67.3:

Arbitration shall take place in Nairobi, Kenya. The language of all arbitration proceedings shall be in English. The cost of arbitration shall be apportioned by the Arbitrator according to his findings.

## **Notices**

### **68.1 Add the following at the end of this subclause:-**

Notwithstanding the foregoing, the Contractor shall either maintain an address close to the Works or appoint an agent residing close to the Works for the purpose of receiving notices to be given to the Contractor under the terms of the Contract. This obligation shall be terminated upon the issue of the Certificate of Completion.

### **68.2 Delete the words "nominated for that purpose in Part II of these Conditions" in this sub-clause.**

## **Default of Employer**

### **69.1 Default of Employer**

In paragraph (a) of this Sub-Clause, delete the words "within 28 days of expiry of the time stated in Sub-clause 60.10" and insert "within 56 days after the expiry of the time stated in Sub-Clause 60.4".

### **69.4 Contractor's Entitlement to Suspend Work**

Delete the first four lines of this Sub-Clause and replace with the following:-

“Without prejudice to the Contractor’s entitlement to interest under Sub-clause 60.7 and to terminate his employment under Sub-Clause 69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 56 days after the expiry of the time stated in Sub-Clause 60.4.....”

Delete sub-clause 69.4 (b) and substitute with the following----“the amount of such cost, which shall be added to the Contract Price. However, the costs due to idle time for plant, equipment and labour shall not be included in the said costs and shall be borne by the Contractor.

**69.5 Resumption of Work**

In line 3 of this Sub-Clause delete the Words “Sub-Clause 60.10” and replace with “Sub-Clause 60.7”

**Changes in Cost and Legislation (NOT APPLICABLE)**

70.1 Delete the sub-clause 70.1 in its entirety and substitute with the following:-

“The Contract Price shall be deemed to have been calculated in the matter set below and shall be subject to the adjustment in the event specified hereunder:

- (a) The rates contained in the priced Bill of Quantities are based upon the rates of wages and other emoluments and expenses applicable at the site and the date of tender pricing (as defined in sub-clause 70.4 hereinafter);
- (b) If the said rates of wages and other emoluments and expenses shall be increased or decreased by act, statue, decree, regulation and the like after the said date of tender pricing then the net amount of increase the emoluments and expenses shall, as the case may be, paid to or allowed by Contractor;
- (c) The rates contained in the price Bill of Quantities are based upon the rates of the Contractor’s compulsory contributions payable at the date of tender under or by virtue of any Act, Statue, Regulations and the like applicable at the site;
- (d) If any of the said rates of contribution becomes payable after that date then the net amount of new statutory contribution becomes payable after that date then the net amount of increase or decrease of the emoluments and expenses shall, as the case may be, be paid to or allowed by the Contractor. Difference between what the Contractor actually pays in respect of work people engaged upon or in connection with the works and what he would have paid in respect of such person had any of the said rates not been increased or decreased or had a new contribution not become payable as aforesaid, shall as the case may be, be paid to or allowed by the Contractor. Provided always that the Engineer and the Contractor may agree a sum, which shall be deemed to be the net amount of the aforesaid difference, and such sum shall be deemed for the purpose of this Contract to be, that which



is to be paid to or allowed by the Contractor by the virtue of this sub-paragraph;

- (e) If the market price or any materials or goods specified as aforesaid shall be increased or decreased after the said Date of Tender Pricing, then the net amount of difference between the basic price and the market price payable by the Contractor and current when any such goods and materials are bought shall, as the case may be, be paid to or allowed by the Contractor. Orders for materials and goods listed as aforesaid shall have been placed within a reasonable time after the date at which sufficient information is available for the placing of such orders, and the placing of orders at that time shall be a condition precedent to any payments being made to the Contractor in respect of increased market prices.”

Substitute and add the following sub-clauses:

- 70.2 (a) If the Contractor shall decide subject to Clause 4 thereof to sub-let any portion of the work he shall incorporate in the sub-contract provisions to the like effect as those contained in sub-clause (1) of this Clause;
- (c) If the price payable under a sub-contract as aforesaid is increased above or decreased below the price in such sub-contract by reason of the operation of the incorporated provisions of sub-clause (1) of this clause then the net amount of such increase or decrease shall as the case may be, be paid to or allowed by the Contractor under this Contract.
- 70.3 The expression “the date of tender pricing” as used in this Clause means the date 28 days prior to the final date for submission of Tenders as determined by the Employer in the Tender documents.
- 70.4 For imported materials, the supplier’s/manufacturer’s Prime costs shall be C.I.F. cost at point of entry by the same means of transport as determined by the Contractor’s Basic Rate.

For locally produced materials, the supplier’s or manufacturer’s prime costs shall be at their nearest depot or the nearest railway station relevant to the works.

For materials, which are subject to Government Price Control, payments for price variations will be determined from the difference between the control price in force at a date 28 days prior to date for submission of Tenders and the price in force on the date of purchase.

- 70.5 The materials to which this Variation Clause applies are:

- ◆ All bitumen material
- ◆ Fuels, oils and lubricant
- ◆ Cement
- ◆ Lime
- ◆ Flex beam guardrail
- ◆ Explosives
- ◆ Gabion mesh

◆ Reinforcing steel

- 70.6 The Contractor shall not change the supplier or manufacturer during the Contract without the approval of the Engineer.
- 70.7 No payments will be made for price variation related to expenses incurred by the Contractor in his Head Office in Kenya, or overseas.
- 70.8 All payments made pursuant to Clause 70 shall be in Kenya Shillings.
- 70.9 No payments will be made for the cost of preparing V.O.P. claims.
- 70.10 Add the following at the end of this clause.

“Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited as aforesaid if the same shall already have been taken into account in accordance with the provisions of sub-clause 70.1”.

## **ADDITIONAL CLAUSES**

### **Clause 73 Declaration Against Waiver**

The condoning by the Employer of any breach or breaches by the Contractor or any authorized sub-contractor of any of the stipulations and Conditions contained in the Contract shall in no way prejudice or affect or be construed as a waiver of the Employer's rights, powers and remedies under the Contract in respect of any breach or breaches as aforesaid.

### **Clause 74 Bribery and Collusion**

The Employer shall be entitled to determine the Contract and recover from the Contractor the amount of any loss resulting from such determination if the Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement of regard for doing or fore bearing to do or for having done or fore borne to do any action in relation to obtaining or the execution of the Contract or any other contract with the Employer or if any of the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the

knowledge of the Contractor) or if the Contractor shall have come to any agreement with another contractor or number of contractors whereby an agreed quotation or estimate shall be tendered to the Employer by one or more contractors.

### **Clause 75 Contract Confidential**

The Contractor shall treat the Contract and everything in connection therewith as private and confidential. In particular, the Contractor shall not publish any information, drawings or photographs concerning the Works in any trade or technical paper etc, and shall not use the Site for the purpose of advertising except with the written consent of the Engineer and subject to such conditions as the Engineer may prescribe.

### **Clause 76 Employer's Officials etc., Not Personally Liable**

No official of the Employer or the Engineer or the Engineer's Representative or anyone of their respective staffs or their employees shall be in any way personally bound or liable for the acts or obligations of the Employer under the Contract or answerable for default or omission in the observance or performance of any of the acts, matters or things which are herein contained.

**Clause 77    Taxes and Duties**

- (1)    The Contractor shall list in his tender the plant and vehicles which he intends to import for the execution of the Works. The Engineer will consider the list in the context of the program of the Works and will give his approval subject to any modifications that he may see fit to make. No appeal against the Engineer's decision shall be permitted.

All applicable taxes and duties shall be paid in the execution of this contract

**Clause 78    Joint Ventures**

- 78.1    If the Contractor is a joint venture, all partners of the joint venture shall be jointly and severally liable to the Employer for the execution of the entire Contract in accordance with its terms and Conditions.

## SECTION VII – BILLS OF QUANTITIES

**BILL NO. 1**

**PRELIMINARIES**

Page 1

ITEM	DESCRIPTION	UNIT	QTY	RATE (Kshs)	AMOUNT (Kshs)
<b>1.1</b>	<b>Signboards</b>				
1.1.1	Allow for a prime cost sum of Ksh 20,000 for provision, erection and maintenance of project signboard as directed by the Engineer	No.	1		20,000
<b>1.2</b>	<b>Supervision of works by Engineers</b>				
1.2.1	provide prime cost for Ksh 30,000 for supervision to be expended as directed by Engineer to include checking levels, air time, progress reports, photographs and publicity.	L/S	1	30,000	30,000
1.3	Add percent on item 1.2.1 for overheads and profits	%	24%		7,200
	<b>SUB TOTAL CARRIED TO SUMMARY</b>				<b>57,200</b>

**BILL NO. 2 - EXCAVATIONS AND PIPEWORK**

Item No.	Description	Unit	Quantity	Rate (Kshs)	Amount (Kshs)
<b>2.1</b>	<b>Excavations and Backfilling</b>				
	Rates for excavations and back filling trench, shall include for trimming of trench bottom and the excavated material. Trench depth shall be average 600 mm and width not exceeding 450 mm.				
2.1.1	Excavate trench and backfill for HDPE 4" Ø rolls	M	1000		
2.1.2	Trench for HDPE 2" Ø rolls	M	4950		
<b>2.2</b>	<b>Pipework</b>				
	Provide, lay, <b>joint/fusion</b> and test HDPE, uPVC and GS pipeline. Rates to include for jointing materials, cutting, waste and transporting along the pipeline route.				
	Note: The following have been used on the drawings to specify pipe diameters (type) class. Pipe dimensions/working pressures shall conform to KS 06 – 149				
	<b>HDPE AND uPVC</b>				
	<b>Class            Colour            Working pressure (Mpa)</b>				
	A (PN6)            Red            0.6				
	B (PN 8)            Blue            0.9				
	C (PN 10)            Green            1.2				
	D (PN 12.5)            Brown            1.5				
2.2.1	110 mm (4") HDPE roll (PN 10) with all connectors	M	1000		
2.2.2	63 mm (2") HDPE (PN 10) with all connectors	M	4950		
<b>SUB TOTAL CARRIED FORWARD TO SUMMARY</b>					

**EXCAVATIONS AND PIPEWORK**

Item No.	Description	Unit	Quantity	Rate (Kshs)	Amount (Kshs)
	<b>Galvanised Steel Pipes (GS)</b>				
	<b>Class            Colour            Working pressure (Mpa)</b>				
	A                    Yellow				
	B                    Blue				
	C                    Red				
3.3	100 mm(4") G.S Pipes Class "B" socketed	No	12		
3.4	50 mm(2") G.S Pipes Class "B" socketed	No	119		
	<b>Pipe Fittings</b>				
	Provide, fix/install and test the following GS fittings, valves and specials. Rates shall include for completion and pipe protection at all pipe joints as specified in specification				
1	Equal GS Tee 3" (at junction)	No	1		
2	GS Nipples 3"	No	2		
3	GS Union 3"	No	1		
4	Equal GS Tee 4" (at division chamber)	No	1		
5	GS Reducing bush 4"x 2" (at division chamber)	No	2		
6	GS Nipples 2"	No	4		
7	GS Elbows 2"	No	2		
8	GS Reducing bush 3"x 2"	No	2		
9	110 mm (4")Coupling (Connectors)	No	4		
10	63mm (2") Coupling (Connectors)	No	12		
11	Single Air valves 2"	No	4		
12	Lockable Air valve chambers with all fittings	No	4		
13	Lockable distribution chamber with all fittings	No	1		
14	63mm (2") Coupling (Connectors)for Air valves	No	4		
<b>SUB TOTAL CARRIED FORWARD TO SUMMARY</b>					

## SUMMARY

		<b>AMOUNT (Ksh.)</b>
<b>1.</b>	<b>SUB TOTAL – PRELIMINARIES</b>	
<b>2.</b>	<b>SUB TOTAL PAGE 2</b>	
<b>3.</b>	<b>SUB TOTAL PAGE 3</b>	
	<b>GRAND TOTAL</b>	



## **SECTION VIII – STANDARD FORMS**

1. Form of Tender
2. Appendix to Form of Tender
3. Letter of Acceptance
4. Form of Agreement
5. Tender-Securing Declaration Form
6. Performance Bank Guarantee(unconditional)
7. Bank Guarantee for Advance Payment
8. Tender Questionnaire
9. Confidential Business Questionnaire
10. Schedule of Materials;- Basic Prices
11. Schedule of Labour;- Basic Prices
12. Details of Sub-Contractors
13. Certificate of Tenderer's Site visit
14. Form of Written Power of Attorney
15. Key Personnel
16. Schedule of Completed Works
17. Schedule of Ongoing Projects
18. Schedule of Plant and Equipment
19. Other Supplementary Information
20. Declaration Form
21. Letter of notification of award

**1. FORM OF TENDER** *(on letterhead of the tenderer)*

TO: \_\_\_\_\_ *[Name of Employer)* \_\_\_\_\_ *[Date]*  
\_\_\_\_\_ *[Name and Identification Number of Contract]*

Dear Sir,

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, install and complete such Works and remedy any defects therein for the sum of Kshs. \_\_\_\_\_ *[Amount in figures]* Kenya Shillings \_\_\_\_\_ *[Amount in words]*
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until \_\_\_\_\_ *[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.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

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

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

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

Witness; Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**2. APPENDIX TO FORM OF TENDER**

(This appendix forms part of the tender)

CONDITIONS OF CONTRACT	CLAUSE	AMOUNT
Tender Security (Bank Guarantee only)		TKshs.90,000 form of Unconditional Bank Guarantee from a local reputable bank
Amount of Performance Security (Unconditional Bank Guarantee)	10.1	Five (5) percent of Tender Sum in the form of Unconditional Bank Guarantee from a local reputable bank
Program to be submitted	14.1	Not later than 14 days after issuance of Order to Commence
Cashflow estimate to be submitted	14.3	Not later than 28days after issuance of Order to Commence
Minimum amount of Third Party Insurance	23.2	As per applicable laws in Kenya
Period for commencement, from the Engineer’s order to commence	41.1	14 days
Time for completion from Commencement Date	43.1	6 (Six) calendar months
Amount of liquidated damages	47.1	Kshs. 10,000.00 per day
Limit of liquidated damages	47.1	10% of Contract Value
Defect Liability period	49.1	6 Months
Percentage of the invoice value of listed materials	60.2	60%
Percentage of Retention	60.5	10% of Interim Payment Certificate
Limit of Retention Money	60.5	10% of the contract sum
Minimum amount of interim certificates	60.2	Ksh.2,000,000.00
Time within which payment to be made after Interim Payment Certificate signed by Engineer	60.8	14 days
Time within which payment to be made after Final Payment Certificate signed by Engineer	60.8	30 days
Appointer of Arbitrator	67(3)	Chartered Institute of Arbitrators – Kenya Chapter
Notice to Employer and Engineer	68.2	The Employers address is:          The Engineer’s address is:

Name of tenderer.....

Signature of Tender.....  
Date.....

Stamp.....  
....

**3. LETTER OF ACCEPTANCE**

[Letterhead paper of the Employer]

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

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

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

Dear Sir,

This is to notify you that your Tender dated \_\_\_\_\_  
for the execution of \_\_\_\_\_  
[name of the Contract and identification number, as given in the Tender documents] for  
the Contract Price of Kshs. \_\_\_\_\_ [amount in figures][Kenya  
Shillings \_\_\_\_\_ (amount in words) ] in accordance with the  
Instructions to Tenderers is hereby accepted.

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

Authorized Signature .....

Name and Title of Signatory .....

Attachment : Agreement

## 4. FORM OF AGREEMENT

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

WHEREAS THE Employer is desirous that the Contractor executes

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

NOW THIS AGREEMENT WITNESSETH as follows:

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

times and in the manner prescribed by the Contract.

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

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

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

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

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

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

In the presence of (i) Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

## **TENDER-SECURING DECLARATION FORM**

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

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

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

To: *[insert complete name of purchaser]*

1. We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.
2. We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of *five (5) years* starting on *October 2013* if we are in breach of our obligation(s) under the bid conditions, because we:
  - (a) have withdrawn our Bid during the period of bid validity specified by us in the Bidding 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 ITB.
3. We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of
  - (i) our receipt of your notification to us of the name of the successful Bidder; or
  - (ii) twenty-eight days after the expiration of our Tender.
4. We understand that if we are a joint venture, the Bid 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 Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: *[insert signature of person whose name and capacity are shown]*

In the capacity of *[insert legal capacity of person signing the Bid-Securing Declaration]*

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

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

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

**5. PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)**

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

Dear Sir,

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

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

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

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

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

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

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

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

**6. BANK GUARANTEE FOR ADVANCE PAYMENT**



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

Gentlemen,

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

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

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

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

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

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

Yours faithfully,

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

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

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

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

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

**TENDER QUESTIONNAIRE**

Please fill in block letters.

1. Full names of tenderer  
.....
2. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below)  
.....
3. Telephone number (s) of tenderer  
.....
4. Telex address of tenderer  
.....
5. Name of tenderer's representative to be contacted on matters of the tender during the tender period

.....

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

.....

Signature of Tenderer:.....

Make copy and deliver to : \_\_\_\_\_ (*Name of Employer*)

**7. CONFIDENTIAL BUSINESS QUESTIONNAIRE**

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

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

*Part 1 – General*

Business Name .....

Location of business premises; Country/Town.....

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

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

Nature of Business.....

Current Trade Licence No..... Expiring date.....

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

Name of your bankers.....

Branch.....

*Part 2 (a) – Sole Proprietor*

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

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

\*Citizenship details .....

*Part 2 (b) – Partnership*

*Give details of partners as follows:*

	<i>Name in full</i>	<i>Nationality</i>	<i>Citizenship Details</i>	<i>Shares</i>
1.	.....	.....	.....	.....
2.	.....	.....	.....	.....
3.	.....	.....	.....	.....

***Part 2(c) – Registered Company:***

Private or public.....

State the nominal and issued capital of the Company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows:

Name in full . Nationality. Citizenship Details\*. Shares.

1.  
.....
2.  
.....
3.  
.....
4.  
.....

**Part 2(d) – Interest in the Firm:**

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

I certify that the information given above is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

\* Attach proof of citizenship

**8. SCHEDULE OF MATERIALS;-BASIC PRICES**

**(Ref: Clause 70 of Conditions of Contract)**

MATERIAL	UNIT	ORIGIN AND PRICE			TRANSPORT ATION COST FROM SOURCE OF ORIGIN	
		COUNTRY OF ORIGIN	SUPPLIER PRICE		MODE	PRICE (KSHS)
Cement	Mg					
Lime	Mg					
Sand	Mg					
Aggregate	Mg					
Diesel	L					
Regular Petrol	L					
Super Petrol	L					
Kerosene	L					
Structural steel	Mg					
Gabion Mesh	M2					
Reinforcement Steel	Mg					
Explosives	Kg					

Oil and Lubricants	L			
Bitumen Emulsion A3	L			
Bitumen Emulsion A4	L			
Bitumen Emulsion K1	L			
Bitumen Emulsion K3	L			
Bitumen 80/100	Kg			
Bitumen MC 30	ML			
Bitumen MC 70	L			
Bitumen MC 3000	L			
Ammonium nitrate for blasting	Kg			

I certify that the above information is correct.

.....

(Title)

.....

(Signature)

.....

(Date)

The prices inserted above shall be those prevailing 30 days before the submission of Tenders and shall be quoted in Kenya Shillings using the exchange rates specified in the Appendix to Form of Tender.

Prices of imported materials to be quoted CIF Mombasa or Nairobi as appropriate depending on whether materials are imported by the tenderer directly or through a local agent.

Transportation costs for imported materials to be quoted from Mombasa or Nairobi as appropriate to \_\_\_\_\_ (Contract Site) depending on whether materials are imported directly by the tenderer or through a local agent.

## 9. SCHEDULE OF LABOUR:- BASIC RATES

(Reference: Clause 70 of Conditions of Contract)

LABOUR CATEGORY	UNIT (MONTH/SHIFT/HOUR)	RATES

Categories to be generally in accordance with those used by the Kenya Building Construction and Engineering and Allied Trades Workers' Union.

#### **10. DETAILS OF SUB-CONTRACTORS**

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

Failure to comply with this requirement may invalidate the tender.



(1) Portion of Works to be sublet: .....

(i) Full name of Sub-contractor and address of head office:

.....

.....

ii) Sub-contractor's experience of similar works carried out in the last 3 years with Contract value: .....

.....

(2) Portion of Works to sublet: .....

(i) Full name of sub-contractor and address of head office:

.....

.....

.....

(ii) Sub-contractor's experience of similar works carried out in the last 3 years with contract value: .....

.....

\_\_\_\_\_  
[Signature of Tenderer)

\_\_\_\_\_  
Date

**11. CERTIFICATE OF TENDERER'S VISIT TO SITE**

This is to certify that

[Name/s].....

.....

Being the authorized representative/Agent of [*Name of Tenderer*]

.....

.....

participated in the organized inspection visit of the site of the works for the (**Name of Contract:** .....

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

Signed.....

(Employer's Representative)

.....

**12. FORM OF WRITTEN POWER-OF-ATTORNEY**

The Tenderer consisting of a joint venture shall state here below the name and address of his representative who is authorised to receive on his behalf correspondence in connection with the Tender.

.....

*(Name of Tenderer's Representative in block letters)*

.....

*(Address of Tenderer's Representative)*

.....

*(Signature of Tenderer's Representative)*

**13. KEY PERSONNEL**

DESIGNATION	NAME	NATIONALITY	SUMMARY OF QUALIFICATIONS AND EXPERIENCE
Headquarters: 1. Director 2. 3. 4. 5. etc.			
Site Office: 1. Site Superintendent 2. 3. 4. 5. etc.			

I certify that the above information is correct.

.....  
 (Title)

.....  
 (Signature)

.....  
 (Date)

**14. SCHEDULE OF COMPLETED WORKS CARRIED OUT BY THE  
TENDERER IN THE TEN (10) YEARS**

DESCRIPTION OF WORKS AND CLIENT	TOTAL VALUE OF WORKS (KSHS)	CONTRACT PERIOD (YEARS)	YEAR COMPLETED

I certify that the above Civil Works were successfully carried out and completed by ourselves.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

\*Value in Kshs using Central Bank of Kenya mean exchange rate at a reference date 30 days before date of tender opening.

**15. SCHEDULE OF ONGOING PROJECTS**

DESCRIPTION OF WORK AND CLIENT	CONTRACT PERIOD	DATE OF COMMENCEMENT	DATE OF COMPLETION	TOTAL VALUE OF WORKS (KSHS.)	PERCENTAGE COMPLETED TO DATE

I certify that the above Civil Works are being carried out by us and that the above information is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

## 16. SHEDULE OF PLANT AND EQUIPMENT

Major items of Contractor's Equipment proposed for carrying out the Works. List all information requested below. Refer also to Sub-Clause 2.1 (c) of the Instructions to Tenderers.

Item of Equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?)
(a) (b)			

**17. OTHER SUPPLEMENTARY INFORMATION**

- 1. Financial reports for the last five years, balance sheets, profit and loss statements, auditors' reports etc. List them below and attach copies.

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

- 2. Evidence of access to financial resources to meet the qualification requirements. Cash in hand, lines of credit etc. List below and attach copies of supporting documents

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

- 3. Name, address , telephone, telex, fax numbers of the Tenderer's Bankers who may provide reference if contacted by the Employer.

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

- 4. Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents

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



5. Information on current litigation in which the Tenderer is involved.

OTHER PARTY (IES)	CAUSE OF DISPUTE	AMOUNT INVOLVED (KSHS)

I certify that the above information is correct.

.....

*Title*

.....

*Signature*

.....

*Date*

## 18. DECLARATION FORM

Date

To *(Name and address of Employer)*

The tenderer i.e. (name and address)

declare the following:

- a) Has not been debarred from participating in public procurement.
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

Title

Signature

Date

(To be signed by authorized representative and officially stamped)

**19. LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

To:

RE: Tender No.

Tender Name

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

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

*(FULL PARTICULARS)*

SIGNED FOR ACCOUNTING OFFICER