**  **

**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND THE COOPERATIVES**

**STATE DEPARTMENT FOR FISHERIES, AQUACULTURE AND BLUE ECONOMY**

**AQUACULTURE BUSINESS DEVELOPMENT PROGRAMME (ABDP)**

**IFAD LOAN NO: 2000002052 - Aquaculture Business Development Programme**

**SPECIFIC PROCUREMENT NOTICE**

|  |  |
| --- | --- |
| **Country:** | **Kenya** |
| **Project:** | **Aquaculture Business Development Programme** |
| **Contract Tittle:** | **Proposed Construction of Upgrading of Classrooms and Laboratory at Ramogi Institute of Advanced Technology** |
| **Financing Agreements:** | **2000002052** |
| **NCB Reference No:** | **Upgrading of Classrooms and Laboratory at Ramogi Institute of Advanced Technology MOALF/SDFA&BE/ABDP/NCB/2020-2021/005** |
| **ISSUED ON:** | **DECEMBER 1, 2020** |

**TENDER CLOSING DATE:** **JANUARY 4, 2021, 11.00 AM EAT**

**TENDER OPENING DATE: JANUARY 4, 2021, 11.30 AM EAT**

#

# BACKGROUND/TENDER NOTICE

Aquaculture Business Development Programme (ABDP) is a partnership between the Government of Kenya, and the International Fund for Agricultural Development (IFAD). The Programme is expected to be completed in April 2026. It is implemented by Ministry of Agriculture, Livestock, Fisheries and Irrigation and supervised by IFAD.

The Programme intends to use proceeds of the loan to Upgrade Classrooms and Laboratory at Ramogi Institute of Advanced Technology.

The bidding will be conducted through National Competitive Bid (NCB) method and is open to special Group Suppliers Registered by the National Treasury **(Youth, Women and Persons with Disabilities)**

Interested eligible Bidders may inspect the bidding document at the ABDP Offices situated on IFAD building off Kamakwa Road Nyeri before the tender closing date within working hours from 8.30 am to 4.30 pm on Mondays to Fridays, except on public holidays.

Prospective bidders may also download the tender document from the Procuring entity website [*www.kilimo.go.ke*](http://www.kilimo.go.ke) or [www.abdpcu.org](http://www.abdpcu.org) free of charge.

Bidders who download the tender document from the website MUST forward their particulars immediately via email to *procurement@abdpcu.org*. This is for record purpose and any further tender clarifications or addendum where necessary.

The original and copy of the tender document all inserted in one outer envelope and clearly marked with the tender number **MOALF/SDFA&BE /ABDP/NCB /2020-2021/005** must be delivered to and dropped in Tender Box at ABDP RCO offices in Kisumu located off Airport Road , opposite Kenya fisheries Service Offices and addressed as follows:

**The Programme Coordinator,**

**Aquaculture Business Development programme**

**P.O. Box 904-10100,**

**Nyeri**

Bids can also be send by courier so as to reach the above address on or before: **4th January, 2020 at 11.00 AM EAT**

Tenders will be opened **on 4th January, 2021 at 11.30am** at ABDP RCO Office in Kisumu. Due to the COVID-19 containment measures announced by government, there will be no public participation in tender opening. Bidders may however request for a copy of the tender opening minutes.

A Mandatory pre-tender site meeting/Visit will be held on **15th December 2020.** A representative of the Employer will be available to meet the intending tenderers at the venue.

**TABLE OF CONTENTS**

[**BACKGROUND/TENDER NOTICE i**](#_Toc54164078)

[**SECTION I : INVITATION TO TENDER 6**](#_Toc54164079)

[**SECTION II: INSTRUCTIONS TO TENDERERS AND CONDITIONS OF TENDER 8**](#_Toc54164080)

[1. Scope of Bid 8](#_Toc54164081)

[2 Sources of Funds 8](#_Toc54164082)

[3 Corrupt Practices 8](#_Toc54164083)

[4 Eligible Bidders 8](#_Toc54164084)

5 [Qualification of the Bidder 9](#_Toc54164085)

[6 One Bid per Bidder 9](#_Toc54164086)

[7 Cost of Bidding 9](#_Toc54164087)

[8 Site Visit 9](#_Toc54164088)

[9 Contents of Bidding Documents 10](#_Toc54164089)

[10 Clarification of Bidding Documents 10](#_Toc54164090)

[11 Amendment of Bidding Documents 11](#_Toc54164091)

[12 Language of Bid 11](#_Toc54164092)

[13 Documents Comprising the Bid 11](#_Toc54164093)

[14 Bid Prices 11](#_Toc54164094)

[15 Currencies of Bid and Payment 12](#_Toc54164095)

[16 Bid Validity 12](#_Toc54164096)

[17 Bid Securing Declaration 12](#_Toc54164097)

[18 No Alternative Offers 12](#_Toc54164098)

[19 Pre-Bid Meeting 13](#_Toc54164099)

[20 Format and Signing of Bids 13](#_Toc54164100)

[21 Sealing and Marking of Bids 13](#_Toc54164101)

[22 Deadline for Submission of Bids 14](#_Toc54164102)

[23 Late Bids 14](#_Toc54164103)

[24 Modification, Substitution and Withdrawal of Bids 14](#_Toc54164104)

[25 Bid Opening 15](#_Toc54164105)

[26 Process to be Confidential 15](#_Toc54164106)

[27 Clarification of Bids and Contacting of the Employer 15](#_Toc54164107)

[29 Correction of Errors 16](#_Toc54164108)

[30 Evaluation and Comparison of Bids 16](#_Toc54164109)

[31. Qualification and Evaluation Criteria 17](#_Toc54164110)

[**F. FINANCIAL EVALUATION 17**](#_Toc54164111)

[31 Award 18](#_Toc54164112)

[32 Employer's Right to Accept any Bid and to Reject any or All Bids 18](#_Toc54164113)

[33 Notification of Award 18](#_Toc54164114)

[34 Signing of Agreement 18](#_Toc54164115)

[35 Performance Security 19](#_Toc54164116)

[Contract Effectiveness 19](#_Toc54164117)

[**SECTION III: APPENDIX TO INSTRUCTIONS TO TENDERERS 19**](#_Toc54164118)

[Preliminary Evaluation 20](#_Toc54164119)

[**TECHNICAL EVALUATION 21**](#_Toc54164120)

[Table for the Technical Evaluation 21](#_Toc54164121)

[**FINANCIAL EVALUATION 22**](#_Toc54164122)

[Tender Rates 22](#_Toc54164123)

[**SECTION IV CONDITIONS OF CONTRACT 24**](#_Toc54164124)

[**CONDITIONS OF CONTRACT 26**](#_Toc54164125)

[**SECTION V – APPENDIX TO CONDITIONS OF CONTRACT 45**](#_Toc54164126)

[**SECTION VI - DRAWINGS 48**](#_Toc54164127)

[**SECTION VII – STANDARD FORMS 48**](#_Toc54164128)

[**FORM OF TENDER 49**](#_Toc54164129)

[**TENDER SECURING DECLARATION FORM (r.22) 49**](#_Toc54164130)

[**LETTER OF NOTIFICATION OF AWARD 51**](#_Toc54164131)

[**LETTER OF ACCEPTANCE 52**](#_Toc54164132)

[**FORM OF AGREEMENT 53**](#_Toc54164134)

[**PERFORMANCE BANK GUARANTEE 55**](#_Toc54164135)

[**BANK GUARANTEE FOR ADVANCE PAYMENT 56**](#_Toc54164136)

[**QUALIFICATION INFORMATION 58**](#_Toc54164137)

[**TENDER QUESTIONNAIRE 61**](#_Toc54164138)

[**CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM 62**](#_Toc54164139)

[**TENDER SECURITY FORM 64**](#_Toc54164140)

[**SELF DECLARATION FORMS 65**](#_Toc54164141)

[**SELF DECLARATION FORMS 66**](#_Toc54164142)

[**FORM RB 1 67**](#_Toc54164143)

[**DETAILS OF SUB-CONTRACTORS 68**](#_Toc54164144)

[**SECTION VIII: BILLS OF QUANTITIES (Attach BOQs here) 70**](#_Toc54164145)

# SECTION I : INVITATION TO TENDER

**Date: 26th October, 2020**

**TENDER REF NO.** **MOALF/SDFA&BE/ABDP/NCB/2020-2021/005**

**TENDER NAME: Upgrade of Classrooms and Laboratory at Ramogi Institute of Advanced Technology**

1.1 The Aquaculture Business Development Programme (ABDP) invites sealed bids from registered suppliers by the National Treasury (Youth, Women and Persons with Disabilities) for **Upgrade of Classrooms and Laboratory at Ramogi Institute of Advanced Technology - MOALF/SDFA&BE/ABDP/NCB/2020-2021/005**

**QUALIFICATION FOR TENDERING**:

**Mandatory Requirements**

The following must be submitted together with bid:

1. Certified copy of Certificate of incorporation;
2. Certified Copy of VALID Registration Certificate with the National Construction Authority - NCA 8;
3. A copy of VALID Tax Compliance Certificate (Will be verified on the KRA TCC Checker)
4. Certified copy of RECENT CR12 form - (12 months) from Registrar of Companies for limited companies;
5. Certified copies of Identification Cards for directors;
6. Certified copy of Current Single Business Permit;
7. Certified copy of Certificate Registration with the National Treasury (Youth, Women & Persons with Disability);
8. For Persons with Disability (PWD), attach valid and certified copy of proof of registration with NCPWD;
9. Fully completed Tender Securing Declaration Form;
10. Dully completed Form of Tender;
11. Dully filled Self Declaration Form not to have been debarred from participating in Public Procurement;
12. Dully completed Self Declaration Form not to engage in Corrupt or Fraudulent Practices;
13. Dully filled Tender Questionnaire;
14. Dully completed Confidential Business Questionnaire;
15. Well Bound and Sequentially Serialized Original Bid Document; d
16. Provide Proof of Power of Attorney; and
17. Copy of the site visit Certificate.
	1. Due to the Directives issued on the COVID-19 Pandemic there shall be no pre-tender site visit, bidders are advised to make their own personal arrangements to familiarize themselves with the site before submission of their bids.
	2. Interested eligible candidates may obtain further information from and inspect the tender documents at **ABDP** RCO offices in Kisumu located off Airport Road , opposite Kenya fisheries Service Offices during normal working hours.
	3. A complete set of tender documents may also be obtained by interested candidates free of charge from the procuring entity website [*www.kilimo.go.ke*](http://www.kilimo.go.ke) *or www.abdpcu.org*
	4. Bidders who download the tender document from the website MUST forward their particulars immediately via email to *procurement@abdpco.org*. This is for records and any further tender clarifications and addendum where necessary. The particulars should include name of firm, postal address, telephone number, e-mail address, tender number and tender name.
	5. All requests for clarification must be done through the said e-mail and/or in writing (through a letter - Hard Copy Only) addressed and delivered to the address below seven (7) days before the deadline for submission of tenders
	6. Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box at ABDP RCO offices in Kisumu located off Airport Road , opposite Kenya fisheries Service Offices *)* or be addressed to *Aquaculture Business Development Programme (ABDP), P.O. Box 904-10100 Nyeri* so as to be received on or before Monday**, January 4th, 2021 at 11.00am**
	7. Prices quoted should be net inclusive of all taxes and in Kenya Shillings and shall remain valid for (120) days from the closing date of the tender.
	8. Bidders are required to sequentially serialize their documents. The Procuring entity will not take liability of any missing pages of the bidder’s document.
	9. Tenders will be opened immediately thereafter **at 11:30 am** at the ABDP RCO offices in Kisumu located off Airport Road, opposite Kenya fisheries Service Offices. Due to the containment measures announced by Government (Ministry of Health), Vendors or their representatives will not be allowed to participate in the tender opening. However, bidders may request for a copy of the opening minutes at least 24 hours after the deadline.

Programme Coordinator

Aquaculture Business Development Programme

P.O. Box 904-10100,

Nyeri

Email: *procurement@abdpcu.org*

* 1. The contract shall be awarded to the Bidder whose bid will be determined to be the lowest evaluated as per section 86 (1) (a) of the Public Procurement and Asset Disposal Act 2015 and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

#

# SECTION II: INSTRUCTIONS TO TENDERERS AND CONDITIONS OF TENDER

# 1. Scope of Bid

1.1 The Employer, as defined in the Conditions of Contract Part II hereinafter “the Employer” wishes to receive bids for the proposed works construction of works as described in the Special Specifications –“Location and extent of the Works”).

1.2 The successful bidder will be expected to complete the Works within the period three (3) Months from the date of commencement of the Works.

1.3 Throughout these bidding documents, the terms bid and tender and their derivatives (bidder/tenderer, bid/tendered, bidding/tendering etc.) are synonymous, and day means calendar day.

# 2 Sources of Funds

2.1 The source of funding is the Government of Kenya in partnership with the International Fund for Agricultural Development (IFAD).

# 3 IFAD’s Policy- Corrupt and Fraudulent Practices

IFAD requires that its own staff and the staff of Borrowers/Recipients (including beneficiaries of IFAD financing), and all bidders, suppliers, contractors and consultants under IFAD-financed contracts, observe the highest standard of ethics and integrity during the execution of and procurement under such contracts. This position is clearly stated in the IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations (hereafter: the anticorruption policy), which applies to these guidelines. In line with this policy, IFAD will have the right to:

a.     Reject a proposal for award if it determines that the bidder, supplier, contractor or consultants recommended for award has, directly or through an agent, engaged in coercive, collusive, corrupt or fraudulent practices in competing for the contract in question;

b.     Suspend or cancel all or part of the financing in accordance with the General Conditions if it determines at any time that representatives of the Borrower/Recipient or of a beneficiary of the financing engaged in coercive, collusive, corrupt or fraudulent practices during the procurement or the execution of that contract, without the Borrower/Recipient having taken timely and appropriate action satisfactory to IFAD to remedy the situation;

c.      Sanction an individual or firm – which may include declaring the individual or firm ineligible to be awarded an IFAD-financed contract indefinitely or for a stated period of time – if at any time it determines that the individual or firm has, directly or through an agent, engaged in coercive, collusive, corrupt or fraudulent practices in competing for, or in executing, an IFAD-financed contract;

d.     Require that bidding documents and the contracts that it finances include a provision requiring suppliers, contractors and consultants to permit IFAD to inspect their accounts, records and other documents relating to the bid submission and contract performance, and to have them audited by IFAD-appointed auditors;

e.     Refer any cases of irregular practices that include, but are not limited to, fraud and corruption to the relevant national authorities for further investigation; and

f.      Apply, in the event of cases in which irregular practices have been determined, the sanctions it deems necessary and appropriate.

**Prohibited Practices**

The following practices are considered to be prohibited practices when engaged in connection with an IFAD-financed and/or IFAD-managed operation or activity:

(a)  “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value in order to improperly influence the actions of another party;

(b)   “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation;

(c)    “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including improperly influencing the actions of another party;

(d)   “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party in order to improperly influence the actions of that or another party;

(e)   “obstructive practice” is:

(i)              deliberately destroying, falsifying, altering or concealing evidence that may be material to an investigation by the Fund or making false statements to investigators in order to materially impede an investigation by the Fund;

(ii)            threatening, harassing or intimidating any party in order to prevent that party from disclosing its knowledge of matters relevant to an investigation by the Fund or from pursuing such an investigation; and/or

(iii)           the commission of any act intended to materially impede the exercise of the Fund’s contractual rights of audit, inspection and access to information.

**Reporting**

To report any allegation of prohibited practice, a designated confidential and secure e-mail address may be used to report and or seek guidance.

Email: ethicsoffice@ifad.org

In the event of uncertainty as to whether or not an act or omission constitutes a prohibited practice, the designated confidential and secure e-mail address may be used to seek guidance.

IFAD treats all reported allegations with strict confidentiality. This means that the Fund does not normally reveal the identity of a reporting party to anybody outside of the investigative, sanctioning or disciplinary process without the consent of the reporting party.

IFAD endeavours to provide protection from retaliation to any individuals or entities that have helped prevent or have reported to the Fund, in good faith, allegations or other indications of prohibited practices. IFAD staff and non-staff personnel are protected from retaliation under the Fund’s Whistle-blower Protection Procedures.

# 4 Eligible Bidders

4.1 This invitation to bid is open special group firms registered by the National Treasury and legally registered or incorporated in the Republic of Kenya as of the time of bid submission. Registration with the National Construction Authority (NCA) class 8 is mandatory.

4.2 Bidders shall provide such evidence of their continued eligibility satisfactory to the

 Employer as the Employer shall reasonably request.

# Qualification of the Bidder

* 1. Bidders shall as part of their bid:

(a) Submit a written power of attorney authorizing the signatory of the bid to commit the bidder; and

(b) Update any information submitted with their bids and update in any case the information indicated in the schedules and continue to meet the minimum threshold criteria set out in the bid documents.

5.2 As a minimum, bidders shall update the following information:

(a) Evidence of access to lines of credit from a bank and availability of other financial resources;

(b) Financial predictions for the current year and the one subsequent year, including the effect of known commitments;

(c) Work commitments;

(d) Current litigation information; and

(e) Availability of critical equipment.

5.3 Bidders shall also submit proposals of work methods and schedule in sufficient detail to demonstrate the adequacy of the bidders’ proposals to meet the technical specifications/Bills of Quantities and the completion time referred to in Clause 1.2 above.

# 6 One Bid per Bidder

6.1 Each bidder shall submit only one bid. A bidder who submits or participates in more than one bid will be disqualified.

# 7 Cost of Bidding

7.1 The bidder shall bear all costs associated with the preparation and submission of his bid and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

# 8 Site Visit

8.1 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.

8.2 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.

8.3 A Mandatory pre-tender site meeting/visit shall be held as specified in the tender notice. A representative of the Employer will be available to meet the intending tenderers at the venue.

8.4 The Employer will conduct a Site Visit concurrently with the pre-bid meeting, attendance for which is necessary for all bidders. Attendance by the tenderers shall be as specified in the tender notice.

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

8.6 Each tenderer shall complete the Certificate of Tenderer’s Visit to the Site, and a copy of it attached to the bid document as it forms part of the mandatory requirements.

# 9 Contents of Bidding Documents

9.1 The set of documents comprising the tender includes the following together with any addenda issued in accordance with Clause 11:

* 1. Invitation to Bid
	2. Instructions to Bidders and Conditions of Tender
	3. Appendix to Instruction to Tenderers
	4. Conditions of Contract -Part I
	5. Conditions of Contract -Part II
	6. Standard Specifications
	7. Special Specifications
	8. Form of Bid, Appendix to Form of Bid and Bid Security
	9. Bills of Quantities
	10. Schedules of Supplementary information
	11. Form of Contract Agreement
	12. Form of Performance Security

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

9.3 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”.

# 10 Clarification of Bidding Documents

10.1 The prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing, cable or by e-mail (hereinafter the term cable is deemed to include telex and facsimile) at the Employer’s mailing address indicated in the Bidding Data.

10.2 The Employer will respond in writing to any request for clarification that he receives earlier than seven (7) days prior to the deadline for the submission of bids. Copies of the Employer’s response to queries raised by bidders (including an explanation of the query but without identifying the sources of the inquiry) will be sent to all prospective bidders who will have purchased the bidding documents.

# 11 Amendment of Bidding Documents

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

11.2 The Addendum thus issued shall be part of the bidding documents pursuant to Sub-Clause 10.1 and shall be communicated in writing or cable to all purchasers of the bidding documents. Prospective bidders shall promptly acknowledge receipt of each Addendum in writing or by cable to the Employer.

11.3 In order to afford prospective bidders reasonable time in which to take an Addendum into account in preparing their bids, the Employer may, at his discretion, extend the deadline for the submission of bids in accordance with Clause 16.2.

**C. Preparation Bids**

# 12 Language of Bid

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

# 13 Documents Comprising the Bid

13.1 The bid to be prepared by the bidder shall comprise:

(a) Duly filled-in Form of Bid and Appendix to form of bid;

(b) Tender Securing Declaration Form;

(c) Priced Bills of Quantities;

(d) Schedules of information

(e) Qualification criteria

(f) Any other materials required to be completed and submitted in accordance with the Instructions to Bidders embodied in these bidding documents.

13.2 These Forms, Bills of Quantities and Schedules provided in these bidding documents shall be used without exception (subject to extensions of the Schedules in the same format).

# 14 Bid Prices

14.1 Unless explicitly stated otherwise in the bidding documents, the contract shall be for the whole works as described in Sub-Clause 1.1, based on the basic unit rates and prices in the Bill of Quantities submitted by the bidder.

14.2 The bidder shall fill in rates and prices for all items of Works described in the Bills of Quantities, whether quantities are stated or not.

14.3 All duties, taxes (including VAT) and other levies payable by the Contractor under the Contract, or for any other cause as of the date seven (7) days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Bid Price submitted by the bidder.

14.4 Unless otherwise provided in the Bidding Data and Conditions of Particular Application the rates and prices quoted by the bidder are subject to adjustment during the performance of the contract in accordance with the provisions of Clause 70 of the Conditions of Contract.

# 15 Currencies of Bid and Payment

15.1 Bids shall be priced in Kenya Shillings.

# 16 Bid Validity

16.1 The bid shall remain valid and open for acceptance for a period of 120 calendar days from the specified date of bid opening specified in Clause 22.

16.2 In exceptional circumstances prior to expiry of the original bid validity period, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by cable. A bidder may refuse the request without forfeiting his bid security. A bidder agreeing to the request will not be required nor permitted to modify his bid, but will be required to extend the validity of his bid security for the period of the extension, and in compliance with Clause 17 in all respects.

# 17 Bid Securing Declaration

17.1 The bidder shall furnish, as part of his bid, a duly filled and signed bid Securing Declaration Form as shown in the Appendix to instruction to tenderers.

17.2 The bid securing declaration shall be in the format and in accordance with bid securing declaration form included in Section 3. The bid securing declaration shall remain valid for a period of thirty (30) days beyond the original validity period for the bid, and beyond any period of extension subsequently requested under Sub-Clause

17.3 Any bid not accompanied by an acceptable bid securing declaration will be rejected by the Employer as non-responsive.

17.4 The bid securing declaration of unsuccessful bidders will expire either 28 days after the expiration of the period of bid validity or upon receipt of copy of notification of award to successful bidder whichever comes earlier.

17.5 The bid securing declaration of the successful bidder will be discharged upon the bidder signing the Contract Agreement and furnishing the required performance security.

# 18 No Alternative Offers

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

18.2 The bid submitted shall be solely on behalf of the bidder. A bidder who submits or participates in more than one bid will be disqualified.

18.3 A price or rate shall be entered in indelible ink against every item in the Bills of Quantities with the exception of items which already have Prime Cost or Provisional sums affixed thereto. The bidders are reminded that no “nil” or “included” rates or “lump-sum” discounts will be accepted. The rates for various items should include discounts if any. Bidders who fail to comply will be disqualified.

# 19 Pre-Bid Meeting

19.1 The bidder’s designated representative is invited to attend a mandatory pre-bid meeting, which will take place as specified in the Tender notice. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

19.2 The bidder is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than one week 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 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 bidding documents. Any modification of the bidding documents listed in Sub-Clause 9.1, which may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to Clause 10 or through the minutes of the pre-bid meeting.

# 20 Format and Signing of Bids

20.1 The bidder shall prepare one original of the documents comprising the bid as described in Clause 13 of these Instructions to Bidders, bound with the section containing the Form of Bid and Appendix to Bid, and clearly marked “ORIGINAL”. In addition, the bidder shall submit another copy of the bid clearly marked “COPY OF ORIGINAL”. In the event of discrepancy between them, the original shall prevail.

20.2 The original and copies of the bid shall be typed or written in indelible ink (in the case of copies, photocopies are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the bidder pursuant to Sub-Clause 5.1(a) OR 4.3 (c) as the case may be. The person or persons signing the bid shall initial all pages of the bid where entries or amendments have been made.

20.3 The bid shall be without alterations, omissions or conditions except as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.

**D. Submission of Bids**

# 21 Sealing and Marking of Bids

21.1 The bidder shall seal the original and each copy of the bid in separate envelopes duly marking the envelopes “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer separate envelope.

21.2 The inner and outer envelopes shall be:

(a) Addressed to the Employer at the address provided in the Appendix to Form of Bid.

1. Bear the name and identification number of the contract. In addition to the identification required in sub-Clause 21.2, the inner envelopes shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared “late” pursuant to Clause 23.1, and for matching purposes under Clause 24.

21.3 If the outer envelope is not sealed and marked as instructed above, the Employer will assume no responsibility for the misplacement or premature opening of the bid. If the outer envelope discloses the bidder's identity the Employer will not guarantee the anonymity of the bid submission, but this shall not constitute grounds for rejection of the bid.

# 22 Deadline for Submission of Bids

22.1 Bids must be received by the Employer at the address specified in Sub Clause 21.2 not later than the date indicated in the tender notice. Tenders delivered by hand must be placed in the “tender box” provided in the office of the employer. Proof of posting will not be accepted as proof of delivery and any tender delivered after the above stipulated time, from whatever cause arising will not be considered.

22.2 The Employer may, at his discretion, extend the deadline for the submission of bids through the issue of an Addendum in accordance with Clause 11 in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline shall thereafter be subject to the new deadline as extended.

# 23 Late Bids

23.1 Any bid received by the Employer after the deadline for submission of bids prescribed in Clause 22 will be returned unopened to the bidder.

# 24 Modification, Substitution and Withdrawal of Bids

24.1 The bidder may modify, substitute or withdraw his bid after bid submission, provided that written notice of modification or withdrawal is received by the Employer prior to the prescribed deadline for submission of bids.

24.2 The bidder’s modification, substitution or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the provisions of Clause 21, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL” as appropriate.

24.3 No bid may be modified subsequent to the deadline for submission of bids, except in accordance with Sub-Clause 29.2.

24.4 Any withdrawal of a bid during the interval between the deadline for submission of bids and expiration of the period of bid validity specified in Clause 17 may result in the forfeiture of the bid security pursuant to Sub-Clause 17.6.

**E. Bid Opening and Evaluation**

# 25 Bid Opening

25.1 The Employer will open the bids, including withdrawals and modifications made pursuant to Clause 24, in the presence of bidders' designated representatives who choose to attend, at the time, date, and location stipulated in the letter of invitation. The bidders' representatives who are present shall sign a register evidencing their attendance.

25.2 Envelopes marked "WITHDRAWAL" and “SUBSTITUTION” shall be opened first and the name of the bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 24 shall not be opened.

25.3 The bidder's name, the Bid Prices, including any bid modifications and withdrawals, the presence (or absence) of bid security, and any such details as the Employer may consider appropriate, will be announced by the Employer at the opening. Subsequently, all envelopes marked “MODIFICATION” shall be opened and the submissions therein read out in appropriate detail. No bid shall be rejected at bid opening except for late bids pursuant to Clause 22.

25.4 The Employer shall prepare minutes of the bid opening, including the information disclosed to those present in accordance with Sub-Clause 24.3.

25.5 Bids not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances.

# 26 Process to be Confidential

26.1 Information relating to the examination, evaluation and comparison of bids, and recommendations for the award of contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful bidder has been announced. Any effort by a bidder to influence the Employer's processing of bids or award decisions may result in the rejection of the bidder's bid.

# 27 Clarification of Bids and Contacting of the Employer

27.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at its discretion, ask any bidder for clarification of its bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, but no change in the price or substance of the bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 29.

27.2 Subject to Sub-Clause 26.1, no bidder shall contact the Employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the bidder wishes to bring additional information to the notice of the Employer, should do so in writing.

27.3 Any effort by the bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the bidder's bid.

28.1 Prior to the detailed evaluation of bids, the Employer will determine whether each bid

(a) has been properly signed;

(b) is accompanied by the required securities;

(c) is substantially responsive to the requirements of the bidding documents; and

(d) provides any clarification and/or substantiation that the Employer may require to determine responsiveness pursuant to Sub-Clause 28.2.

28.2 A substantially responsive bid is one that conforms to all the terms, conditions, and specifications of the bidding documents without material deviation or reservation and has a valid tender bank guarantee. A material deviation or reservation is one:

(a) Which affects in any substantial way the scope, quality, or performance of the works;

(b) Which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the bidder's obligations under the contract; or

(c) Whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

28.3 If a bid is not substantially responsive, it will be rejected by the Employer and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

# 29 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 NOT be corrected by the Employer.** Any bid found to have arithmetic errors shall be disqualified. Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.

# 30 Evaluation and Comparison of Bids

30.1 The Employer will carry out evaluation of details and information provided in post-Qualification Questionnaire and any bidder who does not qualify shall not have his/her bid evaluated further.

30.2 The Employer will then evaluate and compare only the bids determined to be substantially responsive in accordance with Clauses 27 and 28.

30.3 The Employer may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

30.4 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.

# 31. Qualification and Evaluation Criteria

31.1 Post-qualification will be based on meeting all of the following minimum criteria regarding the Applicant’s general and particular experience, personnel and equipment capabilities as well as financial position. The Employer reserves the right to waive minor deviations, if they do not materially affect the capacity of an applicant to perform the contract. Subcontractor’s experience and resources shall not be taken into account in determining the Applicant’s compliance with qualifying criteria.

31.2 **General Experience.**

The Applicant shall meet the following minimum criteria: -

(a) Average annual turnover for the last two (2) years – KShs 6,000,000.00/-

(b) Successful completion of three projects of a similar nature and comparable in complexity to the proposed contract within the last three (3) years.

31.3 **Personnel Capabilities**. The Applicant should list down personnel of minimum qualification of Higher National Diploma in Civil Engineering for Site Agent, Ordinary Diploma for the surveyor and other supervisory staff.

31.4 **Equipment Capabilities**. The Applicant should list down, the plants and equipment that are in his ownership and the ones proposed for hire which should be suitable for executing contract works. - Applicants must attach evidence of ownership or hiring arrangements.

31.5 **Cash flow statement**. The Applicant should demonstrate that the firm has access to or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means sufficient to meet the construction cash flow for a period of 2 months, estimated at 20% of the estimated tender sum.

31.6 **Audited Accounts.** Signed and stamped Audited Accounts for the last three years (for 2017, 2018 and 2019) should be submitted and must demonstrate the soundness of the Applicant’s financial position, availability of working capital and net worth.

31.7 **Financial Position/Ratios**. The applicant’s financial information will be assessed in terms of ROCE, current ratio and return on equity, and evaluated on their financial position given on this basis. Where necessary, the Employer may make inquiries with the Applicant’s bankers.

31.8 **Litigation History**. The Applicant should provide accurate information on any litigation or arbitration resulting from contracts completed or under execution by him over the last five years. A consistent adverse history of litigation against the Applicant may result in failure of the application.

31.9 Q**ualification** criteria are as provided in the Appendix to instruction to tenderers. The bidders who pass the technical criteria will be subjected to financial evaluation.

# F. FINANCIAL EVALUATION

30.8 Comparison of major rates of items of construction & credibility of tenderers rates

The Employer will compare the tenderers’ rates with the Engineer’s estimates for major items of construction. If some bids are seriously unbalanced or front loaded in relation to the Engineer's estimates for the major items of work to be performed under the contract, the Employer may require the bidder to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed.

After evaluation of the price analyses, taking into consideration the schedule of estimated contract payments, the Employer may require that the amount of the Performance Security set forth in Clause 35 be increased at the expense of the bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the contract.

**G. Award of Contract**

# 31 Award

31.1 Subject to Clause 32, the Employer will award the contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest Evaluated Bid Price pursuant to Clause 29, provided that such bidder has been determined to be (a) eligible in accordance with the provisions of Sub-Clause 3.1, and (b) qualified in accordance with the provisions of Clause 4.

# 32 Employer's Right to Accept any Bid and to Reject any or All Bids

32.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of contract, without thereby incurring any liability to the affected bidder or bidders but will inform the affected bidder or bidders of the grounds for the Employer's action.

# 33 Notification of Award

* 1. Prior to expiration of the period of bid validity prescribed by the Employer, the Employer will notify the successful bidder in writing or by cable confirmed by registered letter that its bid has been accepted. This letter (hereinafter and in the Conditions of Contract called "Letter of Acceptance") shall specify the sum, which the Employer will pay the Contractor in consideration of the execution and completion of the works and the remedying of any defects therein by the Contractor as prescribed by the contract (hereinafter and in the Conditions of Contract called "the Contract Price").

33.2 At the same time that the Employer notifies the successful bidder that his bid has been accepted, the Employer shall notify the other bidders that their bids have been unsuccessful and that their bid security will be returned as promptly as possible, in accordance with sub clause 17.4.

# 34 Signing of Agreement

34.1 Within 21 days of receipt of the Notification of Award, the successful bidder shall sign the Form of Agreement and return it to the Employer, together with the required performance security.

# 35 Performance Security

35.1 Within 14 days of receipt of the Letter of Acceptance from the Employer, the successful bidder shall furnish to the Employer a performance security in the form stipulated in the Conditions of contract. The form of performance security provided in the bidding documents shall be used.

35.2 The successful bidder shall provide a performance security in the form of an Unconditional Bank Guarantee from a reputable bank located in Kenya.

35.3 Failure by successful bidder to lodge the required performance Guarantee within 14 days of the receipt of the letter of Acceptance shall constitute sufficient grounds for annulment of the award and forfeiture of the bid surety; in which event the Employer may make the award to another bidder or call for new bids.

# Contract Effectiveness

* 1. The Contract will be effective only upon signature of the Agreement between the Contractor and the Employer.
	2. 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.
	3. Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
	4. Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.
	5. Price variation request shall be processed by the procuring entity within 30 days of receiving the request.
	6. The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
	7. 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.
	8. 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.

# SECTION III: APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision 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 TENDERS** |
| Eligible bidders | Open to contractors registered by the National Treasury (Women, Youth and Persons with Disabilities) with valid certificates and also registered with National Construction Authority – NCA 8. |
| Preliminary Examination | The tenderers are required to provide the documents/information as indicated in 2.2 that will form the criteria for Preliminary examination. |
| Tender Securing Declaration Form | Bidders MUST Fill the Tender Securing Declaration Form |
| Deadline and submission of tenders | Monday, January4th 2021 at 11.00am |
| Clarification of Documents | Any request for clarification of documents should be sent on email to *procurement@abdpcu.org*  |
| Performance Security | Performance security of 1% of the contract value will be required from the successful bidder within 21 days from the day of receipt of the notification of after award. |

# Preliminary Evaluation

|  |  |  |  |
| --- | --- | --- | --- |
| S/No | **MANDATORY REQUIREMENTS(MR)** | **YES** | **NO** |
| MR1 | Valid Copy of Certificate of Incorporation/ Registration. |  |  |
| MR2 | Certified copy of Valid Current KRA Tax Compliance Certificate  |  |  |
| MR3 | Certified copy of Valid NCA 8 registration certificate |  |  |
| MR4 | Dully filled and signed tender questionnaire  |  |  |
| MR5 | Dully filled and signed Confidential business questionnaire |  |  |
| MR6 | Dully filled and signed Anticorruption declaration Form |  |  |
| MR7 | Submission of original tender document properly bound and sequentially serialized and initialed. |  |  |
| MR8 | Certified Copy of Valid National Treasury Registration Certificate  |  |  |
| MR9 | Duly filled, signed and stamped Tender Securing Declaration Form valid for 120 days from the date of Tender Opening. |  |  |
| MR10 | Certified copy of valid CR12/CR13 form showing the list of directors /shareholding (issued within the last 1 year) or proof of application of the same  |  |  |
| MR11 | Provide proof of Power of attorney ( of Tender Signatory) |  |  |
| MR12 | Dully filled Self Declaration form on not being Debarred from participating in Public Procurement |  |  |
| MR13 | Dully filled Form of Tender |  |  |
| MR14 | Certified Copies of the National Identification Cards (IDs) of Directors |  |  |
| MR15 | For Persons with Disability (PWD), attach valid and certified copy of proof of registration with NCPWD |  |  |
| MR16 | Certified copy of Current Single Business Permit  |  |  |
| MR17 | Copy of signed Site Visit Certificate |  |  |

**Note**

Tender Bid Document submitted without ANY of the above mentioned Mandatory documents shall be rejected by the evaluation Committee and will therefore not proceed to the technical and financial Evaluation

# TECHNICAL EVALUATION

The parameters for the **Technical Evaluation** will be as follows: -

1. Key Contracts completed in the last five (5) years
2. Schedules of on-going projects
3. Schedules of contractor’s equipment & transport
4. Audited Financial Report for the for the last 3 years (2017, 2018, 2019)
5. Evidence of Financial Resources
6. Litigation History

# Table for the Technical Evaluation

|  |  |  |  |
| --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **YES** | **NO** |
| **1** | **Key Personnel (Attach evidence)** |  |  |
|  | **Director of the firm*** Holder of a minimum of a trade test certificate in a relevant construction/ engineering field
 |  |  |
|  | **Key Personnel/ Project Manager/ Site Manager*** Holder of a higher national diploma in relevant engineering, construction/ project management field.
* Minimum of 3 years relevant experience
 |  |  |
| **2** | **Similar Nature Contracts** |  |  |
|  | **3No. Construction contracts completed in the last five (5) years*** Project of minimum value of Kshs. 6,000,000.00
* Attach recommendation letters from the clients within the last 5years ***(At least 3No clients)*** indicating the **value of the works and the satisfaction** with the works.
 |  |  |
| **3** | **Schedules of contractor’s equipment**  |  |  |
|  | **(Attach evidence of proof of ownership or lease agreement)*** specialized equipment sufficient for works
 |  |  |
| **4** | **Financial report** |  |  |
|  | * Three years audited and opinioned financial statements (2017, 2018, 2019)
* Minimum turnover per annum for each financial year is Kshs. 2,000,000.00
 |  |  |
| **5** | * Evidence of financial resources (cash in hand, lines of credit, over draft facility etc.) of minimum of Kshs. 2,000,000.00
 |  |  |
| **6** | **Litigation History** |  |  |
|  | * Provide litigation history for the last five years.
 |  |  |

**Note**

Bids that confirm to the mandatory and technical minimum requirements stipulated above shall be considered for financial evaluation**.**

# FINANCIAL EVALUATION

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

1. Tender Rates and arithmetic Errors.
2. Tender Sums,

#

# Tender Rates

1. **Examination of Arithmetic Errors**

**According to Section 82** of the Public Procurement and Asset Disposal Act (2015) that the tender sum as submitted and read out during the Tender Opening shall be absolute and final, and shall not be the subject of correction, adjustment or amendment in any way or by any person or entity, The committee will check the arithmetic errors and notify the winning bidder incase errors are found in the document, however no alteration of bid price will be done.

1. **Comparison of rates.**

Evaluation of the tender rates will constitute examination of (i) pricing consistency (same rates for similar items, price distribution amongst sections, etc.); (ii) Reasonableness of pricing (comparison with prevailing market levels, inclusion of taxes [VAT, etc.] in the rates); the rates for major items will be examined and compared with the Official Estimate. The bidders who pass the test of price consistency and reasonableness, (if any) shall proceed to Financial Score Evaluation.

**Award Criteria:**

**The firm achieving the lowest evaluated price will be awarded the contract in line with Section 86 of the Public Procurement and Disposal Act, 2015**

#

# SECTION IV: CONDITIONS OF CONTRACT

#####  **Table of Contents**

1 Definitions …………………………………………………………. 26

2 Interpretation……………………………………………………….. 28

3 Language and Law ………………………………………..………. 29

4 Project Manager’s Decisions……………………………..…………29

5 Delegation………………………………………………………….. 29

6 Communications ……………………………………………………29

7 Sub-Contracting …………………………………………………….29

8 Other Contractors …………………………………………………. 29

9 Personnel ………………………………………………………….. 29

10 Works……………………………………………………………… 30

11 Safety and temporary works ……………………………………… 30

12 Discoveries ………………………………………………… ………30

13 Work Programme …………………………………………………. 30

14 Possession of site …………………………………………………. 31

15 Access to site ……………………………………………………… 31

16 Instructions ………………………………………………………… 31

17 Extension or Acceleration of completion date ……………………. 31

18 Management Meetings ……………………………………………. 32

19 Early Warning …………………………………………………….. 32

20 Defects ……………………………………………………………. 32

21 Bills of Quantities ………………………………………………… 32

22 Variations ………………………………………………………… 33

23 Payment certificates, currency of payments and

 Advance Payments ………………………………………………… 33

24 Compensation events ……………………………………………… 35

25 Price Adjustment …………………………………………………. 35

26 Retention ………………………………………………………… 38

27 Liquidated Damages……………………………………………… 38

28 Securities ………………………………………………………….. 38

29 Day Works ………………………………………………………… 39

30 Liability and Insurance ……………………………………………. 39

31 Completion and taking over ……………………………………….. 40

32 Final Account ……………………………………………………… 40

33 Termination ……………………………………………………….. 40

34 Payment upon termination ………………………………………… 41

35 Release from performance ………………………………………… 42

36 Corrupt gifts and payments of commission ……………………….. 42

37 Settlement of Disputes …………………………………………….. 43

38 Alternative Dispute Resolution …………………………………….. 44

# CONDITIONS OF CONTRACT

1. **Definitions**
	1. In this Contract, except where context otherwise requires, the following terms shall be interpreted as indicated;

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Employer”,** or the **“Procuring entity”** as defined in the Public Procurement Regulations is the party who employs the Contractor to carry out the Works.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**3. Language and Law**

* 1. Language of the Contract and the law governing the Contract shall be English language and the Laws of Kenya respectively unless otherwise stated.
1. **Project Manager’s Decisions**
	1. Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.
2. **Delegation**
	1. The Project Manager may delegate any of his duties and responsibilities to others after notifying the Contractor.
3. **Communications**

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

1. **Subcontracting**

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

1. **Other Contractors**

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

1. **Personnel**
	1. The Contractor shall employ the key personnel named in the Qualification Information, to carry out the functions stated in the said Information or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Qualification Information. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor’s staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the Work in the Contract.
2. **Works**
	1. The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
3. **Safety and Temporary Works**
	1. The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.
	2. The Project Manager’s approval shall not alter the Contractor’s responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent Works, shall be subject to prior approval by the Project Manager before they can be used.
	3. The Contractor shall be responsible for the safety of all activities on the Site.

**12. Discoveries**

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

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

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

1. **Possession of Site**
	1. The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Appendix to Conditions of Contract, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.
2. **Access to Site**
	1. The Contractor shall allow the Project Manager and any other person authorized by the Project Manager, access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
3. **Instructions**
	1. The Contractor shall carry out all instructions of the Project Manager which are in accordance with the Contract.
4. **Extension or Acceleration of Completion Date**
	1. The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining Work, which would cause the Contractor to incur additional cost. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager in writing for a decision upon the effect of a Compensation Event or variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay caused by such failure shall not be considered in assessing the new (extended) Completion Date
	2. No bonus for early completion of the Works shall be paid to the Contractor by the Employer.
5. **Management Meetings**
	1. A Contract management meeting shall be held monthly and attended by the Project Manager and the Contractor. Its business shall be to review the plans for the remaining Work and to deal with matters raised in accordance with the early warning procedure. The Project Manager shall record the minutes of management meetings and provide copies of the same to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
6. **Early Warning**
	1. The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the Work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
	2. The Contractor shall cooperate with the Project Manager in making and considering proposals on how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the Work and in carrying out any resulting instructions of the Project Manager.
7. **Defects**
	1. The Project Manager shall inspect the Contractor’s work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor’s responsibilities. The Project Manager may instruct the Contractor to search for a defect and to uncover and test any Work that the Project Manager considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor, However, if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.
	2. The Project Manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.
	3. Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Project Manager’s notice. If the Contractor has not corrected a defect within the time specified in the Project Manager’s notice, the Project Manager will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.
8. **Bills Of Quantities**
	1. The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rate in the Bills of Quantities for each item.
	2. If the final quantity of the Work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the Initial Contract price, the Project Manager shall adjust the rate to allow for the change.
	3. If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bills of Quantities.
9. **Variations**
	1. All variations shall be included in updated programs produced by the Contractor.
	2. The Contractor shall provide the Project Manager with a quotation for carrying out the variations when requested to do so. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period as may be stated by the Project Manager and before the Variation is ordered.

* 1. If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the variation does not correspond with items in the Bills of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
	2. If the Contractor’s quotation is unreasonable, the Project Manager may order the variation and make a change to the Contract price, which shall be based on the Project Manager’s own forecast of the effects of the variation on the Contractor’s costs.
	3. If the Project Manager decides that the urgency of varying the Work would prevent a quotation being given and considered without delaying the Work, no quotation shall be given and the variation shall be treated as a Compensation Event.
	4. The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
	5. When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.
1. **Payment Certificates, Currency of Payments and Advance Payments**
	1. The Contractor shall submit to the Project Manager monthly applications for payment giving sufficient details of the Work done and materials on Site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the monthly application and certify the amount to be paid to the Contractor within 14 days. The value of Work executed and payable shall be determined by the Project Manager.
	2. The value of Work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed, materials delivered on Site, variations and compensation events. Such materials shall become the property of the Employer once the Employer has paid the Contractor for their value. Thereafter, they shall not be removed from Site without the Project Manager’s instructions except for use upon the Works.
	3. Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. If the Employer makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the Central Bank of Kenya’s average rate for base lending prevailing as of the first day the payment becomes overdue.
	4. If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
	5. Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
	6. The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Appendix to Conditions of Contract. If the Contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services the Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The Employer and the Project Manager shall be notified promptly by the Contractor of an changes in the expected foreign currency requirements of the Contractor during the execution of the Works as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.

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

1. On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 10% (ten percent) of the original amount of the Contract. The advance shall not be subject to retention money.
2. No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.
3. 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 = A(x1 – x11)

 80 – 20

Where:

 R = the amount to be reimbursed

 A = the amount of the advance which has been granted

X1 = 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%.

X11 = 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%.

1. With each reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.
2. **Compensation Events**
	1. The following issues shall constitute Compensation Events:
3. The Employer does not give access to a part of the Site by the Site Possession Date stated in the Appendix to Conditions of Contract.
4. The Employer modifies the List of Other Contractors, etc., in a way that affects the Work of the Contractor under the Contract.
5. The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the Works on time.
6. The Project Manager instructs the Contractor to uncover or to carry out additional tests upon the Work, which is then found to have no defects.
7. The Project Manager unreasonably does not approve a subcontract to be let.
8. Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site investigation reports), from information available publicly and from a visual inspection of the Site.
9. The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional work required for safety or other reasons.
10. Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
11. The effects on the Contractor of any of the Employer’s risks.
12. The Project Manager unreasonably delays issuing a Certificate of Completion.
13. Other compensation events described in the Contract or determined by the Project Manager shall apply.
	1. If a compensation event would cause additional cost or would prevent the Work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
	2. As soon as information demonstrating the effect of each compensation event upon the Contractor’s forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor’s forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager’s own forecast. The

Project Manager will assume that the Contractor will react competently and promptly to the event.

* 1. The Contractor shall not be entitled to compensation to the extent that the Employer’s interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.
	2. Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.
	3. The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

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

1. **Price Adjustment**
	1. The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.
	2. The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works. Unless otherwise stated in the Contract, if at any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case may be.
	3. Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manner set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified thereunder;
2. The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C.) and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.
3. Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labor incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.
4. No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.
	1. The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the Works as determined by the J.B.C. and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.
	2. Upon the J.B.C. determining that any of the said basic prices are increased or decreased then the Contract Price shall be increased or decreased by the amount to be assessed by the Project Manager based upon the difference between the price set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 23 of these Conditions issued before the date of publication of such increase or decrease.
	3. No adjustment shall be made in respect of changes in basic prices of materials which occur after the date for Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.
	4. The provisions of sub-clause 25.1 to 25.2 herein shall not apply in respect of any materials included in the schedule of basic rates.
5. **Retention**
	1. The Employer shall retain from each payment due to the Contractor the proportion stated in the Appendix to Conditions of Contract until Completion of the whole of the Works. On Completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the remaining half when the Defects Liability Period has passed and the Project Manager has certified that all defects notified to the Contractor before the end of this period have been corrected.
6. **Liquidated Damages**
	1. The Contractor shall pay liquidated damages to the Employer at the rate stated in the Appendix to Conditions of Contract for each day that the actual Completion Date is later than the Intended Completion Date. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not alter the Contractor’s liabilities.
	2. If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rate specified in Clause 23.30
7. **Securities**
	1. The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a reputable bank acceptable to the Employer, and denominated in Kenya Shillings. The Performance Security shall be valid until a date 30 days beyond the date of issue of the Certificate of Completion
8. **Day works**
	1. If applicable, the Day works rates in the Contractor’s tender shall be used for small additional amounts of Work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
	2. All work to be paid for as Day works shall be recorded by the Contractor on Forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the Work being done.
	3. The Contractor shall be paid for Day works subject to obtaining signed Day works forms.
9. **Liability and Insurance**
	1. From the Start Date until the Defects Correction Certificate has been issued, the following are the Employer’s risks:
10. The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to;
11. use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or
12. Negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
13. The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in Employer’s design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.
	1. From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is the Employer’s risk except loss or damage due to;
14. A defect which existed on or before the Completion Date.
15. an event occurring before the Completion Date, which was not itself the Employer’s risk
16. The activities of the Contractor on the Site after the Completion Date.
	1. From the Start Date until the Defects Correction Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer’s risk are Contractor’s risks.

The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Appendix to Conditions of Contract for the following events;

1. loss of or damage to the Works, Plant, and Materials;
2. loss of or damage to Equipment;
3. loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract, and
4. Personal injury or death.
	1. Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager’s approval before the Start Date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.
	2. If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
	3. Alterations to the terms of an insurance shall not be made without the approval of the Project Manager. Both parties shall comply with any conditions of insurance policies.
5. **Completion and taking over**
	1. Upon deciding that the Works are complete, the Contractor shall issue a written request to the Project Manager to issue a Certificate of Completion of the Works. The Employer shall take over the Site and the Works within seven [7] days of the Project Manager’s issuing a Certificate of Completion.
6. **Final Account**

32.1 The Contractor shall issue the Project Manager with a detailed account of the total amount that the Contractor considers payable to him by the Employer under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor’s account if it is correct and complete. If it is not, the Project Manager shall issue within 30 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate. The Employer shall pay the Contractor the amount due in the Final Certificate within 60 days.

1. **Termination**
	1. The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;
2. the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorized by the Project Manager;
3. the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
4. the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
5. a payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate)of issue.
6. the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
7. the Contractor does not maintain a security, which is required.
	1. When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Clause 33.1 above, the Project Manager shall decide whether the breach is fundamental or not.
	2. Notwithstanding the above, the Employer may terminate the Contract for convenience.
	3. If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible. The Project Manager shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.
8. **Payment Upon Termination**
	1. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the Work done and materials ordered and delivered to Site up to the date of the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor.
	2. If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the Work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works.
	3. The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on the Site, plant, equipment and temporary works.
	4. The Contractor shall, during the execution or after the completion of the Works under this clause remove from the Site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

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

1. **Release from Performance**
	1. If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop Work as quickly as possible after receiving this certificate and shall be paid for all Work carried out before receiving it.
2. **IFAD’s Policy- Corrupt and Fraudulent Practices**

IFAD requires that its own staff and the staff of Borrowers/Recipients (including beneficiaries of IFAD financing), and all bidders, suppliers, contractors and consultants under IFAD-financed contracts, observe the highest standard of ethics and integrity during the execution of and procurement under such contracts. This position is clearly stated in the IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations (hereafter: the anticorruption policy), which applies to these guidelines. In line with this policy, IFAD will have the right to:

a. Reject a proposal for award if it determines that the bidder, supplier, contractor or consultants recommended for award has, directly or through an agent, engaged in coercive, collusive, corrupt or fraudulent practices in competing for the contract in question;

b. Suspend or cancel all or part of the financing in accordance with the General Conditions if it determines at any time that representatives of the Borrower/Recipient or of a beneficiary of the financing engaged in coercive, collusive, corrupt or fraudulent practices during the procurement or the execution of that contract, without the Borrower/Recipient having taken timely and appropriate action satisfactory to IFAD to remedy the situation;

c. Sanction an individual or firm – which may include declaring the individual or firm ineligible to be awarded an IFAD-financed contract indefinitely or for a stated period of time – if at any time it determines that the individual or firm has, directly or through an agent, engaged in coercive, collusive, corrupt or fraudulent practices in competing for, or in executing, an IFAD-financed contract;

d. Require that bidding documents and the contracts that it finances include a provision requiring suppliers, contractors and consultants to permit IFAD to inspect their accounts, records and other documents relating to the bid submission and contract performance, and to have them audited by IFAD-appointed auditors;

e. Refer any cases of irregular practices that include, but are not limited to, fraud and corruption to the relevant national authorities for further investigation; and

f. Apply, in the event of cases in which irregular practices have been determined, the sanctions it deems necessary and appropriate.

 **Prohibited Practices**

The following practices are considered to be prohibited practices when engaged in connection with an IFAD-financed and/or IFAD-managed operation or activity:

(a) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value in order to improperly influence the actions of another party;

(b) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation;

(c) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including improperly influencing the actions of another party;

(d) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party in order to improperly influence the actions of that or another party;

(e) “obstructive practice” is:

(i) deliberately destroying, falsifying, altering or concealing evidence that may be material to an investigation by the Fund or making false statements to investigators in order to materially impede an investigation by the Fund;

(ii) threatening, harassing or intimidating any party in order to prevent that party from disclosing its knowledge of matters relevant to an investigation by the Fund or from pursuing such an investigation; and/or

(iii) the commission of any act intended to materially impede the exercise of the Fund’s contractual rights of audit, inspection and access to information.

**Reporting**

To report any allegation of prohibited practice, a designated confidential and secure e-mail address may be used to report and or seek guidance.

Email: ethicsoffice@ifad.org

In the event of uncertainty as to whether or not an act or omission constitutes a prohibited practice, the designated confidential and secure e-mail address may be used to seek guidance.

 IFAD treats all reported allegations with strict confidentiality. This means that the Fund does not normally reveal the identity of a reporting party to anybody outside of the investigative, sanctioning or disciplinary process without the consent of the reporting party.

IFAD endeavors to provide protection from retaliation to any individuals or entities that have helped prevent or have reported to the Fund, in good faith, allegations or other indications of prohibited practices. IFAD staff and non-staff personnel are protected from retaliation under the Fund’s Whistle-blower Protection Procedures.

1. **Settlement Of Disputes**
	1. In case any dispute or difference shall arise between the Employer or the Project Manager on his behalf and the Contractor, either during the progress or after the completion or termination of the Works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of Architectural Association of Kenya on the request of the applying party. The institution written to first by the aggrieved party shall take precedence over all other institutions.
	2. The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising thereunder or in connection therewith, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.
	3. Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.
	4. Notwithstanding the issue of a notice as stated above, the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties. Proof of such attempt shall be required.
	5. Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:
		* 1. The appointment of a replacement Project Manager upon the said person ceasing to act.
			2. Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
			3. Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
			4. Any dispute or difference arising in respect of war risks or war damage.
	6. All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Employer and the Contractor agree otherwise in writing.
	7. The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
	8. The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
	9. The award of such Arbitrator shall be final and binding upon the parties
2. **Alternative Dispute Resolution**
	1. In pursuant to clause 37 of these Conditions of Contract, it shall be a condition that no dispute shall be referred to arbitration unless and until the matter has been dealt with through Alternative Dispute Resolution (ADR) mechanism.
	2. The person or persons to conduct the Alternative Resolution shall be agreed upon between the parties.
	3. The Alternative Dispute Resolution shall involve Reconciliation, Mediation or Adjudication.

# SECTION V – APPENDIX TO CONDITIONS OF CONTRACT

THE EMPLOYER IS

Name: **Aquaculture Business Development Programme (ABDP)**

Address **P.O. Box 904 – 10100**

Town: **NYERI**

Name of Authorized Representative: Programme Coordinator

**Aquaculture Business Development Programme**

**THE PROJECT MANAGER IS**

 ABDP QUANTITY SURVEYOR

 **P.O. Box 10100 Nyeri**

The name (and identification number) of the Contract: **Proposed Construction of Upgrading of Classrooms and Laboratory at Ramogi Institute of Advanced Technology.**

The Works consist of: **CONSTRUCTION OF CLASSROOMS AND LABORATORY.**

The Start Date shall be: **AGREED WITH THE PROJECT MANAGER**

The Intended Completion Date for the whole of the Works shall be **12 WEEKS** from the commencement date

The following documents also form part of the Contract:

**AS LISTED IN CLAUSE 2.3 OF THE CONDITIONS OF CONTRACT**

The Contractor shall submit a program for the Works within **14** days of delivery of the Letter of Acceptance.

The Site Possession Date shall be **AGREED WITH THE PROJECT MANAGER**

The Site is located in **Kisumu - Ramogi Institute of Advanced Technology.**

The Defects Liability period is **180** days.

Other Contractors, utilities etc., to be engaged by the Employer on the Site include those for the execution of; **None**

The minimum insurance covers shall be;

1. The minimum cover for insurance of the Works and of Plant and Materials in respect of the

Contractor’s faulty design is **Contractors all risk policy**

1. The minimum cover for loss or damage to Equipment is **2,000,000**
2. The minimum for insurance of other property is **KShs 5,000,000.00**
3. The minimum cover for personal injury or death insurance
* For the Contractor’s employees is **AS PER LAWS APPLICABLE**
* And for other people is **AS PER LAWS APPLICABLE**

The following events shall also be Compensation Events:

1. **None (Only As Listed In Clause 24 Of The Conditions Of Contract**
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The period between Program updates is **14** days.

The amount to be withheld for late submission of an updated Program is **WHOLE CERTIFICATE**

The proportion of payments retained is **10** percent.

The limit of payments retained is **10** percent.

The Price Adjustment Clause **shall not** apply

The liquidated damages for the whole of the Works is **Kshs. 100,000.00** per month or part thereof

The Performance Security shall be for the following minimum amounts equivalent as a percentage of the Contract Price **one** percent (1%)

The Completion Period for the Works is **12 WEEKS**

The schedule of basic rates used in pricing by the Contractor is as attached: **CONTRACTOR TO ATTACH**

Advance Payment shall **NOT** be granted.

# SECTION VI – DRAWINGS



#

# SECTION VII – STANDARD FORMS

1. Form of Tender **(to be filled and submitted with Tender)**
2. Tender Securing Declaration Form (**To be filled and submitted with Tender**)
3. Notification Letter of Award
4. Letter of Acceptance
5. Form of Agreement
6. Performance Bank Guarantee
7. Bank Guarantee for Advance Payment
8. Qualification Information **(to be filled and submitted with tender)**
9. Tender Questionnaire (**to be filled and submitted with Tender)**
	1. Confidential Business Questionnaire ( **To be filled by Tenderer**)
	2. Details of Sub-Contractors (**To be filled by Tenderer**)
10. Request for Review Form
11. Self-declaration not to engage in Corrupt or fraudulent practices **(to be filled and submitted with tender)**
12. Self-declaration that the tenderer is not debarred from participating in public procurement (**to be filled and submitted with tender**

# FORM OF TENDER

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[Name of Employer) \_\_\_\_\_\_\_\_\_\_\_\_[Date]*

 *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[Name of Contract]*

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities 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]*

1. 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.

1. 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.
2. 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.
3. 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 tendeer]* of*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[*Address of tendeer]*

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

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

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

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

# TENDER SECURING DECLARATION FORM (r.22)

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

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

Tender No………………………………………………………………

To: Kenya Reinsurance Corporation

We, the undersigned, declare that:

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

2. We accept that we will automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of time of *[insert number of months or years]* starting on *[insert date],* if we are in breach of our obligation(s) under the 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 Instructions to Tenderers.

3. We understand this Tender Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of

 (i) our receipt of a copy of your notification of the name of the successful Bidder; or

 (ii) twenty-eight days after the expiration of our Bid.

4. We understand that if we are a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid. If the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: …………………………………………………….*[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 Tender 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]*

***To be completed by bidder and returned with Tender Documents.***

# 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

# LETTER OF ACCEPTANCE

##  [letter head 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

# 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 theWorks*]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 inwords].*

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.
3. Letter of Acceptance
4. Form of Tender
5. Conditions of Contract Part I
6. Conditions of Contract Part II and Appendix to Conditions of Contract
7. Specifications
8. Drawings
9. 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.

1. 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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# PERFORMANCE BANK GUARANTEE

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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(*Address of Employer)*

Dear Sir,

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

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a 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 ofGuarantee in words*) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

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

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

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

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

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

# 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 figurers]* Kenya Shillings*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[amount of Guarantee in words].*

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

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

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

This guarantee shall remain valid and in full effect from the date of the

advance payment under the Contract until

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(*name of Employer*) receives full payment of the same amount from the Contract.

Yours faithfully,

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

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

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

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

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

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

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

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

# QUALIFICATION INFORMATION

1. **Individual Tenderers or Individual Members of Joint Ventures**
	1. Constitution or legal status of tenderer (attach copy or Incorporation Certificate);

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

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

Power of attorney of signatory of tender \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. Total annual volume of construction work performed in the last five years

|  |  |
| --- | --- |
| Year | Volume |
|  | Currency Value |
|  |  |

* 1. Work performed as Main Contractor on works of a similar nature and volume over the last five years. Also list details of work under way or committed, including expected completion date.

Project name Name of client Type of work Value of

 and contact performed and Contract

 person year of

 completion

* 1. Major items of Contractor’s Equipment proposed for carrying out the Works. List all information requested below.

|  |  |  |  |
| --- | --- | --- | --- |
| Item ofEquipment  | Description,Make and age(years) | Condition(new,good, poor) and number available | Owned, leased (from whom?), or to be purchased (from whom?) |
|  |  |  |  |

* 1. Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data.

|  |  |  |  |
| --- | --- | --- | --- |
| Position | Name | Years of experience (general) | Years of experience in proposed position |
| Project Manager\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(etc.) |  |  |  |

* 1. Financial reports for the last three years: balance sheets, profit and loss statements, auditor’s reports, etc. List below and attach copies.

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

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

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

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

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

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

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

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

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

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

* 1. Proposed program (work method and schedule) for the whole of the Works.
1. **Joint Ventures (If applicable)**
	1. The information listed in 1.1 – 1.10 above shall be provided for each partner of the joint venture.
	2. The information required in 1.11 above shall be provided for the joint venture.
	3. Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture
	4. Attach the Agreement among all partners of the joint venture ( and which is legally binding on all partners), which shows that:
2. all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
3. one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
4. the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

# TENDER QUESTIONNAIRE

 Please fill in block letters.

1. Full names of tenderer

………………………………………………………………………………………

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

………………………………………………………………………………………

1. Telephone number (s) of tenderer

………………………………………………………………………………………

1. Telex address of tenderer

………………………………………………………………………………………

1. Name of tenderer’s representative to be contacted on matters of the tender during the tender period

………………………………………………………………………………………

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

 Signature of Tenderer

# CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c) whichever applied 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. ……………………………………………………………Plot No………………………………………………… Street/Road …………………………………………..Postal Address ……………………….. Tel No. …………………. Fax ………………. E mail …………….Nature of Business ………………………………………………………………………..Registration Certificate No. ………………………………………………………………Maximum value of business which you can handle at any one time – Kshs. …………………………………Name of your bankers ……………………………………….. Branch ……………………………………… |

|  |  |
| --- | --- |
|  |  Part 2 (a) – Sole ProprietorYour name in full …………………………………………………….. Age ………………………..Nationality ………………………………… Country of origin …………………………………….Citizenship details ………………………………………………………………. |
|  |  Part 2 (b) PartnershipGiven details of partners as follows:Name Nationality Citizenship Details Shares* 1. ………………………………………………………………………
	2. ………………………………………………………………………
	3. ……………………………………………………………………….
	4. ……………………………………………………………………….
 |
|  |  Part 2 (c ) – Registered CompanyPrivate or Public …………………………………………………………….State the nominal and issued capital of company- Nominal Kshs. ……………………………… Issued Kshs. …………………………………Given details of all directors as followsName Nationality Citizenship Details Shares1……………………………………………………………………………………2.………………………………………………………………………………………3.………………………………………………………………………………………4.………………………………………………………………………………………5……………………………………………………………………………………… |
| Date ………………………………………………….. Signature of Candidate ……………………………….. |

* + - If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth Naturalization or registration.

# TENDER SECURITY FORM

 Whereas ………………………………………. [*name of the tenderer]*

 (hereinafter called “the tenderer”) has submitted its tender dated …………. [*date of submission of tender]* for the supply, installation and commissioning of ……………………*[name and/or description of the equipment]* (hereinafter called “the Tender”) ……………………………………….. KNOW ALL PEOPLE by these presents that WE ……………………… of ………………………. having our registered office at ………………… (hereinafter called “the Bank”), are bound unto …………….. [*name of Procuring entity}* (hereinafter called “the Procuring entity”) in the sum of …………………….. for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this day of 20 .

 THE CONDITIONS of this obligation are:-

 1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or

 2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:

1. fails or refuses to execute the Contract Form, if required; or
2. fails or refuses to furnish the performance security in accordance with the Instructions to tenderers;

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

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

  *[signature of the bank]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

 *(Amend accordingly if provided by Insurance Company)*

# SELF DECLARATION FORMS

**SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN**

**ANY CORRUPT OR FRAUDULENT PRACTICE**

I …………………………..of P 0 Box ……………………….being a resident of ………………..in the Republic ……………of do hereby make a statement as follows:

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of………………………………………………..(insert name of the Company) who is a Bidder in respect of Tender No………………………….. for …………………..(insert tender title/description) for ( insert name of the Procuring entity) and duly authorized and competent to make this statement.

2 THAT the aforesaid Bidder its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board Management Staff and/or employees and/or agents of ……………………………(insert name of the Procuring entity) which is the procuring entity.

3 THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board Management Staff and/or employees and/or agents of (name of the procuring entity).

4 THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.

5 THAT what is disponed to herein above is true to the best of my knowledge information

and belief.

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

(Title) (Signature) (Date)

Bidder s Official Stamp

# SELF DECLARATION FORMS

**(r47)**

**FORM SD l**

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

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

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of …………………………………(insert name of the Company) who is a Bidder m respect of Tender No………………………….. For…………………………… (Insert tender title/description) for…………………………… (Insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder its Directors and subcontractors have not been debarred from participating m procurement proceeding under Part IV of the Act.

3. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

……………………………………………………………………………………………….

(Title) (Signature) (Date)

Bidder Official Stamp

#

# FORM RB 1

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO…………….OF……….….20……...

BETWEEN

…………………………………………….APPLICANT

AND

…………………………………RESPONDENT *(Procuring Entity*)

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

**REQUEST FOR REVIEW**

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

1.

2.

etc.

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

1.

2.

etc

SIGNED ……………….(Applicant)

Dated on…………….day of ……………/…20…

**FOR OFFICIAL USE ONLY**

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

SIGNED

Board Secretary

# 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: ………………………………

1. [i) Full name of Sub-contractor

and address of head office: ………………………………

1. 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: ………………………………

1. Sub-contractor’s experience

of similar works carried out

in the last 3 years with

contract value: ……………………………

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

[Signature of Tenderer) Date

# SECTION VIII: BILLS OF QUANTITIES

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM****NO.** | **DESCRIPTION** | **UNIT** | **QTY.** | **KSHS.** | **CTS.** |
| A | **PROPOSED CONSTRUCTION OF UPGRADING OF CLASSROOM AND LABORATORY AT RAMOGI INSTITUTE OF ADVANCED TECHNOLOGY****BILLS OF QUANTITIES SECTION NO. 1****PRELIMINARIES**Erection and maintenance of a Publicity Sign board in compliance with the Public Works design throughout the duration of the Project**TOTAL FOR PRELIMINARIES CARRIED TO SUMMARY** |  | Sum**KSHS.** |  |  |
| **65,000** | **00** |
|  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| 1 234 | **PROPOSED CONSTRUCTION OF UPGRADING OF CLASSROOM AND LABORATORY AT RAMOGI INSTITUTE OF ADVANCED TECHNOLOGY****BILLS OF QUANTITIES ELEMENT NO.1****SUBSTRUCTURE** (All Provisional) NOTESThe Tenderer's attention is drawn to the Preliminaries Contract Particulars Clause 8.0 which states that the Standard Method of Measurement is the June 2008 Edition. Per Clause D5(g) ofthis S.M.M **all excavations in this BoQ have been measured NET and no allowance has been made for working space and the tenderer is shall price for the excavations accordingly.**Cement for all Structural Works in these Bills of Quantities shall strictly be **Grade 42.5**Cement for Non-Structural Works in these Bills of Quantities shall be **Grade 32.5**All Reinforcement in these Bills of Quantities shall be to BS4449:1997 with the following characteristic; a) **Grade 460 B****high strength type 2 Ribbed bars with proof stress of****460N/mm²;** allow for cutting, bending, hoisting and fixing including all necessary trying wires and spacer stools; |  |  |  |  |

Substructures 2/1

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| AB C DE FG HIJK | **SUBSTRUCTURES (CONT'D)**Clear site of bushes, shrubs, trees and uproot with all roots and dispose as directedExcavations & EarthworksExcavate to remove top vegetable soil average 300mm deep;remove from siteExcavate for strip foundations not exceeding 1.5 m deep from reduced levelDitto for Column Bases not exceeding 1.5 m deep from reduced levelDisposalBackfilling around foundations & columnsLoad and cart away surplus spoilImported filling300mm Thick approved hardcore under floor bed well compacted300mm Thick Murram or quarry dust blinding to hardcoreDamp proof membrane as described :-1000 Gauge polythene sheet damp proof membrane to horizontal surfacesAnti-termite treatmentChemical anti-termite treatment executed by an approved specialist under a ten-year guarantee to horizontal surfaces of the floor slab and around the plinth, e.t.c.Concrete Class ( 1:3:6 ) in 50mm thick blinding under :- Strip foundations for masonry walling**Carried to Collection** | m2m3 m3 m3m3 m3m2 m2m2m2m2 | 2276813711112617817817857 | **Kshs.** |  |

Substructures 2/2

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| AB C D E F GH IJ KL M N O P | Column basesVibrated reinforced concrete class 20 in: Ground Beam(300x200mm)Colum Bases(600x600) Columns(300x200) Strip foundations150 mm Thick slab150 Ramp**Reinforcement** Reinforcement to BS 4449:1997 with the following characteristic; a) Grade 460 B high strength type 2 Ribbed bars with proof stress of 460N/mm²; allow for cutting, bending, hoisting and fixing including all necessary trying wires and spacer stoolsD12D10D8Steel mesh fabric reinforcement to B.S. 1483Ref. A142 Layer of fabric mesh reinforcement laid in bed with150mm side and end laps **Sawn formwork to:** Sides of beamsSides of column basesSides of columnSides of strip foundationsEdges of floor beds and ramps 150 - 225mm high**Carried to Collection**  | m2m3 m3 m3 m3 m2 m2Kg Kg Kgm2m2 m2 m2 m2 m | 2111117863734814178373865 | **Kshs.** |  |

Substructures 2/3

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| AB C D | Quarry dressed natural stone walling in cement sand mortar (1:3) with minimum crushing strength of 7.0 N/mm2200mm Thick walling1000 Gauge polythene sheet damp proof course laid on and including cement sand (1:3) levelling screed200mm WideCement sand ( 1:4 ) render to :-12mm Thick render to plinth wall externallyPrepare and apply two coats of bituminous paint to :- Rendered walls externally**Carried to Collection**COLLECTION Page No. 2/2Page No. 2/3Page No. 2/4**TOTAL FOR SUBSTRUCTURES CARRIED TO SUMMARY** | m2m m2 m2 | 114744141 | **Kshs.****KSHS.** |  |
|  |
|  |
|  |

Substructures 2/4

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| ABC DE F | **BILLS OF QUANTITIES ELEMENT NO.2****RC SUPERSTRUCTURE** Concrete Class 20mm in:- ColumnsConcrete Class 20mm in:- Beams and lintols**Reinforcement; as before described**D12D8Sawn formwork to :- Vertical sides of columns Sides and soffites of beams**TOTAL FOR RC SUPERSTRUCTURE CARRIED TO SUMMARY** | m3m3KgKgm2 m2 | 142141081436 | **KSHS.** |  |

RC Superstructure 2/6

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| A B C D EFG | **BILLS OF QUANTITIES ELEMENT NO.4****ROOF CONSTRUCTION, COVERINGS AND RAINWATER DISPOSAL****ROOF CONSTRUCTION**The following in sawn softwood timber including fabricating, hoisting and fixing in position approximately 12,000mm above ground floor level as per Structural Engineer's drawingTreated Sawn cypress Rates to include all necessary bolting and/or nailingAngle lines 2''x2'' RHS 3''x2"RHS 4''x2'' RHS 2''x1'' SHS 1''x1''Wrot treated prime grade cypress38mm thick tongued and grooved eaves filling V- jointed and secretly nailed onto and including 50mm x50mm sawn cypress brackets with mosquito wire gauze in between225mm x 38mm thick fascia board fixed onto ends of rafters**Carried to Collection** | m m m m mm2 m | 305192481421087442 | **Kshs.** |  |
|  |

Roof 2/10

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| A BC DE FG HI JK L | ROOF COVERINGSRoof covering as IT4 Sheet roofing gauge 30 including roof vents to suppliers recommendationsDitto Transparent150mm diameter half round ridge tile to match roof tilesDitto for TransparentPrepare surfaces and apply one coat of aluminium wood primer and two finishing coats of gloss oil paint on:General wood surfacesWood surfaces 200 - 300mm girthRainwater goods150mm dia. Iron gutter fixed onto fascia board with approved mild steel straps at every 1,000mm centresExtra over ditto for stopped endsDitto for forming 150mm x 150mm hole for down pipe150mm dia.PVC rain water down pipe fixed onto walls with approved mild steel support brackets at 1,000mm centresExtra over ditto for swan neck projection with 600mm offsetDitto horse-shoe ditto with 300mm offset**Carried to Collection** COLLECTION Page No. 2/10Page No. 2/11**TOTAL FOR ROOF CARRIED TO SUMMARY** | m2 m2 m mm2 mmNo. No.mNo. No. | 224593012744242552455 | **Kshs.****KSHS.** |  |
|  |

Roof 2/11

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY.** | **RATE** | **KSHS.** |
| AB | **BILLS OF QUANTITIES ELEMENT NO. 5****EXTERNAL WALLS**Approved concrete block work; squared and;bedded in cement mortar (1:4); reinforced with 25mm wide x 20mm gauge hoop iron strapping every alternate course150mm Thick walls150mm Thick Gable walling**TOTAL FOR EXTERNAL WALLS CARRIED TO** | m2 m2 | 14719 | **KSHS.** |  |
|  |
| **SUMMARY** |
|  |

External Walls 2/14

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY.** | **RATE** | **KSHS.** |
| AB | **BILLS OF QUANTITIES ELEMENT NO. 6****INTERNAL WALLS**Approved concrete blockwork; squared ;bedded in cement mortar (1:4); reinforced with 25mm wide x 20mm gauge hoop iron strapping every alternate course150mm thick**Worktops in labs**150mm wall**TOTAL FOR INTERNAL WALLS CARRIED TO SUMMARY** | m2m2 | 304 | **KSHS.** |  |
|  |

Internal Walls 2/16

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** |  | **UNIT** | **QTY.** | **RATE** | **KSHS.** |
| A BCD | **BILLS OF QUANTITIES ELEMENT NO. 7****WINDOWS**STEEL WINDOWSSupply and fix the following purpose made casement windows comprising of 50 x 50 x 16 G and 25 mm "Z" section framing including all coupling mullions etc;and complete with bronze handles ,peg stays and other ironmongery; factory primed with red oxide primer including cutting and pining fixing lugs to concrete or masonry work jambs ; bedding in cement and sand (1:3) mortar , pointing all round frames in mastic ,easing ,oiling and adjusting opening lights on completion, including permanent wire gauze ventilation; All as per the architect's Schedule of Size 1200 x 1500 mm highSize 600 x 600 mm high**Precast concrete weathered and throated window** **cills**Window cill over all size 275 x 100 mm high with 3NoGlazing4mm thick clear sheet glass in panes 0.1-0.5sm fixed in steel window panes with putty**Carried to Collection** |  | No. No.msm | 1321924 | **Kshs.** |  |

Windows 2/17

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY.** | **RATE** | **KSHS.** |
| A B | **Painting**Prepare,prime and apply 3 coats of super gloss oil paint | m2 m2 | 2424 | **Kshs.****KSHS.** |  |
| as''crown'' or any other equal and approved to surface of :Windows externallyWindows internally**Carried to Collection** COLLECTION Page No. 2/15Page No. 2/16**TOTAL FOR WINDOWS CARRIED TO SUMMARY** |
|  |
|  |

Windows 2/18

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
|  | **BILLS OF QUANTITIES ELEMENT NO. 8****DOORS Steel Doors** |  | 31 |  |  |
|  |  |
| A B CDE FG H | Supply and fix the following medium gauge steel door including 6mm thick clear glass infill complete with all necessary purpose made ironmongery, permanent ventilation and locks to Architect's details and ApprovalSize 1500 x 2400mm high doorSize 1000 x 2400mm high door Size 900 x 2400mm high door **Ironmongery**Supply and fix the following ironmongery as applicable | No. No. | **KSHS.** |  |
|  |
| No.Setm2 mm2 m | 5924424135 |
| or equal and approved ironmongery with matching Two lever mortice lock including 2 No. Lever Handles **Painting and decorating**Prepare,prime and apply 3 coats of super gloss oil paint |
| as''crown'' or any other equal and approved to surface of :Steel surfaceSurfaces 100 - 200 mm girth**Painting and decorating**Prepare and apply three coats 2-pack clear polyurathane varnish to surfaces of: Timber surfacesSurfaces 100 - 200 mm girth**TOTAL FOR DOORS CARRIED TO SUMMARY** |
|  |

Doors 2/19

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| A B C DE F GH IJK L | **BILLS OF QUANTITIES ELEMENT NO.10****FINISHES Floor Finishes**15mm Thick cement sand(1:3) backing screed to receiv**e**terrazzo/ceramic tiles(m.s) TilesDitto 100mm high skirting Wooden floor finish to cointerners **Walls** 12mm thick gauged plaster cement sand lime 1:1:6 with a smooth float to walls internallytiles(ms)6mm thick ceramic wall tiles as ''SAJ & RAK'' or any other equal and approved size 200 x 250mm high**Ceiling**Approved chipboard ceiling fixed to brandering10 x 75mm ditto cornice plugged and nailed to battensExtra-over ditto in access door size 450 x 600mm includingPrepare and apply 3 coats permaplast long lasting interior first grade plastic emulsion paint as ''crown;; or any other equal and approved paint to:CeilingWalls internally**Carried to collection** | m2 m2 m m2m2 m2 m2m2 m nom2 m2 | 12712793252262222127702127243 |  |  |

Internal Finishes 2/23

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| A | **Brandering**50 x 50mm sawn cypress brandering**Carried to Collection**COLLECTION Page No. 2/21Page No. 2/22**TOTAL FOR INTERNAL FINISHES CARRIED TO**  | m | 505 | **Kshs.****KSHS.** |  |
|  |
|  |
|  |

Internal Finishes 2/24

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| AB | **BILLS OF QUANTITIES ELEMENT NO. 9****EXTERNAL FINISHES Externally**12mm thick gauged cement sand render 1:2 finished with a wood float to, wall,columns and beams externallyPrepare and apply 3 coats permaplast long lasting exterior first grade plastic emulsion paint as ''crown;; or | m2m2 | 166166 | **KSHS.** |  |
| any other equal and approved paint to: Walls externally**TOTAL FOR EXTERNAL FINISHES CARRIED TO SUMMARY** |
|  |
|  |

External Finishes 2/21

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **QTY** | **UNIT** | **RATE** | **AMOUNT****(KSHS)** |
| AB C D E | **SANITARY FITTINGS****Supply, deliver install and fix the following sanitary fittings including all materials and jointings to supply waste/soil and overflow pipes.****DISABLED TOILET FACILITY**A completely assembled unit of wheel chair accessibleWC/WHB disabled toilet combination facilitycomprising: (i) A close coupled white in colour WC bowl with horizontal outlet complete with 7.5L cisterncomplete with fittings and additional cover clip for additional security. 100mm high Avalon seat ring with chrome plated metal hinges.(ii) Wall mounted wash hand basin with one L/Hand or R/Hand offset tap hole and chain stay hole, wall brackets, lever action chrome plated 15mm diameter tap, chrome plated chain waste 32mm,(iii) 3No. 600mm diameter long rails.(iv) 1No. Hinged support rail and back support rail. All in nylon coated alluminium.(v) Mirror 400mm wide by 900mm high fixed 500mmabove the floor.The whole facility to conform in all aspects to the requirements of LANTAC certificate ref. NR 35 T-10. To be as Twyfords AVALON - D.O.C.M pack or equal and approved.Supply and fix a completely assembled WC Asian type to specificationSupply and fix a completely assembled automatic Urinal to specificationSupply and fix a completely assembled WHB to specificationConstruct manholes complete with fittings**Total carried to collection** | 12228 | SetNoNoNoNo |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| A BCD E F G H K | **LAB** **Laboratory sink**Laboratory sink Vulcathene black moulded polypropylene sink size 460 x 300 x 200mm deep15mm diameter chrome plated swivel tap40mm diameter bottle trap complete with plastic chain waste, plastic screw and and any other necessary accessory to connect to the existing Laboratory sinks40mm diameter UPVC drainage pipe100mm diameter UPVC grey drainage pipe40mm diameter tee100 X 100 mm diameter gulley trap15mm diameter by 300mm long flexible tubeAllow for connection to sewerline to approval approx.length 50m**Total carried to collection****COLLETION**Page 1Page 2 | 66618306661 | NoNoNo Lm Lm No No NoItem |  |  |
|  | **Total for Plumbing works** |  |  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **UNIT** | **QTY** | **RATE** | **KSHS.** |
| AB CDE | **BILLS OF QUANTITIES****Renovation to existing container offices****Floor Finishes**Wooden floor finish to cointernersPrepare and apply 3 coats permaplast long lasting interior first grade plastic emulsion paint as ''crown;; or any other equal and approved paint to:CeilingWalls internallySupply and fix the following purpose made casement windows comprising of 50 x 50 x 16 G and 25 mm "Z" section framing including all coupling mullions etc;and complete with bronze handles ,peg stays and other ironmongery; factory primed with red oxide primer including cutting and pining fixing lugs to concrete or masonry work jambs ; bedding in cement and sand (1:3) mortar , pointing all round frames in mastic ,easing ,oiling and adjusting opening lights on completion, including permanent wire gauze ventilation; All as per the architect's Schedule of windowsSize 1200 x 1500 mm highGlazing4mm thick clear sheet glass in panes 0.1-0.5sm fixed in steel window panes with putty**Carried to collection** | m2m2 m2No.sm | 13133014 |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| A B | **Painting**Prepare,prime and apply 3 coats of super gloss oil paint as''crown'' or any other equal and approved to surface of : Windows externallyWindows internally**Carried to Collection**COLLECTION Page No. 2/21Page No. 2/22**TOTAL FOR INTERNAL FINISHES CARRIED TO**  | m2 m2 | 44 | **Kshs.****KSHS.** |  |
|  |
|  |
|  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ITEM****NO.** |  |  | **SHS.** | **CTS.** |
| 1234567891011 | **BILLS OF QUANTITIES** SUMMARY SUBSTRUCTURESRC SUPERSTRUCTURE ROOFEXTERNAL WALLS INTERNAL WALLS WINDOWSDOORSINTERNAL FINISHES EXTERNAL FINISHES PLUMBING RENOVATION**TOTAL FOR CARRIED TO MAIN SUMMARY** | PAGE NO.2/52/62/132/152/162/182/202/222/242/25**KSHS.** |  |  |
|  |  |

Summary 2/26

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ITEM NO.** | **DESCRIPTION** | **UNIT** | **QTY.** | **KSHS.** |
| A BCD | **BILLS OF QUANTITIES****PRIME COST AND PROVISIONAL SUMS PRIME COST SUMS**Allow a provisional sum of Kenya Shillings Seventy Thousand for electrical works to Project Manager's descriptionAllow a provision Sum of Kenya Shillings One HundredThousand only for Project ManagementAllow a provisional sum of (Kenya Shillings Two HundredThousand only for contingencies to Project Manager's descriptionAllow a provisional sum of (Kenya Shillings FifteenThousand only for material tests**TOTAL FOR PRIME COST AND PROVISIONAL SUMS CARRIED TO SUMMARY** |  | Sum Sum Sum Sum**KSHS.** | 70,000200,000300,00015,000**585,000** |
|  |

Summary 2/26

|  |  |  |  |
| --- | --- | --- | --- |
| **ITEM****NO.** |  |  | **SHS.** |
| 123 | MAIN SUMMARY PRELIMINARIES BUILDER'S WORK PROVISIONAL SUMS **TOTAL**ADD 14% VAT |  |  |
| **TOTAL CARRIED TO GRAND SUMMARY** |  |
| EMPLOYER: CONTRACTORNAME: …………………...…………………… NAME: ………………………………………………………………..…………. ………………………..…………. ADDRESS: ………….…………………………. ADDRESS: ……..…..……..…….………………………………………………….. …………………………………..SIGNATURE: …………………………………. SIGNATURE: ……………..……. DATE: …………………………………………. DATE: ……………………..……. |