



TENDER NO. KPA/210/2025-26/PDM

**PROPOSED CONSTRUCTION OF INTEGRATED
STORM WATER DRAINAGE WITHIN THE PORT
OF MOMBASA – PHASE 1**

TENDER DOCUMENT

JUNE 2026

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INVITATION TO TENDER

DATE: JUNE 2026

TENDER NO. KPA/210/2025-26/PDM

TENDER NAME: PROPOSED CONSTRUCTION OF INTEGRATED STORM WATER DRAINAGE WITHIN THE PORT OF MOMBASA – PHASE 1

1. The Kenya Ports Authority invites sealed tenders for the construction of **PROPOSED CONSTRUCTION OF INTEGRATED STORM WATER DRAINAGE WITHIN THE PORT OF MOMBASA – PHASE 1.**
2. Tendering will be conducted under open National competitive method using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
3. Tender documents may be viewed and downloaded for free from the KPA website www.kpa.co.ke. Tenderers who download the tender document must forward their particulars immediately to tenders@kpa.co.ke to facilitate any further clarification or addendum.
4. Enquiries can be made via email address tenders@kpa.co.ke.
5. Bidders are advised to regularly visit the KPA website to obtain any additional information/addendum on the tender. **All addenda/additional information on the tender shall be posted on the KPA website as they become available.**
6. Tenders shall be quoted be in Kenya Shillings and shall include all taxes. Tenders shall remain valid for 210 days from the date of opening of tenders.
7. Tenderers shall be required to submit a Tender Security amounting to **Kenya Shillings One Million (Kshs. 1,000,000.00)** in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA), letter of credit or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 240 days from the date of tender opening in the format provided in the tender document.
8. The Tenderer shall chronologically serialize all pages of the tender documents including any attachments submitted in the format 1,2,3,4,5,.....n (where n is the last numerical page number).
9. All Tenders in **one original plus one copy of original and a PDF soft copy of the original in a flash disk & Priced BoQ in excel format**, properly filled in, and enclosed in plain envelopes and must be marked as follows:

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PROPOSED CONSTRUCTION OF INTEGRATED STORM WATER DRAINAGE WITHIN THE PORT OF MOMBASA – PHASE 1

“DO NOT OPEN BEFORE 1000 HOURS ON FRIDAY 3RD JULY 2026”.

10. Completed tenders must be delivered to the address below on or before **1000HOURS ON FRIDAY 3RD JULY 2026.** Electronic Tenders *will not* be permitted.

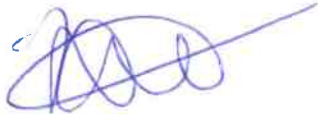
11. Tenders will be opened promptly after **1000HOURS ON FRIDAY 3RD JULY 2026**. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
12. Late tenders will be rejected.
13. The addresses referred to above are:

A. Address for Submission of Tenders.

- i) Tender Box located at the **BUS TERMINUS
PORT MAIN PEDESTRIAN GATE NO. 8,
KILINDINI, MOMBASA**
- ii) THE GENERAL MANAGER SUPPLY CHAIN MANAGEMENT
KENYA PORTS AUTHORITY
KIPEVU HEADQUARTERS 4TH FLOOR
FINANCE BLOCK III, DOOR BLK-3.4.3
KILINDINI MOMBASA
Phone: +254 (41) 2113600/ 2113999
E-mail: tenders@kpaco.ke

B. Address for Opening of Tenders.

- i) Procurement Conference Room
New Service Area (Kapenguria)
KILINDINI MOMBASA
14. KPA is committed to the fight against corruption and adheres to high standards of integrity in its business operations. Bidders and the general public are encouraged to report any unethical behavior immediately to any of the following anonymous hotline service:-
- Hotline number: **0794272376**
 - Email: stopcorruption@kpa.co.ke
 - KPA website www.kpa.co.ke under the Report corruption tab



Eveline I. Shigoli
GENERAL MANAGER SUPPLY CHAIN MANAGEMENT
FOR: MANAGING DIRECTOR



VISION, MISSION, & CORE VALUES

Vision

World class ports of choice.

Mission

To provide efficient and competitive port services to facilitate global trade

Core Values

Customer Focus: Service excellence is key to our operations and we endeavor to exceed customer expectations.

Integrity: We uphold fairness, honesty, professionalism and transparency in all our undertakings.

Teamwork: We embrace team spirit in all that we do.

Care: We care for our staff, the communities around us and are sensitive to the environment

Innovation: The Authority will invest and leverage on research, development and innovation to ensure that the Kenya Ports stay ahead of the curve in improving efficiency in their processes.

Kenya Ports Authority

Environment, Health & Safety Policy

Kenya Ports Authority recognizes the impacts caused by our activities and services and therefore undertakes to employ environmentally friendly practices and to provide safe and healthy working and operating environment for all employees, contractors, customers, port users and visitors. KPA demonstrates this commitment through the implementation of an Integrated Management System based on ISO 14001:2015 and ISO 45001:2018.

To accomplish this commitment KPA shall:

1. Implement sound and environmentally friendly practices aimed at preventing pollution, efficient waste containment and management and protection of the environment from negative environmental impacts arising from all aspects of our operations.
2. Engage our stakeholders including but not limited to contractors, suppliers and business partners in a manner that will ensure compliance with EMS/OSH standards, designed procedures and other relevant legal requirements whilst encouraging them to protect the environment.
3. Comply with all applicable environmental and occupational health and safety legal and other requirements.
4. Eliminate hazards and reduce occupational health and safety risks in order to prevent work-related injuries and ill health.
5. Enhance consultation and participation of workers and/or their representatives in development and roll-out of health and safety policies.
6. Educate and train employees and the community on safe working and environmentally friendly practices in order to create a culture of safety and sustainable environmental improvement and stewardship.
7. Regularly review and continually improve the EMS/OSH management system to enhance performance and to conform to changing trends.
8. Provide adequate funds and resources to accomplish the established EMS/OSH objectives and targets and for the maintenance and improvement of the Integrated Management System based on ISO 14001:2015 and ISO 45001:2018.

The Managing Director and Top Management of the Port are responsible and accountable for effective implementation of this Policy.



Capt. William K. Ruto, MBS, AFNI
MANAGING DIRECTOR

1st July 2024



KEBS ISO 9001:2015 Certified Org. No. 087

KENYA PORTS AUTHORITY

QUALITY AND INFORMATION SECURITY POLICY

Our Vision

"World-class ports of choice"

Our Quality And Information Security Policy Statement

We are committed to complying with the requirements of ISO 9001:2015 Quality Management System (QMS) and ISO 27001:2022 Information Security Management System (ISMS) Standards, applicable statutory regulations and aligning our management system policies and processes with Risk Management.

Our Strategic Objectives

1. Attain a customer satisfaction index of 75%
2. Improve port efficiency by 41%
3. Promote a safe and healthy working environment with zero accidents
4. Increase common transit market share by 7%
5. Increase profitability to KES 20 billion by 2027/2028
6. Increase employee productivity index to 2
7. Promote 100% compliance to legal and regulatory requirements and good governance principles

We shall;

- provide efficient and competitive port services to facilitate global trade through enhanced customer service, operational excellence, governance and the preservation of confidentiality, integrity, and availability of information
- ensure that this policy and Management System objectives are aligned to the Authority's Strategic Objectives
- effectively implement and continually improve our Management System policies, processes and capabilities
- review these objectives for suitability on an annual basis in accordance with the Authority's Performance Management Framework

Kenya Ports Authority shall ensure that the Quality & Information Security Objectives are established at relevant functions and processes with the organisation.


Capt. William K. Ruto, AFNI
MANAGING DIRECTOR

Date: 29th August, 2023



KEBS ISO 9001:2015 Certified Org. No. 087

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 as described in the tender documents. The name, identification, and number of lots (contracts) of this Tender Document are **specified in the TDS.**

2. Fraud and Corruption

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

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

2.3 Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, pre-qualification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

2.4 Unfair Competitive Advantage -Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. 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.

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 3.8, or an individual or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS.**

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

3.3 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of

interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:

- a) Directly or indirectly controls, is controlled by or is under common control with another tenderer; or
 - b) Receives or has received any direct or indirect subsidy from another tenderer; or
 - c) Has the same legal representative as another tenderer; or
 - d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process; or
 - e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender; or
 - f) any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as Engineer for the Contract implementation; or
 - g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document or
 - h) Has a close business or family relationship with a professional staff of the Procuring Entity who:
 - i. are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or
 - ii. may 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 or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified.
- 3.5 A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. A firm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender.
- 3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract including related Services.
- 3.7 A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
- 3.8 A Tenderer that is a state-owned enterprise or a public institution in Kenya may be eligible to tender and be awarded a Contract(s) only if it is determined by the Procuring Entity to meet the following conditions, i.e. if it is.
- i. A legal public entity of Government and/or public administration,
 - ii. financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and

iii. operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis

- 3.9 Firms and individuals shall be ineligible if their countries of origin are:
- i. as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or
 - ii. 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, local subcontracts and labor) from citizen suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided for this purpose in "SECTION III-EVALUATION AND QUALIFICATION CRITERIA".

3.11 Pursuant to the eligibility requirements of ITT4.1, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.

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

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

3.14 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing a valid tax compliance or valid tax certificate issued by the Kenya Revenue Authority.

4. Eligible Goods, Equipment, and Services

4.1 Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not ineligible under ITT3.9. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.

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

5. Tenderer's Responsibilities

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

B. CONTENTS OF TENDER DOCUMENTS

6. Sections of Tender Document

- 6.1 The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITT10.

PART 1 Tendering Procedures

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

PART 2 Works Requirements

Section V - Drawings
Section VI - Specifications
Section VII - Bills of Quantities

PART 3 Conditions of Contract and Contract Forms

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

- 6.2 The Invitation to Tender Notice issued by the Procuring Entity is not part of the Contract documents.
- 6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of a pre-arranged site visit and those of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.
- 6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in

the Tender Document and to furnish with its Tender all information and documentation as is required by the Tender document.

7. Clarification of Tender Document, Site Visit, Pre-Tender Meeting

- 7.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address **specified in the TDS** or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 7.2. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 7.4, including a description of the inquiry but without identifying its source. If so specified in **the TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents following the procedure under ITT 8 and ITT 22.2.
- 7.2 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information that may be necessary for preparing a tender. The costs of visiting the Site shall be at the Tenderer's own expense. The Procuring Entity shall specify in the **TDS** if a pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.3 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.
- 7.4 Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.
- 7.5 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-arranged site visit and those of the pre-tender meeting at the web page identified **in the TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-arranged site visit and those of the pre-tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.

8. Amendment of Tender Documents

- 8.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tender Documents by issuing addenda.
- 8.2 Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents from the Procuring Entity. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's website in accordance with ITT 7.5.
- 8.3 To give Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity should extend the deadline for the submission of Tenders, pursuant to ITT 22.2.

C. PREPARATION OF TENDERS

9. Cost of Tendering

- 9.1 The Tenderer shall meet all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

10. Language of Tender

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

11. Documents Comprising the Tender

- 11.1 The Tender shall comprise the following:
- a) Form of Tender prepared in accordance with ITT 12;
 - b) Schedules including priced Bill of Quantities, completed in accordance with ITT 12 and ITT 14;
 - c) Tender Security or Tender-Securing Declaration, in accordance with ITT 19.1;
 - d) Alternative Tender, if permissible, in accordance with ITT 13;
 - e) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 20.3;
 - f) Qualifications: documentary evidence in accordance with ITT 17 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
 - g) Conformity: a technical proposal in accordance with ITT 16;
 - h) Any other document required in the **TDS**
- 11.2 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 JV Agreement. Change of membership and conditions of the JV prior to contract signature will render the tender liable for disqualification.

12. Form of Tender and Schedules

- 12.1 The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
- 12.2 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

13. Alternative Tenders

- 13.1 Unless otherwise specified in the TDS, alternative Tenders shall not be considered.
- 13.2 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.
- 13.3 Except as provided under ITT13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price the Procuring

Entity's design as described in the Tender Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

- 13.4 When specified in the **TDS**, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the **TDS**, as will the method for their evaluating, and described in Section VI, Works' Requirements.

14. Tender Prices and Discounts

- 14.1 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.
- 14.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Procuring Entity. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.
- 14.3 The price to be quoted in the Form of Tender, in accordance with ITT 12, shall be the total price of the Tender, including any discounts offered.
- 14.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT 12
- 14.5 It will be specified in the **TDS** if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, except in cases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Procuring Entity may require the Tenderer to justify its proposed indices and weightings.
- 14.6 Where tenders are being invited for individual lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 14.4, provided the Tenders for all lots (contracts) are opened at the same time.
- 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

15. Currencies of Tender and Payment

- 15.1 The currency (ies) of the Tender and the currency (ies) of payments shall be the same.
- 15.2 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) A Tenderer expecting to incur expenditures in other currencies for inputs to the Works

supplied from outside Kenya (referred to as “the foreign currency requirements”) shall (if so allowed in the TDS) indicate in the Appendix to Tender the percentage(s) of the Tender Price (excluding Provisional Sums), needed by the Tenderer for the payment of such foreign currency requirements, limited to no more than two foreign currencies.

b) The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Tenderer in the Appendix to Tender and shall be based on the exchange rate provided by the Central Bank of Kenya on the date 30 days prior to the actual date of tender opening. Such exchange rate shall apply for all foreign payments under the Contract.

15.3 Tenderers may be required by the Procuring Entity to justify, to the Procuring Entity's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data in the Appendix to Tender are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Tenderers.

16. Documents Comprising the Technical Proposal

16.1 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.

17. Documents Establishing the Eligibility and Qualifications of the Tenderer

17.1 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance with ITT 3.

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

17.3 If a margin of preference applies as specified in accordance with ITT33. 1, national tenderers, individually or in joint ventures, applying for eligibility for national preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.

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

17.5 The purpose of the information described in **ITT 17.4** above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

17.6 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.4. 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.

- 17.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 17.8 If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 17.9 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i. If the procurement process is still on going, the tenderer will be disqualified from the procurement process,
 - ii. If the contract has been awarded to that tenderer, the contract award will be set aside,
 - iii. The tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 17.10 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 17.8 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

18. Period of Validity of Tenders

- 18.1 Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 22). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 18.2 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 19, 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 their quest shall not be required or permitted to modify its Tender.

19. Tender Security

- 19.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the **TDS**, in original form and, in the case of a Tender Security, in the amount and currency **specified in the TDS**. A Tender-Securing Declaration shall use the form included in Section IV, Tender Forms.
- 19.2 If a Tender Security is specified pursuant to ITT19.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:
- i. a bank guarantee;
 - ii. a guarantee by an insurance company registered and licensed by the Insurance

- Regulatory Authority listed by the Authority; or
- iii. a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya, from a reputable source, and an eligible country.
- 19.3 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.
- 19.4 If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.
- 19.5 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the **TDS**. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.
- 19.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security, and any other documents required in the **TDS**.
- 19.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension there to provided by the Tenderer; or
 - b) if the successful Tenderer fails to:
 - i) sign the Contract in accordance with ITT 47; or
 - ii) furnish a Performance Security and if required in the **TDS**, and any other documents required in the **TDS**.
- 19.8 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.
- 19.9 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 3.1 and ITT 11.2.
- 19.10 A tenderer shall not issue a tender security to guarantee itself

20. Format and Signing of Tender

- 20.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number **specified in the TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 Tenderers shall mark as "CONFIDENTIAL" all information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 20.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This

authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

- 20.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 20.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. SUBMISSION AND OPENING OF TENDERS

21. Sealing and Marking of Tenders

- 21.1 The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- a) in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and
 - b) in an envelope or package or container marked "COPIES" all required copies of the Tender; and
 - c) if alternative Tenders are permitted in accordance with ITT 13, and if relevant:
 - i) in an envelope or package or container marked "ORIGINAL - ALTERNATIVE TENDER", the alternative Tender; and
 - ii) in the envelope or package or container marked "COPIES-ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) Bear the name and address of the Procuring Entity.
 - b) Bear the name and address of the Tenderer; and
 - c) Bear the name and Reference number of the Tender.
- 21.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that were misplaced or opened prematurely will not be accepted

22. Deadline for Submission of Tenders

- 22.1 Tenders must be received by the Procuring Entity at the address specified in the **TDS** and no later than the date and time also specified in the **TDS**. When so specified in the **TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the **TDS**.
- 22.2 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.

23. Late Tenders

- 23.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT 22. 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.

24. Withdrawal, Substitution, and Modification of Tenders

- 24.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 20.3, (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 20 and ITT 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and
 - b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.
- 24.2 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the Tenderers.
- 24.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

25. Tender Opening

- 25.1 Except in the cases specified in ITT 23 and ITT 24.2, the Procuring Entity shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified **in the TDS**, in the presence of Tenderers' designated representatives and anyone who chooses to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 22.1, shall be as specified in the **TDS**.
- 25.2 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.
- 25.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 25.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.
- 25.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.
- 25.6 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 Bill of Quantities (to be decided on by the tender opening committee) are to be initialed by the members of the tender opening committee attending the opening.

- 25.7 At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 23.1).
- 25.8 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.
- 25.9 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 tender opening register shall be issued to a tenderer upon request.

E. Evaluation and Comparison of Tenders

26. Confidentiality

- 26.1 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 43.
- 26.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.
- 26.3 Notwithstanding ITT 26.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.

27. Clarification of Tenders

- 27.1 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the tenders, in accordance with ITT 31.
- 27.2 If a tenderer does not provide clarifications of its tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

28. Deviations, Reservations, and Omissions

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

29. Determination of Responsiveness

- 29.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the tender itself, as defined in ITT 11.
- 29.2 A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:
- a) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
 - b) limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights or the tenderer's obligations under the proposed contract; or
 - c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.
- 29.3 The Procuring Entity shall examine the technical aspects of the tender submitted in accordance with ITT 16, to confirm that all requirements of Part 2, Works' Requirements have been met without any material deviation, reservation or omission.
- 29.4 If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

30. Non-material non-conformities

- 30.1 Provided that a tender is substantially responsive, the Procuring Entity may waive any non-conformities in the tender.
- 30.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the tenderer submit the necessary information or documentation, within a reasonable period of time, 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.
- 30.3 Provided that a tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified **in the TDS**.

31. Arithmetical Errors

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

32. Conversion to Single Currency

32.1 For evaluation and comparison purposes, the currency (ies) of the Tender shall be converted into a single currency **as specified in the TDS**.

33. Margin of Preference and Reservations

33.1 A margin of preference may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.

33.2 A margin of preference shall not be allowed unless it is specified so in the **TDS**.

33.3 Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 33.4.

33.4 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and 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 or firms belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

34. Nominated Subcontractors

34.1 **Unless** otherwise stated **in the TDS**, the Procuring Entity does not intend to execute any specific elements of the Works by subcontractors selected/nominated by the Procuring Entity. In case the Procuring Entity nominates a subcontractor, the subcontract agreement shall be signed by the Subcontractor and the Procuring Entity. The main contract shall specify the working arrangements between the main contractor and the nominated subcontractor.

34.2 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.

34.3 Domestic subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works unless their specialized parts of the Works were previously designated so 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.

35. Evaluation of Tenders

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

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

- a) Price adjustment in accordance with ITT 30; excluding provisional sums and contingencies, if any, but including Day work items, where priced competitively;
- b) Price adjustment due to discounts offered in accordance with ITT 14.4;
- c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 32;
- d) price adjustment due to quantifiable non material non-conformities in accordance with ITT 30.3; and
- e) any additional evaluation factors specified **in the TDS** and Section III, Evaluation

and Qualification Criteria.

35.3 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.

35.4 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 35.2. The methodology to determine the lowest evaluated tenderer or tenderers based on one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, the tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

36. Comparison of Tenders

36.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

37. Abnormally Low Tenders and Abnormally High

Tenders Abnormally Low Tenders

37.1 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.

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

37.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

Abnormally High Tenders

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

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

- i. If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
- ii. If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

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

38. Unbalanced and/or Front-Loaded Tenders

38.1 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.

38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:

- a) accept the Tender; or
- b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 10% of the Contract Price; or
- c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
- d) reject the Tender,

39. Qualifications of the Tenderer

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

39.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 17. 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.

39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

40. Lowest Evaluated Tender

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

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

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

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

F. AWARD OF CONTRACT

42. Award Criteria

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

43. Notice of Intention to enter into a Contract

- 43.1 Upon award of the contract and prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:
- a) the name and address of the Tenderer submitting the successful tender;
 - b) the Contract price of the successful tender;
 - c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
 - d) the expiry date of the Standstill Period; and
 - e) instructions on how to request a debriefing and/or submit a complaint during the stand still period;

44. Stand still Period

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

45. Debriefing by the Procuring Entity

- 45.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a concern regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.
- 45.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.:

46. Letter of Award

- 46.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 44.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

47. Signing of Contract

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

48. Performance Security

- 48.1 Within twenty-one (21) days of the receipt of the Letter of Award from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the **TDS**, in accordance with the General Conditions of Contract, subject to ITT 38.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent bank is not required.
- 48.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the **TDS** or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.
- 48.3 Performance security shall not be required for contracts estimated to cost less than the amount specified in the Regulations.

49. Publication of Procurement Contract

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

50. Procurement Related Complaint and Administrative Review

- 50.1 The procedures for making Procurement-related Complaints shall be specified in the **TDS**.
- 50.2 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 name of the contract is PROPOSED CONSTRUCTION OF INTEGRATED STORM WATER DRAINAGE WITHIN THE PORT OF MOMBASA – PHASE 1 The reference number of the Contract is TENDER NO. KPA/210/2025-26/PDM
ITT 2.4	The firm that provided Consulting Services for the Contract being tendered is: HORICON ENGINEERING SOLUTIONS LTD
ITT 3.1	The maximum number of members in the Joint Venture shall be: Two
	B. Contents of Tender Document
ITT 7.1	The Tenderer will submit any request for clarifications in writing at email address, tenders@kpa.co.ke no later than 5 days before deadline of submission of tenders.
ITT 7.2	N/A
ITT 7.5	The Procuring Entity's website is www.kpa.co.ke
	C. Preparation of Tenders
ITT 11.1 (h)	The Tenderer shall submit the following additional documents in its Tender: <i>all duly completed and signed mandatory tendering forms under section IV</i>
ITT 13.1	Alternative Tenders " <i>shall not be</i> " considered.
ITT 13.2	Alternative times for completion " <i>shall not be</i> " permitted.
ITT 13.4	Alternative technical solutions " <i>shall not be</i> " permitted.
ITT 14.5	The prices quoted by the Tenderer " <i>shall not</i> " be subject to adjustment during the performance of the Contract.
ITT 15.2(a)	Foreign currency requirements: not allowed.
ITT 18.1	The Tender validity period shall be 210 days from the date of tender opening.
ITT 18.3	The Number of days beyond the expiry of the initial tender validity period will be 30 days.
ITT 19.1	Tenderers shall be required to submit a Tender Security amounting to Kenya Shillings One Million (Kshs. 1,000,000.00) in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA), letter of credit or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 240 days from the date of tender opening in the format provided in the tender

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	document.
ITT 19.5, 19.6 and 19.7	Other documents required: N/A
ITT 20.1	In addition to the original of the Tender, the number of copies is: one original plus one copy of original and a PDF soft copy of the original in a flash disk & priced BoQ in excel format.
ITT 20.3	<p>The written confirmation of authorization to sign on behalf of the Tenderer shall consist of a Power of Attorney. The name and position held by each person signing the authorization must be typed or printed below the signature.</p> <p><i>The Power of Attorney must show the name and specimen signature of the person authorized to sign the documents.</i></p> <p><i>This applies to only limited companies and Partnerships.</i></p>
D. Submission and Opening of Tenders	
ITT 21.2	A tender package or container that cannot fit in the tender box shall be received as follows: Office of the General Manager Supply Chain Management located in Finance Block III.
ITT 22.1	<p>For <u>Tender submission purposes</u> only, the Procuring Entity's address is:</p> <p>THE GENERAL MANAGER SUPPLY CHAIN MANAGEMENT KENYA PORTS AUTHORITY KIPEVU HEADQUARTERS 4TH FLOOR FINANCE BLOCK III, DOOR BLK-3.4.3 MOMBASA, KENYA Phone: +254 (41) 2113600/ 2113999 E-mail: tenders@kpa.co.ke</p> <p>The deadline for Tender submission is:</p> <p>Date: THURSDAY 2ND JULY 2026</p> <p>Time: BEFORE 1000HOURS.</p> <p>Tenderers "shall not" have the option of submitting their Tenders electronically.</p>
ITT 25.1	<p>Tender opening shall be at the Procurement Conference Room.</p> <p>Date: THURSDAY 2ND JULY 2026</p> <p>Time: 1030HOURS</p>
E. Evaluation, and Comparison of Tenders	
ITT 30.3	The adjustment shall be based on the average price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate.
ITT 32.1	<p>The currency that shall be used for Tender evaluation and comparison purposes to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is KENYA SHILLINGS.</p> <p>The source of exchange rate shall be The Central bank of Kenya (mean rate)</p>

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	The date for the exchange rate shall be the deadline date for Submission of the Tenders.
ITT 33.2	A margin of preference " <i>shall not</i> " apply.
ITT 33.4	The invitation to tender is extended to the following groups that qualify for Reservations: N/A
ITT 34.1	At this time, the Procuring Entity does not intend to execute certain specific parts of the Works by subcontractors selected in advance
ITT 34.2	Contractor's may propose subcontracting: Maximum percentage of subcontracting permitted is: <i>40% of the total contract amount</i> . Tenderers planning to subcontract more than 10% of total volume of work shall specify, in the Form of Tender, the activity (ies) or parts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience
ITT 34.3	The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows: N/A
ITT 35.2 (e)	<p>Other information or materials required to be completed and submitted by Tenderers:</p> <p>EVALUATION CRITERIA</p> <p>Participating bidders are required to provide their best unit rates for each specified area.</p> <p>1. Financial Evaluation:</p> <p>This will entail verifying the financials and checking for arithmetical errors, omissions, and price comparison among the qualified tenderers in accordance with the evaluation criteria.</p>
F. Evaluation, and Comparison of Tenders	
ITT 48.1	<p>Performance Security shall be 10% of the contract sum in form of performance guarantee from a bank with its operations in Kenya in the format provided in Section X – (Contract Forms - Form No. 5 - Performance Security – (Unconditional Demand Bank Guarantee) valid for the contract period.</p> <p>Any other required documents: N/A</p>
ITT 50.1	<p>The procedures for making a Procurement-related Complaint are available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing to: complaints@ppra.go.ke</p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <p>(i) the terms of the Tender Documents; and</p> <p>(ii) the Procuring Entity's decision to award the contract.</p>

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 amount 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 in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

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

Evaluation and contract award Criteria

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

2. Preliminary examination for Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements of "Part 2 – Procuring Entity's Works Requirements", including checking for tenders with unacceptable errors, abnormally low tenders, abnormally high tenders and tenders that are front loaded. Tenders that do not pass the Preliminary Examination will be considered irresponsive and will not be considered further.

The *bid* submission

1. Shall have a table of contents page clearly indicating Sections and Page Numbers **(Mandatory)**.
2. Shall have pages in the whole document from the table of contents page numbered in the correct sequence (1,2,3,4,5,.....n (where n is the last numerical page number)) including all appendixes and attachments - ***page numbers MUST be typed, handwritten numbering SHALL NOT be allowed (Mandatory)***.
3. Shall be firmly bound and should not have any loose pages. Spiral binding and files (spring and box) are not acceptable **(Mandatory)**.
4. Shall be submitted in **one original plus one copy of original and a PDF soft copy of the original in a flash disk & priced BoQ in excel format (Mandatory)**.

5. Shall be signed (where signatures are required) by a duly authorized representative of the firm or any other officer appointed and evidenced by a Power of Attorney **(Mandatory)**.

The bid submission shall contain the following documents arranged in the following order:

- i. Power of attorney (of tender signatory if not director of the company/ partner, signed and stamped by Commissioner of Oaths)- **ITT 20.3 (Mandatory)**.
- ii. Particulars of Tendering Company to include: -
 - a. Certificate of Registration/Incorporation (for Main Contractor and Domestic Subcontractors) **(Mandatory)**.
 - b. A copy of a valid Tax Compliance Certificate (for Main Contractor and Domestic Subcontractors) **(Mandatory)**.
 - c. A copy of valid Business Permit (for the year 2026) (for Main Contractor and Domestic Subcontractors) **(Mandatory)**.
 - d. A copy CR12 from Registrar of Companies or equivalent for limited companies, Name of Proprietor for Sole Proprietor and Names of Partners for Partnerships **(Mandatory)**.
 - e. Copy of National Identification documents for owners/Directors of the company (ID/Passport) **(Mandatory)**.
- iii. Tenderers shall be required to submit a Tender Security amounting to **Kenya Shillings One Million (Kshs. 1,000,000.00)** in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA), letter of credit or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 240 days from the date of tender opening in the format provided in the tender document.
- iv. All duly completed and signed mandatory tendering forms under section IV **(Mandatory)**.
- v. Valid/Current NCA Certificate and Practicing License in in Roads Works, Water Works, Building, Electrical and Mechanical works Category NCA1 **(Mandatory)**.
- vi. The Bidder shall submit its Code of Conduct that will apply to Contractor's Personnel to ensure compliance with the Contractor's Environmental and Social (ES) obligations under the Contract. **(Mandatory)**.
- vii. Work Methodology **(Mandatory)**:
 - a. Methodology on Environmental and Social Safeguard issues. The Bidders to also explain how they intend to carry out Corporate Social Responsibility within the community.
 - b. Program of works & cash flow projection.
 - c. Detailed Methodology for the works.
 - d. Methodology on safety during the construction period.
 - e. Proposed Equipment Scheduling/Work statement.
- viii. Submit certified copies of audited accounts (Signed by the company Director(s) and Auditors who are Certified Public Accountants registered with Institute of Certified

Public Accountants of Kenya (**ICPAK**) for the last **three (3) years (2022,2023 and 2024) (Mandatory)**.

NOTE: *bidders who do not satisfy any of the above requirements shall be considered non-Responsive and their tenders will not be evaluated further*

3. Tender Evaluation (ITT 35)

In addition to the criteria listed in ITT 35.2 (a) – (d) the following criteria shall apply if permitted under ITT 35.2(e):

- a) Technical evaluation
- b) Financial evaluation
- c) Award will be to the Lowest Evaluated Bidder

4. Multiple Contracts

Applicable.

5. Alternative Tenders (ITT 13.1)

Not Applicable.

6. Margin of Preference is not applicable

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

In determining satisfaction as to the information submitted by the bidder who has been recommended for tender award, the Procuring Entity may conduct due diligence on the information provided by the bidder and visit the reference sites so as to establish whether the information provided in the bid submission is accurate (post-qualification). **Any false information provided will lead to automatic disqualification and the bidder will be recommended for debarment.**

8.1 History of non-performing contracts

Tenderer (Supplier or/and manufacturer, and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur as a result of the default of the Tenderer, manufacturer or the member of JV as the case may be, in the **last five (5) years**. The required information shall be furnished as per form CON-2].

8.2 Pending Litigation

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under paragraph I (i) above assuming that all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations as per Form CON-2.

8.3 Litigation History

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last **five (5) years**. All parties to the contract shall furnish the information on the related Form (CON-2) about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

QUALIFICATION FORM – TECHNICAL EVALUATION

1 Item No.	2 Qualification Subject	3 Qualification Requirement	4 Document To be Completed by Tenderer	5 For Entity's Procuring Use (Qualification met or Not Met)
1	Nationality	Nationality in accordance with ITT 3.6	Forms ELI – 1.1 and 1.2, with attachments	
2	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by Kenya Revenue Authority in accordance with ITT 3.14.	Attachment	
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 3.7	Form of Tender	
5	State- owned Enterprise	Meets conditions of ITT 3.8	Forms ELI – 1.1 and 1.2, with attachments	
6	Goods, equipment and services to be supplied under the contract	To have their origin in any country that is not determined ineligible under ITT 4.1	Forms ELI – 1.1 and 1.2, with attachments	
7	History of Non-Performing Contracts	Non-performance of a contract did not occur as a result of contractor default since 1 st January 2020	Form CON-2	
8	Suspension Based on Execution of Tender/Proposal Securing Declaration	Not under suspension based on-execution of a Tender/Proposal Securing Declaration pursuant to ITT 19.7	Form of Tender	

1 Item No.	2 Qualification Subject	3 Qualification Requirement	4 Document To be Completed by Tenderer	5 For Entity's Use (Qualification met or Not Met)
	by the Procuring Entity			
9	Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in FORM 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer.	Form CON - 2	
10	Litigation History	No consistent history of court/arbitral award decisions against the Tenderer since 1 st January 2020.	Form CON - 2	
11	Financial Capabilities	<p>(i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Kenya Shillings 250,000,000.00 equivalent for the subject contract(s) net of the Tenderer's other commitments.</p> <p>(ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.</p> <p>(iii) The audited balance sheets or, if not required</p>	Form FIN - 3.1, with attachments	

1 Item No.	2 Qualification Subject	3 Qualification Requirement	4 Document To be Completed by Tenderer	5 For Entity's Use (Qualification met or Not Met)
		by the laws of the Tenderer's country, other financial statements acceptable to the Procuring Entity, for the last 3 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 2,000,000,000.00 as individual firm or JV, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last 3 years,	Form FIN – 3.2	
13	General Construction Experience	Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last 5 years, starting 1 st January 2020.	Form EXP – 4.1	
14	Specific Construction & Contract Management Experience	A minimum number of 3 similar contracts specified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1st January 2020 and tender submission deadline, each of minimum value Kenya shillings...200,000,000.00..... equivalent.	Form EXP 4.2(a)	

1 Item No.	2 Qualification Subject	3 Qualification Requirement	4 Document To be Completed by Tenderer	5 For Entity's Use (Qualification met or Not Met)
15	Contractors key equipment	<p>Bidders shall declare they have possession/Ownership of various equipment as proposed to be used in the Project by providing Logbooks that demonstrate proof of ownership</p> <p>For Bidders planning to hire, they shall provide an Active Lease Agreement in Place that can be used during the Project Life. The copy of logbooks of the lessor(s) shall also be provided</p>	(Form EQU)	
Main Equipment				
	1. Excavators 20–30 Ton		Quantity (No) (Minimum)	3
	2. Excavators (Small; 7–10 Ton)			2
	3. Backhoe Loaders (Standard)			3
	4. Wheel Loaders (2.5–3.5 m ³ bucket)			3
	5. Dump Trucks (20–25 Ton)			12
	6. Vibratory Rollers (10–12 Ton)			2
	7. Drum Rollers (8–10 Ton)			1
	8. Water Bowers			2
	9. Concrete Mixers (5 m ³)			3
	10. Mobile Concrete Pumps			1

1 Item No.	2 Qualification Subject	3 Qualification Requirement	4 Document To be Completed by Tenderer	5 For Entity's Use (Qualification met or Not Met)
	11. Pocker Vibrators		6	
	12. Plate Compactors		4	
	13. The hydro-flushing unit (trailer-mounted system designed 1000-3,000 liters capacity, a high-pressure pump capable of delivering up to 300 bar)		1	
	14. Dewatering Pumps (Diesel, high discharge)		4	
	15. Submersible Pumps (Electric/Diesel)		4	
	16. Crane (Mobile; 25-35 Ton)		1	
	17. Welding Machines (Electric)		3	
	18. Generator Sets (50-100 KVA)		2	
	19. Survey Equipment (Total Station)		2	
	20. GPS Survey Equipment (High accuracy)		1	
	21. Service Pickup / Utility Vehicle		2	
16	Contractor's Representative and Key Personnel	<p>Tenderers must demonstrate that it will have a suitably qualified Contractor's Representative and suitably qualified (and in adequate numbers) Key Personnel, as listed below</p> <p>(In case of a Joint Venture (JV) All members combined must meet requirements)</p> <p>Qualification and experience of the following key personnel</p>	<p>(Form PER. 1 and PER. 2)</p> <p>Curriculum Vitae (CVs) of the Proposed Key Staff must be presented in the provided format and duly signed by the proposed individual. Copies of certificates and Annual Practicing Licenses (for Engineers) and Academic Certificates for all</p>	

1 Item No.	2 Qualification Subject	3 Qualification Requirement	4 Document To be Completed by Tenderer	5 For Procuring Entity's Use (Qualification met or Not Met)
			staff is mandatory.	
Key staff	Experience	Qualifications	Registration and Subscription	For Procuring Entity's Use (Qualification met or Not Met)
Project manager	At least 15 years with 10 years' experience in similar works	Degree in Civil/Marine Engineering	Registration by EBK Professional Engineer with valid subscription	
Site Agent	At least 15 years with 5 years' experience in similar works	Degree in Civil/Marine Engineering	Registration by EBK Professional Engineer with valid subscription	
Quality Assurance/Materials Engineer	At least 10 years with 5 years' experience in similar works	Degree in Civil Engineering	Registration by EBK Professional Engineer with valid subscription	
Site Surveyor	At least 10 years with 5 years' experience in similar works	Degree in Surveying or equivalent	Registration by Institution of Surveyors of Kenya:	
Foreman	At least 10 years with 5 years'	Degree HND	Registration by relevant registration body with valid	

1 Item No.	2 Qualification Subject	3 Qualification Requirement	4 Document To be Completed by Tenderer	5 For Procuring Entity's Use (Qualification met or Not Met)
		experience in similar works	Diploma	subscription)
Health and Safety officer	At least 10 years with 5 years' experience in similar works	Training certificate in Occupational Health and Safety	Academic /professional certificates	
Environmental and social safe guards	At least 10 years with 5 years' experience in similar works	Degree in Environmental Science or equivalent	Registered with NEMA	
Proposed methodology	Adequacy and quality of the proposed methodology		<ul style="list-style-type: none"> • Provide a detailed Work Methodology • Procedure on execution of activities as outlined in the BoQs • Allocation of machinery/labour in the execution of the activities • Procedures in quality control of the activities described in BoQs • Provide a Methodology on safety during the 	

1 Item No.	2 Qualification Subject	3 Qualification Requirement	4 Document To be Completed by Tenderer	5 For Procuring Entity's Use (Qualification met or Not Met)
			<p>construction period</p> <p>Work plan/ Program of Works (PoW) To be submitted in A3 Size Paper well legible Fonts</p> <ul style="list-style-type: none"> • PoW captures Monthly outputs for each activity • PoW details BoQ Quantities, Units and Rates • PoW is superimposed with Cashflow • Site Organization and staffing 	
<p>NOTE: Bidders that provide false information shall automatically be disqualified and recommended for debarment pursuant to clause 41(d) of Public Procurement and Asset Disposal Act, 2015</p>				
<p>FINANCIAL EVALUATION: The lowest evaluated bidder shall be subjected to Financial Evaluation which includes but not limited to sensitivity analysis of the rates to detect abnormally low bids or abnormally high bids or unbalanced tenders or front loaded. Treatment of Abnormally Low Bid/ Abnormally high Bid/ Unbalanced bid.</p> <p>The Procuring Entity may undertake an analysis of bidders' rates which are potentially lower/higher than the known prevailing market rates. The bidders shall be required to provide objective justification including supporting documents on derivation of their rates within stipulated time to the Procuring Entity</p>				

SECTION IV – TENDERING FORMS

QUALIFICATION FORMS

1. FOREIGN TENDERERS 40%RULE.
2. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE
3. Form EQU: EQUIPMENT.
4. FORM PER -1.
5. FORM PER-2.
6. TENDERERS QUALIFICATION WITHOUT PRE-QUALIFICATION.
 - 6.1 FORM ELI-1.1.
 - 6.2 FORM ELI-1.2.
 - 6.3 FORM CON -2.
 - 6.4 FORM FIN -3.1.
 - 6.5 FORM FIN -3.2.
 - 6.6 FORM FIN -3.3.
 - 6.7 FORM FIN -3.4.
 - 6.8 FORM EXP -4.1.
 - 6.9 FORM EXP - 4.2(a).
 - 6.9 FORM EXP - 4.2 (a) (cont.).
 - 6.10 FORM EXP -4.2 (b).

OTHER FORMS

7. FORM OF TENDER.
8. FORM OF TENDER SECURITY - DEMAND BANKGUARANTEE.
9. FORM OF TENDER SECURITY (TENDERBOND).
10. FORM OF TENDER-SECURINGDECLARATION.
11. APPENDIX TO TENDER.

TECHNICAL PROPOSAL FORMS

Site Organization.

Method Statement.

Mobilization Schedule.

Construction Schedule

QUALIFICATION FORMS

1. FOREIGN TENDERERS 40%RULE Work Items

Pursuant to ITT 3.9, a foreign tenderer must complete this form to demonstrate that the tender fulfils this condition.

ITEM	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
A	Local Labor			
1				
2				
3				
4				
5				
B	Sub contracts from Local sources			
1				
2				
3				
4				
5				
C	Local materials			
1				
2				
3				
4				
5				
D	Use of Local Plant and Equipment			
1				
2				
3				
4				
5				
E	Add any other items			
1				
2				
3				
4				
5				
6				
	TOTAL COST LOCAL CONTENT		XXXXX	
	PERCENTAGE OF CONTRACT PRICE			

2 FORM EQU: EQUIPMENT (MANDATORY)

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

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

Omit the following information for equipment owned by the Tenderer.

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

3. FORM PER -1 (MANDATORY)

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

4. FORM PER-2: (MANDATORY)

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

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

Name of Tenderer

Position [#1]: <i>[title of position from Form PER-1]</i>	
Personnel information	Name: _____ Date of birth: _____
	Address: _____ E-mail: _____
	Professional qualifications: _____
	Academic qualifications: _____
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>
Details	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
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

Declaration

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

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

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

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

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

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

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Tenderer:

Signature _____

Date: (day month year): _____

**5. TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION
(MANDATORY)**

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: <i>[indicate country of Constitution]</i>
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 <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.6 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing: <ul style="list-style-type: none"> • 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, a list of Board of Directors, and the beneficial ownership.

4.2 FORM ELI -1.2 (MANDATORY where applicable)

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

Date: _____

ITT No. and title: _____

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

4.3 FORM CON – 2 (MANDATORY)

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)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/city/country]</i> Reason(s) for nonperformance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

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 <input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. <input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			
Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

4.4 **FORM FIN – 3.1:**

Financial Situation and Performance

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

4.4.1. Financial Data

Type of Financial information in _____ (currency)	Historic information for previous _____ years,				
	(amount in currency, currency, exchange rate*, Kshs e				
	2018	Year 2019	Year 2020		
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

***Refer to ITT 15 for the exchange rate**

4.4.2 Sources of Finance

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

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

3		
---	--	--

4.4.3 Financial documents

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

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

Attached are copies of financial statements¹ for the _____ years required above; and complying with the requirements

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.

4.5 FORM FIN – 3.2: (MANDATORY)

Average Annual Construction Turnover

Tenderer’s Name: _____

Date: _____

JV Member’s Name _____

ITT No. and title: _____

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

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

4.6 FORM FIN – 3.3:

Financial Resources

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

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

4.7 FORM FIN – 3.4: (MANDATORY)

Current Contract Commitments / Works in Progress

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

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

4.8

FORM EXP - 4.1 (MANDATORY)

General Construction Experience

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Page _____ of _____ pages

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

4.9 FORM EXP - 4.2(a) (MANDATORY)
Specific Construction and Contract Management Experience

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

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount	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:				

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

Specific Construction and Contract Management Experience (cont.)

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

4.11 FORM EXP - 4.2(b)

Construction Experience in Key Activities

Tenderer's Name: _____

Date: _____

Tenderer's JV Member Name: _____

Sub-contractor's Name2 (as per ITT 34): _____

ITT No. and title: _____

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

1. Key Activity No One: __

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

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

6. FORM OF TENDER (MANDATORY)

INSTRUCTIONS TO TENDERERS

- i) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.*
- ii) All italicized text is to help Tenderer in preparing this form.*
- iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.*
- iv) The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*
 - *Tenderer's Eligibility- Confidential Business Questionnaire*
 - *Certificate of Independent Tender Determination*
 - *Self-Declaration of the Tenderer*

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

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

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

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

To: *[insert complete name of Procuring Entity]* Dear Sirs,

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

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

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

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Special Conditions of Contract.
3. We agree to adhere by this tender until _____ *[Insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us. We further understand that you are not bound to accept the lowest or any tender you may receive.
5. We, the undersigned, further declare that:

- i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;
- ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;
- iii) Tender-Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's Country in accordance with ITT 19.8;
- iv) Conformity: We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: *[insert a brief description of the Works]*;
- v) Tender Price: The total price of our Tender, excluding any discounts offered in item 1 above is: *[Insert one of the options below as appropriate]*
- vi) Option 1, in case of one lot: Total price is: *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]*; Or

Option 2, in case of multiple lots:

- a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]*; and
- b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]*;
- vii) Discounts: The discounts offered and the methodology for their application are:
 - viii) The discounts offered are: *[Specify in detail each discount offered.]*
 - ix) The exact method of calculations to determine the net price after application of discounts is shown below: *[Specify in detail the method that shall be used to apply the discounts]*;
- x) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- xi) Performance Security: If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;
- xii) One Tender Per Tender: We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;
- xiii) Suspension and Debarment: We, along with any of our subcontractors, suppliers, Project Manager, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.
- xiv) State-owned enterprise or institution: *[select the appropriate option and delete the other] [We are not a state-owned enterprise or institution] /*

[We are a state-owned enterprise or institution but meet the requirements of ITT 3.8];

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

Name of Recipient	Address	Reason	Amount

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

xvi) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;

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

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

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

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

xxi) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:

- a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
- b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
- c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
- d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal

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

Name of the Tenderer: *[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 name of person duly authorized to sign the Tender]*

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

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

Date signed _____ **day of** _____, _____

Notes

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

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

A. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE (MANDATORY)

Instruction to Tenderer

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

(a) Tenderer's details

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

Private or public Company _____

State the nominal and issued capital of the Company _____

Nominal Kenya Shillings (Equivalent).....

Issued Kenya Shillings (Equivalent).....

Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

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

If yes, provide details as follows.

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

ii) Conflict of interest disclosure

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

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

f) Certification

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

Full Name _____ **Title**

or Designation _____

(Signature)

(Date)

B. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION (MANDATORY)

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

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

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

Name _____ **Title** _____ **Date** _____

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

C. SELF - DECLARATION FORMS (MANDATORY)

FORM SD1

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

I,, of Post Office Box being a resident of

..... in the Republic of do hereby make a statement as follows: -

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

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

Bidder Official Stamp

FORM SD2

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

I, of P. O. Box being a resident of

..... in the Republic of do hereby make a statement as follows: -

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

.....
(Title)

.....
(Signature)

.....
(Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS (MANDATORY)

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

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....

Telephone..... E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name

Sign..... Date.....

D. APPENDIX 1- FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

3. Requirements

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

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

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

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

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

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

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

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

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

c) Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

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

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors,

and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

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

¹For 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 for Tenders 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 sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

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

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

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

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or 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, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this ____ day of _____ 20 ____.

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

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

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

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

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

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

[Date]

[Signature of the Guarantor]

[Witness]

[Seal]

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

TENDER-SECURING DECLARATION FORM (MANDATORY)

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

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

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

To:..... *[insert complete name of Purchaser]* I/We, the undersigned,

declare that:

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

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

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

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

Appendix to Tender

Schedule of Currency requirements

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

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 2 - WORKS' REQUIREMENTS

SECTION V - BILLS OF QUANTITIES

Bills of Quantities as annexed in the Tender Document

SECTION VI- SPECIFICATIONS

**PART 3 - CONDITIONS OF CONTRACT AND CONTRACT
FORMS**

SECTION VIII - GENERAL CONDITIONS OF CONTRACT

A. General Provisions

The Conditions of Contract comprise the "General Conditions of Contract", which form part of the "FIDIC® Conditions of Contract for Construction for Building and Engineering Works Designed by The Employer, Second Edition 2017 " published by the Federation Internationale des Ingenieurs-Conseils (FIDIC), and the following "Particular Conditions of Contract", which include amendments and additions to such General Conditions of Contract.

The Bidder / Contractor is obligated to purchase the " FIDIC® Conditions of Contract for Construction for Building and Engineering Works Designed by The Employer, Second Edition 2017 (ISBN 2-88432-022-9) at the following address:

International Federation of Consulting Engineers (FIDIC)

World Trade Center II

P.O.Box 311

1215 GENEVA 15 (Switzerland)

Phone: +41 22 799 4900

Fax: +41 22 799 4901

E-mail: fidic@fidic.org

Internet: www.fidic.org

SECTION IX - SPECIAL CONDITIONS OF CONTRACT

The following Particular Conditions shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Conditions	Data
Procuring Entity's name and address	THE GENERAL MANAGER SUPPLY CHAIN MANAGEMENT KENYA PORTS AUTHORITY KIPEVU HEADQUARTERS 4TH FLOOR FINANCE BLOCK III, DOOR BLK-3.4.3 KILINDINI MOMBASA P.O. Box 95009-80104, Mombasa, Kenya E-mail: tenders@kpa.co.ke
Engineers Name and address	THE GENERAL MANAGER INFRASTRUCTURE DEVELOPMENT KENYA PORTS AUTHORITY KIPEVU HEADQUARTERS 5TH FLOOR KILINDINI MOMBASA P.O.Box 95009-80104, Mombasa, Kenya
Time for Completion of the Works	24 months
Defects Notification Period	12 months
Electronic Transmission Systems	To be agreed with the Engineer
Time for Access to the Site	To be agreed with the Engineer
Amount of Performance Security	The performance security will be in the form of a performance bank guarantee in the amount of 10% of the accepted Amount in the same currency(ies) of the accepted contract amount
Normal Working Hours	The official working hours shall be 0800-1300 HRS and 1400-1700 HRS on Mondays to Fridays, and 0800-1300 HRS on Saturdays.
Delay Damages for the Works	0.025 % of the Contract price per day
Maximum amount for Delay Damages	5% of the final contract price
Provisional Sums	As determined by the Engineer
Adjustments for Changes in Cost	N/A
Total advance payment	20% Percentage of the Accepted Contract

Repayment amortization rate of advance payment	25% of the amount of each IPC (excluding the advance payment and deductions and release of retention moneys) in the currencies and proportions of the advance payment, until such time as the advance payment has been repaid.
Percentage of Retention	10%
Limit of Retention	5 % of the Accepted Contract Amount
Plant and Materials	N/A
	N/A
Minimum Amount of Interim Payment Certificates	Ksh. 50,000,000.00
Periods for submission of insurance: a) evidence of insurance b) Relevant policies	14 days 14 days
The place of arbitration	<i>To be agreed upon</i>

APPENDIX TO GENERAL CONDITIONS OF CONTRACT

Sub-Clause	Description
1.1.81 – Tender	<i>Add the following paragraph at the end of Sub-Clause 1.1.81:</i> The word "Tender" is synonymous with the word "Bid" and vice versa. The word "Tender Documents" is synonymous with the word "Bidding Documents" and vice versa.
1.1.31– Employer	<i>A new Sub-clause 1.1.31 is added as follows:</i> "Employer" means: Kenya Ports Authority Kipevu Headquarters P.O.Box 95009-80104 Mombasa Republic of Kenya
1.1.84 – Time for Completion	730 Days to complete the works
1.1.27 – Defects Notification Period	730 Days
1.1.42 – Foreign Currency	"Foreign Currency" means US Dollar (USD)
1.1.21 – Country	"Country" means the Republic of Kenya.
1.2 – Interpretation	<i>Add the following paragraph at the end of Sub-Clause 1.2:</i> In these Conditions, provisions including the expression "Cost plus reasonable profit" require this profit to be five percent (5%) of this Cost.
1.4 - Law and Language	The Contract document shall be drawn up in the ENGLISH LANGUAGE. Communication between the Contractor and the Engineer's Representative shall

Sub-Clause	Description
	be in this given language
1.5 – Priority of Documents	<p>In sub-paragraph (c) of Sub-Clause 1.5 replace “the Letter of Tender” by “the Letter of Tender including Appendix to Tender”</p> <p>In sub-paragraph (h) of Sub-Clause 1.5 replace the text by “the Schedules including the Bills of Quantities and any other documents forming part of the Contract”.</p> <p>The documents forming the Contract shall be interpreted in the following order of priority:</p> <p>Agreement, Letter of Acceptance, Contractor's Bid, Special Conditions of Contract, General Conditions of Contract, including Appendices, Specifications, Drawings,</p>
1.12 – Confidential Details	<p><i>Add the following Sub-Clause 1.25:</i></p> <p>The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the Employer.</p> <p>On completion of the Contract or on instruction from the Engineer the Contractor shall hand over to the Engineer all drawings, data, reports, maps and other similar documents prepared or received in connection with the Contract.</p>
1.15 – Limitation of Liability	<p><i>Add the following paragraph at the end of Sub-Clause 1.15:</i></p> <p>The total liability of the Contractor to the Employer shall not exceed 115% (one hundred fifteen per cent) of the Accepted Contract Amount.</p>
3.2 – Engineer’s Duties and Authority	<p><i>The Project Manager is The Manager Projects Development and Management (MPDM), or any other officer appointed in writing by the Employer (Procuring entity)</i></p> <p><i>Add the following paragraph after the third paragraph of Sub-Clause 3.2”:</i></p> <p>The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of these Conditions:</p> <p>Sub-Clause 4.4: giving consent to a Subcontractor for a subcontract for which a different subcontractor is named in the Contract;</p> <p>Sub-Clause 4.12: certifying additional cost determined</p> <p>Sub-Clause 8.4: agreeing or determining an extension of the Time for Completion;</p> <p>Sub-Clause 8.8: suspend progress of part or all the</p>

Sub-Clause	Description
	<p>Works; Sub-Clause 10.1: issue the Taking-Over Certificate; Clause 13: instructing a Variation which is expected to increase the Contract Price; or in any substantial way change the scope, character or quality of the Works.</p> <p><i>Add the following paragraph at the end:</i> If in the opinion of the Engineer an emergency occurs affecting the safety of life or of the works or of adjoining property, the Engineer may, without recourse to the provisions as set out above, and without relieving the Contractor of any of his duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Sub-Clause 3.5 [Determinations] and shall notify the Contractor accordingly, with a copy to the Employer.</p>
3.8 –Meetings	<p><i>A new Sub-Clause 3.6 is added as follows:</i> The Engineer or the Contractor’s Representative may require the other to attend a management meeting in order to review the arrangements for future Works. The Engineer shall record the business of management meeting and supply copies of the record to those attending the meeting and to the Employer. In the record, responsibilities for any action to be taken shall be in accordance with the Contract. These meetings shall take part at the Engineer’s office at or near the Site.</p>
4.1 – Contractor’s General Obligations	<p><i>Add the following paragraph after the fourth paragraph of Sub-Clause 4.1</i> The Contractor must answer in written form all Employer’s or Engineer’s letters or notes (received in written form either by mail, fax or e-mail) within three working days after having received such letters or notes.</p>
4.2 – Performance Security	<p><i>Delete in the second paragraph of Sub-Clause 4.2 the words “... within 28 days after receiving the Letter of Acceptance,” and substitute them by “... within 14 days after receiving the Letter of Acceptance,”</i> <i>At the end of the second paragraph of Sub-Clause 4.2 insert:</i> The Performance Security shall be issued by a bank approved by the Employer either located and registered in the Country or by an internationally operating Bank with a triple A rating. The performance security shall be payable upon Employer’s first demand in written form and without cavil or argument. <i>Add the following paragraphs after the third</i></p>

Sub-Clause	Description
	<p><i>paragraph of Sub-Clause 4.2:</i> Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 15 percent of the Contract Price, the Contractor, at the Engineer's written request, shall promptly increase the value of the performance security by an equal percentage. The Contractor shall notify the Engineer when providing the performance security to the Employer.</p>
4.3 - Contractor's Representative	<p><i>Add to paragraph 3:</i> The Contractor shall, within Fourteen (14) days of receipt of the Engineer's order to commence the works inform the Engineer in writing the name of the Contractor's Representative and the anticipated date of his arrival on site.</p>
4.14 – Avoidance of Interference	<p><i>Add the following paragraph:</i> The Contractor accepts the priority of the Employer's port / terminal operations with regard to his own activities.</p>
4.15 – Access Route	<p><i>Add the following sub-paragraph (f) in Sub-Clause 4.15:</i> (f) The Contractor shall comply with all the access requirements of site security / access / egress arrangements and in particular the requirements of the Employer. <i>Add the following paragraphs at the end of Sub-Clause 4.15:</i> In case any operation connected with the traffic / access necessitates diversion, obstruction or closure of any road or any other "right of way" the approval of the Engineer and the respective competent authorities shall be obtained well in advance. Access routes shall also include access by sea. The Contractor shall at all times observe and comply with all laws, including regulations and orders relating to navigation and anchoring of floating plant to be used throughout the Works and any instruction that may be given by the Engineer. The Contractor shall carry out his work strictly in a manner which would not obstruct or endanger the normal use of waterways, anchorages, wharves and approaches thereto, whether in the possession of the Employer, or any other persons.</p>
4.20 – Progress Reports	<p><i>Under the heading "Each progress report shall include:" of this Sub- Clause 4.20 add at the end:</i> (i) the Contractor's forecast of the cost of the Works expected to be performed within the next three months.</p>
4.21 – Security on the Site	<p><i>The following paragraphs are added at the end of Sub-Clause 4.12:</i> The Contractor shall ensure the security of the Site during the whole period of execution and shall be responsible for taking the necessary steps to prevent any loss or accident, which may result from carrying</p>

Sub-Clause	Description
	<p>out the Works. The Contractor shall take all essential steps, on his own responsibility and at his expense, to ensure that existing structures and installations on the Site are protected, preserved and maintained.</p>
4.22 – Contractor’s Operations on Site	<p><i>Add the following new Sub-Clause 4.22:</i> All operations necessary for the execution of the Works shall, so far as compliance with the requirements of the Contract permit, be carried on so as not to interfere unnecessarily or improperly with the convenience of the public, or the access to, use and occupation of public or private roads and footpaths or of properties whether in the possession of the Employer or any other person. The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters in so far as the Contractor is responsible therefore.</p>
6.1 – Engagement of Staff and Labour	<p><i>Add the following paragraph at the end of Sub-Clause 6.1:</i> The Contractor shall only employ semi-skilled and unskilled labour who are citizens of the Republic of Kenya or Resident Aliens in possession of all legally required documentation.</p>
6.5 –Working Hours	<p>The normal working hours on the Site shall be in accordance with the applicable labour laws of the Republic of Kenya. Normal working hours are assumed to be 10 hours/day inclusive lunch breaks from 07:00 hrs to 18.00 hrs Monday to Saturday. Whenever the Contractor desires to depart from normal working hours he shall obtain the written approval of the Engineer at least forty-eight (48) hours prior to the contemplated change in operations. No Sunday work will be permitted except in the case of an emergency or if directed by the Engineer. As far as possible, the Contractor shall refrain from working on days which are legal holidays within the area of the Contract. If he desires to work upon any such holidays, he shall request the written approval of the Engineer at least four (4) days in advance of such holidays. If the Contractor fails to give notice in advance of any holiday or fails to obtain the Engineer's written approval for working thereon, such failure shall be considered as notification that no work on this Contract is to be done on such a holiday. Whenever, in the judgment of the Engineer, it may be necessary or expedient to do work at night or on Sundays or on holidays or after or before the regular time of ending or beginning labour, such night or overtime work shall be performed by the Contractor without additional or extra cost to the Employer beyond the price bid for the work.</p>
6.7 – Health and Safety of Personnel	<p><i>Include the statement after the word "necessary precautions" Add the following wording at the end of</i></p>

Sub-Clause	Description
	<p><i>first paragraph:</i> ", including provision of suitable prophylactics for the Contractor's Personnel, use of appropriate insecticides and alert signs for maintaining hygiene at Site, all in compliance with the regulations of the local health authorities." <i>The following paragraphs shall be added prior to the last paragraph of Sub-Clause 6.7:</i> Personnel that are found working above ground level without a safety harness or without connecting it to an appropriate fixed structure shall not be allowed to continue working under this Contract. In addition, the Contractor shall be penalised with a penalty equal to that corresponding to one day of failure to comply with the contract period for each of these cases detected during the construction period. Any stoppage of work by the Engineer due to an accident shall not be grounds for an extension of time or claim by the Contractor.</p>
6.9 – Contractor's Personnel	<p><i>Add the following paragraph to Sub-Clause 6.9:</i> The Contractor shall comply with and pay all costs including national insurance contributions for all his employees, whether local or foreign, involved in or concerned with the execution of the Works, and all other costs relating to the employment of labour, health, working hours and conditions and rates of pay, whether referred to in the Contract or not. The Contractor shall comply with the Country's income tax regulations and pay all associated costs The Contractor shall be responsible for obtaining the necessary immigration and works permits for all employees imported into Kenya for the execution of the Works and all such costs including national insurance costs shall be deemed to be included in the Contract Price.</p>
6.12 – Key Personnel	<p><i>Add the following new Sub-Clause 6.12:</i> The Contractor may recruit any foreign personnel who are necessary for the execution of the Works. The Contractor is responsible that these personnel are provided with the required residence visas, work permits and national insurance cover, etc., the costs of which shall be deemed to be included in the Contract Price. The Contractor shall be responsible and pay for the return to the place where they were recruited or to their domicile of imported Contractor's Personnel. In the event of the death of any of foreign staff or labour or members of their families in the Country, the Contractor shall similarly be responsible and pay for making the appropriate arrangements for the return or burial.</p>
6.13 – Measures against Pest and Insect Nuisance	<p><i>Add the following new Sub-Clause 6.13:</i> The Contractor shall at all times take the necessary precautions to protect staff and labour employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall</p>

Sub-Clause	Description
	provide suitable prophylactics for the Contractor's Personnel and shall comply with all the regulations of the local health authorities, including use of appropriate insecticide
6.14 – Alcoholic Liquor or Drugs	<i>Add the following new Sub-Clause 6.14:</i> The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow use, importation, sale, gift, barter or disposal by Contractor's Personnel.
6.15 – Arms and Ammunition	<i>Add the following new Sub-Clause 6.15:</i> The Contractor shall not give, barter or otherwise dispose of to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so or to use them on the Site.
6.16 – Festivals and Religious Customs	<i>Add the following Sub-Clause 6.16:</i> The Contractor shall respect the Country's recognised festivals, days of rest and religious or other customs.
7.4 – Testing by the Contractor	<i>Substitute the fourth paragraph of Sub-Clause 7.4 by the following wording:</i> The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend tests carried out at a maximum distance of 50 km off-site and not less than 4 hours' notice of intention to attend tests carried out on-site, including site laboratories. If the Engineer does not attend at the time and place agreed the Contractor may proceed with the tests, unless otherwise instructed by the Engineer. <i>Substitute the second last paragraph of Sub-Clause 7.4 by the following wording:</i> The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate for those tests that were witnessed by him or issue a certificate to that effect. If the Engineer has not attended the tests the results will be deemed to be correct unless the Engineer registers an objection within 14 days after receipt by him of the Contractor's test certificates.
8.1 – Commencement of Work	<i>Delete the last sentence of the first paragraph of Sub-Clause 8.1 and substitute:</i> The Commencement Date shall be within 28 days after the Contractor receives the Letter of Acceptance
8.2 – Time for Completion	<i>Add the following paragraphs at the end of Sub-Clause 8.2:</i> Time for Completion for Sections according Sub-Clause 1.1.5.6 of Volume I of the Tender Documents is 730 days.
8.3 – Programme	<i>Replace the first sentence of the first paragraph of</i>

Sub-Clause	Description
	<p><i>Sub-Clause 8.3 as follows:</i> The Contractor shall submit a detailed time programme to the Engineer within 14 days after the date of the Letter of Acceptance.</p> <p><i>Add the following at the end of Sub-Clause 8.3:</i> The programme shall be submitted in the form of a Gantt Chart, with dates and in consideration of milestones stipulated in the Specification commencing at day 0 for the Commencement Date. A copy (in digital format and as hard copy) of the programme in the latest edition of Microsoft Project format shall be provided to the Engineer. Histograms of the planned number of staff at the Site on a monthly basis shall also be provided, and shall show administrative, civil works, mechanical, electrical and supervisory personnel separately.</p>
8.5 – Extension of Time for Completion	<p><i>Add the following sentence at the end of subparagraph (e) of Sub-Clause 8.5:</i> In order for an extension of time to be considered the Contractor shall demonstrate that he has taken all reasonable steps to liaise with the Employer, Employer’s Personnel and the Employer’s other contractors in order to avoid or reduce delays caused by them.</p>
8.14 – Delay Damages	<p><i>Add New Sub Clause 8.14:</i> Once the applicable limit of delay damages is reached, the Employer will be able to suspend this Contract and hire third parties to complete the Works. Any cost associated with the hiring of third parties to complete the Works shall be recovered from the Contractor. All Delay Damages shall be deducted from Interim and/or from Final Payments.</p>
8.15 – Other Contractors	<p><i>Add the new following Sub-Clause 8.13:</i> The Contractor shall take due account of the presence of other contractors, employed by the Employer or by other parties, who may be working immediately adjacent to or overlapping with the Contractor’s Site during part or all of the Contract period. The Contractor will be deemed to have taken all reasonable steps to avoid delay and interference with or from these other contractors and will be expected to cooperate fully with these contractors wherever possible.</p>
10.2 – Taking Over Parts	<p><i>Add the following at the end of second paragraph of the Sub-Clause 10.2:</i> For the purpose of interpretation of the second paragraph of this Sub-Clause 10.2 and its subparagraphs (a) and (b) the temporary use of parts of the Works as are desired by the Employer and their suppliers and contractors to install, test and commission systems, facilities, equipment, including cranes and terminal equipment, and to perform trial operations and training of Employer’s personnel, shall not be deemed as Taking-Over by the Employer.</p>

Sub-Clause	Description
	The Contractor shall remain liable for such part of the Works until a taking-Over Certificate is issued by the Engineer for the respective section of the Works.
11.10 – Unfulfilled Obligations	<i>Add the following Sub-Clause 11.10:</i> The liability of the Contractor for latent defects in building and civil works shall be in accordance with the Governing Law as stated in the Appendix to Tender. However, notwithstanding the provisions of this Law, the period of liability for such defects shall not be less than 10 years from the date of the Performance Certificate.
12.1 – Works to be Measured	<i>Add the following after the first sentence of Sub-Clause 12.1</i> Measurements shall be made separately for each Section.
12.3 – Valuation of the Works	<i>Sub-paragraph (a) of this Sub-Clause 12.3 is deleted completely.</i>
13.1 – Right to Vary	<i>Add the following before the last paragraph of Sub-Clause 13.1.</i> The Employer may omit and/or reduce any work of the Contract and the Contractor is not deemed to be entitled for any compensation or revision of Contract rates in regard with such omission and/or reduction, provided: the total value of such omissions and/or reductions does not exceed 25% of the accepted Contract Price; and the Employer notifies in writing the omission and/or reduction of the work prior to the Contractor commencing the procurement or other actions of the execution of such work."
13.3 – Variation Procedure	<i>At the end of this Sub-Clause 13.3 the following paragraph shall be added:</i> The prices for all Variations shall be ascertained by the Engineer in accordance with the following principles: (i) where work is of similar character and executed under similar conditions to work priced in the Bill of quantities, it shall be valued at such rates and prices contained therein; (ii) where work is not of similar character or is not executed under similar conditions, the rates and prices in the Contract shall be used as the basis for valuation so far as is reasonable; (iii) where a Variation is necessitated by default or breach of Contract by the Contractor, any additional cost attributable to such Variation shall be borne by the Contractor.
13.7 – Adjustments for Changes in Cost	<i>Substitute Sub-Clause 13.7 as follows:</i> The Contract Price shall not be subject to any adjustment in respect of rise or fall in the cost of labour, Materials, Plant or any other matters affecting the cost of execution of the Contract, except as stipulated in Sub-Clause 13.7.
14.1 – The Contract Price	<i>At the end of this Sub-Clause 14.1 a sub-paragraph (e) as well as two other paragraphs shall be added:</i>

Sub-Clause	Description
	<p>(e) the Contract Price is not dependable on inflation, currency exchange rates, price increases in labour, material or fuel price nor on any other factors. The Contractor shall be liable for the payment of all taxes, duties, fees and other charges including national insurance contributions, work permit costs, general local taxes, and all taxes and regulations current at the time of tendering including but not limited to those applicable in the Country and in the country of origin. Which apply to him or to his staff or employees and these will be deemed to be included in the Contract Price.</p> <p>The Contractor shall be responsible for obtaining all necessary building permits, way leaves and work permits for foreign nationals as prescribed by the laws of the Country.</p>
14.3 – Application for Interim Payment Certificates	<p><i>Add the following in the third paragraph of Sub-Clause 14.3</i> applying the percentage of retention that is 10%</p>
14.4 – Schedule of Payments	<p><i>The second sentence of the last paragraph of Sub-Clause 14.4 shall be replaced as follows:</i> The first estimate shall be submitted within 14 days after the date of the Letter of Acceptance.</p>
14.5 – Plant and Materials intended for the Works	<p><i>Sub-Clause 14.5 is not applicable and is deleted in its entirety.</i></p>
14.6 – Issue of Interim Payment Certificates	<p><i>Delete in the second sentence of the first paragraph of this Sub-Clause 14.6 the words “within 28 days after” and substitute:</i> “Within 21 days after”</p> <p><i>Add the following sub-paragraph (c) at the end of the 3rd paragraph:</i> (c) if the Contractor fails to provide drawings, diagrams, operating and maintenance instructions or other documentation forming part of the Works, at the times specified in the Contract, payments which become due to the Contractor in accordance with the Contract may be delayed by a period of time equal to the delay in providing the documentation.</p>
14.7 – Payment	<p><i>Delete the words of sub-paragraph (a) of Sub-Clause 14.7 completely and substitute:</i> (a) the first instalment of the Advance Payment within 21 days after receiving the documents in accordance with Sub-Clause 4.2 (Performance Security) and Sub-Clause 14.2 (Advance Payment);”</p> <p><i>In sub-paragraph (b) of Sub-Clause 14.7, delete the words “within 56 days” and substitute “within 28 days”.</i></p> <p><i>In sub-paragraph (c) of Sub-Clause 14.7, delete the words “within 56 days” and substitute “within 28 days”.</i></p> <p><i>Substitute the final paragraph of Sub-Clause 14.7 by the following:</i> Payments to the Contractor by the Employer shall be made into a bank account nominated by the Contractor in the Country. Payments may be made in</p>

Sub-Clause	Description
	Kenyan Shillings or US Dollars in accordance with the Employer's preference.
14.9 – Release of Retention Money	<p><i>Add the following paragraph at the end of Sub-Clause 14.9:</i></p> <p>If requested by the Contractor at the time of issuing a Taking-Over Certificate, the Employer, upon the certification by the Engineer, may release the second half of the Retention Money relevant to the Works covered by the Taking-Over Certificate, always provided that the Contractor provides a bank bond by a first-class international bank approved by the Employer, in the form annexed to the Particular Conditions and in amounts and currencies equal to the payment.</p> <p>The Contractor shall ensure that the bank bond is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. The return to the Contractor of any such bank bond shall follow the conditions for Retention Money as stipulated in Sub-Clause 14.9.</p>
14.18 – Consultancy Fees etc. in Case of Delays	<p><i>Add the following new Sub-Clause 14.18:</i></p> <p>Besides the Liquidated Damages, the Contractor shall also be responsible for the payment of the consultancy fees for the Engineer, expenses on Engineers site facilities etc. for the entire period of delay.</p>
15.2 – Termination for Contractor's Default	<p><i>Add the following paragraph at the end of Sub-Clause:</i></p> <p>ig) In case the Contractor is persistent in unsafe behaviour and does not show any effort to improve the safety regulations of the Employer</p>
19.1 – General Requirements for Insurances	<p><i>Add the following sentence at the end of the 1st paragraph of Sub-Clause 19.1:</i></p> <p>The "insuring Party" is the Contractor.</p> <p><i>Substitute the 2nd paragraph of Sub-Clause 18.1 as follows:</i></p> <p>Wherever the Contractor is the Insuring Party, each insurance shall be affected with reputable solvent insurers and at terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance and shall include a clause of surrender of right to appeal against the Employer, and shall satisfy the criteria set by the legislation of the Country. This agreement of terms shall take precedence over the provisions of this Clause 18.</p>
19.2 – Insurance to be provided by the Contractor	<p><i>Add the following at end of Sub-Clause 18.2:</i></p> <p>Without limiting the responsibility under this paragraph, the amount of this insurance shall not be less than the Accepted Contract Amount plus a further amount of twenty (20) percent of this value and shall cover loss of, damage to and reinstatement of Works as stipulated under sub-paragraph (e) of this sub-clause. The excess of the insurance for Works shall not exceed 0.05% of the Accepted Contract Amount.</p>
21.1 - Date by which	28 days after the Commencement Date

Sub-Clause	Description
the DAAB shall be appointed	
21.1 - The DAAB shall be comprised of	One member agreed upon by both parties
21.1 - List of proposed members of DAAB -proposed by Employer -proposed by Contractor	
21.2 - Appointment (if not agreed) to be made by	Chartered Institute of Arbitrators, Kenya Branch, Flamingo Towers, Mezzanine 1, Upperhill, Nairobi info@ciarbkenya.org +254722200496 +254734652205
Appendix to Cl. 21 – General Conditions of Dispute Adjudication Agreement	The DAAB shall not be appointed permanently but on ad hoc basis. The respective Appendix of FIDIC "Conditions of Contract for Construction for Building and Engineering Works designed by the Employer", 1999, Second edition 2017 shall be applied, if required.

SECTION X - CONTRACT FORMS

Table of Forms

FORM No. 1 - NOTIFICATION OF INTENTION TO AWARD

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FORM No. 6- PERFORMANCE SECURITY [Option 2– Performance
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FORM No. 8 - RETENTION MONEY SECURITY

FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE FORM

FORM No 1: NOTIFICATION OF INTENTION TO AWARD

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

FORMAT

1. For the attention of Tenderer's Authorized Representative
 - i) Name: *[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 sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]

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

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

3. Notification of Intention to Award
 - i) Procuring Entity: *[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 tenderers:

Package No.	Name of successful Tenderer	Address of the successful Tenderer	Contract price of the successful Tenderer
Package No.			
Package No.			
Package No.			
Package No.			
Package No.			
Package No.			

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.

Package No.	Name of Tenderer	Address of the Tenderer	Tender price	evaluated price
Package No.				
Package No.				
Package No.				
Package No.				
Package No.				
Package No.				

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. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.
- e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint

- 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 the Procurement-related Complaint as follows:
 - i) Attention: [*insert full name of person, if applicable*]
 - ii) Title/position: [*insert title/position*]
 - iii) Agency: [*insert name of Procuring Entity*]
 - iv) Email address: [*insert email address*]
- 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 to Award.

iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

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

Signature: _____ **Name:** _____

_____ **Title/position:** _____

_____ **Telephone: Email:** _____

FORM NO. 2 - REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....**APPLICANT**

AND

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

Request for review of the decision of the..... (Name of the Procuring Entity ofdated the...day of20.....in the matter of Tender No.....of20..... 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 of20.....

SIGNED

Board Secretary

FORM NO 3: LETTER OF AWARD

[letterhead paper of the Procuring Entity] [date]

To: [name and address of the Contractor]

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

You are requested to arrange to sign the Framework Agreement within 28 days in accordance with the Conditions of Contract. On being instructed to commence the contract on any of the packages you have won, by a call-off notification, you will be requested to furnish for the particular package a Performance Security within 28 days in accordance with the Conditions of Contract, and for that purpose, using one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

**Authorized
Signature:.....**

**Name and Title of
Signatory:.....**

**Name of Procuring
Entity.....**

**Attachment: Contract
Agreement.....**

FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the _____ day of _____, 20___,
between

_____ of _____
(hereinafter "the Procuring Entity"), of the one part, and _____ of
(hereinafter "the Contractor"), of the other part:

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

The Procuring Entity and the Contractor agree as follows:

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

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

Signed and sealed by _____ (for the Procuring Entity)

Signed and sealed by _____ (for the Contractor).

FORM NO. 5 - PERFORMANCE SECURITY

[Option 1 - Unconditional Demand Bank Guarantee]

[Guarantor letterhead]

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

Date: _____ *[Insert date of issue]*

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

1. _____ We have been informed that _____
_____ (hereinafter called "the Contractor") has entered
into Contract No. _____ dated _____ with
(name of Procuring Entity) _____ (the Procuring Entity as the Beneficiary), for the
execution of

_____ **(hereinafter called "the Contract")**.

2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

3. _____ At
the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the
Beneficiary any sum or sums not exceeding in total an amount of _____ *(in
words)*,¹ such sum being payable in the types and proportions of currencies in which
the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand
supported by the Beneficiary's statement, whether in the demand itself or in a separate
signed document accompanying or identifying the demand, stating that the Applicant is in
breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or
to show grounds for your demand or the sum specified therein.

4. This guarantee shall expire, no later than the Day of, 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]*, in response to the Beneficiary's written request for such
extension, such request to be presented to the Guarantor before the expiry of the
guarantee."

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

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

FORM No. 6 - PERFORMANCE SECURITY

[Option 2- Performance Bond]

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

[Guarantor letterhead or SWIFT identifier code]

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

Date: _____ *[Insert date of issue].*

PERFORMANCE BOND No.: _____

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

1. _____ By this Bond _____ as Principal
(hereinafter called "the Contractor")
and _____] as
Surety (hereinafter called "the Surety"), are held and firmly bound unto _____
_] as Obligee (hereinafter called "the Procuring Entity") in the amount of _____ for
the payment of which sum well and truly to be made in the types and proportions of currencies
in which the Contract Price is payable, the Contractor and the Surety bind themselves, their
heirs, executors, administrators, successors and assigns, jointly and severally, firmly by
these presents.

2. WHEREAS the Contractor has entered into a written Agreement with the
Procuring Entity dated the
_____ day of _____, 20, for _____ in accordance with the
**documents, plans, specifications, and amendments thereto, which to the extent
herein provided for, are by reference made part hereof and are hereinafter
referred to as the Contract.**

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor
shall promptly and faithfully perform the said Contract (including any amendments
thereto), then this obligation shall be null and void; otherwise, it shall remain in full force
and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be,
in default under the Contract, the Procuring Entity having performed the Procuring
Entity's obligations thereunder, the Surety may promptly remedy the default, or shall
promptly:

- 1) complete the Contract in accordance with its terms and conditions; or
- 2) obtain a tender or tenders from qualified tenderers for submission to the Procuring
Entity for completing the Contract in accordance with its terms and conditions, and
upon determination by the Procuring Entity and the Surety of the lowest responsive
Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and
make available as work progresses (even though there should be a default or a
succession of defaults under the Contract or Contracts of completion arranged under
this paragraph) sufficient funds to pay the cost of completion less the Balance of the
Contract Price; but not exceeding, including other costs and damages for which the
Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The
term "Balance of the Contract Price," as used in this paragraph, shall mean the total
amount payable by Procuring Entity to Contractor under the Contract, less the
amount properly paid by Procuring Entity to Contractor; or
- 3) pay the Procuring Entity the amount required by Procuring Entity to complete the
Contract in accordance with its terms and conditions up to a total not exceeding the
amount of this Bond.

4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day_of____20____.

**SIGNED ON _____ on behalf of By ___ in the capacity
of In the presence of**

**SIGNED ON _____ on behalf of By ___ in the capacity
of In the presence of**

FORM NO. 7 - ADVANCE PAYMENT SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: _____ [Insert name and Address of Procuring Entity]

Date: _____ [Insert date of issue]

ADVANCE PAYMENT GUARANTEE No.: _____ [Insert guarantee reference

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

1. _____ We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum

_____ **(in words) is to be made against an advance payment guarantee.**

3. _____ At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (in _____ words) 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 the Applicant:

- a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
- b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

4. _____ A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number _____ at _____.

5. _____ The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the _____ day of _____, 2nd, ² whichever is earlier. Consequently, a demand for payment under this guarantee must be received by us at this office on or before that date.

6. _____ The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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

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

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

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

FORM NO. 8 - RETENTION MONEY SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

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

Date: _____ *[Insert date of issue]*

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

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

1. We have been informed that _____ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. _____ *[insert reference number of the contract]* dated _____ with the Beneficiary, for the execution of _____ *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and payment of *[insert the second half of the Retention Money]* is to be made against a Retention Money guarantee.

3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* _____ *([insert amount in words _____])*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 that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Contractor on its account number _____ at _____ *[insert name and address of Applicant's bank]*.

5. This guarantee shall expire no later than the Day of, 2.....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]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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

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

¹The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.

²Insert 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

Tender Reference No.: _____

Name of the Tender Title/Description: _____

Name of Procuring Entity _____

In response to the requirement in your notification of award dated ___ to furnish additional information on beneficial ownership: We here by provide the following beneficial ownership information.

Details of beneficial ownership

	Details of all Beneficial Owners		% of shares a 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 influence or control over the Company (tenderer) (Yes / No)
1.	Full Name		Directly---- -----% of shares	Directly...% 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. Exercise s significant influence or control over the Company body of the Company (tenderer) Yes -----No--- -
	National identity card number or Passport number		Indirectly-- ----- % of shares	Indirectly- -----% of voting rights		
	Personal Identification Number (where applicable)					

Details of all Beneficial Owners		% of shares a 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 influence or control over the Company (tenderer) (Yes / No)
Nationality				2. Is this right held directly or indirectly?:	2. Is this influence or control exercised directly or indirectly?
Date of birth [dd/mm/yyyy]				Direct.....	Direct.....
Postal address				Indirect.....	Indirect.....
Residential address					
Telephone number					
Email address					
Occupation or profession					
2.	Full Name	Directly---- -----% of shares	Directly...% 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. Exercise s significant influence or control over the Company body of the Company (tenderer) Yes ----No--
	National identity card number or Passport number	Indirectly-- ----- % of shares	Indirectly- -----% of voting rights	2. Is this right held directly or indirectly?:	2. Is this influence or control exercised directly or indirectly?
	Personal Identification Number (where applicable)				
	Nationality(ies)				
	Date of				

	Details of all Beneficial Owners		% of shares a 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 influence or control over the Company (tenderer) (Yes / No)
	birth [dd/mm/yyyy]				Direct.....	Direct.....
	Postal address					Indirect.....
	Residential address				Indirect.....	
	Telephone number					
	Email address					
	Occupation or profession					
3.						
e.t.c						

I) 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 Identifiable Information 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 address and Telephone number.*

II) 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.

III) What is stated to herein above is true to the best of my knowledge, information and belief.

Name of the Tenderer:

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

.....
Designation of the person signing the Tender:

.....
Signature of the person named above:

.....
Date:.....

.....
Bidder Official Stamp

