REPUBLIC OF KENYA

COUNTY GOVERNMENT OF BOMET
DEPARTMENT OF WATER, IRRIGATION, ENVIRONMENT AND CLIMATE CHANGE.

TENDER NAME: TENDER FOR SUPPLY AND DELIVERY, INSTALLATION, TESTING

AND COMMISSIONING OF SOLAR SYSTEM IN WATER SCHEMES

TENDER NO: CGB/DWI/002/2024/2025

CLOSING DATE: FRIDAY 13TH DECEMBER 2024 AT 1200 LOCAL HOURS

NEGOTIATION NO:1683393

BIDDERS ARE ENCOURAGED TO READ THROUGH THE TENDER DOCUMENT BEFORE MAKING THE BID.

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INVITATION TO TENDER

PROCURING ENTITY: COUNTY GOVERNMENT OF BOMET

P.O. BOX 19-20400 BOMET

CONTRACT NAME AND DESCRIPTION: SOLARISATION OF PUMPS AT TREATMENT WORKS FOR MOGOMBET (LOW LIFT AND HIGH LIFT) KAPRORON, LONGISA, SOTIK, GELEGELE AND KAPCHEKUCH WATER SUPPLY SCHEMES.

The COUNTY GOVERNMENT OF BOMET invites sealed tenders from eligible candidates for.

SOLARISATION OF PUMPS AT TREATMENT WORKS FOR MOGOMBET (LOW LIFT AND HIGH LIFT) KAPRORON, LONGISA, SOTIK, GELEGELE AND KAPCHEKUCH WATER SUPPLY SCHEMES.

1. Tendering will be conducted under **Open National Tender** using a standardized tender document. The tender is open to qualified bidders who are willing to participate.

2. Invited tenderers may obtain further information and inspect the Tender Documents during office hours0900 to 1700 at the address given below.

3. A complete set of tender documents will be issued to the tenderers upon payment of non –refundable fee of**Kenya Shillings 1,000/= (One Thousand) only** in cash or Bankers Cheque and payable to Principal Secretary, State Department for Energy.

4. Price quoted should be in Kenya Shillings and shall include all taxes. Tenders shall remain valid for 150 daysfrom the date of opening of tenders

5. All Tenders must be accompanied by a **tender Security of 2% of the quoted tender SUM**. **Tender SecurityMUST be in the form of Bank Guarantee** or Insurance bond from a reputable financial institution recognized by Central Bank of Kenya or PPRA and valid for at least 180 days from the tender opening date

6. The Tenderer shall chronologically serialize all pages of the tender documents submitted.

7. Completed tenders **Must** be delivered to the address below on or before **[FRIDAY 13TH December 2024 at 1200 hours].**

8. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.

9. Late tenders will be rejected

10. The addresses referred to above are:

a. **Address for obtaining further information and for purchasing tender documents**

County Government of Bomet

Department of Water, sanitation, Environment and
Natural Resources and Climate Change.
P.O. Box 19-20400,
Bomet.
Head, Supply Chain Management Services, email cgbprocurement@gmail.com

Address for Submission of Tenders.

County Government of Bomet

Department of Water, sanitation, Environment and
Natural Resources and Climate Change.
P.O. Box 19-20400,
Bomet.
Head, Supply Chain Management Services, email cgbprocurement@gmail.com

b. ***Address for Opening of Tenders.***

County Government of Bomet

Department of Water, sanitation, Environment and
natural Resources
P.O. Box 19-20400,
Bomet.
Head, Supply Chain Management Services, email cgbprocurement@gmail.com

Head, Supply Chain Management Services

Name_____

(*Official of the Procuring Entity issuing the invitation)*

Designation _____

Signature _____

Date_____

PART 1 - TENDERING PROCEDURES

SECTION I: INSTRUCTIONS TO TENDERERS

A General Provisions

1. Scope of Tender

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

2. Fraud and Corruption

2.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act,2015, Section 62 "Declaration not to engage in corruption". The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the personor his or her sub-contractors are not debarred from participating in public procurement proceedings.

2.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the"Certificate of Independent Tender Determination" annexed to the Form of Tender.

2.3 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or theirAffiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

2.4 Unfair Competitive Advantage -Fairness and transparency in the tender process require that the Firms or theirAffiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender being tendered for. The Procuring Entity shall indicate in the **TDS** firms(if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfaircompetitive advantage over competing firms.

3. Eligible Tenderers

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

. Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister.

Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial orcontrolling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

3.3 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, ifthe tenderer:

a) Directly or indirectly controls, is controlled by or is under common control with another tenderer; or

b) Receives or has received any direct or indirect subsidy from another tenderer; or

c) Has the same legal representative as another tenderer; or

d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position

to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding thistendering process; or

e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications ofthe works that are the subject of the tender; or

f) any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as Engineer for theContract implementation; or

g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document or

h) Has a close business or family relationship with a professional staff of the Procuring Entity who:

i) are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or

ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.

3.4 A tenderer shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. A tenderer thatis proven to have been involved any of these practices shall be automatically disqualified.

3.5 A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participationshall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a tenderer or a JVmember may participate as a subcontractor in more than one tender. Members of a joint venture may not alsomake an individual tender, be a subcontractor in a separate tender or be part of another joint venture for thepurposes of the same Tender.

3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.8.A Tenderershall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub- consultants for any part of the Contract including related Services.

3.7 Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or beawarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.

3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are accredited by PPRA to be (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget supportfrom any public entity or Government, and (iii) operating under commercial law and vested with legal rights andliabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.

3.9 A Firms and individuals may be ineligible if their countries of origin (a) as a matter of law

official regulations,Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

3.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will beautomatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in *"SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9".*

3.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer isnot registered in Kenya or if the tenderer is registered in Kenya and has <u>less than 51 percent</u> ownership by Kenyan

Citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.

3.12 The National Construction Authority Act of Kenya requires that all local and foreign contractors be registeredwith the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before such award and signature of contract. Application for registration with National Construction Authority may be accessed fromthe website www.nca.go.ke.

3.13 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenyamay be accessed from the website www.cak.go.ke

3.14 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid taxclearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

4. Eligible Goods, Equipment, and Services

4.1 Goods, equipment and services to be supplied under the Contract may have their origin in any country that is noteligible under ITT 3.9. At the Procuring Entity's request, Tenderers may be required to provide evidence of theorigin of Goods, equipment and services.

4.2 Any goods, works and production processes with characteristics that have been declared by the relevant nationalenvironmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

5. Tenderer's Responsibilities

5.1 The tenderer shall bear all costs associated with the preparation and submission of his/her tender, and theProcuring Entity will in no case be responsible or liable for those costs.

5.2 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's ownexpense.

5.3 The Tenderer and any of its personnel or agents will be granted permission by the Procuring Entity to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify the Procuring Entity against allliability arising from death or personal injury, loss of or damage to property, and any other losses and expensesincurred as a result of the inspection.

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

B. Contents of Tender Documents

6. Sections of Tender Document

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

PART 1 Tendering Procedures

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

PART 2 Works Requirements

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

PART 3 Conditions of Contract and Contract Forms

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

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

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

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

7. Site Visit

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

8. Pre-Tender Meeting

8.1 The Procuring Entity shall specify in the **TDS** if a pre-tender meeting will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender site visit will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works.The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than theperiod specified in the **TDS** before the meeting.

8.3 Minutes of the pre-Tender meeting and the pre-arranged pretender site visit of the site of the works, if applicable,including the text of the questions asked by Tenderers and the responses given, together with any responsesprepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.

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

9. Clarification and amendments of Tender Documents

9.1 ATenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at theProcuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre-

arranged pretender visit of the site of the works if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than theperiod specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forwardcopies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If specified in the **TDS**, the ProcuringEntity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 8.4.

10. Amendment of Tendering Document

10.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tenderingdocument by issuing addenda.

10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.4.

10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordancewith ITT 25.2 below**.**

C. Preparation of Tenders

11. Cost of Tendering

11.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the ProcuringEntity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

12. Language of Tender

12.1 The Tender, as well as all correspondence and documents relating to the tender exchanged by the tenderer and theProcuring Entity, shall be written in the English Language. Supporting documents and printed literature that arepart of the Tender may be in another language provided they are accompanied by an accurate and notarizedtranslation of the relevant passages into the English Language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

13. Documents Comprising the Tender

13.1 The Tender shall comprise the following:

a) Form of Tender prepared in accordance with ITT 14;
b) Schedules including priced Bill of Quantities, completed in accordance with ITT 14 and ITT 16;
c) Tender Security or Tender-Securing Declaration, in accordance with ITT 21.1;
d) Alternative Tender, if permissible, in accordance with ITT 15;
e) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, inaccordance with ITT 22.3;

f) Qualifications: documentary evidence in accordance with ITT 19establishing the Tenderer's qualificationsto perform the Contract if its Tender is accepted;

g) Conformity: a technical proposal in accordance with ITT 18;

h) Any other document required in the **TDS**.

13.2 In addition to the requirements under ITT 11.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender,

together with a copy of the proposed Agreement. The Tenderer shall chronologically serialize pages of all tenderdocuments submitted.

13.3 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to bepaid to agents or any other party relating to this Tender**.**

14. Form of Tender and Schedules

14.1 The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and nosubstitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested.

15. Alternative Tenders

15.1 Unless otherwise specified in the **TDS**, alternative Tenders shall not be considered.

15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **TDS**, and the method of evaluating different alternative times for completion will be described in Section III,Evaluation and Qualification Criteria.

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

16. Tender Prices and Discounts

16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements specified below.

16.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Procuring Entity. An item not listed in the pricedBill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determinedwill be used for price comparison.

16.3 The price to be quoted in the Form of Tender, in accordance with ITT 14.1, shall be the total price of theTender, including any discounts offered.

16.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, inaccordance with ITT 14.1.

16.5 It will be specified in the **TDS** if the rates and prices quoted by the Tenderer are or are not subject to adjustmentduring the performance of the Contract in accordance with the provisions of the Conditions of Contract, except in cases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Procuring Entity may require the Tenderer to justify its proposed indices and weightings.

16.6 Where tenders are being invited for individual lots (contracts)or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender theprice reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 16.4, provided the Tenders for all lots (contracts) are opened at the same time.

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

17. Currencies of Tender and Payment

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

18. Documents Comprising the Technical Proposal

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

19. Documents Establishing the Eligibility and Qualifications of the Tenderer

19.1 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance with ITT 4.

19.2 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract the Tenderer shall provide the information requested in the corresponding information sheets included inSection IV, Tender Forms.

19.3 A margin of preference will not be allowed. Preference and reservations will be allowed, individually or in joint ventures. Applying for eligibility for Preference and reservations shall supply all information required to satisfy thecriteria for eligibility specified in accordance with ITT 33.1.

19.4 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details ofownership, as shall be required to determine whether, according to the classification established by the ProcuringEntity, a contractor or group of contractors qualifies for a margin of preference. Further the information willenable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.

19.5 The purpose of the information described in ITT 19.4 above overrides any claims to confidentiality which atenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership andcontrol.

19.6 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entitymay request in relation to ownership and control which ormation on any changes to the information which was provided by the tenderer nder ITT 6.3. The obligations to require this information shall continue for the

duration of the

procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

19.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurateas at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.

19.8 If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly,if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the informationsubmitted by a tenderer pursuant to these requirements, then the tender will be rejected.

19.9 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity(whether through its own enquiries, through notification by the public or otherwise), shows any conflict of

interest which could materially and improperly benefit the tenderer in relation to the procurement or contractmanagement process, then:

i) if the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
ii) if the contract has been awarded to that tenderer, the contract award will be set aside,
iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether thetenderer or any other persons have committed any criminal offence.

19.10 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, orattempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

20. Period of Validity of Tenders

20.1 Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period startsfrom the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance withITT 24). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 21.1, it shall also be extended for thirty (30)days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 20.3.

20.3 If the award is delayed by a period exceeding the number of days to be specified in the **TDS** days beyond theexpiry of the initial tender validity period, the Contract price shall be determined as follows**:**

a) in the case of **fixed price** contracts, the Contract price shall be the tender price adjusted by the factorspecified in the **TDS**;
b) in the case of **adjustable price** contracts, no adjustment shall be made; or in any case, tender evaluationshall be based on the tender price without taking into consideration the applicable correction from thoseindicated above.

21. Tender Security

21.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the **TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified inthe **TDS**. A Tender-Securing Declaration shall use the form included in Section IV, Tender Forms**.**

21.2 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand guarantee in any ofthe following forms at the Tenderer's option:

a) ~~an unconditional Bank Guarantee issued by reputable commercial bank); or~~
b) an irrevocable letter of credit;

c) a Banker's cheque issued by a reputable commercial bank; or

d) another security specified **in the TDS**,

21.3 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30)days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT20.2.

21.4 If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender- Securing Declaration shall be rejected bythe Procuring Entity as non-responsive.

21.5 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the **TDS**. The Procuring Entity shall also promptlyreturn the tender security to the tenderers where the procurement proceedings are terminated, all tenders were

determined nonresponsive or a bidder declines to extend tender validity period.

21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successfulTenderer has signed the Contract and furnished the required Performance Security, and any other documentsrequired in the **TDS**.

21.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:

e) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on theForm of Tender, or any extension thereto provided by the Tenderer; or

f) if the successful Tenderer fails to:

i) sign the Contract in accordance with ITT 50; or

ii) furnish a Performance Security and if required in the **TDS**, and any other documents required in the **TDS**.

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

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

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

22. Format and Signing of Tender

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

22.2 Tenderers shall mark as "CONFIDENTIAL" all information in their Tenders which is confidential to theirbusiness. This may include proprietary information, trade secrets, or commercial or financially sensitiveinformation.

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

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

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

D. Submission and Opening of Tenders

23. Sealing and Marking of Tenders

23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package orcontainer. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

a) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, asdescribed in ITT 11; and

b) in an envelope or package or container marked "COPIES", all required copies of the Tender; and

c) if alternative Tenders are permitted in accordance with ITT 15, and if relevant:

i) in an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", thealternative Tender; and

ii) in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", allrequired copies of the alternative Tender.

The inner envelopes or packages or containers shall:

a) bear the name and address of the Procuring Entity.

b) bear the name and address of the Tenderer; and

c) bear the name and Reference number of the Tender.

23.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume noresponsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

24. Deadline for Submission of Tenders

24.1 Tenders must be received by the Procuring Entity at the address specified in the **TDS** and no later than the dateand time also specified in the **TDS**. When so specified in the **TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the **TDS**.

24.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

25. Late Tenders

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

26. Withdrawal, Substitution, and Modification of Tenders

26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice,duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT22.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

a) prepared and submitted in accordance with ITT 22 and ITT 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;"and

b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordancewith ITT 24.

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

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

27. Tender Opening

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

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

and is read out at Tender opening.

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

27.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. NoTender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

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

27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed bythe members of the tender opening committee attending the opening. The number of representatives of the Procuring Entity to sign shall be specified in the **TDS**.

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

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

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

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

E. Evaluation and Comparison of Tenders

28. Confidentiality

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

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

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

29. Clarification of Tenders

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

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

30. Deviations, Reservations, and Omissions

30.1 During the evaluation of tenders, the following definitions apply:

a) "Deviation" is a departure from the requirements specified in the tender document;

b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of therequirements specified in the tender document; and

c) "Omission" is the failure to submit part or all of the information or documentation required in the Tenderdocument.

31. Determination of Responsiveness

31.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the tenderitself, as defined in ITT 13.

31.2 A substantially responsive Tender is one that meets the requirements of the Tender document without materialdeviation**, reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:**

a) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or

b) limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights or thetenderer's obligations under the proposed contract; or

c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantiallyresponsive tenders.

31.3 The Procuring Entity shall examine the technical aspects of the tender submitted in accordance with ITT 18, toconfirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.

31.4 If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by theProcuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

32. Non-material Non-conformities

32.1 Provided that a tender is substantially responsive, the Procuring Entity may waive any non-conformities in thetender.

32.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the tenderer submit thenecessary information or documentation, within a reasonable period, to rectify nonmaterial non-conformities in the tender related to documentation requirements. Requesting information or documentation on such non- conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to comply with the request may result in the rejection of its tender.

32.3 Provided that a tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified inthe **TDS.**

33. Arithmetical Er ors

33.1 The tender sum as submitted and read out during the tender opening shall be absol

and final and shall not bethe subject of correction, adjustment or amendment in any way by any person or entity.

33.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the followingbasis:

a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead todisqualification of the tender as non-responsive.

b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, and subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall leadto disqualification of the tender as non-responsive. and

c) if there is a discrepancy between words and figures, the amount in words shall prevail

33.3 Tenderers shall be notified of any error detected in their bid during the notification of a ward.

34. Currency provisions

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

35. Margin of Preference and Reservations

35.1 No margin of preference shall be allowed on contracts for small works.

35.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and/or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to those specified groups are the only ones eligible to tender. Otherwise if no so stated, the invitation will be open to all tenderers.

36. Nominated Subcontractors

36.1 Unless otherwise stated in the **TDS**, the Procuring Entity does not intend to execute any specific elements of theWorks by subcontractors selected in advance by the Procuring Entity.

36.2 Tenderers may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the **TDS**. Subcontractors proposed by the Tenderer shall be fully qualified for their parts of the Works.

36.3 The subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works unless their specializedparts of the Works were previously designated by the Procuring Entity in the **TDS** as can be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Tenderer may be added to the qualifications of the Tenderer.

37. Evaluation of Tenders

37.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria andmethodologies the Procuring Entity shall determine the Best Evaluated Tender in accordance with ITT 40.

37.2 To evaluate a Tender, the Procuring Entity shall consider the following:

a) price adjustment due to discounts offered in accordance with ITT 16;
b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency inaccordance with ITT39;
c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 30.3; and
d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and QualificationCriteria.

37.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.

In the case of multiple contracts or lots, Tenderers shall be allowed to tender for one or

more lots and the methodology to determine the lowest evaluated cost of the lot (contract) combinations, including any discounts offered in the **Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.**

38. Comparison of Tenders

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

39. Abnormally Low Tenders

39.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender,appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.

39.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and anyother requirements of the Tender document.

39.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer hasfailed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entityshall reject the Tender.

40. Abnormally High Tenders

40.1 An abnormally high price is one where the tender price, in combination with other constituent elements of theTender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the ProcuringEntity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

40.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, checkif the estimated cost of the contract is correct and review the Tender Documents to check if the specifications,scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entitymay accept or not accept the tender depending on the Procuring Entity's budget considerations.

ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

40.3 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the ProcuringEntity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering**.**

41. Unbalanced and/or Front-Loaded Tenders

41.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications.Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

41.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the ProcuringEntity may as appropriate:

a) accept the Tender; or

b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to alevel not exceeding a 30% of the Contract Price; or

c) agree on a payment mode that eliminates the inherent risk of the Procuring Enti

paying too much forundelivered works;or

d) reject the Tender,

42. Qualifications of the Tenderer

42.1 The Procuring Entity shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specifiedin Section III, Evaluation and Qualification Criteria.

42.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT
19. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates,subcontractors (other than Specialized Subcontractors if permitted in the Tender document), or any other firm(s) different from the Tenderer.

42.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative

determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed tothe Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

42.4 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender,appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.

42.5 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and anyother requirements of the Tender document.

42.6 After evaluation of the price analyses, if the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall rejectthe Tender.

43. Best Evaluated Tender

43.1 Having compared the evaluated prices of Tenders, the Procuring Entity shall determine the Best Evaluated Tender. The Best Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whoseTender has been determined to be:

a) Most responsive to the Tender document; and
b) the lowest evaluated price.

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

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

F. Award of Contract

45. Award Criteria

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

46. Notice of Intention to enter into a Contract

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

a) the name and address of the Tenderer submitting the successful tender;
b) the Contract price of the successful tender;
c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed wasunsuccessful, unless the price information in (c) above already reveals the reason;

d) the expiry date of the Standstill Period; and
e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

47. Standstill Period

47.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall notapply.

47.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to eachTenderer the Notification of Intention to Enter **into a Contract with the successful Tenderer.**

48. Debriefing by the Procuring Entity

48.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 46, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt ofthe request.

48.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its owncosts of attending **such a debriefing meeting.**

49. Letter of Award

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

50. Signing ofContract

50.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the partiesmeeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

50.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, andreturn it to the Procuring Entity.

50.3 The written contract shall be entered into within the period specified in the notification of award and beforeexpiry of the tender validity period

51. Appointment of Adjudicator

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

52. Performance Security

52.1 Within twenty-one (21) days of the receipt of the Letter of Acceptance from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the **TDS**, in accordancewith the General Conditions of Contract, subject to ITT 40.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unlessthe Procuring Entity has agreed in writing that a correspondent bank is not required.

52.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the **TDS**, or sign the Contract shall constitute sufficient

grounds for the annulment of the award andforfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

52.3 Performance security shall not be required for contracts estimated to cost less than Kenya shillings five millionshillings**.**

53. Publication of Procurement Contract

53.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall containthefollowing information:

a) name and address of the Procuring Entity;

b) name and reference number of the contract being awarded, a summary of its scope and the selection

method used;

c) the name of the successful Tenderer, the final total contract price, the contract duration.

d) dates of signature, commencement and completion of contract;

e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

54. Procurement Related Complaints and Administrative Review

54.1 The procedures for making Procurement-related Complaints are as specified in the **TDS**.

54.2 A request for administrative review shall be made in the form provided under contract forms.

Section II - Tender Data Sheet (TDS)

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

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	A. General
ITT 1.1	The reference number of the Invitation to Tender (ITT) is: ***CGB/DWI/002/2024-2025*** The Procuring Entity is: ***COUNTY GOVERNMENT OF BOMET*** The name of the tender is: **SOLARISATION OF PUMPS AT TREATMENT WORKS FOR MOGOMBET (LOW LIFT AND HIGH LIFT) KAPRORON, LONGISA, SOTIK, GELEGELE AND KAPCHEKUCH WATER SUPPLY SCHEMES.** The number and identification of lots (contracts) comprising this ITT is: **one lot** **Bidders can tender for only one Lot and WILL be awarded the lot.**
ITT 2.3	The Information made available on competing firms is as follows: **NONE**
ITT 2.4	The firms that provided consulting services for the contract being tendered for are: **NONE**
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be: **N/A.**
B. Contents of Tender Document	
8.1	(A) Pre-Tender conference ***["shall not"]*** take place at the following date, time andplace: Date:_____N/A_____ Time:_____N/A_____ Place: _____N/A_____ **(B)** A pre-arranged pretender site visits of the site of the works ***["shall]*** take placeat the following date, time and place: **on THURSDAY 5TH DECEMBER 2024 at 9:00 am. Bidders are asked to assemble outside public works offices for further directions.**
ITT 8.2	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than five days before the opening date (5days)
ITT 8.4	The Procuring Entity's website where Minutes of the pre-Tender meeting and the pre-arranged pretender site visit will be published is _____N/A_____

ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity's address is: **(1) DEPARTMENT OF WATER, SANITATION, ENVIRONMENT, NATURAL RESOURCES AND CIMATE CHANGE.** **(2) COUNTY GOVERNMENT OF BOMET.** **(3) Postal Address - P.O. Box 19-20400 Bomet** ***(4)*** Insert name, telephone number and e-mail address of the officer to be contacted ***cgbprocurement@gmail.com***
C. Preparation of Tenders	

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITP 13.1 (h)	The Tenderer shall submit the following additional documents in its Tender. a) Certificate of Incorporation/ Business Registration. b) Latest CR12 for limited companies, National ID for sole proprietor orpartnership deed for partnerships c) Valid Tax Compliance Certificate. d) Valid single business permit from the county government e) Confidential Business Questionnaire duly filled and signed. f) Duly filled and signed form of tender g) Self-declaration non debarment forms (SD1) h) Self-Declaration anti-corruption form (SD2) i) A proposed Work Programme MUST be submitted. j) The written confirmation of authorization to sign on behalf of theTenderer shall consist of: - Power of attorney
ITT 15.1	Alternative Tenders **SHALL NOT BE** considered.
ITT 15.2	Alternative times for completion *"**shall not be**"* permitted.
ITT 16.5	The prices quoted by the Tenderer shall be: **FIXED**
ITT 20.1	The Tender validity period shall be **150.**
ITT 20.3 (a)	(a) The delayed to exceeding **90 number of days.** The Tender price **shall not** be adjusted during any period of extension.
ITT 21.1	A Tender Security **shall** *be* required. Tender Security **MUST** be: - (i) Tender Security of **Ksh. 2% of contract sum** be in the form of Bank Guarantee or Insurance bond from a reputable financial institution or insurance company recognized by Central Bank of Kenyaor PPRA and valid for at **least 180 days** from the tender opening date *Tender security shall be in **Kenya shilling.***
ITT 21.2 (d)	The other Tender Security shall be N/A
ITT 21.5	On the Performance Security, other documents required shall be **-See Special Conditions of Contract**
ITT 22.1	In addition to the original of the Tender, the number of copies is: ONE(1)
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: **- Power of attorney**
D. Submission and Opening of Tenders	

ITT 24.1	A) For Tender submission purposes only, the Procuring Entity's address is: **County Secretary,County Government of Bomet** **P.O. Box 19-20400** **Bomet**. Date and time for submission of Tenders **is [FRIDAY 13TH December 2024 at 1200hours.** Tenderers **shall submit** tenders both manually and electronically.
ITT 27.1	The Tender opening shall take place at the time and the address for Opening ofTenders provided below: **DEPARTMENT OF WATER, SANITATION, ENVIRONMENT, NATURAL RESOURCES AND CIMATE CHANGE.** **COUNTY GOVERNMENT OF BOMET.** **Postal Address - P.O. Box 19-20400 Bomet**

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	FRIDAY 13TH December 2024 at 1200hours.
ITT 27.1	If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures **specified FOR THE IFMIS SYSTEM.**
ITT 27.6	The number of representatives of the Procuring Entity to sign is at **least three**
E. Evaluation, and Comparison of Tenders	
ITT 32.3	The adjustment of price **shall not** apply.
ITT 36.1	At this time, the Procuring Entity ***does not intend*** to execute certain specific parts of the Works by subcontractors selected in advance.
ITT 36.2	Contractor's may not propose subcontracting.
ITT 36.3	The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows: **NONE**
ITT 37.2 (d)	Additional requirements apply. These are detailed in the evaluation criteria inSection III, Evaluation and Qualification Criteria.
ITT 51.1	The person named to be appointed as Adjudicator is **TBD**
ITT 52.2	Other documents required are **N/A**
ITT 54.1	The procedures for making a Procurement-related Complaints are detailed in the"Regulations" available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: For the attention: Title/position: Chief Officer Procuring Entity: **Department of Water,** **Sanitation, Environment, Natural** **Resources and Climate Change** Email address*:* *cgbprocurement@gmail.com* In summary, a Procurement-related Complaint may challenge any of the following: (i) the terms of the Tender Documents; and (ii) the Procuring Entity's decision to award the contract

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1. General Provisions

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

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

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

Evaluation and contract award Criteria

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

2. Preliminary examination for Determination of Responsiveness

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

[The Procuring Entity will provide the preliminary evaluation criteria. To facilitate, a template may be attached or clearly described all information and list of documentation to be submitted by Tenderers to enable preliminary evaluation of the Tender]

3. Tender Evaluation (ITT 35) Price evaluation: in addition to the criteria listed in ITT 35.2 (a)

– (c) the followingcriteria shall apply:

i) **Alternative Completion Times, i**f permitted under ITT 13.2, will be evaluated as follows: ……

ii) **Alternative Technical Solutions** for specified parts of the Works, if permitted under ITT 13.4, will beevaluated as follows: ……

iii) **Other Criteria; i**f permitted under ITT 35.2(d): ……
…

4. Multiple Contracts

Multiple contracts will be permitted in accordance with ITT 35.4. Tenderers are evaluated on basis of Lots and thelowest evaluated tenderer identified for each Lot. The Procuring Entity will select one Option of the two Options listed below for award of Contracts.

OPTION 1

i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meetsthe Eligibility and Qualification Criteria for that Lot.

ii) If a tenderer wins more than one Lot, the tender will be awarded contracts for all won Lots, provided the tenderer meetsthe aggregate Eligibility and Qualification Criteria for all the Lots. The tenderer will be awarded the combination of Lots for which the tenderer qualifies and the others will be considered for award to second lowest the tenderers.

OPTION 2

The Procuring Entity will consider all possible combinations of won Lots [contract(s)] and determine the combinations with the lowest evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the combinations provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots.

5. Alternative Tenders (ITT 13.1)

An alternative if permitted under ITT 13.1, will be evaluated as follows:

The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2- Works Requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

6. Margin of Preference is not applicable

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

a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluatedtenderer, subject to confirmation of pre-qualification data, if so required.

b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowestevaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.

i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered realassets, lines of credit, and other financial means (independent of any contractual advance p a y m e n t) sufficient to meet th e construction c a s h fl o w of K en ya Shillings _____.

ii) Minimum average annual construction turnover of Kenya Shillings_*[insert amount]*,equivalent calculated as total certified payments received for contracts in progress and/or completed within the last_____*[insert of year]* years.

iii) At least_____(*insert number)* of contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings____ ____equivalent.

iv) Contractor's Representative and Key Personnel, which are specified as _____

v) Contractors key equipment listed on the table "Contractor's Equipment" below and more specificallylisted as *[specify requirements for each lot as applicable]* _____

vi) Other conditions depending on their seriousness.

a) **History of non-performing contracts**:
Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non- performance of a contract did not occur because of the default of the Tenderer, or the member of a JVin the last_(*specify years*). The required information shall befurnished in the appropriate form.

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

c) Litigation History

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

8. QUALIFICATION FORM SUMMARY

1	2	3	*4*	*5*
Item No.	**Qualification Subject**	**Qualification Requirement**	***Document To be Completedby Tenderer***	***For Procuring Entity's Use (Qualification met or Not Met)***
1	Nationality	Nationality in accordance with ITT 3.6	Forms ELI – 1.1 and 1.2, with attachments	
2	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or taxexemption certificate issued by the the Kenya Revenue Authority in accordance with ITT 3.14.	Form of Tender	
3	Conflict of Interest	No conflicts of interest in accordance with ITT 3.3	Form of Tender	
4	PPRA Eligibility	Not having been declared ineligible by the PPRA as described in ITT 3.8	Form of Tender	
5	State- owned Enterprise	Meets conditions of ITT 3.7	Forms ELI – 1.1 and 1.2, with attachments	
6	Goods, equipment andservices to be supplied under the contract	To have their origin in any country that is not determinedineligible under ITT 4.1	Forms ELI – 1.1 and 1.2, withattachments	
7	History of Non-Performing Contracts	Non-performance of a contract did not occur as a result of contractor default since 1st January […….].	Form CON-2	
8	Suspension Based on Execution of Tender/Proposal SecuringDeclaration by the Procuring Entity	Not under suspension based on-execution of a Tender/Proposal Securing Declaration pursuant to ITT 19.9	Form of Tender	
9	Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will	Form CON – 2	

		NOT be resolved against the Tenderer.		
10	Litigation History	No consistent history of court/arbitral award decisions against the Tenderer since 1st January *[insert year]*	Form CON – 2	
11	Financial Capabilities	(i) The Tenderer shall demonstrate that it has access to, orhas available, liquid assets, unencumbered real assets, linesof credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Kenya Shillings *[insert amount]* equivalent for the subject contract(s) net of the Tenderer's other commitments. (ii) The Tenderers shall also demonstrate, to the satisfactionof the Procuring Entity, that it has adequate sources of	Form FIN – 3.1, withattachments	

		finance to meet the cash flow requirements on works currently in progress and for future contract commitments. (iii) The audited balance sheets or, if not required by thelaws of the Tenderer's country, other financial statementsacceptable to the Procuring Entity, for the last *[insert number of years]* years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.		
12	Average Annual Construction Turnover	Minimum average annual construction turnover of Kenya Shillings *[insert amount]*, equivalent calculated as total certified payments received for contracts in progress and/orcompleted within the last *[insert of year]* years, divided by *[insert number of years]* years	Form FIN – 3.2	
13	General Construction Experience	Experience under construction contracts in the role of primecontractor, JV member, sub-contractor, or management contractor for at least the last *[insert number of years]* years, starting 1st January *[insert year]*.	**4.** Form EXP – 4.1 **Experience**	

	Specific Construction & Contract Management Experience	A minimum number of *[state the number]* similar contractsspecified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1st January [*insert year*] and tender submission deadline i.e. …. (number) contracts, each of minimum value Kenyashillings equivalent. [*In case the Works are to be tender as individual contracts under multiple contract procedure, the minimum number ofcontracts required for purposes of evaluating qualification shall be selected from the options mentioned in ITT 35.4]* The similarity of the contracts shall be based on the following: [*Based on Section VII, Scope of Works, specifythe minimum key requirements in terms of physical size, complexity, construction method, technology and/or othercharacteristics including part of the requirements that maybe met by specialized subcontractors, if permitted in accordance with ITT 34.3]*	Form EXP 4.2(a)	

Clause 31.Determination of Requirements

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

A	PRELIMINARY EVALUATION/ MANDATORY REQUIREMENT	REMARKS
A1	Copy of Certificate of Incorporation/Registration Certificate	YES/NO
A2	Copy of Valid Current KRA TAX Compliance Certificate. Subject to TCC Checker.	YES/NO
A3	Copy of PIN Certificate from KRA indicating relevant tax obligation(s)	YES/NO
A4	Copy of certified current CR12 (Generated within the last one (1) year from tender closing date).	YES/NO
A5	Solar PV License from Energy Regulatory Commission, Kenya, CLASS V3.Which should be certified as a true copy by the Commissioner of Oaths.	YES/NO
A6	Submit a copy of current business License of where the business is Located	YES/NO
A7	Submit **a tender Security of 2% of Total Tender Sum** (From a reputable bank or Insurance Firm regulated by Insurance Regulatory Authority) Valid for a period of 180 days from date of tender opening in the form and format provided in the bid document.	YES/NO
A8	Bidder must Submit a Duly Filled, signed and stamped confidential business questionnaire	YES/NO
A9	Bidder must Submit a written declaration that the bidder has not been debarred from participating in public procurement	YES/NO
A10	Bidders should have their documents sequentially paginated/serialized to ensure compliance with section 74 (1) (i) Public Procurement and Asset Disposal Act2015. (in format1,2,3,4 to the last page).	YES/NO
A11	Duly filled, signed and stamped form of tender	YES/NO
A12	Duly filled, signed and stamped business questionnaire	YES/NO
A13	Must submit bank reference letter stating your credit worthiness.	YES/NO
A14	Provide reference letters from at least five (5) organizations where you have suppliedand installed Solar systems.(subject to confirmation)	YES/NO
A15	Submit signed and stamped site visit Certificate issued from the Institution (subject to confirmation)	YES/NO
A16	Bidder must submit minimum NCA '6' Electrical works category certificate (Subject to NCA Checker)	YES/NO
A17	Bidder must have a Manufacturer Authorization (Subject to Confirmation)	YES/NO
A18	Bidders **MUST** submit with their bid a proposed Works Programme to complete the works within a period of 12 weeks, failure to which the bid will be non-responsive.	

NOTE:

- **THE BIDDER WHO DOESN'T MEET THE ABOVE REQUIREMENTS SHALL BE DISQUALIFIED FROM FURTHER ANALYSIS.**

B. Technical Evaluation (Total: 100 Marks)

Sub-Factor	Requirement	Maximum Score	Awarded Score
B) EXPERIENCE			
General Experience	General experience under contracts in the role of contractor, subcontractor, or management contractor for a period of Five [5] years prior to the applications submission deadline	**(Max 15)**	
	i). Over 5 years	15	
	ii). Between 2-4 years	10	
	iii). Less than 2 years	5	
	iv). No executed works	0	
Specific Experience	**Specific Experience** participating as contractor, management contractor or subcontractor in at **least five** contracts that have been **successfully** and **substantially completed** that are of similar nature and scope to the proposed Works**.** ***Provide proof of similar works in terms of copies of contracts agreements, LPO, completion certificates or Interim completion certificates of not less than 70% complete.***	**(Max 25)**	
	i). At least five Water projects involving Solarization each of similar nature, complexity and magnitude	25	
	ii). 2-4 Water projects involving solarization of similar nature, complexity and magnitude	15	
	iii). Below 2 Water projects involving solarization of similar nature, complexity and magnitude	5	
	iv). No executed works of similar nature	0	
TOTAL FOR EXPERIENCE		**40**	
C) KEY PERSONNEL			
Project Manager	At least a Degree in Degree/Diploma with 3 years' experience in Electro-Mechanical installation works supervision with 2 years being in Solar PV installation field, 5 years' specific works experience and held the position of project manager/ Team Leader in at least three projects of similar nature and scope. (Attach qualification certificates and CV)	10	

	At least a Diploma in Electro-mechanical field (Attach qualification certificates and CV)	5	
	No Relevant Certificate	0	

Sub-Factor	Requirement	Maximum Score	Awarded Score
Site Agent	At least a Diploma in Relevant Engineering field, with at least 5 years of specific works experience and held the position of Site Agent in at least three projects of similar nature and scope	5	
	At least a certificate in relevant Engineering field	3	
	No Relevant Certificate	0	
Site Surveyor	At least a Diploma in relevant Engineering field with at least 5 years of work experience	5	
	No Relevant Certificate	0	
Artisan	At least Grade III Trade Test	2	
	No Relevant Certificate	0	
TOTAL FOR KEY PERSONNEL		**30**	
D) KEY EQUIPMENT (LEASED OR OWNED) PROVIDE PROOF			
HDPE Fusion Machine	Provided	5	
	Not Provided	0	
Support truck/Tipper/ Pick - Up	Provided	3	
	Not Provided	0	
Water pump testing kit	Provided	2	
	Not Provided	0	
TOTAL SCORE FOR EQUIPMENT		**10**	

Financial capability	Maximum accumulative volume of business handled in the last two years (Must attach LPO's/contracts signed and stamped) A. Above 10 million (10 marks) B. 5- 9 million (5 marks) C. Below 5 million (1 mark)	10	
	Financial capability as supported by certified audited accounts for the last Three (3) years.(2021, 2021 & 2022) • Current Ratio above 1 … (10 Marks) • Current Ratio Below 1 but above 0.5… (5 marks) • Current Ratio Below 0.5 (0 Marks)	10	

C	**FINANCIAL EVALUATION**	

	Only bidders who score 75% and above will be subjected to financial evaluation. Those who scorebelow 75% will be eliminated at this stage from the entire evaluation process and will not be considered further. **FINANCIAL EVALUATION** • The bidder that qualifies technically and with lowest financial quote will be recommendedfor the award of the contract. • If there is a tie on the lowest quoted price between two or more firms, the firm with the highesttechnical score will be recommended for award. • Unrealistic low or high prices shall be rejected as may be guided by prevailingmarket price.	

1. **ADD TO CLAUSE 33: Arithmetical Errors**

33.4The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity. 33.5Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:

a) Any error detected if considered a major deviation that affects the substance of the tender, shalllead to disqualification of the tender as non-responsive.
b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, and subtotal and total bid price shall be considered as a major deviation that affects the substance ofthe tender and shall lead to disqualification of the tender as non-responsive. and
c) if there is a discrepancy between words and figures, the amount in words shall prevailTenderers shall be notified of any error detected in their bid during the notification of a ward

2. **ADD TO CLAUSE 37: Evaluation of Tenders**

37.5 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the BestEvaluated Tender in accordance with ITT 40.

37.6 To evaluate a Tender, the Procuring Entity shall consider the following:

d) price adjustment due to discounts offered in accordance with ITT 16;
e) converting the amount resulting from applying (a) and (b) above, if relevant, to a singlecurrency in accordance with ITT 39;
f) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 30.3;and
g) any additional evaluation factors specified **in the TDS** and Section III, Evaluation andQualification Criteria.

37.7 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over theperiod of execution of the Contract, shall not be considered in Tender evaluation.

37.8 In the case of multiple contracts or lots, Tenderers shall be allowed to tender for one or more lots and
the methodology to determine the lowest evaluated cost of the lot (contract) combinations,

any discounts offered in the **Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.**

38: Comparison of Tenders

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

a) The detailed specifications pump **MUST** meet the minimum specifications stated in Section VI of thetender document. Any tender not meeting these minimum specifications will be disqualified

b) The detailed specifications for pump control unit **MUST** meet the minimum specifications stated inSection VI of the tender document. Any tender not meeting these minimum specifications will be disqualified

c) The detailed specifications for solar pv modules **MUST** meet the minimum specifications stated inSection VI of the tender document. Any tender not meeting these minimum specifications will be disqualified

d) The detailed specifications for Inverters/Change **MUST** meet the minimum specifications stated inSection VI of the tender document. Any tender not meeting these minimum specifications will be disqualified

e) The detailed specifications for Solar charger controllers **MUST** meet the minimum specifications statedin Section VI of the tender document. Any tender not meeting these minimum specifications will be disqualified

f) The detailed specifications for Solar butteris **MUST** meet the minimum specifications stated in SectionVI of the tender document. Any tender not meeting these minimum specifications will be disqualified

g) The detailed specifications for the Reverse Osmosis Plant MUST meet the minimum specifications stated in Section VI of the tender document. Any tender not meeting these minimum specifications willbe disqualified

h) The detailed specifications for Tank Mounting Structure MUST meet the minimum specifications stated in Section VI of the tender document. Any tender not meeting these minimum specifications willbe disqualified

i) The detailed specifications for complete water desalination system **MUST** meet the minimum specifications stated in Section F of the tender document. Any tender not meeting these minimumspecifications will be disqualified

j) The detailed specifications for water desalination system control unit **MUST** meet the minimum specifications stated in Section F of the tender document. Any tender not meeting these minimumspecifications will be disqualified

The detailed specifications laptop computer MUST meet the minimum specifications stated in SectionVI of the tender document. Any tender not meeting these minimum specifications will be disqualified

QUALIFICATION FORMS

1. FORM EQU: EQUIPMENT

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

<table>
<tr><td colspan="3">Item of equipment</td></tr>
<tr><td rowspan="2">Equipment information</td><td>Name of manufacturer</td><td>Model and power rating</td></tr>
<tr><td>Capacity</td><td>Year of manufacture</td></tr>
<tr><td rowspan="2">Current status</td><td colspan="2">Current location</td></tr>
<tr><td colspan="2">Details of current commitments</td></tr>
<tr><td>Source</td><td colspan="2">Indicate source of the equipment
☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured</td></tr>
</table>

Omit the following information for equipment owned by the Tenderer.

<table>
<tr><td rowspan="4">Owner</td><td colspan="2">Name of owner</td></tr>
<tr><td colspan="2">Address of owner</td></tr>
<tr><td>Telephone</td><td>Contact name and title</td></tr>
<tr><td>Fax</td><td>Telex</td></tr>
<tr><td>Agreements</td><td colspan="2">Details of rental / lease / manufacture agreements specific to the project</td></tr>
<tr><td></td><td colspan="2"></td></tr>
<tr><td></td><td colspan="2"></td></tr>
</table>

2. FORM PER -1

Contractor's Representative and Key Personnel Schedule

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

Contractor' Representative and Key Personnel

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

	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]

3. FORM PER-2:

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

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

Name of Tenderer

Position [*#1*]: [*title of position from Form PER-1*]		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: *[language and levels of speaking, reading and writing skills]*	
Details		
	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present Procuring Entity:

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

Project	**Role**	**Duration of involvement**	**Relevant experience**
[main project details]	*[role and responsibilities on the project]*	*[time in role]*	*[describe the experience relevant to thisposition]*

Declaration

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

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

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

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

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

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

Signature: _____

Date: (day month year):_____Countersignature

of authorized representative of the Tenderer:

Signature:_____Date: (day

monthyear): _____

4. TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION

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

4.1 FORM ELI -1.1

Tenderer Information

Form
Date: _____

ITT No. and title: _____

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended country of registration: *[indicate country of Constitution]*
Tenderer's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information Name:_____ Address: _____ Telephone/Fax numbers: _____ E-mail address:_____
1. Attached are copies of original documents of ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/ordocuments of registration of the legal entity named above, in accordance with ITT 3.6 ☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5 ☐ In case of state-owned enterprise or institution, in accordance with ITT 3.8, documentsestablishing: • Legal and financial autonomy • Operation under commercial law • Establishing that the Tenderer is not under the supervision of the Procuring Entity 2. Included are the organizational chart and a list of Board of Directors.

4.2 FORM ELI -1.2

Tenderer's JV Information Form
(to be completed for each member of Tenderer's JV)
Date: _____

ITT No. and title: _____ _

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

4.3 FORM CON – 2

Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

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

Year of dispute	**Amount in dispute (currency)**	**Contract Identification**	**Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)**

		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: ___ Status of dispute: _____	
		Contract Identification: Name of Procuring Entity: Address of Procuring Entity: Matter in dispute: Party who initiated the dispute: Status of dispute:	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			
☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor2.4. ☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4as indicated below.			

Year of award	Outcome as percentage of NetWorth	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
[insert year]	*[insert percentage]*	Contract Identification: [indicate completecontract name, number, and any other identification] Name of Procuring Entity: *[insert full name]*Address of Procuring Entity: *[insert street/city/country]* Matter in dispute: *[indicate main issues indispute]* Party who initiated the dispute: *[indicate"Procuring Entity" or "Contractor"]* Reason(s) for Litigation and award decision *[indicate main reason(s)]*	*[insert amount]*

4.4 FORM FIN – 3.1:

Financial Situation and Performance

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

4.4.1. Financial Data

Type of Financial informationin_____ (currency)	**Historic information for previous___*years*, (amount in currency, currency, exchange rate*, USD equivalent)**				
	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					

Information from Income Statement					
Total Revenue (TR)					

Type of Financial informationin_____ (currency)	**Historic information for previous___*years*, (amount in currency, currency, exchange rate*, USD equivalent)**				
	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from OperatingActivities					

*Refer to ITT 15 for the exchange rate

4.4.2 Sources of Finance

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

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

4.4.3 Financial documents

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

(a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such asparent company or group member).

(b) be independently audited or certified in accordance with local legislation.

(c) be complete, including all notes to the financial statements.

(d) correspond to accounting periods already completed and audited.

☐ Attached are copies of financial statements[1] for the___years required above; and complying with therequirements

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

Average Annual Construction Turnover

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

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

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

4.6 <u>FORM FIN – 3.3:</u>

Financial Resources

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

Financial Resources		
No.	**Source of financing**	**Amount (Kenya Shilling equivalent)**
1		
2		
3		

Current Contract Commitments / Works in Progress

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have beenawarded, 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.

Current Contract Commitments					
	Name of Contract	**Procuring Entity's Contact Address, Tel,**	**Value of Outstanding Work [Current Kenya Shilling /month Equivalent]**	**Estimated CompletionDate**	**Average Monthly Invoicing Over Last SixMonths [Kenya Shilling /month)]**
1					
2					
3					
4					
5					

48 8 FORM EXP - 4.1

General Construction Experience

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

Page_____of_____pages

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

FORM EXP - 4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

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

FORM EXP - 4.2 (a) (cont.)

Specific Construction and Contract Management Experience (cont.)

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

411 11 FORM EXP - 4.2 (b)

Construction Experience in Key Activities

Tenderer's Name: _____
Date: _____
Tenderer's JV Member Name: _____
Sub-contractor's Name[2] (as per ITT 34): _____
ITT No. and title _____

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

1. Key Activity No One: _

	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor ☐	Member inJV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount			**Kenya Shilling**	
Quantity (Volume, number or rate of production, as applicable) performed underthe contract per year or part of the year	Total quantity inthe contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				
Procuring Entity's Name:				
Address: Telephone/fax numberE-mail:				

[2] If applicable

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

2. Activity No. Two
3. ……

OTHER FORMS

5. FORM OF TENDER
(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

INSTRUCTIONS TO TENDERERS

i) *All italicized text is to help the Tenderer in preparing this form.*

ii) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer'scomplete name and business address. Tenderers are reminded that this is a mandatory requirement.*

iii) *Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and theSELF DECLARATION FORMS OF THE TENDERER as listed under (s) below.*

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

Identification:.....*[insert identification]*

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

To..... *[Insert complete name of Procuring Entity]*

Dear Sirs,

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

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

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

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

3. We agree to adhere by this tender until_____*[Insert date],* and it shall remain binding upon usand may be accepted at any time before that date.

4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us. We further understand that you are not bound to accept the lowest or any tender you may receive.

5. We, the undersigned, further declare that:

i) *No reservations:* We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;

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

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

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

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

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

Option 2, in case of multiple lots:

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

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

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

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

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

x) *Tender Validity Period:* Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, ifapplicable), and it shall remain binding upon us and may be accepted at any time before the expiration ofthat period;

xi) *Performance Security:* If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;

xii) *One Tender Per Tender:* We are not submitting any other Tender(s) as an individual Tender, and we are notparticipating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;

xiii) *Suspension and Debarment:* We, along with any of our subcontractors, suppliers, Project Manager, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PublicProcurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.

xiv) *State-owned enterprise or institution:* [*select the appropriate option and delete the other*] [*We are not a state-owned enterprise or institution*] / [*We are a state-owned enterprise or institution but meet the requirements of ITT 3.8*];

xv) *Commissions, gratuities, fees:* We have paid, or will pay the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency ofeach such commission or gratuity].*

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

xvi) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract

between us, until a formal contract is prepared and executed;

xvii) Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated cost Tender, theMost Advantageous Tender or any other Tender that you may receive;

xviii) Fraud and Corruption: We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption;

xix) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.

xx) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copyavailable from (*specify website*) during the procurement process and theexecution of any resulting contract.

xxi) **Beneficial Ownership Information:** We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intentionto enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.

xxii) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:

a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflictto interest.
b) Certificate of Independent Tender Determination – to declare that we completed the tender withoutcolluding with other tenderers.
c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in anyform of fraud and corruption.
d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurementand Asset Disposal

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

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

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

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

Signature of the person named above: [*insert signature of person whose name and capacity are shownabove*] **Date signed** [*insert date of signing*] dayof [*insert month*], [*insert year*]

Date signed_____day of_____, _____

Notes
** In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer*
*** Person signing the Tender shall have the power of attorney given by the Tenderer to be attached with theTender.*

A. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

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

(a) **Tenderer's details**

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

General and Specific Details

b) Sole Proprietor, provide the following details.

Name in full_____Age_____Nationality _____Country of Origin_____Citizenship _____

c) Partnership, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

d) Registered Company, provide the following details.

i) Private or public Company_____

ii) State the nominal and issued capital of the Company Nominal Kenya Shillings (Equivalent) ..... Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

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

If yes, provide details as follows.

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

ii) Conflict of interest disclosure

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is		

	controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly orthrough common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
5	Any of the Tenderer's affiliates participated as a consultant inthe preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consultingservices or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly orindirectly involved in the preparation of the Tender document or specifications of the Contract, and/or theTender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with aprofessional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated initem 7 and 8 above been resolved in a manner acceptable tothe Procuring Entity throughout the tendering process and execution of the Contract.		

f) Certification

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

Full Name_____Title

orDesignation_____

_____ _____

(Signature) *(Date)*

B. CERTIFICATEOF INDEPENDENTTENDERDETERMINATION

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

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

1. I have read and I understand the contents of this Certificate;

2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in everyrespect;

3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tenderon behalf of the Tenderer;

4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include anyindividual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
   a) has been requested to submit a Tender in response to this request for tenders;
   b) could potentially submit a tender in response to this request for tenders, based on their qualifications,abilities orexperience;

5. The Tenderer discloses that [check one of the following, as applicable:
   a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
   b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attacheddocument(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;

6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation,communication, agreement or arrangement with any competitor regarding:
   a) prices;
   b) methods, factors or formulas used to calculate prices;
   c) the intention or decision to submit, or not to submit, a tender; or
   d) the submission of a tender which does not meet the specifications of the request for Tenders; except asspecifically disclosed pursuant to paragraph (5)(b) above;

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;

8. the terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name_____Title_Date _____

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

C. SELF - DECLARATION FORMS

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OFTHE PUBLIC PROCUREMENTAND ASSET DISPOSALACT 2015.

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

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of …..... *(insert name of the Company)* who is a Bidder in respect of TenderNo. …….. for ……. *(insert tender title/description)* for ..... *(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

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

3. THATwhat is deponed to herein above is true to the best of my knowledge, information and belief.

…….	…….	(Title)
	(Signature)	(Date)

Bidder Official Stamp

FORM SD2

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

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

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

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

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

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

5. THATwhat is deponed to herein above is true to the best of my knowledge information and belief.

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

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

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

Position…….....…….....
.....

Office address…….
Telephone…….....…….

E-
mail…….....….....
.....…

Name of the
Firm/Company…….....……

Date.....(Company Seal/ Rubber

Stamp where applicable)

Witness

Name ……..... Sign.....

Date……

D. APPENDIX 1- FRAUDAND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

3. Requirements

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

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

1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive orfraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits anoffence;
3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
   a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
   b) if a contract has already been entered into with the person, the contract shall be voidable;
4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy theprocuring entity may have;
5) An employee or agent of the procuring entity or a member of the Board or committee of the procuringentity who has a conflict of interest with respect to a procurement: -
   a) shall not take part in the procurement proceedings;

b) shall not, after a procurement contract has been entered into, take part in any decision relating to theprocurement or contract; and

c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group ofbidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements ofthis Act.

6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose theconflict of interest to the procuring entity;

7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a)and the contract is awarded to the person or his relative or to another person in whom one of them had adirect or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

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

a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:

i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influenceimproperlythe actions of anotherparty;

ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improperpurpose, including to influence improperly the actions of another party;

iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly,any party or the property of the party to influence improperly the actions of a party;

v) "obstructive practice" is:

- deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.

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

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

c) Rejects a proposal for award[1] of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriateauthority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2] all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Governmentof Kenya; and

f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have notengaged/will not engage in any corrupt or fraudulent practices.

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

[2] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and*

making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]

Beneficiary:_____

Request forTenders No:

_____

Date:_____

TENDER GUARANTEE No.:_____

Guarantor: _____

1. We have been informed that_____(here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of_____ under Request for Tenders No. ("the ITT").

2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sumor sums not exceeding in total an amount of (_____) upon receipt by us of the Beneficiary'scomplying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signeddocument accompanying or identifying the demand, stating that either the Applicant:

(a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("theTender Validity Period"), or any extension thereto provided by the Applicant; or

b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failedto furnish the Performance.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not thesuccessful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicantof the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above onor before that date.

_____

[signature(s)]

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

FORMAT OF TENDER SECURITY [Option 2–Insurance

Guarantee]TENDER GUARANTEE No.: _____

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

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

Sealed with the Common Seal of the said Guarantor this __day of _____20 __.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:

   a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or

   b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructionsto tenderers ("ITT") of the Procuring Entity's Tendering document.

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

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies ofthe contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicantis not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii)twenty-eight days after the end of the Tender Validity Period.

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

_____ _____

[Date] *[Signature of the Guarantor]*

_____ _____

_____*[Witness]*

[Seal]

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

TENDER-SECURING DECLARATION FORM

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

Date ..... *[insert date (as day, month and year) of Tender Submission]*
Tender No ..... *[insert number of tendering process]*
To: ..... *[insert completename of Purchaser]* I/We, the undersigned, declare that:

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

2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach ofour obligation(s) under the bid conditions, because we – (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), uponthe earlier of:
   a) our receipt of a copy of your notification of the name of the successful Tenderer; or
   b) thirty days after the expiration of our Tender.

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

Signed ..... Capacity / title (director

or partner or sole proprietor, etc.) ..... Name:

…..... Duly

authorized to sign the bidfor and on behalf of: *[insert completename of Tenderer]*

Dated on …… day of..... *[Insert date of signing]* Seal or stamp

Appendix to Tender

Schedule of Currency requirements

Summary of currencies of the Tender for_____*[insert name of Section of the Works]*

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

PART II - WORK REQUIREMENTS

SECTION V - DRAWINGS

SOLARISATION OF PUMPS AT TREATMENT WORKS FOR MOGOMBET (LOW LIFT AND HIGH LIFT) KAPRORON, LONGISA, SOTIK, GELEGELE AND KAPCHEKUCH WATER SUPPLY SCHEMES.

SECTION V – SCHEDULE OF REQUIREMENTS

The schedule of requirements, together with the price schedule, should serve as a base in the event of quantity variations at the time of award of contract pursuant to instructions to tenderers clause 26.

The date or period of delivery should be carefully specified, taking into account the date prescribed herein from which the procuring entity's delivery obligations start (notice of award).

This part will include any deliverables under the service contract

Preamble to the Bills of Quantities

1. The Bills of Quantities shall be read in conjunction with the instructions to Tenderers, General Conditions of Contract, Particular Conditions of Contract and Technical specifications.

2. The quantities given in the Bills of Quantities are provisional and are given to provide a common basis for tendering. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the contractor and verified by the Engineer and valued at the rates and prices quoted in the Price Schedules and Schedule of Unit Rates where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.

3. The rates and prices quoted in the Price Schedules and Schedule of Unit Rates shall except insofar as it is otherwise under the Contract, maintenance, insurance, profit, together with al general risks, liabilities and obligations set out or implied in the Contract.

4. A rate or price shall be entered against each item in the Price Schedules and Schedule of Unit Rates, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by the Contract Price.

5. The whole cost of complying with the provisions of the Contract shall be included in the items provided in the Price Schedules and Schedule of Unit Rates, and where no items are provided the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Works.

6. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bills of Quantities, Price Schedules and Schedule of Unit Rates. References to the relevant sections of the contract documentation shall be made before entering prices against each item in the priced Bill of Quantities, Price Schedules and Schedule of Unit Rates.

NOTE:

1. All Prices shall include **VAT**
2. The Contractor will be required to fill in the unit rates or prices in the **Bills of Quantities, Price Schedules** and **Schedule of Unit Rates** .
3. **Drawings:** Clause 3.20 of **Section IV**: "Specific Conditions of Contract" and, particularly, in Reference to "General Conditions of Contract" shall apply.
4. **NO** claim of components replaced without Project Manager's Instructions.

SITE LOCATION AND SPECIFICATIONS

ITEM	DESCRIPTION	UNIT	QNTY	RATE (KShs)	AMOUNT (KShs)
	BILL No. 1				
1	**GENERAL OBLIGATIONS** *All in accordance to Conditions of Contract-Services/Allowances*				
1.11	Allow a P.C. Sum of Kshs. 300,000 for project supervision, administrations, transport allowances etc	Item	PC	300,000.00	**300,000.00**
1.12	All profits and overheads on items 1.11	%	1		
1.13	Allow a prime Cost for charges in compliance with statutory and construction regulatory requirements by NEMA to include but not Limited to EIA/SPR/CPR and allow for Environmental Mitigation Measures and NEMA License	Item	PC	200,000	**200,000.00**
1.14	All profits and overheads on items 1.13	%	200,000		
1.15	Allow a prime Cost for charges in compliance with statutory and construction regulatory requirements by DOSH	Item	PC	100,000	**100,000.00**
1.16	All profits and overheads on items 1.15	%	100,000		
	TOTAL BILL NO.1 CARRIED TO SUMMARY				
	BILL No. 2				
2	**SOLARISATION**				
	All fittings arrangements in accordance with site conditions and design drawings provided				
	Provide all Solar Equipment's and fittings listed below and fix				
2.10	Veichi 45kw hybrid solar inverter	No.	7		
2.11	Veichi 11kw hybrid solar inverter	No.	7		
2.12	435W 24v mono modules	No.	924		
2.13	PV disconnect switch	No.	7		
2.14	Looping cables 10.0mm²/ 4 core	M	210		
2.16	UG cable 50mmx4core	M	210		
2.17	Earth rod 4ft and earth clamp	No.	7		
2.18	Solar MC4 connectors	No.	42		
2.19	Litening arrestor	No.	7		
2.20	Solar DC surge arrestor	No.	7		
2.21	Inverter mounting box/enclosure	No.	7		
2.22	Installation sundries- Cable ties, tapes, cable clips and accessories	Item	7		
2.23	Electrical sundries for the installation- Electrical- to include earth rod; earth lead cable and clamping device.	Item	7		
2.24	Construct a solar structure to hold tubes - including of excavating and installation	Item	7		
2.25	Installation charges for the solar panels and electrical work – this to include the components of the power hook up; testing and commissioning the system.	Item	7		
	TOTAL BILL NO.2 CARRIED TO SUMMARY				

SUMMARY					

BILL NO	**DESCRIPTION**	**AMOUNT(KShs)**
1	Preliminary and General Items	
2	Solarisation	
	SUB-TOTAL	
	GRAND TOTAL CARRIED TO FOR OF TENDER	

Tenderer's Name and Stamp,

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

.....Signature.....

Date.....

PIN No..... VAT Certificate No.....

Witness..... Address.....

Signature of witness..... Date.....

SECTION VI DESCRIPTION OF SERVICES

GENERAL TECHNICAL SPECIFICATIONS

1. These specifications describe the basic requirements for equipment. Tenderers are requested to submit with their offers the detailed specifications **from manufacturers**, drawings, catalogues, etc. for the products they intend to supply. **Downloads from the internet will not be accepted.**

2. Tenderers **MUST** only offer one set of detailed specifications per equipment. Failure to comply will renderthe bid non-responsive.

3. Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.

4. All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any, shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The procuring entity reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.

5. The tenderers are requested to present information along with their offers as follows:

    i. Shortest possible delivery period of each product.
    ii. Information on proper representative and/or workshop for back-up service/repair and maintenanceincluding their names and addresses.

3 All offered equipment must comply with the relevant Kenyan Standards for such equipment.

PART III - CONDITIONS OF CONTRACTAND CONTRACT FORMS

SECTION VIII - GENERAL CONDITIONS OF CONTRACT

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

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

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

General Conditions of Contract

A.General

1. Definitions

1.1 Bold face type is used to identify defined terms.

a) **The Accepted Contract** Amount means the amount accepted in the Letter of Acceptance for the executionand completion of the Works and the remedying of any defects.

b) **The Activity Schedule** is a schedule of the activities comprising the construction,

installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which isused for valuations and for assessing the effects of Variations and Compensation Events.

c) **The Adjudicator** is the person appointed jointly by the Procuring Entity and the Contractor to resolvedisputes in the first instance, as provided for in GCC 23.

d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.

e) **Compensation Events** are those defined in GCC Clause 42 hereunder.

f) **The Completion Date** is the date of completion of the Works as certified by the Project Manager, inaccordance with GCC Sub-Clause 53.1.

g) **The Contract** is the Contract between the Procuring Entity and the Contractor to execute, complete, andmaintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.

h) **The Contractor** is the party whose Bid to carry out the Works has been accepted by the Procuring Entity.

i) **The Contractor's Bid** is the completed bidding document submitted by the Contractor to the ProcuringEntity.

j) **The Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter asadjusted in accordance with the Contract.

k) **Days** are calendar days; months are calendar months.

l) **Day work**s are varied work inputs subject to payment on a time basis for the Contractor's employees andEquipment, in addition to payments for associated Materials and Plant.

m) **ADefect** is any part of the Works not completed in accordance with the Contract.

n) **The Defects** Liability Certificate is the certificate issued by Project Manager upon correction of defects bythe Contractor.

o) **The Defects Liability Period** is the period **named in the SCC** pursuant to Sub-Clause 34.1 and calculatedfrom the Completion Date.

p) **Drawings** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Procuring Entity in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of theContract.

q) **The Procuring Entity** is the party who employs the Contractor to carry out the Works, **as specified in theSCC,** who is also the Procuring Entity.

r) **Equipmen**t is the Contractor's machinery and vehicles brought temporarily to the Site to construct theWorks.

s) **"In writing" or "written"** means hand-written, type-written, printed or electronically made, andresulting in a permanent record;

t) The Initial Contract Price is the Contract Price listed in the Procuring Entity's Letter of Acceptance.

u) **The Intended Completion Date** is the date on which it is intended that the Contractor shall complete theWorks. The Intended Completion Date is **specified in the SCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

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

w) **Plant i**s any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

x) **The Project Manager** is the person **named in the SCC** (or any other competent person appointed by theProcuring Entity and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

y) **SCC** means Special Conditions of Contract.

z) **The Site** is the area of the works as **defined as such in the SCC**.

aa) **Site Investigation Reports** are those that were included in the bidding document and are factual andinterpretative reports about the surface and subsurface conditions at the Site.

bb) **Specification** means the Specification of the Works included in the Contract and any modification oraddition made or approved by the Project Manager.

cc) **The Start Date** is **given in the SCC**. It is the latest date when the Contractor shall commence executionof the Works. It does not necessarily coincide with any of the Site Possession Dates.

dd) **A Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a partof the work in the Contract, which includes work on the Site.

ee) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that areneeded for construction or installation of the Works.

ff) **A Variation** is an instruction given by the Project Manager which varies the Works.

gg) **The Works** are what the Contract requires the Contractor to construct, install, and turn over to theProcuring Entity, **as defined in the SCC**.

2. Interpretation

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

22 If sectional completion is specified in the SCC, references in the GCC to the Works, the Completion Date,and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

23 The documents forming the Contract shall be interpreted in the following order of priority:

a) Agreement,

b) Letter of Acceptance,

c) Contractor's Bid,
d) Special Conditions of Contract,
e) General Conditions of Contract, including Appendices,
f) Specifications,
g) Drawings,
h) Bill of Quantities[6], and
i) any other document **listed in the SCC** as forming part of the Contract.

[6] *In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."*

3. Language andLaw

3.1 The language of the Contract is English Language and the law governing the Contract are the Laws of Kenya.

3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and servicesprohibitions in the Procuring Entity's Country when

a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country; or

b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments toany country, person, or entity in that country.

4. Project Manager's Decisions

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

5. Delegation

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

6. Communications

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

7. Subcontracting

7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contractwithout the approval of the Procuring Entity in writing. Subcontracting shall not alter the Contractor's obligations.

8. Other Contractors

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

9. Personnel andEquipment

9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out theWorks or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.

9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff orwork force, stating the reasons, the Contractor shall ensure that the

person leaves the Site within seven daysand has no further connection with the work in the Contract.

9.3 If the Procuring Entity, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in Fraud and Corruption during the execution of the Works, then that employeeshall be removed in accordance with Clause 9.2 above.

10. Procuring Entity's and Contractor's Risks

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

11. Procuring Entity's Risks

11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Procuring Entity'srisks:

a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials,and Equipment), which are due to

i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidableresult of the Works or

ii) negligence, breach of statutory duty, or interference with any legal right by the Procuring Entity orby any person employed by or contracted to him except the Contractor.

b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is a Procuring Entity's risk except loss or damage due to

aa) a Defect which existed on the Completion Date,

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

12. Contractor's Risks

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

13. Insurance

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

a) loss of or damage to the Works, Plant, and Materials;

b) loss of or damage to Equipment;

c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with theContract; and

d) personal injury or death.

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

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

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

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

14. Site Data

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

15. Contractor to Construct the Works

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

16. The Works to Be Completed by the Intended Completion Date

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

17. Approval by the Project Manager

17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

17.2 The Contractor shall be responsible for design of Temporary Works.

17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

18. Safety

18.1 The Contractor shall be responsible for the safety of all activities on the Site.

19. Discoveries

19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall bethe property of the Procuring Entity. The Contractor shall notify the Project Manager of such discoveries and carry outthe Project Manager's instructionsfordealingwith them.

20. Possession of the Site

20.1 The Procuring Entity shall give possession of all parts of the Site to the Contractor. If possession of a part is notgiven by the date **stated in the SCC,** the Procuring Entity shall be deemed to have delayed the start of the relevantactivities, and this shall be a Compensation Event.

21. Access to the Site

21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to theSite and to any place where work in connection with the Contract is being carried out or is intended to be carriedout.

22. Instructions, Inspections and Audits

22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable lawswhere the Site is located.

22.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub- consultants to keep, accurate and systematic accounts and records in respect of the Works in such form anddetails as will clearly identify relevant time changes and costs.

22.3 The Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, the Procuring Entity and/or persons appointed by the Public Procurement Regulatory Authority to inspect the Site and/orthe accounts and records relating to the

procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Public Procurement Regulatory Authority. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 25.1 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Public Procurement Regulatory Authority's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Public Procurement Regulatory Authority's prevailing sanctions procedures).

23. Appointment of the Adjudicator

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

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

24. Settlement of Claims and Disputes

24.1Contractor's Claims

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

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

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

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

24.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractorand approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailedclaim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

a) this fully detailed claim shall be considered as interim;
b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delayand/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
c) the Contractor shall send a final claim within 30 days after the end of the effects resulting

from the eventor circumstance, or within such other period as may be proposed by the Contractor and approved by theProject Manager.

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

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

24.1.8 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before orafter its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the

additional payment (if any) to which the Contractor is entitled under the Contract.

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

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

24.1.11 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may applyto a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, anyextension of time and/or additional payment shall take account of the extent (if any) to which the failurehas prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the secondparagraph of this Sub-Clause 24.3.

242 Amicable Settlement

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

243 Matters that may be referred to arbitration

24.3.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Worksor abandonment of the Works or termination of the Contractby either party:

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

244 Arbitration

24.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably inaccordance with Sub-Clause 24.3 shall be finally settled by arbitration.

24.4.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter orissue giving rise to the dispute.

24.4.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or disputeamicably with or without the assistance of third parties. Proof of such attempt shall be required.

24.4.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine therights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

24.4.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review andrevise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute whichshall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

24.4.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representativesof the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

24.4.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons fordissatisfaction given in its Notice of Dissatisfaction.

24.4.8 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, andthe Project Manager shall not be altered by reason of any arbitration being conducted during the progress ofthe Works.

24.4.9 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the

Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of thisremuneration.

24.5 Arbitration with National Contractors

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

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

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

24.6 Alternative Arbitration Proceedings

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

24.7 Failure to Comply with Arbitrator's Decision

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

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

24.8 Contract operations to continue

24.8.1 Notwithstanding any reference to arbitration herein,

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

25. Fraud andCorruption

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

25.2 The Procuring Entity requires the Contractor to disclose any commissions or fees that may have been paid orare to be paid to agents or any other party with respect to the bidding process or execution of the Contract.The information disclosed must include at least the name and address of the agent or other party, the amountand currency, and the purpose of the commission, gratuity or fee.

B.Time Control

26. Program

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

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

26.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longerthan the period stated in the SCC. If the Contractor does not submit an updated Program within this period,the Project Manager may withhold the amount stated in the SCC from the next payment certificate and

continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

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

27. Extension of the Intended Completion Date

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

27.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning ofa delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

28. Acceleration

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

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

29. Delays Ordered by the Project Manager

29.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

30. Management Meetings

30.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with mattersraised in accordance with the early warning procedure.

30.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

31. Early Warning

31.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events orcircumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimateshall be provided

by the Contractor as soon as reasonably possible.

31.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how theeffect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

32. Identifying Defects

32.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct theContractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

33. Tests

33.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to checkwhether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and anysamples. If there is no Defect, the test shall be a Compensation Event.

34. Correction of Defects

34.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the SCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

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

35. Uncorrected Defects

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

D. Cost Control

36. Contract Price[7]

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

37. Changes in the Contract Price[8]

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

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

38. Variations

38.1 All Variations shall be included in updated Programs9 produced by the Contractor.

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

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

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

[7] *In lump sum contracts, replace GCC Sub-Clauses 36.1 as follows:*

36.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for materials on site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

[8] *In lump sum contracts, replace entire GCC Clause 37 with new GCC Sub-Clause 37.1, as follows: The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.*

[9] *In lump sum contracts, add "and Activity Schedules" after "Programs."* [10] *In lump sum contracts, delete this paragraph.*

38.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by givingearly warning

38.6 If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinionof the Project Manager, the quantity of work above the limit stated in Sub-Clause 39.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing ofthe work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work

38.7 Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

a) the proposed change(s), and a description of the difference to the existing contract requirements;
b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (includinglife cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and
c) a description of any effect(s) of the change on performance/functionality.

38.8 The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:

a) accelerate the contract completion period; or
b) reduce the Contract Price or the life cycle costs to the Procuring Entity; or
c) improve the quality, efficiency, safety or sustainability of the Facilities; or
d) yield any other benefits to the Procuring Entity, without compromising the functionality of the Works.

38.9 If the value engineering proposal is approved by the Procuring Entity and results in:

a) a reduction of the Contract Price; the amount to be paid to the Contractor shall be the **percentage specifiedin the SCC** of the reduction in the Contract Price; or
b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in
(a) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.

39. Cash FlowForecasts

39.1 When the Program[11], is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

40. Payment Certificates

40.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the workexecuted less the cumulative amount certified previously.

40.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to theContractor.

40.3 The value of work executed shall be determined by the Project Manager.

40.4 The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities thathave been completed12.

40.5 The value of work executed shall include the valuation of Variations and Compensation Events.

40.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

40.7 Where the contract price is different from the corrected tender price, in order to ensure the contractor is notpaid less or more relative to the contract price (which would be the tender price), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities orschedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: *(corrected tender price – tender price)/tender price X 100.*

41. Payments

41.1 Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shallpay the Contractor the amounts certified by the Project Manager within 30 days of the date of each certificate.If the Procuring Entity makes a late payment, the Contractor shall be paid interest on the late payment in thenext payment. Interest shall be calculated from the date by which the payment should have been made up tothe date when the late payment is made at the prevailing rate of interest for commercial borrowing for eachof the currencies in which payments are made.

41.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interestshall be calculated from the date upon which the increased amount would have been certified in the absenceof dispute.

41.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

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

42. Compensation Events

42.1 The following shall be Compensation Events:

d) The Procuring Entity does not give access to a part of the Site by the Site Possession Date pursuant to GCCSub-Clause 20.1.

e) The Procuring Entity modifies the Schedule of Other Contractors in a way that affects the work of theContractor under the Contract.

f) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions requiredfor execution of the Works on time.

g) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, whichis then found to have no Defects.

h) The Project Manager unreasonably does not approve a subcontract to be let.

i) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.

j) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by theProcuring Entity, or additional work required for safety or other reasons.

k) Other contractors, public authorities, utilities, or the Procuring Entity does not work within the dates andother constraints stated in the Contract, and they cause delay or extra cost to the Contractor.

l) The advance payment is delayed.

m) The effects on the Contractor of any of the Procuring Entity's Risks.

n) The Project Manager unreasonably delays issuing a Certificate of Completion.

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

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

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[11] *In lump sum contracts, add "or Activity Schedule" after "Program."*

[12] *In lump sum contracts, replace this paragraph with the following: "The value of work executed shall comprise the value of completedactivities in the Activity Schedule."*

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

43. Tax

43.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date30 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

44. Currency y of Payment

44.1 All payments under the contract shall be made in Kenya Shillings

45. Price Adjustment

45.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC.** If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted byapplying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of thetypespecified below applies:

P = A + B Im/Io

where: P is the adjustment factor for the portion of the Contract Price payable.

A and B are coefficients[13] **specified in the SCC,** representing the non-adjustable and adjustable portions, respectively, of the Contract Price payable and Im is the index prevailing at the end of the month being invoiced and IOC is the index prevailing 30 days before Bid opening for inputs payable.

45.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of allchanges in cost due to fluctuations in costs.

46. Retention

46.1 The Procuring Entity shall retain from each payment due to the Contractor the proportion stated in the **SCC** until Completion of the whole of the Works.

46.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 53.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention moneywith an “on demand” Bank guarantee.

47. Liquidated Damages

47.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the **SCC** foreach day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

47.2 If the Intended Completion Date is extended after liquidated damages have been paid, the

Project Manager shallcorrect any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 41.1.

48. Bonus

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

49. Advance Payment

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

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

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

c c

50. Securities

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

51. Dayworks

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

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

51.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

52. Cost of Repairs

52.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing theContract

53. Completion

53.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and theProject Manager shall do so upon deciding that the whole of the Works is completed.

54. Taking Over

54.1 The Procuring Entity shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

55. Final Account

55.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The ProjectManager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Managershall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

[13] *The sum of the two coefficients A and B should be 1 (one) in the formula for each currency. Normally, coefficients shall be the same in the formulae for all currencies, since coefficient A, for the non-adjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other non-adjustable components. The sum of the adjustments for each currency are added to the Contract Price.*

56. Operating and Maintenance Manuals

56.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supplythem by the dates stated in the SCC.

56.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC pursuant to GCC Sub-Clause 56.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the SCC** from payments due to the Contractor.

57. Termination

57.1 The Procuring Entity or the Contractor may terminate the Contract if the other party causes a fundamental breachof the Contract.

57.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

a) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and thestoppage has not been authorized by the Project Manager;

b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is notwithdrawn within 30 days;

c) the Procuring Entity or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction oramalgamation;

d) a payment certified by the Project Manager is not paid by the Procuring Entity to the Contractor within 84days of the date of the Project Manager's certificate;

e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the ProjectManager;

f) the Contractor does not maintain a Security, which is required;

g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**; or

h) if the Contractor, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix A to the GCC, in competing for or in executing the Contract, then the Procuring Entity may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel him from the Site.

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

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

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

58. Payment upon Termination

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

58.2 If the Contract is terminated for the Procuring Entity's convenience or because of a

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

59. Property

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

60. Release from Performance

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

SECTION IX - SPECIAL CONDITIONS OF CONTRACT

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

Number ofGC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	A. General
GCC 1.1 (q)	The Procuring Entity IS COUNTY OF BOMET , **DEPARTMENT OF WATER,SANITATION,ENVIRONMENT AND NATURAL RESOURCES AND CLIMATE CHANGE , P.O. Box 19-20400, Bomet.**
GCC 1.1 (u)	The Intended Completion Date for the whole of the Works shall be 12 weeks
GCC 1.1 (x)	The Project Manager is ***Chief Officer-Water, Sanitation, Environment, Natural Resources and Climate Change.***
GCC 1.1 (z)	The Site is located in as above in Bomet County
GCC 1.1 (cc)	The Start Date shall be **Within Seven Days after the signing of the Contract by theContractor and the Employer.**
GCC 1.1 (gg)	The Works consist of ***Supply Installation Testing and Commissioning of Solar systems in six No. Water Schemes.***
GCC 2.2	Sectional Completions are: *Not applicable*
GCC 5.1	The Project manager **may** delegate any of his duties and responsibilities.
GCC 8.1	Schedule of other contractors: **Not applicable**
GCC 9.1	**Key Personnel** GCC 9.1 is replaced with the following: 9.1 Key Personnel are the Contractor's personnel named in this GCC 9.1 of the Special Conditions of Contract. The Contractor shall employ the Key Personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipmentapproved by the Project Manager. The Project Manager shall approve any proposed replacement of Key Personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid. Key Personnel - As per the qualification criteria
GCC 13.1	The minimum insurance amounts and deductibles shall be: **(a)** for loss or damage to the Works, Plant and Materials: **KES 1,000,000.00** **(b)** For loss or damage to Equipment: **KES 1,000,000.00** (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) inconnection with Contract **KES 0.00**. (d) for personal injury or death: (i) of the Contractor's employees: **KES 1,000,000.00**.

	(ii) of other people: **KES 1,000,000.00** .
GCC 14.1	Site Data are: **None**
GCC 20.1	The Site Possession Date(s) shall be: **At Start date** (date of kick off meeting)

Number ofGC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 24.5	i. Appointing Authority for the Adjudicator: *In the event of any dispute controversy or claim arising out of or in connection with this contract or breach thereof, including any question regarding its existence, validity or termination, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties.* ii. *If they do not reach settlement within a period of 45 days of either party providing written notice of the dispute to the other party, then either partyshall, by notice to the other party and the Nairobi Centre for International Arbitration (NCIA) demand mediation under the Mediation Rules of the NCIA.* iii. *If settlement is not reached within 45 days after service of a written demandfor mediation, any dispute controversy or claim arising out of or in connection with this contract or breach thereof, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the NCIA Rules, which Rules are deemed to be incorporated by reference into this clause.* a) *The seat of Arbitration shall be Nairobi* b) *The language of the arbitration shall be English.* c) *The place of arbitration shall be Nairobi.* d) *There shall be one arbitrator, selected in accordance with the NCIA Rules.*
B. Time Control	
GCC 26.1	The Contractor shall submit for approval a Program for the Works within **Seven (*7*)** days fromthe date of the Letter of Acceptance.
GCC 26.3	The period between Program updates is14 days. The amount to be withheld for late submission of an updated Program is **10% of contractsum**
C. Quality Control	
GCC 34.1	The Defects Liability Period is: ***6 months***.
D. Cost Control	
GCC 38.9	If the value engineering proposal is approved by the Procuring Entity the amount to be paid tothe Contractor shall be ….. N/A …… of the reduction in the Contract Price.
GCC 44.1	The currency of the Procuring Entity's Country is: ***Kenya Shilling***.
GCC 45.1	The Contract ***is not*** subject to price adjustment in accordance with GCC Clause 45, and thefollowing information regarding coefficients ***does not*** apply.
GCC 46.1	The proportion of payments retained is: ***ten (10%) percent***
GCC 47.1	The liquidated damages for the whole of the Works are ***0.1% of the final Contract Price*** perday. The maximum amount of liquidated damages for the whole of the Works **is *10% of*** the final Contract Price.
GCC 48.1	The Bonus for the whole of the Works is ***Nil*** per day. The maximum amount of Bonus for thewhole of the Works is ***N/A*** of the final Contract Price.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 49.1	The Advance Payments shall be: **NOT APPLICABLE** and shall be paid to the Contractor nolater than *N/A]*.
GCC 50.1	The Performance Security amount is *[insert amount(s) denominated in the types and proportions of the currencies in which the Contract Price is payable, or in a freely convertiblecurrency acceptable to the* Procuring Entity*]* (a) Performance Security – Bank Guarantee: in the amount(s) of **5%** percent of the Accepted Contract Amount and in the same currency (ies) of the Accepted ContractAmount. (b) Performance Security – Performance Bond: in the amount(s) of **5%** percent of the Accepted Contract Amount and in the same currency (ies) of the Accepted ContractAmount.
E. Finishing the Contract	
GCC 56.1	The date by which operating and maintenance manuals are required is **Date ofCommissioning**. The date by which "as built" drawings are required is **N/A**
GCC 56.2	The amount to be withheld for failing to produce "as built" drawings and/or operating andmaintenance manuals by the date required in GCC 58.1 is **N/A**
GCC 57.2 (g)	The maximum number of days is: **84 days**.
GCC 58.1	The percentage to apply to the value of the work not completed, representing the ProcuringEntity's additional cost for completing the Works, is **30%**.

FORM No 1: NOTIFICATION OF INTENTION TO AWARD

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

FORMAT

1. For the attention of Tenderer's Authorized Representative
   - *i)* Name: *[insert Authorized Representative's name]*
   - *ii)* Address: *[insert Authorized Representative's Address]*
   - *iii)* Telephone: *[insert Authorized Representative's telephone/fax numbers]*
   - *iv)* Email Address: *[insert Authorized Representative's email address]*

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

2. Date of transmission: [*email*] on [*date*] (local time)

   This Notification is sent by (*Name and designation*) _____

3. Notification of Intention to Award

   - *i)* Procuring Entity: *[insert the name of the Procuring Entity]*
   - *ii)* Project: *[insert name of project]*
   - *iii)* Contract title: *[insert the name of the contract]*
   - *iv)* Country: *[insert country where ITT is issued]*
   - *v)* ITT No: *[insert ITT reference number from Procurement Plan]*

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

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

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

   a) The successful tenderer
      - i) Name of successful Tender _____
      - ii) Address of the successful Tender _____
      - iii) Contract price of the successful Tender Kenya Shillings _____ (inwords _____)

   b) Other Tenderers

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

SNo	Name of Tender	Tender Priceas read out	Tender's evaluated price (Note a)	One Reason Why notEvaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5. How to request a debriefing

a) DEADLINE: The deadline to request a debriefing expires at midnight on [*insert date*] (*local time*).

b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.

c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

i) Attention: [*insert full name of person, if applicable*]

ii) Title/position: [*insert title/position*]

ii) Agency: [*insert name of Procuring Entity*]

iii) Email address: [*insert email address*]

d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. Ifthis happens, we will notify you and confirm the date that the extended Standstill Period will end.

e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date ofpublication of the Contract Award Notice.

6. How to make a complaint

a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight,[*insert date*] (local time).

b) Provide the contract name, reference number, name of the Tenderer, contact details; and address theProcurement-related Complaint as follows:

i) Attention: [*insert full name of person, if applicable*]

ii) Title/position: [*insert title/position*]

iii) Agency: [*insert name of Procuring Entity*]

iv) Email address: [*insert email address*]

c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or

received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website info@ppra.go.ke or complaints@ppra.go.ke.

You should read these documents before preparing and submitting your complaint.

e) There are four essential requirements:

i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.

ii) The complaint can only challenge the decision to award the contract.
iii) You must submit the complaint within the period stated above.

iv) You must include, in your complaint, all of the information required to support your complaint.

7. Standstill Period

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

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

Signature:_____Name:_____

Title/position:_____Telephone:_Email: _____

FORM NO. 2 - REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO…….OF……..….20……...

BETWEEN

……...……

….APPLICANT AND

…..... RESPONDENT
(Procuring Entity)

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

REQUEST FOR REVIEW

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

1.

2.

By this memorandum, the Applicant requests the Board for

an order/orders that:1.

2.

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

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

SIGNED

Board Secretary

FORM NO 3: LETTER OF AWARD

[letterhead paper of the Procuring Entity] [date]

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

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

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

Authorized Signature:.....

Name and Title of Signatory:.....

Name of Procuring Entity.....

Attachment: *Contract Agreement*.....

FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the_____day of_____, 20___, between _____of_____(hereinafter "the Procuring Entity"), of the one part, and_____of_____ _____(hereinafter"the Contractor"), of the other part:

WHEREAS the Procuring Entity desires that the Works known as_____should beexecuted by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. ThisAgreement shall prevail over all other Contract documents.
   a) the Letter of Acceptance
   b) the Letter of Tender
   c) the addenda Nos_____(if any)
   d) the Special Conditions of Contract
   e) the General Conditions of Contract;
   f) the Specifications
   g) the Drawings*;* and
   h) the completed Schedules and any other documents forming part of the contract.

3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Procuring Entity to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payableunder the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

Signed and sealed by_____(for the Procuring Entity)

Signed and sealed by_____(for the Contractor).

FORM NO. 5 - PERFORMANCE SECURITY

[Option 1 - Unconditional Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary:_____*[insert name and Address of* Procuring Entity*]* **Date:**____

_____*[Insert date of issue]*

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

1. We have been informed that_____(hereinafter called "theContractor") has entered into Contract No._____dated_____with (*nameof Procuring Entity*)_____(the Procuring Entity as the Beneficiary), for the execution of _____(hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee isrequired.

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum orsums not exceeding in total an amount of_____(*in words*),[1] such sum being payable in the types and proportions of currencies in which the Contract Price ispayable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement,whether in the demand itself or in a separate signed document accompanying or identifying the demand, statingthat the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

4. This guarantee shall expire, no later than the …. Day of ……, 2 [2], and any demand for payment under it must be received by us at the office indicated above on or before that date.

5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, inresponse to the Beneficiary's written request for such extension, such request to be presented to the Guarantorbefore the expiry of the guarantee."

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

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

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

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

FORM No. 6 - PERFORMANCE SECURITY

[Option 2– Performance Bond]

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

[Guarantor letterhead or SWIFT identifier code]

Beneficiary:_____*[insert name and Address of* Procuring Entity*]* **Date:**

_____*[Insert date of issue]***.**

PERFORMANCE BONDNo.:_____

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

1. By this Bond_____as Principal (hereinafter called "the Contractor")and_____] as Surety (hereinafter called"the Surety"), are held and firmly bound unto_____] asObligee (hereinafter called "the Procuring Entity") in the amount of_____ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the ContractPrice is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors andassigns, jointly and severally, firmly by these presents.

2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the _____day of_____, 20 , for_____in accordance with the documents, plans,specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:
   1) complete the Contract in accordance with its terms and conditions; or
   2) obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity andthe Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds topay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costsand damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
   3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordancewith its terms and conditions up to a total not exceeding the amount of this Bond.

4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of theTaking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporationother than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns ofthe Procuring Entity.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has causedthese presents to be sealed with his corporate seal duly attested by the signature of his legal representative, thisday_____of__20___.

SIGNED ON_____on behalfof By in the capacity of In thepresence of

SIGNED ON_____on behalf of By in the capacity of In thepresence of

FORM NO. 7 - ADVANCE PAYMENT SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: *[Insert name and Address of* Procuring Entity*]*
Date: *[Insert date of issue]*

ADVANCE PAYMENTGUARANTEE No.: *[Insert guarantee reference number]* **Guarantor:**

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

1. We have been informed that (hereinafter called "the Contractor") has entered into Contract No. *dated* with the Beneficiary, for the execution of (hereinafter called "the Contract").

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

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sumor sums not exceeding in total an amount of (*in words*)[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that theApplicant:
   a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
   b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amountwhich the Applicant has failed to repay.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate fromthe Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor onits account number at .

5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance paymentrepaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of , 2 ,[2] whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months][one year],* inresponse to the Beneficiary's written request for such extension, such request to be presented to the Guarantorbefore the expiry of the guarantee.

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

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

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

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

FORM NO. 8 - RETENTION MONEY SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

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

Date:_____*[Insert date of issue]*

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

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

1. We have beeninformed that_____*[insert name of Contractor, which in the case of a joint ventureshall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. _____*[insert reference number of the contract]* dated___with the Beneficiary, for theexecution of_____*[insert name of contract and brief description of* Works*]* (hereinaftercalled "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up tothe limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and paymentof *[*insert the second half of the Retention Money] is to be made against a Retention Money guarantee.

3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum orsums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount inwords___])*[1] upon receipt by us of the Beneficiary's complying demand supportedby the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying oridentifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, withoutyour needing to prove or show grounds for your demand or the sum specified therein.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited tothe Contractor on its account number____at *[insert name and address ofApplicant's bank]*.

5. This guarantee shall expire no later than the …..... Day of ..... , 2 .....[2], and any demand for payment under it must be received by us at the office indicated above on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, inresponse to the Beneficiary's written request for such extension, such request to be presented to the Guarantorbefore the expiry of the guarantee.

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

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

The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.

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

FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE FORM

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

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

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.

Tender Reference No.:_____[*insert identification no*]Name of the Tender Title/Description:_____*[insert name of the assignment]* to:

_____*[insert complete name of Procuring Entity]*

In response to the requirement in your notification of award dated *[insert date of notification of award]* to furnish additional information on beneficial ownership:__*[select one option as applicable and delete the optionsthat are not applicable]*

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

Details of beneficial ownership

	Details of all Beneficial Owners		**% of sharesa person holds in the company Directly or indirectly**	**% of voting rights a person holds in the company**	**Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer** (Yes / No)	**Whether a person directly or indirectly exercises significant influenceor control over the Company (tenderer) (Yes / No)**
1.	Full Name		Directly-------- % of shares Indirectly-------%	Directly…… …….% of votingrights Indirectly-------% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No----	1. Exercises significant influence or control over the Company body ofthe Company (tenderer)
	National identitycard number or Passport number					
	Personal Identification Number (where					

	applicable)		of shares		2. Is this right held directly or indirectly?: Direct…… …… … Indirect…… …… …...	Yes -----No----- 2. Is this influence or control exercised directlyor indirectly? Direct…… ….. Indirect…… ……
	Nationality					
	Date of birth *[dd/mm/yyyy]*					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					

	Details of all Beneficial Owners		% of sharesa person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influenceor control over the Company (tenderer) (Yes / No)
2.	Full Name		Directly-------- % of shares Indirectly-------% of shares	Directly…… …….% of votingrights Indirectly-------% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No---- 2. Is this right held directly or indirectly?: Direct…… … Indirect…… …...	1. Exercises significant influence or control over the Company body ofthe Company (tenderer) Yes -----No---- 2. Is this influence or control exercised directlyor indirectly? Direct…… ….. Indirect…… ……
	National identitycard number or Passport number					
	Personal Identification Number (where applicable)					
	Nationality(ies)					
	Date of birth *[dd/mm/yyyy]*					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					
3. **e.t.c**						

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information)

Regulations, 2020.(Notwithstanding this paragraph Personally IdentifiableInformation in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email addressand Telephone number.*

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

(a) holds at least ten percent of the issued shares in the company either directly or indirectly;

(b) exercises at least ten percent of the voting rights in the company either directly or indirectly;

(c) holds a right, directly or indirectly, to appoint or remove a director of the company; or

(d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

*Name of the Tenderer..... *[insert complete name of the Tenderer]_____*

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

Designation of the person signing the Tender ..... [insert complete title of the person signing the Tender]

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

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

Bidder Official Stamp