



# COUNTY GOVERNMENT OF KIAMBU

TENDER FOR THE DESIGN, CONSTRUCTION AND  
COMMISSIONING OF GITHURAI MARKET AND  
ASSOCIATED AMENITIES FOR THE COUNTY  
GOVERNMENT OF KIAMBU

**TENDER NO. KCG/T/023/2018/2019**

**DATE 19<sup>TH</sup> MAY 2018**

**CLOSING DATE: 8TH JUNE 2018 AT 11.00 AM**

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## **INTRODUCTION**

- 1.1 This standard tender document for **Design, Construction and Commissioning of Githurai Market and associated Amenities**
  
- 1.2 The standard tender document should remain unchanged and any necessary changes by a procuring entity shall be introduced only through the Appendix to instructions to tenderers and the special conditions of contract.

## **SECTION I: INVITATION TO TENDER**

**Tender for Design, Construction and Commissioning of Githurai Market and Associated Amenities for the County Government of Kiambu: Tender No. KCG/T/023/2018/2019**

- 1.1 The **County Government of Kiambu** invites tenders from eligible candidates for Architectural and Engineering **design, construction, commissioning of works for Githurai Market** and associated amenities as a turnkey project.
- 1.2 Interested candidates may obtain further information and inspect the tender documents at **County Government of Kiambu** at the address given below.
- 1.3 The tenders documents can also be downloaded **free of charge** from the following website: [www.kiambu.go.ke](http://www.kiambu.go.ke)
- 1.4 Completed tenders should be submitted accompanied by a tender security issued by a reputable bank or insurance company in the amount of **Kshs. 5,000,000 (Kenya Shillings Five Million Thousand Only)** to be received on or before **8<sup>th</sup> June 2018 at 11.00 A.M.** Failure to provide tender security will lead to disqualification of the tender.
- 1.5 Prices quoted shall be inclusive of all duties and other taxes and shall remain valid for **120 (one hundred and twenty days)** from the closing date of the tenders

Completed tender documents shall be submitted in plain sealed envelopes clearly marked with the Tender number and name and marked

**“DO NOT OPEN BEFORE 8<sup>th</sup> June 2018 at 11.00 AM**

**TENDER FOR DESIGN, CONSTRUCTION AND COMMISSIONING OF GITHURAI MARKET AND ASSOCIATED AMENITIES FOR THE COUNTY GOVERNMENT OF KIAMBU**

and addressed to:

**County Secretary  
County Government of Kiambu  
P.O. Box 2344-00900  
Kiambu**

- 1.6 Tenders will be opened immediately after the closing time in the presence of tenderers representatives who choose to attend the opening at Land, Housing, Physical Planning headquarters boardroom **at 11:10 A.M.**

## **SECTION II -**

### **BACKGROUND AND PRELIMINARY INFORMATION**

Kiambu County is one of the 47 counties in the Republic of Kenya. It is located in the central region and covers a total area of 2,543.5 Km<sup>2</sup> with 476.3 Km<sup>2</sup> under forest cover according to the 2009 Kenya Population.

#### **The Objectives of the County Government**

- To promote democratic and accountable exercise of power
- To foster national unity by recognising diversity
- To give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them
- To recognise the right of communities to manage their own affairs and to further their development
- To protect and promote the interests and rights of minorities and marginalised communities
- To promote social and economic development and the provision of proximate, easily accessible services throughout Kenya
- To ensure equitable sharing of national and local resources throughout Kenya
- To facilitate the decentralisation of state organs, their functions and services, from the capital of Kenya
- To enhance checks and balances and the separation of powers.

The proposed project is for construction of Githurai market together with associated external works and facilities. The proposed market will be approximately 40,000 sq m. The current status on site is occupied by traders.

The current status of the site of the project is as shown in the data sheets.

## SECTION III INSTRUCTIONS TO TENDERERS

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## **SECTION III - INSTRUCTIONS TO TENDERERS**

### **A GENERAL**

#### **3.1 Definitions**

- (a) “Tenderer” means any person or persons, partnership or company submitting a tender for the project acting directly or through a legally appointed representative.
- (b) “Accepted tenderer” means the tenderer who is approved by the procuring entity
- (c) “Procuring entity” means (name of procuring entity)

#### **3.2 Eligibility and quantification of tenders**

3.2.1 To be eligible and qualified the tender shall provide evidence satisfactory to the procuring entity of its eligibility, capability and adequacy of resources to effectively perform the subject contract. To this end, the tenderer shall be required to submit a “technical proposal” which will include the following information.

- (a) Details of experience and past performance of works of similar nature in the last five years and details of any current work on hand
- (b) The qualifications and experience of key personnel proposed for administration and execution of the contract both on and off site
- (c) Major items of construction plant and equipment proposed for use in the performance of the contract. The tenderer will also indicate on the schedule when each item will be available on the works. Included also should be a schedule of plant, equipment and materials to be imported for the proposed contract, giving details of make, type, and CIF value as appropriate.
- (d) Details of subcontractors to whom it is proposed to sub-contract any portion of the contract and for whom authority will be required for such subcontracting in accordance with the conditions of contract.

- (e) A draft programme of works in the form of a bar chart and schedule of payment, which shall form part of the contract if the tender is accepted. Any change in the programme or schedule shall be subject to the approval of the Procuring entity.
- (f) Details of any current litigation or arbitration proceedings in which the tenderer is involved as one of the parties
- (g) Financial capability including financial reports for the last four years.

### **3.2.2 Joint Venture**

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

- (a) the tender and in cause of a successful tender, contract form shall be signed so as to be legally binding on all partners
- (b) one of the partners shall be nominated as being lead contractor, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners
- (c) The lead contractor shall be authorized to incur liability and receive instructions for and on behalf of any and all the partners of the joint venture and the entire execution of the contract including payment shall be done exclusively with the lead contractor.
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms, and a relevant statement to this effect shall be included in the authorization mentioned in (b) above as well as in the form of tender and the contract form (in case of the accepted tender).
- (e) A copy of the contract entered into by the joint venture partners shall be submitted with the tender.

- 3.2.3 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 3.2.4 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.

### **3.3 Cost of Tendering**

- 3.3.1 The tenderer shall bear all costs associated with the preparation and submission of its tender and the procuring entity will in no case be liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.3.2 The procuring entity shall allow the tenderer to view the tender document free of charge before purchase.

### **3.4 Site Visit**

- 3.4.1 The tenderer is advised to visit and examine the site and its surrounding and obtain for itself on its own cost and responsibility all information that may be necessary for preparing the tender and entering into a contract.
- 3.4.2 The tenderer and any of its personnel or agent will be granted permission by the procuring entity to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, its personnel or agents, will release and indemnify the procuring entity 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.

- 3.4.3 The procuring entity shall organize a site visit at a date to be notified. A representative of the procuring entity will be available to meet the visiting tenderers at the site. The representative will not be available at any other time for site inspection visits. Tenderers must provide their own transport.

## **B TENDER DOCUMENTS**

### **3.5 Contents of Tender documents**

- 3.5.1 The tender documents comprise the documents listed here below and should be read together with any addenda issued in accordance with appendices 1,2,3 & 4 of these instructions to tenderers.

**The tender documents consist of two parts:-**

#### **SECTION IV - “TECHNICAL PROPOSAL” consists of:-**

- (a) Conditions of contract
- (b) Appendix to conditions of Contract
- (c) Specifications
- (d) Scheme Drawings
- (e) Standard Forms

#### **SECTION V “FINANCIAL PROPOSAL” consists of:-**

- (a) Form of tender  
Appendix to Form of Tender
- (b) Performance questionnaire form
- (c) Contract Form
- (d) Advance payment Bank Guarantee Form
- (e) Preliminaries
- (f) Specimen Bills of quantities

(g) Main summary page

3.5.2 The tenderer is expected to examine carefully all instructions, conditions, forms, terms specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the owner risk. Pursuant to clause 3.23 of Instructions to tenderers, tenders which are not substantially responsive to requirements of the tender documents will be rejected.

3.5.3 All recipients of 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” .

**3.6 Inquiries by tenderers**

3.6.1 A tenderer making an inquiry relating to the tender documents may notify the procuring entity in writing by fax or email at the procuring entity’s mailing address indicated in the invitation to tender. The procuring entity will respond in writing to any request for clarification which is received earlier than **7 (seven)** days prior to the deadline for the submission of tenders. Written copies of the procuring entity’s response (including the inquiry but without identifying the source of the entity) will be sent to all respective tenderers who have purchased the tender documents. If a candidate sends an inquiry after the stated days, the procuring entity shall have the option of responding to the inquiry and extension of the date of submission of tenders or ignoring it.

3.6.2 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

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

**3.7 Amendment of Tender Documents**

3.7.1 At any time prior to the deadline for submission of tenders the procuring entity may, for any reason, whether at its own initiative or

in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda

- 3.7.2 Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them.
- 3.7.3 In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the employer may, at his discretion, extend the deadline for the submission of tenders.

## **PREPARATION OF TENDERS**

### **3.8 Language of Tender**

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

### **3.9 Documents Comprising the Tender**

- 3.9.1 The Forms, Bills of Quantities and Schedules submitted with the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 3.13.2 regarding the alternative forms of tender security).

### **3.10 Tender Prices**

- 3.10.1 All the insertions made by the tenderers shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialed by the person or persons signing the tender.

3.10.2 A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not items against which no rate or price is entered by the tenderer will not be paid for by the procuring entity when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.

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

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

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

3.10.3 Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total to the summary of the Bills of Quantities for Contingencies and Variation of Prices [V.O.P] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.

3.10.4 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of unit rates for the supply of items listed in the Conditions of Contract where appropriate

3.10.5 The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the provisions of the Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other supporting information as required of the Conditions of Contract

3.10.6 Where quantity contract variation is allowed, the variation shall not exceed 15% of the original contract price.

3.10.7 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

### **3.11 Currencies of Tender and Payment**

3.11.1 Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings

3.11.2 Tenderers are required to indicate in the Statement of Foreign Currency Requirements, which forms part of the tender, the foreign currency required by them. Such currency should generally be the currency of the country of the tenderer's main office. However, if a substantial portion of the tenderer's expenditure under the Contract is expected to be in a currency other than his country of origin, then he may state a corresponding portion of the contract price in the currency of those other countries. However, the foreign currency element is to be limited to two (2) different currencies and a maximum of 30% (thirty percent) of the Contract Price.

3.11.3 The rate or rates of exchange used for pricing the tender shall be selling rate or rates of the Central Bank ruling on the date thirty (30) days before the final date of for the submission of tenders.

3.11.4 Tenderers must enclose with their tenders, a brief justification of the foreign currency requirements stated in their tenderers.

### **3.12 Tender Validity**

3.12.1 The tender shall remain valid and open for acceptance for a period of One Hundred and Twenty(120) days from the specified date of tender



opening or from the extended date of tender opening (in accordance with clause 7.4 here above) whichever is the later.

3.12.2 In exceptional circumstances prior to expiry of the original tender validity period, the Employer may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing or by cable, telex or facsimile. A tenderer may refuse the request without forfeiting his Tender Surety. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Surety correspondingly.

### 3.13 Tender Security

3.13.1 The tenderer shall furnish as part of his tender, a Tender security in the amount stated in the Appendix to Instructions to Tenderers.

3.13.2 The Tender security shall be valid for at least thirty (30) days beyond the tender validity period.

3.13.3 Any tender not accompanied by an acceptable Tender Security will be rejected by the Employer as non-responsive.

3.13.4. The Tender Securities of unsuccessful tenderers will be returned as promptly as possible as but not later than twenty eight (28) days after concluding the Contract execution and after a performance Security has been furnished by the successful tenderer. The tender security of the successful tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.

3.13.5 The Tender Security may be forfeited.

- (a) if a tenderer withdraws his tender during the period of tender validity; or
- (b) in the case of a successful tenderer, if he fails
  - (i) To sign the Agreement, or

- (ii) To furnish the necessary Performance Security
- (c) If a tenderer does not accept the correction of his tender price pursuant to clause 3.23.

3.13.6 The tender security shall be in the amount stated in the appendix.

### **3.14 No Alternative Offers**

3.14.1 The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix. Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture.

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

Any tenderer who fails to comply with this clause will be disqualified.

### **3.15 Pre-Tender Meeting**

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

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

- (a) Minutes of the meeting including the text of the questions raised and the responses given together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the tender documents. Any modification

of the tender documents listed in Clause 9 which may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting.

- (b) Non attendance at the pre-tender meeting will not be cause for disqualification of a bidder.

### **3.16 Format and Signing of Tender**

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

3.16.2 The copy of the tender and Bills of Quantities shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender.

3.16.3 The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tender, in which case such corrections shall be initialed by the person or persons signing the tender.

## **SUBMISSION OF TENDERS**

### **3.17 Sealing and Marking of Tenders**

3.17.1 The tenderer shall seal the TECHNICAL PROPOSAL AND FINANCIAL PROPOSAL of the tender in separate envelopes duly marked technical proposal and financial proposal. The envelope shall then be sealed in an outer envelope.

3.17.2 The inner and outer envelopes shall be addressed to the procuring entity at the address stated in the Appendix to Instructions to Tenderers and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of tenders stated in the said Appendix.

3.17.3 The inner envelopes shall each indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”, while the outer envelope shall bear no mark indicating the identity of the tenderer.

3.17.4 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 tender. A tender opened prematurely for this cause will be rejected by the procuring entity and return to the tenderer.

### **3.18 Deadline for Submission of Tenders**

3.18.1 Tenderers must be received by the procuring entity at the address specified in clause 17.2 and on the date and time specified in the invitation the tender subject to the provision of clause 7.4, 18.2 and 18.3

Tenderers delivered by hand must be place 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.

Bulky tenders which cannot be placed in the tender box will be received by the procuring entity as indicated in the Appendix to instructions to tenders.

3.18.2 The procuring entity may at its discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline shall thereafter be subjected to the new deadline as extended.

3.18.3 Any tender received by the procuring entity after the prescribed deadline for submission of tenders will be returned unopened to the tenderer.

### **3.19 Modification and Withdrawal of Tenders**

3.19.1 The tenderer may modify or withdraw his tender after tender submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the prescribed deadline for submission of tenders.

3.19.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of tenders, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.

3.19.3 No tender may be modified subsequent to the deadline for submission of tenders

3.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the period of tender validity specified on the tender form. Withdrawal of a tender during this interval will result in the forfeiture of the Tender Surety.

3.19.5 Subsequent to the expiration of the period of tender validity prescribed by the Employer, and the tenderer having not been notified by the Employer of the award of the Contract or the tenderer does not intend to conform with the request of the Employer to extend the

period of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Surety.

## **TENDER OPENING AND EVALUATION**

### **3.20 Tender Opening**

3.20.1 The Employer will open the tenders in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

3.20.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 3.19 will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Securities have been furnished, whether the documents have been properly signed and whether the tenders are generally in order.

3.20.3 At the tender opening, the Employer will announce the tenderer's names, total tender price, tender price modifications and tender withdrawals, if any, the presence of the requisite Tender Security and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.

3.20.4 The Employer shall prepare minutes of the tender opening including the information disclosed to those present.

3.20.5 Tenders not opened and read out at tender opening shall not be considered further for evaluation, irrespective of the circumstances. Any tender received after the deadline for submission of tender shall be returned to the tender unopened.

### **3.21 Process to be Confidential**

3.21.1. After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be

disclosed to tenders or other persons not officially concerned with such process until the award of Contract is announced.

3.21.2 Any effort by a tenderer to influence the Employer in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender.

### **3.22 Clarification Tenders**

3.22.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 24.

3.22.2 No Tender shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

### **3.23 Determination of Responsiveness**

3.23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.

3.23.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specification of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way inconsistent with the tender documents, the Employer's rights or the tenderer's obligations under the Contract and the rectification of which would

affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.

3.23.3 Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.

3.23.4A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation

### **3.24 Correction of Errors**

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

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error
- (c) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.13.

### **3.25 Conversion to Single Currency**



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

3.25.2 The Employer will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Day works where priced competitively) to Kenya Shillings at the selling rates stated in clause 3.25.1

### **3.26 Evaluation and Comparison of Tenders**

3.26.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 3.23

3.26.2 In evaluating tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows

(a) Making any correction for errors pursuant to clause 3.24

(b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.

3.26.3 The Employer reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Employer, shall not be taken into account in tender evaluation.

3.26.4 Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.

3.26.5 If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer

to produce detailed price analyses for any or all items of the bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 3.29 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.

- 3.26.6 Firms incorporated in Kenya where indigenous Kenya's own 51% or more of the share capital shall be allowed a 20% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a non-indigenous sub-contract.
- 3.26.7 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 3.26.8 The procuring entity may at any time terminate procurement proceedings before award and shall not be liable to any person for the termination.
- 3.26.9 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 3.26.10 Persons not officially involved in the evaluation of tender shall not attempt in any way to influence the evaluation.
- 3.26.11 Any person who has a conflict of interest with respect to the procurement shall not participate in the procurement proceedings.

## **AWARD OF CONTRACT**

### **3.27 Award**

- 3.27.1 Subject to clause 3.27.2 the Employer will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated

tender price subject to possessing the capability and resources to effectively carry out the Contract Works.

- 3.27.2 The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.

### **3.28 Notification of Award and Signing of the Contract**

- 3.28.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, teletype or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.
- 3.28.2 Notification of award will constitute the formation of the Contract subject to the parties signing the contract.
- 3.28.3 Upon the furnishing of a Performance Security by the successful tenderer, the unsuccessful tenderers will promptly be notified that their tenders have been unsuccessful.
- 3.28.4 Within twenty eighth (28) days of receipt of the contract form from the Employer the successful tenderer shall sign the form and return it to the employer together with the required Performance Security.
- 3.28.5 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.

### **3.29 Performance Guarantee**

- 3.29.1 Within Fourteen (14) days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the

employer with a Performance Security in an amount stated in the Appendix to Instructions to Tenderers.

3.29.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by an established and a reputable Bank approved by the Employer and located in the Republic of Kenya and shall be divided into two.

### **3.30 Advance Payment**

An advance payment if approved by the employer shall be made under the contract in accordance with the conditions of contract.

### **3.31 Corrupt or fraudulent practices**

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

## **Appendix to Instructions to Tenderers**

### **Notes to the appendix to the instructions to tenderers.**

- 1 The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to corresponding clauses in the instructions to tenders included in Section III and has to be prepared for each specific procurement.
2. The Procuring entity should specify in the appendix information and requires specific to the circumstances of the procuring entity the works to be procured and the tender evaluation criteria that will apply to the tenders.
3. In preparing the appendix the following aspects should be taken into consideration;
  - (a) The information that specifies and complements provisions of section III to be incorporated
  - (b) Amendments and/or supplements if any, to provisions of Section II to be incorporated.
4. Section II should remain unchanged and can only be amended through the appendix
5. Clauses to be included in this part must be compliant with the public procurement law and the regulations.

# APPENDIX TO INSTRUCTIONS TO TENDERERS

## APPENDIX 1

1 THE EMPLOYER IS

**Name:** COUNTY GOVERNMENT OF KIAMBU

**Address:** P. O. Box 2344 -00900, Kiambu, Kenya.

**Name of Authorized Representative:** County Secretary

**Telephone:** 067 20374

**Facsimile:**

**email:** kiambu@kiambu.go.ke

2 **The Project Manager shall be** the ‘Project Architect’ who is the lead consultant

**Name:** Director Public Works

**Address:** Kiambu County

**Name of Authorized Representative:** Arch. J. M. Macharia

**Telephone:** 0722420345

**Facsimile:** xxx

**Email:** jamesmacharia91@gmail.com

3 **The name (and identification number) of the contract is**  
Proposed construction of Githurai market for the County Government of Kiambu

**Tender number: KCG/T/023/2018/2019**

**The Work consists Design, construction and commissioning of works for Githurai market and associated amenities for the County Government of Kiambu**

- 4 It is **Mandatory** that bidders visit the site to check and ascertain possible technical factors that need to be overcome and take into account in their quoted prices.
- 5 **The start date shall be** *(to be determined on award)*
- 6 **The intended completion date for the whole of the works** *(to be determined on award)*
- 7 **The following documents also form part of the contract**
  - *Contract drawings to be submitted and approved by the Engineers as part of the design, construction, supply and installation proposal and Bill of Quantities for the price breakdown*
- 8 **The contractor shall submit a revised program for the works within fourteen (14) day of delivery of the letter of acceptance. The same shall be a revision of the proposed program submitted with the tender.**
- 9 **The site possession date shall be** *(to be determined on award)*
- 10 **The site is located at** LR no Githurai market, Kiambu **and is defined in drawing nos** (ref to appendix)
- 11 **The Defect liability period is** 12 months (from date of practical completion)
- 12 **Other Contractors, Utilities, etc to be engaged by the employer** *(to be determined)*
- 13 **The minimum insurance covers shall be;**

- a.1 The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor's faulty design shall be the entire contract value**
- a.2 The minimum cover for loss or damage to Equipment is (Contractor to determine)**
- a.3 The minimum for insurance of other property is dependant on nature of occurrence. If the sub contractor is responsible they will be liable for the entire amount. If all contractors are jointly liable they take proportionate responsibility.**
- a.4 The minimum cover for personal injury or death insurance**
- **for the contractor's employees is Ksh 10 million**
  - **and for other people is Ksh 10 million**
- a.5 WIBA – Works Injury Benefits Act**
- 14 The following events shall also be compensation events (to be determined)**
- 15 The period between Program updates is every 3 months**
- 16 The amount to be withheld for late submission of an updated program (to be determined)**
- 17 The proportion of payments retained is 10% percent subject to a limit of 5% of the contract value**
- 18 a) The Price Adjustment Clause shall NOT apply as a non-fluctuating price contract is to be awarded**
- b) The Price Adjustment Clause shall not apply as a fixed price contract is awarded**



- 19 **The liquidated and ascertained damages for the whole of the works is Ksh 200,000 per week**
- 20 **The performance security shall be for the following minimum amounts equivalent as a percentage of the Contract price (ten) percent (10%)**
- 21 **The completion period of the works is *(to be determined on award)***
- 22 **The rate of exchange for calculation of foreign currency payment is *(to be determined)***
- 23 **The schedule of basic rates used in pricing by the contractor is as attached *(contractor to attach)***
- 24 **Advance payment** shall be granted based on an acceptable bank advance payment bond (guarantee) and to be recovered in accordance with clause 23 of the PPOA contract.
- 25 **Mandatory site visit** – All bidders must visit the site to ascertain relevant details. The site visit form must duly signed and stamped by the client representative who will be available on site on Wednesday 30<sup>th</sup> May 2018 from 8am to 5pm.

## APPENDIX 2

- 1 Number of **sealed bound** copies of tender required to be submitted are: **TWO** number (**the first one clearly and labelled ‘Original’ and the second one ‘Copy’**). Information in the copy labelled Original will prevail in the event of any discrepancy.

### 2. DELIVERY OF TENDERS

Tenders and all documents in connection therewith, should be put in an envelope, sealed and clearly labelled **ORIGINAL** or **COPY** respectively and addressed as below

### **TENDER FOR THE DESIGN, CONSTRUCTION AND COMMISSIONING OF WORKS FOR GITHURAI MARKET, KIAMBU COUNTY**

TENDER NO: KCG/T/023/2018/2019

**County Secretary  
Kiambu County Government  
P.O. Box 2344-00900  
Kiambu**

Tenders should be deposited in the Tender Box by at Land, Housing, Physical Planning headquarters former Red Nova Hotel, office No.9 as specified in the letter of invitation to tender.

Thereafter, the tenders will be opened at the place and time as specified in the same letter.

**Tenders arriving later than the specified time will not be considered.**

### 3. COMPLETION OF TENDERS

- a) All documents forming the tender must be completed in ink and the offer must be made in the Form of Tender.

- c) The contractor is required to check the numbers of the pages and should any be found to be missing or in duplicate or the figures or writing indistinct, he must inform the quantity surveyor at once and have the same rectified. Should the contractor be in doubt about the precise meaning or any item, word or figure, for any reason whatsoever, or observe any apparent omission of works or figures, he must inform the quantity surveyor immediately in order that the correct meaning may be decided upon before the date of the submission of the tender.
- d) No liability whatsoever will be admitted nor claim allowed in respect of errors in the contractor's tender due to mistakes in the documents which should have been rectified in the manner described above.
- e) The contractor shall not alter or otherwise qualify the text of these documents. Any alteration or qualification made without authority will be ignored and the text of these documents as printed will be adhered to.
- f) The contractor shall be deemed to have made allowance in his prices generally to cover items in the preliminaries or additions to prime cost sums or other items, if these have not been priced against the respective items.

**4. TENDER RATES TO BE INCLUSIVE OF VAT (Value added tax)**

The Tenderers rates or prices shall be deemed to be inclusive of VAT at the prevailing rate.

- 5. The minimum acceptable tender security shall be **Kshs 5,000,000/=**.
- 6. The tender shall remain valid for period of one hundred and twenty (120) days from date of submission. However under exceptional circumstances the employer may request that tenderers extend the valid period for specific period.

## APPENDIX 3

### SPECIAL CONDITIONS OF CONTRACT

1. Bidder attention is drawn to instructions to tender and the table below.  
**All bidders must submit the requisite additional technical information as per the table below which shall be evaluated as shown:**

s/no	Particulars / Criterion		Maximum score
(i).	<p><b>Mandatory Requirements (failure to adhere will lead to automatic disqualification thus no further evaluation of your tender)</b></p> <ul style="list-style-type: none"> <li>i. Valid Tender Security (<i>refer to proposed format on pages 94&amp; 95</i>)</li> <li>ii. Completed signed site visit certification form (<i>refer to format on page 96</i>)</li> <li>iii. Company registration particulars (certificate of incorporation, memorandum and articles and of association, registered office and address)</li> <li>iv. Company PIN <i>I-tax</i> generated (Kenyan Companies)</li> <li>v. Valid tax compliance certificate (Kenyan Companies)</li> <li>vi. NCA 5 and above registration</li> <li>vii. Summarized audited financial statements for the last 3 years</li> <li>viii. Evidence from previous employer of 5 previous projects completed in the last five years of similar magnitude and size.</li> </ul>		

	<p>ix. Availability statement for the key technical and management experts.</p> <p>x. A resourced programme of works for the proposed construction period.</p> <p>xi. Evidence of average annual turnover of US Dollars 100 million US dollar.</p>		
(ii)	<p>Technical Details, Design Proposal, Program and Methodology</p> <p>Design proposals and report workable for this particular project all aligned to Architect and Engineers drawings and details cross checked on site. Comprehensive technical details for Construction of Market and associated Electrical &amp; Mechanical Installations</p> <p><i>10marks for design proposal for Architectural</i></p> <p><i>5marks for Structural, Civil &amp; services installations</i></p> <p><i>5marks for Bills of Quantities Building, Civil Works &amp; Services installations</i></p> <p>Proposed programme from award, procurement of imported components, site installation and commissioning (bidder to clearly state any necessary assumptions made)</p> <p><i>1 marks for presentable logical practical program</i></p> <p><i>2 marks for program including key design &amp; construction activities &amp; task, long lead items, proposed approval stages, etc</i></p> <p><i>2 marks for notable special / specific attribute / rapid fabrication and construction approach</i></p> <p>Write up on proposed Contractors methodology and proposal on mitigation of any challenges observed on site or on the project</p> <p><i>4 marks for main trade for team leader who will be handling main scope of work and how other trades are integrated</i></p>	<p>(20 marks)</p> <p>(5 marks)</p>	<p>35%</p>

	<p><i>2 marks for identified challenges &amp; proposed solutions or mitigation measures</i></p> <p><i>2 marks proposal for liaison and coordination with others during design &amp; construction and other contractors and clients representatives</i></p> <p><i>2 marks for notable special / specific attribute / rapid fabrication and construction approach</i></p>	(10 marks)	
(ii)	<p><b>Major items of construction plant and equipment available to carry out the contract</b></p> <p>Proposal for the timely acquisition and mobilization (owned, lease, hire, etc) of the essential equipment listed as required for the works)</p> <p><i>4marks for relevant list of plant and equipment to be used for structural steel, aluminium &amp; glazing works and undertaking of availability</i></p> <p><i>2marks for off site facilities and undertaking of availability off-site activities, logistics, fabrication and preparation</i></p> <p><i>2 marks for sufficient scaffolding and undertaking of availability</i></p> <p><i>2 marks notable special equipment that will bring a considered comparative advantage</i></p> <p><i>Refer to form (vi) on page 101</i></p>		<b>10%</b>

(iii)	<p><b>Evidence of relevant past experience in similar works and current work load and completion status disclosure</b> Provide list showing project name &amp; location in Kenya, contract period, commencement date, completion date, percentage currently complete</p> <p>Evidence of relevant projects either completed in the last 5 years or currently ongoing that demonstrate capacity to execute the project.</p> <p><i>5 no.relevant commercial or infrastructure project 16 marks</i> <i>Photos of the relevant specialized projects demonstrating contractors capability to handle similar projects 4 marks</i></p> <p><i>Refer to form (viii &amp; ix) on pages 103 &amp; 104</i></p>	(5 marks per relevant project)	<b>20%</b>
(iv)	<p><b>Evidence of adequacy of working capital &amp; financial capability</b></p> <p>a) Letter from bank confirming availability of adequate funds to perform the contract (equivalent to the project cost) Confirmation of other sources working capital, credit lines and the like. <i>Refer to form (viv) on page 109 &amp; 110</i></p> <p>b) Evaluation of financial statements and short term financial ratios</p>	5%  5%	<b>10%</b>
(v)	<p>Qualification and experience of necessary key trades and personnel <i>Provision staff CVs for</i></p> <p><i>Overall team leader (with several year relevant experience), Architectural &amp; Structural design &amp; supervision staff, specialist consultants team, services installations electrical &amp; mechanical.(10marks)</i></p> <p><i>Refer to forms (x &amp; xi) on pages 105 &amp; 106</i></p> <p><i>Evidence of local content affirmation to a minimum of 40% for materials, works construction and Project Management and superintendence (10 marks)</i></p>		<b>20%</b>
(vi)	<p>Duly completed tenders <i>All relevant forms duly completed – form (iii) power of attorney pg. 97; form(iv) tender questionnaire pg 98; form (v)confidential business questionnaire pg 99 &amp; 100; form (vii) joint venture pg 108 summary if required; form (xiii) details of sub contractors Pg 108;</i></p>		<b>5%</b>

	<i>form (xii) litigation history Pg 107; form 6 declaration &amp; anti corruption affidavit page 125: pages serialised</i>		
	<i>Completed form of tender, priced bills of quantities, cash flow projection table (5marks)</i>		
<b>(vii)</b>	<b>TOTAL TECHNICAL SCORE (ST)</b>		<b>100%</b>

The evaluation criteria shall be as follows:

- a) Award of the contract will be based the highest combined technical (ST) and financial score (SF) achieved by the bidding Contractors as per the evaluation criteria below:

T is the weight given to the technical evaluation of the additional information as per the table above under item 15.

P is the weight given to the financial proposal

The respective weights shall be:

**T - Weight given to the technical evaluation = 80%**

**P - Weight given to the financial evaluation = 20%**

**Note P + T will be equal to 100%**

**Minimum technical score for the bidder's financial proposal to be opened is 75%**

- b) The formulae for determining the financial score (SF) shall be as follows:

$$SF = 100 \times FM/F \text{ where}$$



SF is the financial score

FM is the lowest valid correct tender price

F is the valid correct tender price of the bid under consideration.

The lowest valid correct tender price will be allocated the maximum score of 100%

- c) The bidding Contractors will be ranked according to their combined technical score (ST) and financial score (SF) using the weights above. The formule for the combined scores shall be as follows;

$$S = (ST \times T \%) + (SF \times P \%)$$

Where:

S, is the total combined scores of technical and financial scores

ST is the technical score

SF is the financial score

#### **4. Construction programme - condition precedent**

It will be a contractual condition that the tenderer shall execute the contract to completion within the accepted time period. The tenderer will provide a realistic Programme of execution of the works (progress chart) that shall become binding in the event of the tender being awarded and subject to any amendments that may be made with the approval of the Architect.

## **APPENDIX 4: PROPOSED SUB-COUNTY MARKET IN GITHURAI FOR KIAMBU COUNTY**

### **Brief Scope Considerations:**

Kiambu County Government would like to develop a Modern design of market and associated amenities at Githurai with the following considerations:

- Market capacity – 4,000 – 5,000 traders per day
- Available land – about 3.9 acres
- The 3.9 acres should accommodate the Market, associated amenities, green squares plus entry and exit roads that will direct traffic to and from the Thika Superhighway avoiding conflict at the round about
- The design limited by land profile and current access roads
- 4 Storey Design (Ground plus Third Floors), one floor each for
  - vegetables and fresh produce,
  - clothing, hardwares and general shops,
  - food courts, restaurants, offices, banking halls, public health centres etc
  - management and other offices, social halls and meeting places, terraces and sitting areas
- Basement Parking for approx. 300 cars

- Ground Floor Parking for approx. 50 cars
- Total Built up Area – approximately 40,000.00 sq.m.
- Openness, flexibility & circulation to be the main design features
- Provision of recreation facilities for social interaction
- The design should be easily integrated with the Proposed BRT  
which will be developed on the land adjacent to the market

**SECTION IV - TECHNICAL PROPOSAL**

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# **REQUEST FOR PROPOSAL AND DESIGN/BUILD CONTRACT REQUIREMENTS**

## **1.00 - DEFINITIONS**

**Design Builder:** The individual or business entity that has entered into this Contract with Employer.

**Proposal:** The Technical and Financial Proposal packages submitted by the Proposers on the bid date.

**Candidate:** Any person or business entity acting directly or through an authorized representative who submits a Proposal for the work. “Candidate”, Bidder” and Tenderer are synonymous.

**Request For Proposal (RFP):** The documents submitted by the Employer to the “Candidates” describing and specifying the requirements of the work/project.

**Supplier or Vendor:** Any individual or business entity that contracts with the Design Builder to provide materials or equipment.

## **2.0 -PROPOSALS**

### **2.01 -Duty to carefully examine these instructions**

Prospective Candidates for this project shall examine carefully the instructions contained herein and be satisfied with the conditions that must be satisfied prior to submitting a proposal and to the conditions that affect the award of the contract.

### **2.02 -Necessity for Careful Examination of Site, Plans, Specifications**

The Candidate shall carefully examine the project site and shall investigate and be satisfied as to the conditions to be encountered, the character and quantity of surface and subsurface materials or obstacles to be encountered, rights of way and easements at or near the site, the work to be performed, and the materials to be furnished as required by the RFP.

Any failure by the Candidate to acquaint itself with information that is available or with reasonable investigations that may be available will not relieve it from responsibility to properly estimate the difficulty or cost to perform the work. Such examination does not require independent underground soil borings unless required elsewhere.

**a. Subsurface Investigations**

Where the Employer has made investigations of subsurface conditions and has made that information available to Candidates, such information is limited in scope to that which has been actually encountered in the investigations, and is included only for the convenience of the Candidate.

The Employer assumes no responsibility whatsoever with respect to the sufficiency or accuracy of borings or of the log of test borings, or other preliminary investigations, or any interpretation of the above. There is no guarantee or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the site, or any part of it, or that unforeseen conditions or developments may not occur.

Making such information available to Candidates is not to be construed in any way as a waiver of this provision. Candidates must satisfy themselves through their own investigations as to the actual conditions to be encountered.

**b. Differing Site Condition**

During the progress of the works, if a subsurface or latent condition is encountered at the site that is substantially different from those indicated in the RFP or made available for examination, a differing site condition may exist. The Design-Builder shall immediately notify the Project Manager in writing of the differing site condition.

The Project Manager shall investigate the assertion of a differing site condition by collecting the facts and applying the facts to the appropriate provisions of the contract documents.

If the Project Manager in the exercise of reasonable discretion determines that a differing site condition exists and that the differing site condition directly results in extra work, the Design-Builder shall be entitled to a variation order, which shall compensate the Design-Builder for the extra work.

### **2.03 Clarification during Tendering**

The Candidate shall examine the RFP documents in preparing the tender and shall report to the Project Manager any omissions, discrepancies, or apparent errors found in RFP. Prior to the date of tender opening, the Candidate shall submit a written request for clarification to the Project Manager who may give such clarification in the form of addenda to all Candidates.

Only the project Manager is authorized to answer questions or prepare addenda relating to the project. Information obtained from any other source shall not bind either party, may not be relied upon and shall have no standing in any event that may occur.

### **2.04 Proposal Documents**

Each proposal will consist of two separate submittals, the Financial Proposal and the Technical Proposal.

#### **a) Proposal Package**

Any proposal submitted that is not signed by the Candidate or by the Candidate's duly authorized representative shall be rejected by the Employer as non-responsive.

#### **b) Power of Attorney or Agent**

When an agent signs proposal, a power of attorney shall either be on file with the Employer prior to the opening of proposals, or be submitted with the proposal. Failure to submit the power of attorney may result in the rejection of the proposal as irregular and unauthorized. A power of attorney is not necessary in the case of a partner in a partnership.

## **2.05 Competitive Tendering**

If more than one proposal is offered by an individual or business entity or combination thereof, under the same or different names, all such proposals may be rejected. A party who has quoted prices on materials or work to a Proposer is not thereby disqualified from quoting prices to other Proposers, or from submitting a proposal directly for the materials or work.

## **3.0 DESIGN REQUIREMENTS**

### **3.01 Scope of Work**

The Design-Builder shall furnish all architectural, landscape architectural and engineering services complete set of drawings, bills of quantities and detailed specifications necessary to complete the project in accordance with the requirements of the contract documents.

From the approved drawings and detailed specifications the Design-Builder shall furnish all labour, materials, equipment, services and transportation necessary for the complete construction of the project, including site works, structures, utilities and landscaping.

### **3.02 Intent of the Contract Documents**

The intent of the contract documents is to provide the Employer with a project that is complete in all respects. All items necessary or reasonably required are to be provided to produce a complete and operational project.

### **3.03 (a) Laws and Codes**

For any item for which the above codes are not applicable, Design-Builder shall comply with the requirements of the latest edition of the Kenya Building Code.

Codes and specifications incorporated by reference shall be those of the latest edition at the time of receiving proposals, unless otherwise specified.

The Employer shall select a firm(s) to provide materials testing and inspection services during construction. The testing and inspection services firms are solely responsible to the Project Manager for observation of construction, determination of adherence to the contract documents (including approved plans and specifications) and compliance with the applicable codes and standards.

**(b) Plans and Specifications**

The plans and specifications shall state the design codes, standards and requirements used for the development of the plans including the edition and applicable sections.

The plans and specifications shall include a quality control program and an implementation plan to ensure that the completed project complies in all respects to the project requirements. The design professional engaged by the Design-Builder shall specify all tests and inspections that are required by the building code and that are appropriate to achieve the project goals. The design professional on record shall be retained to provide normal construction administration services and shall make periodic visits to the site to observe the quality of the work.

The final design drawings, specifications and calculations shall be signed and stamped by the appropriate registered professionals as complying with the requirements of the applicable codes, standards, practices and regulations.

The design professionals on record shall retain full responsibility for the design.

The Design-Builder shall incorporate changes, if any, resulting from plan check, peer review and/or Employer requirements into the final design without additional cost to the Employer. Such final drawings and specifications shall be resubmitted to the Employer for approval.

**(c) Plan Approval by Employer**

No plans shall be approved for construction without the express written approval of the Employer.

At the discretion of the Employer, the project may be approved in parts provided that each part is assessed as in full compliance with the applicable requirements and can be completed without compromising compliance of the total project.

Any changes, alterations, substitutions or modifications made to the approved plans during construction must be approved in writing by the Project Manager where they could be construed to impact on the adherence to the applicable codes, standards or regulations.

The Design-Builder shall incorporate without additional cost to the Employer any changes, alterations, substitutions or modifications made to the approved plans that are required during construction to satisfy code requirements, including those not previously identified in the approved plans, or to properly implement the approved plans, or where observed workmanship and/or discovered conditions so require.

The Design-Builder shall be responsible for payment of applicable fees and shall incorporate any modifications required in the drawings and detailed specifications without additional cost to the Employer.

The Employer will issue a certificate of completion when satisfied that the approved plans have been implemented and that all inspection and technical code and standards compliance issues identified during construction have been satisfactorily resolved.

### **3.04 Drawings & Specifications**

#### **a) Quality Requirements**

The Design-Builder shall submit to the Employer for approval complete drawings and detailed specifications necessary to construct the project, including drawings and detailed specifications for site layout, utilities and landscaping.

It is required that these drawings and specifications be prepared by Registered professionals under the law.

**b) Plan Review and Testing/Inspection Services**

The Project Manager shall have the responsibility for enforcement of all applicable codes, standards and related responsibilities.

The Employer shall review the plans and specifications for adherence to applicable codes and standards.

The Employer shall select a firm(s) to provide materials testing and inspection services during construction.

The testing and inspection services firms are solely responsible to the Project Manager for observation of construction, determination of adherence to the contract documents (including approved plans and specifications) and compliance with the applicable codes and standards.

**3.05 Approvals Prior to Construction**

Review and approval of all drawings and detailed specifications must be obtained from the Employer before start of construction. However, the Employer will accept a design submission for site development and if found satisfactory, will allow the Design-Builder to proceed with earthwork, foundations and other elements of site development while final plans and specifications for the balance of the work are being completed.

The Design-Builder is responsible for final approvals per Articles as per 4.0 and 4.04 and approval of portions of the work by the Employer does

not relieve the Design-Builder of responsibility for construction should changes be required due to items disapproved or changed due to plan check. The responsibility for a totally integrated design in accordance with the contract documents will remain with the Design-Builder.

**3.06 Submittals**

The Design-Builder shall submit all detailed fabrication drawings, shop drawings, samples, material list and manufacture's equipment brochures setting forth in detail the work as it is to be performed by the Design-Builder. Submittals shall be made in accordance with Article

6.04. Submittals shall be approved in writing by the Employer prior to use of the materials for the work.

### **3.07 Divisions of the Performance Specifications**

The performance specifications are divided into sections for convenience as set forth in the standard format. The actual limitations of work in the various trades and/or sections of the specifications are the responsibility of the Design-Builder.

### **3.08 Layout of the Work**

The Design-Builder shall prepare surveys and design for excavations and shorings required for the project and assure compliance with all state and local regulations.

## **4.0 CONDUCT OF THE CONSTRUCTION WORK**

### **4.01 Laws to be observed - Generally**

- a) The Design-Builder shall observe all Government laws that affect the work under this contract.

The Design-Builder shall hold harmless defend and indemnify the Employer against any claim arising from the violation of any law, whether by itself or its agents, employees or subcontractors.

If a conflict arises between the provisions of this contract and a law, the Design-Builder immediately shall notify the Employer's Project Manager in writing.

“Law” as used in this paragraph includes statutes and regulations adopted as well as executive orders, authoritative interpretations and other rules and directives issued by legally constituted authority.

### **4.02 Laws to be Observed – Regarding Labour**

- a) **Labour**



- i) The Design-Builder shall comply with the provisions of the Kenyan Labour Laws.
  - ii) The Design-Builder shall permit access by representatives of the Employer upon reasonable notice to its books, records, accounts, other sources of information and its facilities as the Employer shall require to ascertain compliance with this clause.
  - iii) The design Builder and its subcontractors shall give written notice of their obligations under this clause to labour organizations with which they have a collective bargaining or other agreement.
- b) Prevailing Wage**

- i) Wage rates set forth are the minimum that may be paid by the Design-Builder on a public works contract.

Public works also means hauling refuse from a public works site to an outside disposal location.

Nothing herein contained shall be construed as preventing the Design-Builder from paying more than the minimum rates set forth.

No extra compensation whatsoever will be allowed by the Employer due to the inability of the Design-Builder to neither hire labour neither at minimum rates nor for the necessity for payment by the Design-Builder of subsistence, travel time, overtime or other added compensations, all of which possibilities are elements to be considered and ascertained to the Design-Builder's own satisfaction in preparing the bid.

- ii) If it becomes necessary to employ crafts other than those listed, the Design-Builder shall notify the Employer immediately and the Employer will ascertain additional prevailing rates and the rates thus determined shall be applicable as minimum from time of initial employment.

- iii) The Design-Builder and any subcontractor under the Design-Builder shall comply with all labour laws.
- iv) The Design Builder and subcontractors shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and actual per diem wages paid to each journeyman, apprentice or worker employed in connection with the public works.

Each payroll record shall contain verification by written declaration that the information contained in the payroll record is true and correct and that the Design-Builder and subcontractors have complied with the requirements.

For work performed by its employees on the project, the Design-Builder's and subcontractor's payroll records shall be available for inspection at all reasonable hours and a certified copy shall be made available upon request to the employer or his or her authorized representative.

- v) The Design-Builder is required to submit a minimum of the first two weeks of certified payroll and the Hourly Labour Rate Worksheet for its workers and all subcontractors.

Additional weeks of certified payroll records may be required at the discretion of the Employer.

**c) Worker's Compensation**

The Design-Builder shall be required to secure payment of Worker's Compensation to its employees in accordance with Labour Laws and shall file with the Employer prior to performing the work the certification required.

**d) Apprentices**

If the Design-Builder or any subcontractor employs workers on the project in any apprenticeable craft it shall apply to the joint apprenticeship committee administering the apprenticeship standards

for the craft in the area of the work for a certificate approving the Design-Builder or subcontractor for the employment and training of apprentices.

Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which they are employed and shall be employed only in the work of the craft or trade to which they are indentured.

The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship agreements under which a person is training.

The Design-Builder or subcontractor employing journeymen or apprentices in any apprenticeable craft or trade shall contribute to the fund or funds set up in the area of work to administer the apprenticeship program in each trade in which it employs such journeymen or apprentices in the same amount and manner as the contributing contractors.

**e) Education, Counseling and Training Programs**

All educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs, under this contract, shall be open to all qualified persons, without regard to race, sex, color, religion, National origin or ancestry.

Such programs shall be conducted to encourage the fullest development of the interests, skills, aptitudes and capacities of all students and trainees with special attention to the problems of culturally deprived, educationally handicapped or economically disadvantaged persons.

Expansion of training opportunities under these programs shall also be encouraged with a view toward involving larger numbers or participants from these segments of the labour force where the need for upgrading levels of skills is the greatest.

The Design-Builder shall obtain copies of such safety orders as are applicable to the type of work to be performed and shall be governed by

their requirements in all construction operations. The Design-Builder shall fully inform each subcontractor and materials supplier as to the requirements of the applicable safety orders.

#### **4.03 Environmental Requirements**

##### **a) Air and Water Pollution Control**

The Design-Builder shall comply with all air and water pollution control rules, regulations, ordinances and statutes that apply to the work performed under the contract including any air pollution control rules, regulations, ordinances and statutes adopted under the authority of the Employer.

The Design-Builder must be eligible to perform work for the Project Manager by not being found to be in violation of any order, resolution or regulation relating to air or water pollution adopted in accordance with Project Manager requirements.

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds and liquid asphalt used on the project, shall comply with the applicable material requirements of the Kenya Bureau of Standards.

All containers of solvent paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.

A regular watering program shall be initiated to adequately control the amount of fugitive dust.

Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust.

Trucks hauling dirt from the site shall be covered in accordance with applicable state and local requirements.

To reduce exhaust omissions, unnecessary idling of construction vehicles and equipment shall be avoided.

Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

**b) Sound Control requirements**

The Design-Builder shall comply with all sound control and noise level rules, regulations and ordinances which apply to the work.

In the absence of any such rules, regulations and ordinances, the Design-Builder shall conduct its work to minimize disruption to others due to sound and noise from the workers and shall be responsive to the Employer's requests to reduce noise levels.

Loading and unloading of construction materials will be scheduled so as to minimize disruptions to any activities.

Construction activities will be scheduled to minimize disruption to the adjacent premises.

**4.04 Substitution of Subcontractors**

Once the subcontractors have been listed provisions of the subletting and subcontracting to any proposed substitution of subcontractors must be approved by the Project Manager.

The Design-Builder must clearly advertise the specific bond requirements for the project including the requirement of a bond, the kind of a bond and the amount of the bond, in order to be eligible to substitute a subcontractor.

When requested by the Project Manager, the Design-Builder shall submit a Subcontractor Status Report, which will be compared with the list of approved contractor.

If any subcontracts are still outstanding at the time of submittal, a follow-up request will be made.

No substitution of any subcontractor would be allowed without written approval of the Employer.

#### **4.05 Design-Builder's Responsibility for the Work**

##### **a) Generally**

The Design-Builder shall be fully responsible for all work performed under this contract and no subcontractor will be recognized as such.

For purposes of assessing responsibility to the Design-Builder, all persons engaged in the work shall be considered as employees of the Design-Builder.

The Design-Builder shall give her/his personal attention to the fulfillment of the contract and keep all phases of the work under her/his control.

The Employer will not arbitrate disputes among subcontractors nor between the Design-Builder and one or more subcontractors concerning responsibility for performing any part of the project.

##### **b) Quality Control**

The Design-Builder shall be fully responsible for the quality of materials and workers skill in the project.

The Design-Builder shall not rely upon the inspection and testing provided by the Employer other than those special inspections and tests performed by the Employer's selected laboratories for which there are written reports.

##### **c) Burden for Damage**

From the issuance of the official Notice to Proceed until formal acceptance of the project by the Employer, the Design-Builder shall have the charge and care of and shall bear the risk of damage to the project and materials and equipment for the project.

The Design-Builder, at its own expense, shall promptly rebuild, repair, restore and make good all such damage to any portion or to all of the project and materials therefore before the acceptance of the project by the Employer except for such damage as is proximately caused by acts of the Employer or public enemy.

In case of suspension of work from any cause whatsoever, the Design-Builder shall be responsible for all materials and shall properly store them, if necessary and shall provide suitable drainage and erect temporary structures where necessary.

If the Design-Builder damages any property belonging to the Employer, the Employer may, in addition to other remedies available to the Employer, retain from the money due to the Design-Builder an amount sufficient to ensure repair of the damage or an amount to contribute towards repair of the damage.

The Design Builder shall be responsible for any damage to the project and materials and equipment for the project.

**d) Protection of Adjoining Facilities**

The Design-Builder shall protect adjoining property and nearby buildings, roads and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Design-Builder's operations.

Dust shall be controlled by sprinkling or other effective methods acceptable to Employer.

An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable Law.

**e) Safety**

The Design-Builder shall exercise precaution at all times for the protection of persons and their property.

The Design Builder shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the work or permanently installed as part of the project.

The Design-Builder shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights and warning signs.

The Design-Builder shall comply with all applicable laws relating to safety precautions, including the safety regulations of the Project Manager.

If the Design-Builder designates other employees, its Foreman shall have the duty of prevention of accidents.

The design-Builder shall institute a safety program, which includes all trades on the site.

Renovation, expansion, or remodel work of any existing building may expose workers to lead-containing materials such as paint, flashings and pipe joints. The Design-Builder shall comply with all applicable laws addressing such exposure.

The Employer and the Project Manager may bring to the attention of the Design-Builder a possible hazardous situation in the field regarding the safety of personnel on the site.

The Design-Builder shall be responsible for verifying that all local, state and Government workplace safety guidelines are being observed.

In no case shall this right to notify the Design-Builder absolve the Design-Builder of its responsibility for monitoring safety conditions.

Such notification shall not imply that anyone other than the Design-builder has assumed any responsibility for field safety operations.

In the event of an accident, the Design-Builder shall make available to the Employer copies of its accident report to its insurance carrier.



The Design-Builder shall determine the cause of the accident and immediately correct any equipment, procedure or condition contributing to the accident.

**f) Utilities**

- i) If the Design-Builder discovers utility facilities not identified in the contract documents, the Design-Builder shall immediately notify the Employer and the utility involved in writing of such discovery.

When the Design-Builder is required by the plans and specifications to locate, remove or relocate utility facilities not identified in the contract documents with reasonable accuracy, she/he shall be compensated for any reasonable actual added cost incurred.

The Design-Builder shall also be compensated for the cost of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the Design-Builder to exercise reasonable care.

All such compensation to the Design-Builder shall be based on an actual cost plus Design-Builder and subcontractor mark-up except that both the Design-Builder's and subcontractor's mark-up shall be reduced by six (6) percent each, where the damages results from the failure of the Design-Builder or subcontractor to exercise reasonable care.

The Employer or the public utility, where it is the owner of the utility facilities shall have the sole discretion to perform repairs, or relocation work or permit the Design-Builder to do such repairs or relocation work at a reasonable price, where such work is required to facilitate the project.

The Design-Builder shall not be assessed liquidated damages for delay in the completion of the project which is caused by the failure of the Employer or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.

- ii) With the exception of the identification of main trunk line utility facilities in the contract documents, the foregoing provisions of subclause (i) shall not apply to and Employer shall have no obligation to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities such as buildings, meter and junction boxes on or adjacent on the site of the construction.
- iii) Except as expressly provided in subclauses (i) and (ii) above, the Design-Builder shall be responsible at its own cost for all work, expense or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the project work including without limitation,  
  
repair of any damage that may result including any damage resulting from hand or exploratory excavation.

The Design-Builder is cautioned that the utilities encountered at the site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such cables, special precautions are to be observed by the Design-Builder at her/his own cost and shall include the following.

- (a) All cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor;
  - (b) Cause injury to persons and appropriate warnings signs, barricades and safety devices shall be erected.
- (iv) The Design-Builder shall provide to the Employer as-built drawings of all utilities encountered and constructed indicating the size, horizontal location and vertical location based on the project bench mark or a stable datum.

#### **4.06 Occupancy by Employer Prior to Acceptance**

The Employer reserves the right to occupy all or any part of the project prior to completion of the entire contract, upon issuance of a written contract change order therefore.

In such event, the Design-Builder shall be relieved of responsibility for any injury or damage to such occupied part as results from the Employer's occupancy and use.

If the Design-Builder carries insurance against damage to such premises or against liability to third persons covering the premises so used and occupied by the Employer and if such occupancy results in increased premiums for such insurance, the Employer will pay to the Design-Builder the added premium costs for such insurance during the period of occupancy.

The Occupancy change order shall be the vehicle for such payment, if applicable.

The Employer's occupancy shall not constitute acceptance by the Employer either of the project as completed or of any portion thereof, nor will it relieve the Design-Builder of full responsibility for correcting defective work or materials found at any time before the formal written acceptance of the project as completed by the Employer and during the full guarantee period after such acceptance, nor does it stop the assessment of liquidated damages.

However, when the project includes several separate facilities and one or more of such facilities is entirely occupied by the Employer, then upon written request of the Design-Builder, the guarantee period for the occupied facility may commence from the date of occupancy subject to written consent thereto by the Employer.

#### **4.07 Responsibility to Secure and Pay for permits, Licenses, Utility Connections Etc.**

The Design-Builder shall secure all permits and licenses required for any operations required under this contract and shall pay all costs relating thereto as well as all other fees and charges that are required by the Project Manager, telephone company, special district or quasi – Project Managerial entity.

It is the Design-Builder's responsibility to ascertain the necessity of such permits and licenses in preparing its tender and include in its tender the cost thereof as well as adjustments for any delays, which may be caused by securing permits and licenses.

#### **4.08 Patented or Copyrighted Materials**

The Design-Builder shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices or processes used on or incorporated in the project and agrees to save harmless, defend and indemnify the Employer Consultants, the Employer, Employees of each of them from all suits, actions or claims for or on account of the

use of any patented or copyrighted materials, equipment, devices or processes.

#### **4.09 Property Rights in Materials and Equipment**

Nothing in the contract shall be construed as vesting in Design-Builder any property in the materials or equipment after they have been attached to or permanently placed in or upon the work or the soil or after payment has been made for the value of the materials or equipment delivered to the site of the work whether or not they have been so attached or placed.

All such materials or equipment shall become the property of Employer upon being so attached or placed or upon payment of the value of the materials or equipment delivered on the site but not yet installed and the Design-Builder warrants that all such property shall pass to Employer free and clear of all liens, claims, security interests or encumbrances.

#### **4.10 Taxes**

The Design-Builder shall pay all taxes imposed by law which are levied or become payable as a result of the Design-Builder's performance under this contract.

#### **4.11. Contract Time**

**(a) Time is of the Essence.**

All time limits specified in this contract are of the essence of the contract.

**(b) Starting and Completion Date**

The Employer shall designate in the Notice to proceed the starting date of the contract on which the Design-Builder shall immediately begin and thereafter diligently execute the work to completion.

The design-Builder agrees to complete the work on the date specified for completion of the Design-Builder's performance in the contract unless such time is adjusted in writing by change order by the Employer.

The Design-Builder may complete the work before the completion date if it will not interfere with employer or other contractors engaged in related or adjacent work.

The work shall be regarded as completed as noted on the Employer Notice of Completion.

**4.12 Labour Force and Foreman**

At all times the Design-Builder shall provide sufficient labour to properly execute the work and to ensure completion of each part in accordance with the schedule and within the contract time.

The Design-Builder shall make certain that competent workers are employed who are skilled in the type of work required and that workmanship is of the best, regardless of the quality of material.

If in the judgment of the Employer, any person is incompetent or disorderly, the Design-Builder shall promptly remove such person from the project and shall not re-employ such person thereon.

The Design-Builder shall retain a competent, full time on-site Foreman to represent the Design Builder and to direct the project at all times while any work under this contract is being performed.

The Foreman shall prepare a daily report, which includes worker count and work in progress and shall provide the report to the Employer upon request.

The design-Builder shall make certain that all subcontractors employed are properly registered and are in good standing with Project Manager requirements.

#### **4.13 Limitation of Construction Operations**

The Design-Builder shall limit the area and nature of the construction operations to that which is authorized in the plans and specifications or approved in writing by the Employer.

The Design-Builder shall be responsible to others engaged in the related or adjacent work for all damage to work, to persons and to property and for loss caused by failure to complete the work within the specified time for completion.

The Design-Builder shall coordinate its work with the work of others so that no discrepancies shall result in the project.

#### **4.14 Drawings Reflecting Actual Construction**

During the course of construction, the Design-Builder shall maintain drawings daily to show the project as it is actually constructed.

Every sheet of the plans and specifications, which differs from the actual construction, shall be marked and sheets so changed shall be noted on the title sheets of the plans and specifications.

All variation orders shall be shown by reference to sketch drawings and any supplementary drawings or change order drawings shall be included.

The Design-Builder shall review the “as-built” drawings with the Project Manager at least once a month to demonstrate that all changes that have occurred are being fully and accurately recorded.

The altered contract drawings shall be sufficiently detailed so that future work on the project or in adjacent areas may be conducted with a minimum of difficulty.

Prior to the completion of the project and prior to release of the final retention payments the “as-built” drawings and specifications shall be transmitted to the Project Manager for further handling with a copy of the transmittal to the Employer.

Additionally, the Design-Builder shall turn over to the Employer a re-drafted and complete set of “as-built”: drawings of the actual construction.

Final payment will not be made to the Design-Builder until the “as-built” drawings are received and spot checked by the Employer. Corrections if any shall be made as necessary.

#### **4.15 Access for Inspection**

The Design Builder shall at all times permit the Employer and the Project Manager to visit and inspect the work and the shops where work is in preparation and shall maintain proper facilities and provide safe access for such inspection.

Work requiring testing, inspection or verification shall not be covered up without such test, inspection or approval.

The Design-Builder shall notify the Project Manager in writing at least 24 hours in advance of the Project Manager being required to inspect the work.

For a project with part time inspection, a minimum of 48 hours written notification by the Design-Builder to the Project Manager is required before the Project Manager is required to inspect the work, whenever the Design-Builder intends to perform work on a Saturday.

#### **4.16 Clean-up of Project and Site**

The Design-Builder shall clean up its work at frequent intervals and at other times when directed by the Employer.

At all times while finish work is being done, floors shall be kept broom clean.

Upon completion of the work, the Design-Builder shall promptly remove from the premises construction equipment and any waste materials not previously disposed of leaving the premises thoroughly clean and ready for occupancy.

In the event the Design-Builder does not maintain the project or the site clear of debris and rubbish in manner acceptable to the Employer, the Employer may cause the project or site to be properly cleaned and may withhold the expense incurred therefore from payments due to the Design-Builder.

#### **4.17 Project Sign, Advertising**

The design-Builder shall furnish and install a project sign required as part of the work under the contract.

As a minimum, the sign shall be 2 metres wide and 4 metres high.

The sign shall identify the Project Name, the Employer, the Design-Builder and the Project Manager.

No advertising is permitted on the project or site without written permission from the Employer.



## **5.0 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS**

### **5.01 Interpretation of Contract Requirements**

#### **(a) Correlation**

Contract documents shall be interpreted as being complementary, requiring a complete project.

Any requirement occurring in any one of the contract documents is as binding as though occurring in all contract documents.

Generally, the specifications address quality, types of materials and contract conditions while the drawings show placement, sizes and fabrication details of materials.

#### **(b) Conflicts**

In the event of conflict in the contract documents, the following priorities shall govern:

- (i) Addenda shall govern over all other contract documents and subsequent addenda shall govern over prior addenda only to the extent modified.
- (ii) “Contract Conditions” shall govern over all sections of the specifications.

No section of the specifications shall modify the Contract Conditions.

- (iii) In the event that provisions of codes, safety orders contract documents, referenced manufacturers specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

#### **(c) Omissions**

In the event of omissions in the contract documents the following shall apply:

- (i) If the contract documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the contract documents in accordance with such standard.

“Minor Detail” shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial and shall include a single component that is incidental even though its cost or importance may be substantial.

- (ii) The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size and profile of the parts of materials otherwise set forth in the contract documents.

## **5.02 Issuance of Interpretations, Clarifications, Additional Instructions**

Should the Design-Builder discover any conflicts, omissions or errors in the contract or have any question concerning interpretation or clarification of the contract, the Design-Builder shall request in writing interpretation, clarification or additional detailed instructions before proceeding with the work affected.

The written request shall be given to the Design-Builder with copies to the Employer and to the Project Manager.

The Employer shall, within a reasonable time, issue in writing the interpretation, clarification or additional detailed instructions requested.

Should the design-Builder proceed with the work affected before receipt of the interpretation, clarification or instructions from the Employer, the Design-Builder shall replace or adjust any work not in

conformance therewith and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification or additional detailed instructions as approved by the Employer and in the opinion of the Design-Builder, constitute work beyond the scope of the contract, the Design-Builder must submit written notice thereof to the Employer within seven calendar days following receipt of such interpretation, clarification or additional detailed instructions and in any event prior to commencement of work thereon.

The Design-Builder shall send copies of such correspondence to the Project Manager. Within seven calendar days after the Design-Builder issues its written notice, the Design-Builder shall submit an explanation of how the interpretation, clarification or additional detailed instruction constitutes work beyond the scope of the contract, along with a detailed cost breakdown and an explanation of any delay impacts.

If in the judgment of the Employer, the notice is justified, the interpretation, clarification or additional detailed instructions shall be revised or the extra work authorized by contract change order or by Site Instruction with a change order to follow.

If the Employer decides that the claim is not justified the Employer shall give the Design-Builder a written order that the claim is not justified and direct the Design-Builder to perform such work.

The Design-Builder shall proceed with the work upon receipt from the Employer of a written order to do so, in accordance with the Employer's interpretation of the contract requirements, but within seven days of receipt of the order, the Design-Builder must notify the Employer by letter that it protests the decision.

When performing disputed work, the Design-Builder shall prepare time and materials records for each day and the Site Manager shall verify these records at the conclusion of each day.

The Design-Builder shall have no claim for additional compensation because of such interpretation, clarification or additional detailed

instruction, unless he/she gives written notice to the Employer within seven calendar days as specified above.

### **5.03 Product and Reference Standards**

#### **(a) Product Designation**

When descriptive catalog designations, including the manufacturer's product brand name, or model number are referred to in the contract, such designations shall be considered as those found in industry publications.

#### **(b) Reference Standards**

When standards of the Project Manager, trade societies or trade associations are referred to in the contract by specific date of issue, these shall be considered a part of this contract.

When such references do not bear a date of issue, the current and most recently published edition shall be considered a part of this contract.

### **5.04 Shop Drawings, Samples, Alternatives or Equals, Substitutions**

#### **(a) Submittal Procedure**

The Design-Builder shall review and approve all shop drawings. "Shop drawings" include drawings, diagrams, illustrations, schedules, performance charts, brochures and catalogs and other data prepared by the Design-Builder or any subcontractor, manufacturer, supplier or distributor, which illustrate some portion of the work.

The Design-Builder shall promptly review and mark the shop drawings approved and submit to the Employer, so as to cause no delay in the work together with samples as required by the

contract and shall also submit any offers of alternatives or substitutions.

The design-Builder shall submit at least four copies of shop drawings with three to be retained by the Employer.

All such submittals shall be sent to the Employer at the address given in the instructions to the Design-Builder at the job start meeting.

A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations in the shop drawings and samples from the requirements of the contract.

Failure by the Design-Builder to identify all deviations may render any action taken by the Employer on the materials submitted to be void.

Whether to void such action shall be in the discretion of the Employer.

The letter and all items accompanying it shall be fully identified as to project name and location, the Design-Builder's name and contract number.

By submitting the approved shop drawings and samples, the Design-Builder represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the contract.

**(b) Samples**

Samples are physical examples furnished by the Design-Builder to illustrate materials, equipment, color, texture or workmanship and to establish standards by which the work will be judged.

The work shall be in accordance with the samples, submitted as required by the contract and reviewed by the Employer.

The Design-Builder shall remove samples from the site when directed by the Employer.

Samples not removed by the Design-Builder at the Employer's option will become the property of the Employer or will be removed or disposed of by the Employer at the Design-Builder's expense.

**(c) Alternatives or Equals**

For convenience in designation on the plans or in the specifications certain materials or equipment may be designated

by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name".

Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the Proposer complies with the following requirements.

- (i) The Proposer shall submit his or her proposal to the Employer for an alternative as "an equal" in writing prior to the award of the contract as required by the Employer.
- (ii) In exceptional cases where the best interests of the Employer so require, the Employer may give written consent to a submittal or re-submittal received after the expiration of the time limit designated.

If a Proposer desires consideration of "an equal" prior to submitting proposals, the Proposer is responsible for a timely submittal.

- (iii) No proposal will be considered unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the Employer.

- (iv) The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Proposer.

Where the material is specified by capacity or performance, the burden of proof shall be on the proposer to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified.

The Proposer shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met.

The Employer shall be the judge of such matters. If the Employer rejects the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, articles or equipment, or because of deviations from contract documents such changes or delays shall be made at the design-Builder's expense without recourse for reimbursement from the Employer.

**(d) Substitutions**

If the Design-Builder proposes a product that is of lesser or greater quality or performance than the specified material or equipment, the Design-Builder must submit any cost impact of this substitution.

By submitting a substitute, the Design-Builder waives any rights to claim a delay due to the processing of this substitution.

The time for submission of a substitute of an unequal product shall be restricted to 5 days after the effective date on the Notice-

to-Proceed unless the Employer allows a longer or shorter period in writing.

### **5.05 Quality of Materials, Articles and Equipment**

Materials articles and equipment furnished by the Design-Builder for incorporation into the work shall be new.

When the contract requires that materials, articles or equipment be furnished but the quality or kind thereof is not specified, the Design-Builder shall furnish materials, articles or equipment at least to the kind or quality or both of materials, articles or equipment which are specified.

### **5.06 Testing Materials, Articles, Equipment and Work**

Materials, articles and equipment requiring tests shall be delivered to the site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval.

The Design-Builder shall be solely responsible for notifying the Employer where and when materials, articles, equipment and work are ready for testing.

Should any such materials, articles, equipment or work be covered without testing and approval, if required, they shall be uncovered at the Design-Builder's expense.

The Employer has the right to order the testing of any other materials, articles, equipment or work at any time during the progress of the work. Unless otherwise directed, all samples for testing shall be taken by the Employer from materials, articles or equipment to be used on the project or from work performed.

All tests will be under the supervision of and at locations convenient to the Employer.

The Employer shall select the laboratories for all tests.

Decisions regarding the adequacy of materials, articles, equipment or work shall be issued to the Employer in writing.



All costs of the initial required tests shall be borne by the Design-builder.

The Employer may decide to take further samples and tests and if the results show that the work was not defective, the Employer shall bear the costs of such samples and tests.

In the event the results of such additional samples and tests show that the work was defective, the Design-builder shall bear the cost of such samples and tests.

Samples that are of value after testing shall remain the property of the Design-Builder. The Employer may be backcharge to the Design-Builder all retesting and re-inspection costs.

#### **5.07 Rejection**

Should any portion of the work done or any materials, articles or equipment delivered fail to comply with the requirements of the contract, such work, materials, articles or equipment shall be rejected in writing and shall immediately be made satisfactory to the Employer, by the Design-Builder at no additional expense to the Employer.

Any materials, articles or equipment, which are rejected, shall immediately be removed from the premises at the expense of the Design-Builder.

The employer may retain one and one-fourth times the cost of the rejected materials, articles, equipment and work from any payments due to the Design-Builder until such time as it is made acceptable to the Employer.

#### **5.08 Responsibility of Quality**

The testing and inspection provided by the Employer shall not relieve the Design-Builder of its responsibility for the quality of materials and workmanship provided by the Design-Builder and the Design-Builder shall make good all defective work discovered during or after completion of the project.

## **5.09 Guarantee**

The design-Builder hereby unconditionally guarantees the work under this contract to be in conformance with the contract requirements and to be and remain free of defects in workmanship and materials for a period of one year from the date of acceptance of the project, unless a longer guarantee period is agreed between the parties.

By this guarantee the Design-Builder agrees within the guarantee period, to repair or replace any work together with any adjacent work which may be displaced in so doing which is not in accordance with the requirements of the contract or which is defective in its workmanship or material, all without any expense whatsoever to the Employer.

Special guarantees that are required by the contract shall be signed by the Design-Builder, who is responsible for the entire work and countersigned by the sub contractor who performs the work.

Contract bonds shall remain in full force and effect during the one-year guarantee period, unless a longer bond period is agreed.

The design-Builder further agrees that within five (5) calendar days after being notified in writing by the Employer of any work not in accordance with the requirements of the contract or of any defects in the work, the Design-Builder shall commence and execute with diligence all work necessary to fulfill the terms of this guarantee and to complete the work in accordance with the requirements of the contract within a reasonable period of time.

The Design-Builder in the event of failure to so comply, does hereby authorize the Employer to proceed to have the work done at the Design-Builder's expense and the Design-Builder agrees to pay the cost thereof upon demand.

The Employer shall be entitled to be reimbursed by the Design-Builder all costs necessarily incurred upon the Design-Builder's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of the Employer, employees, property or the public, the Employer may undertake at the Design-Builder's expense without prior notice, all work necessary to correct any hazardous conditions caused by the work of the Design-Builder not being in accordance with the requirements of this contract.

## **4.2 CONDITIONS OF CONTRACT**

### **NOTES ON THE CONDITIONS OF CONTRACT**

The Conditions of contract contained in this standard document for Procurement of Works or Plant (Turnkey Projects) are those suitable for procurement of Buildings and Associated Civil Engineering Works

These Conditions of Contract shall be substituted with the suitable Conditions of Contract to suit the relevant procurement i.e.

The applicable contract shall be the Kenya Association of Building and Civil Engineering Contractors (KABCEC) which shall be amended accordingly to be in harmony with the Agreement and Conditions of Contract published by PPOA (The Public Procurement Oversight Authority)

#### **4.2.1 Definitions**

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

“Bill of Quantities” means the period 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 execute, complete and maintain the Works.

“The Contractor” refers to the person or corporate body who’s tender to carry out the Works has been accepted by 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 a 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” is the period named in the Contract Data and calculated from the Completion Date.

### 4.3 SPECIFICATION

Notes for preparing Specifications

- 1.0 Specifications must be drafted to present a clear and precise statement of the required standard of materials, and workmanship for tenderers to respond realistically and competitively to the requirements of the employer and ensure responsiveness of tenders. The Specifications should require that all materials, plant and other suppliers to be incorporated in the Works be new, unused, of the most recent or current model and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsible for the design of any part of the permanent works, the extent of his obligations must be stated.
- 2.0 Specifications from previous similar projects are useful and it may not be necessary to re-write specifications for every works contract for universal application.
- 3.0 There are considerable advantages in standardizing **General Specifications** for repetitive Works in recognized public sectors, such as highways urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions, although not necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General Specifications to the particular Works

- 4.0** Care must be taken in drafting Specifications to ensure they are not restrictive. In the specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized international standards be used.
- 5.0** The Employer should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in tender documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential tenderers. The Employer should provide a description of the selected parts of the works with appropriate reference to Drawing, Specifications, Bills of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and specifications.

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

#### 4.4 **DRAWINGS**

Note Contract drawings will be those submitted by the EPC bidder. Site details and dimensions should be confirmed by the bidder on site.

## 4.5 STANDARD FORMS

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**(i) FORM OF TENDER SECURITY**

WHEREAS ..... (Hereinafter called “the Tenderer”) has submitted his tender dated ..... for the construction ..... of .....  
.....  
..... (*Name of Contract*)

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

THE CONDITIONS of this obligation are:

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

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



This guarantee will remain in force up to and including thirty (30) days after the period of tender validity (*which in this case is (One Hundred and Twenty) 120 days*), and any demand in respect thereof should reach the Bank not later than the said date.

\_\_\_\_\_

*[Date]*

\_\_\_\_\_

*[Signature of the Bank]*

\_\_\_\_\_

*[Witness]*

\_\_\_\_\_

*[Seal]*

**(ii) CERTIFICATION OF TENDERER'S VISIT TO SITE –  
(MANDATORY)**

This is to certify that

[Name/s] .....

.....

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

.....

.....

participated in the organized inspection visit of the site of the works for the

**[Name of Contract]**.....

..... Day of .....20 .....

Signed & Stamped

.....

[Employer's Representative]

.....

NOTE: This form is to be completed whether the site visit is made at the time of the organized site or privately organized.

*(iii) FORM OF WRITTEN POWER-OF-ATTORNEY*

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

.....  
[Name of Tenderer's Representative in block letters]

.....  
[Address of Tenderer's Representative]

.....  
[Signature of Tenderer's Representative]

**(iv) TENDER QUESTIONNAIRE**

Please fill in block letters

1. Full names of tenderer

.....

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

.....

3. Telephone number (s) of tenderer

.....

4. Telex address of tenderer

.....

5. Name of tenderers' representative to be contracted on matters of the tender during the tender period

.....

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

.....

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

Make copy and deliver to: \_\_\_\_\_ [name of Employer]

**(v) CONFIDENTIAL BUSINESS QUESTIONNAIRE**

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

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

*Part 1 – General*

Business Name

.....

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

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

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

Nature of Business.....

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

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

Name of your  
bankers.....

Branch.....

*Part 2 (a) – Sole Proprietor*

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

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

Citizenship details .....

*Part 2 (b) – Partnership*

*Give details of partners as follows:*

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

*Part 2(c) - Registered Company:*

Private or public .....

Issued Kshs. ....

Give details of all directors as follows

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

Part 2 (d) Interest in the Firm:

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

I certify that the information given above is correct

.....  
[Title]

.....  
[Signature]

.....  
[Date]

\* Attach proof of citizenship

**(vi) SCHEDULE OF PLANT AND EQUIPMENT**

OWNERSHIP

Particulars Of Each Unit	Type/ Rating	Serial No. & Reg. No.	Year of Manufacturer	Where made	Value	Owned SR. No. & Reg. No. Must be given	To Hire; Give name of owner and address	Hire Purchases: Give Details as stated at the foot note

Note \* Details of each machine/equipment in more than one of the same make or type must be given separately. Items to be imported pursuant to clause 48 of the conditions of contract to be indicated together with seller's name, address and CIF value. Details of proposed hire or hire purchase to be submitted giving names and address of hiring/selling party and serial number/engines number

\* Before the award of Contract, the Engineer or his representative may carry out physical verification of the availability of the plant and equipment listed on the schedule.

**(vii) JOINT VENTURE SUMMARY**

Names of all partners of a joint venture
1. Lead partner
2. Partner
3. Partner
4. Partner
5. Partner
6. Partner

Total value of annual construction turnover, in terms of work billed to clients

Annual turnover data (Construction only Kshs.)

Partner	Form 2 Page no.	Year 1	Year 2	Year 3	Year 4	Year 5
1. Lead Partner						
2. Partner						
3. Partner						
4. Partner						
5. Partner						
6. Partner						
TOTALS						





**(ix) SCHEDULE OF ONGOING CONTRACTS**

Name of Firm or Partner of a joint venture
--

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

Name of contract	Value of outstanding work (Kshs.)	Estimated completion date
1.		
2.		
3.		
4.		
5.		
6.		

**(x) PERSONNEL CAPABILITIES**

Name of Firm
--------------

For *position of team leader* which is essential to the contract implementation, Firms should provide the names of at least two candidates qualified to meet the specified requirements stated for each position. The data on their experience should be supplied in separate sheets.

1.	Title of position* <hr style="border: 1px solid black;"/> Name of prime candidate <hr style="border: 1px solid black;"/> Name of alternate candidate
2.	Title of position* <hr style="border: 1px solid black;"/> Name of prime candidate <hr style="border: 1px solid black;"/>  
3.	Title of position* <hr style="border: 1px solid black;"/> Name of prime candidate <hr style="border: 1px solid black;"/>  
4.	Title of position* <hr style="border: 1px solid black;"/> Name of prime candidate <hr style="border: 1px solid black;"/>  

**(xi) KEY PERSONNEL**

DESIGNATION	NAME	NATIONALITY	SUMMARY OF QUALIFICATIONS AND EXPERIENCE
1. Directors 2. Design Engineer 3. Design Architect 4. 5. etc			
Site: 1. Site Superintendent (steel) 2. Site Superintendent (Aluminum & glazing) 3. 4. 5. etc			

I certify that the above information is correct

.....  
[Title]

.....  
[Signature]

.....  
[Date]

**(xii) LITIGATION HISTORY**

Name of Firm or Partner of a joint venture

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

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

**(xiii) DETAILS OF SUB-CONTRACTORS**

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

Failure to comply with this requirement may invalidate the tender,

(I) Portion of Works to be sublet:

.....

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

.....

.....

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

.....

(2) Portion of Works to sublet:

.....

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

.....

.....

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

.....

.....

\_\_\_\_\_  
[Signature of Tenderer]

\_\_\_\_\_  
[Date]

***(vii) FINANCIAL CAPABILITY***

Name of Firm or partner of a joint venture
--

Firms, including each partner of a joint venture, should provide financial information to demonstrate that they meet the requirements stated in the Instructions to Bidders. Each firm or partner of a joint venture must fill in this form. If necessary, use separate sheets to provide complete banker information. A copy of the audited balance sheets should be attached.

Banker	Name of banker	
	Address of banker	
	Telephone	Contact name and title
	Fax	Telex

Summarize actual assets and liabilities in Kenya Shillings for the previous five years. Based upon known commitments, summarize projected assets and liabilities in Kenya Shillings for the next two years, unless the withholding of such information is justified by the Firm to the satisfaction of the Employer.

<i>Financial Information</i> <i>In Kshs.</i>	<i>Actual</i> <i>previous five years</i>				<i>Projected:</i> <i>next two months</i>	
	1.	2.	3.	4.	5.	6.
1. Total assets						
2. Current assets						
3. Total liabilities						
4. Current liabilities						
5. Profits before taxes						
6. Profits after taxes						

Specify proposed sources of financing to meet the cash flow demands of the Project, net of current commitments

Source of financing	Amount (Kshs.)
1.	
2.	
3.	
4.	



Attached audited financial statements for the last three years (for the individual Firm or each partner of a joint venture).

Firms owned by individuals, and partnerships, may submit their balance sheets certified by a registered accountant, and supported by copies of tax returns, if audits are not required by the laws of their countries of origin.

**(xv) 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

**(xvi) LETTER OF ACCEPTANCE**

**[Letterhead paper of the Employer]**

\_\_\_\_\_ [Date]

To:

\_\_\_\_\_ [Name of the Contractor]

\_\_\_\_\_ [Address of the Contractor]

Dear Sir,

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

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

Authorised Signature .....

Name and Title of Signatory .....

Attachment: Agreement

**(xvii) FORM OF AGREEMENT**

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
\_\_\_\_\_ between \_\_\_\_\_ of  
[or whose registered office is situated at]

(Hereinafter called “the Employer”) of the one part  
AND \_\_\_\_\_ of [or whose  
registered office is situated at] \_\_\_\_\_  
(Hereinafter called “the Contractor”) of the other part.

WHEREAS THE Employer is desirous that the Contractor executes

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

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.
  - (i) Letter of Acceptance
  - (ii) Form of Tender
  - (iii) Conditions of Contract Part I
  - (iv) Conditions of Contract Part II and Appendix to Conditions of Contract
  - (v) Specifications
  - (vi) Drawings
  - (vii) Priced Bills of Quantities/Priced Schedule of Rates [whichever is applicable]

3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
  
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

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

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

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

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

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

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

**(xviii) 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 words].

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

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

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

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

Yours faithfully,

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**(xix) PERFORMANCE BANK GUARANTEE**

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

Dear Sir,

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

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

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

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

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

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

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



**SECTION V - FINANCIAL PROPOSAL**

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**5.1 FORM OF TENDER**

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

The duration for undertaking the Design and Construction of the works as per our proposed programme is

\_\_\_\_\_ [weeks in figures]

\_\_\_\_\_ [weeks in words]

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.

3. We agree to abide by this tender until \_\_\_\_\_ [inset date], and it shall remain binding upon us and may be accepted at any time before the date.

4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.

5. We understand that you are not bound to accept the lowest or any tender you may receive.

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

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

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

of \_\_\_\_\_ [Address of Tenderer]

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

## 5.2 APPENDIX TO FORM OF TENDER

(This appendix forms part of the tender)

CONDITIONS OF CONTRACT	CLAUSE	AMOUNT
Tender Security (Bank Guarantee or PPOA approved Insurance Companies)		Kshs. 5,000,000/=
Amount of Performance Security (Bank Guarantee or PPOA approved Insurance Companies)		10% percent of Tender sum in the form of Unconditional bank Guarantee
Program to be submitted		Not later than 7 days after issuance of Order to Commence
Cash flow estimate to be submitted		Not later than 7 days after issuance of Order to Commence
Minimum amount of Third Party Insurance		Proportionate to Main Contractors – based on contract price
Period for commencement, from the Engineer's order to commence		14 days
Time for completion		Within Main Contractors Programme
Amount of liquidated damages		If the sub contractor is responsible for the default the full amount will be levied ie Ksh 200,000/= per calendar week.  If default is to be apportioned the Proportionate to Main Contractors – based on contract price will apply on a pro rata basis
Limit of liquidated damages		Ksh 200,000/= per calendar week
Defect Liability period		12 Months
Percentage of Retention		10% of interim Payment Certificate
Limit of Retention Money		5% of Contract Price
Minimum amount of interim certificates		N/A
Time within which payment to be made after Interim Payment Certificates signed by		14 days

Architect and presented to the employer		
Time within which payment to be made after Final Payment Certificate signed by Architect and presented to the employer		14 days
Appointer of Arbitrator		As per contract conditions
Notice to Employers Project Manager, Architect and Engineer		

Signature of Tenderer ..... Date .....

### 5.3 SCHEDULE OF MATERIALS; BASIC PRICES

(Ref; Clause 70 of Conditions of Contract)

MATERIAL	UNIT	ORIGIN AND PRICE			TRANSPORTATION COST FROM SOURCE OF ORIGIN	
		COUNTRY OF ORIGIN	SUPPLY	PRICE	MODE	PRICE (KSHS.)
Diesel	L					
Super Petrol	L					
Structural steel	Kg					
Oil and Lubricants	L					
Paint	L					
Structural steel	Kg					
Mild steel bolts	Kg					
Laminated Glass 10mm	sm					
Alucobond sheets	sm					
Concrete class 25	cm					
Prepainted Roofing sheets 24 gauge	sm					

I certify that the above information is correct

.....  
(Title)

.....  
(Signature)

.....  
(Date)

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

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

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

## ***5.4 BILLS OF QUANTITIES***

### **Notes for preparing Bills of Quantities by the tenderer**

4.5.1 The objectives of the Bills of Quantities are:-

- (a) to provide sufficient information on the quantities of Works to be performed
- (b) When a Contract has been entered into, for use in the periodic valuation of Works executed.

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

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

#### **a) Preliminaries**

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

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

#### **(b) Work Items**

(i) The items in the Bills of Quantities should be grouped into sections to distinguish between those parts of the Works which by nature, location, access, timing, or any other special characteristics may give rise to



difference methods of construction, or phasing of the Works, or considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities.

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

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

Unit	Abbreviation	Unit	Abbreviation
Cubic meter	M3 or cu m	Millimeter	Mm
Hectare	Ha	Month	Mon
Hour	H	Number	Nr
Kilogram	Kg	Square meter	M2 or sq m
Lump sum	Sum	Square millimeter	Mm2 or sq mm
Meter	m	week	Wk
Metric ton (1,000 kg)			

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

**(c) Day work Schedule**

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

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

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

**(d) Provisional Quantities and Sums**

(i) Provision for quantity contingencies in any particular item or class of Work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities, and not by increasing the quantities for that item or class of Work beyond those of the work covered above, a general provision for physical contingencies (quantity overruns) should be made by Bill of Quantities. Similarly, a contingency allowance for possible price increase should be provided as a "Provisional Sum" in the Summary of the Bill of Quantities. The inclusion of such provisional sums often facilities request periodic supplementary approvals as the future need arise.

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

**(e) Summary**

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

**SPECIMEN BILL OF QUANTITIES**



**5.6 MONTHLY CASH FLOW PROJECTION STATEMENT**

<b>Month</b>	<b>Monthly Projected Amount (Kshs)</b>	<b>Cumulative Amount (Kshs)</b>	<b>Remarks</b>
1			
2			
3			
4			
5			
6			
6			
7			
9			
10			
...			
<b>TOTAL CONTRACT PRICE</b>			

**6. DECLARATION FORM & ANTI CORRUPTION AFFIDAVIT**

Date \_\_\_\_\_

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

The tenderer i.e. (name and address) \_\_\_\_\_

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

- a) Has not been debarred from participating in public procurement.
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.
- c) All information provided in this tender is accurate and correct

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

(To be signed by authorized representative and officially stamped)

**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...

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

SIGNED  
Board Secretary