KENYATTA UNIVERSITY

TENDER NO.: KU/TNDR/W/002/PCUWT-MNUC/2020-2021

RESTRICTED TENDER FOR PROPOSED CONSTRUCTION OF UNDERGROUND WATER TANK FOR PROPOSED LECTURE THEATRE AT MAMA NGINA UNIVERSITY COLLEGE, GATUNDU

CLOSING DATE: FRIDAY 31ST JULY, 2020 at 10:00 a.m.
KENYATTA UNIVERSITY

PROPOSED ADMINISTRATION BLOCK AND LECTURE THEATRE AT MAMA NGINA UNIVERSITY COLLEGE, GATUNDU

LOT 2– LECTURE THEATRE AND EXTERNAL WORKS

(VOL. 1- CONSTRUCTION OF UNDERGROUND WATER TANK)

BILLS OF QUANTITIES

EMPLOYER
KENYATTA UNIVERSITY
P.O. BOX 43844-00100
NAIROBI.

ARCHITECT
UNIVERSITY ARCHITECTS
P.O. Box 43844-00100
NAIROBI.

PROJECT MANAGER
UNIVERSITY PROJECT MANAGER
P.O. Box 43844-00100
NAIROBI.

QUANTITY SURVEYOR
UNIVERSITY QUANTITY SURVEYORS
STATE DEPARTMENT OF PUBLIC WORKS ENGINEERS
P.O. Box 43844-00100
NAIROBI.

STRUCTURAL & CIVIL ENGINEER
UNIVERSITY STRUCTURAL ENGINEER
STATE DEPARTMENT OF PUBLIC WORKS ENGINEERS
P.O. Box 43844-00100
NAIROBI.

ELECTRICAL ENGINEER
UNIVERSITY ELECTRICAL ENGINEER & STATE DEPARTMENT OF PUBLIC WORKS ENGINEERS
P.O. Box 43844-00100,
NAIROBI.

MECHANICAL ENGINEER
UNIVERSITY MECHANICAL ENGINEER STATE DEPARTMENT OF PUBLIC WORKS ENGINEERS
P.O. Box 43844-00100
NAIROBI.
JULY 2020

SPECIFICATIONS AND BILLS OF QUANTITIES
FOR THE
CONSTRUCTION OF UNDERGROUND WATER TANK AT MAMA NGINA UNIVERSITY
COLLEGE, GATUNDU

Supplied as part of the Contract for Proposed Construction of Underground Water Tank at Mama Ngina University College, Gatundu

ISSUED BY: -
Messrs. Kenyatta University
P.O. Box 43844-00100,
NAIROBI.

PREPARED BY:-
Messrs. Kenyatta University
P. O. Box 43844-00100
NAIROBI.

The Contract for the above mentioned works entered into on the......................... day of ........................................... 2020 by the undersigned parties refers to these Specifications and Bills of Quantities and the Ministry of Public Works General Specifications dated March, 1976 (together with any amendments issued thereto) shall be read and construed as part of the said Contract.

EMPLOYER

CONTRACTOR

MESSRS. KENYATTA UNIVERSITY
SIGNATURE........................................
DATE ..................................................

The contractor is required to check the numbers of the pages of these Bills of Quantities and should he find any missing or in duplicate, or figures indistinct he must inform the Project Manager, Kenyatta University.

Should the contractor be in doubt about the precise meaning of any item or figure for any reason whatsoever, he must inform the Project Manager in order that the correct meaning may be decided before the date for submission of tenders. No liability will be admitted nor claim allowed in respect of errors in the Contractors’ Tender due to mistakes in the Specifications which should have been rectified in the manner described above.

SIGNATURE PAGE AND SPECIAL NOTES.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>VOLUME</th>
<th>SIGNATURE PAGE AND SPECIAL NOTES</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>SECTION I</td>
<td>INVITATION FOR TENDERS</td>
<td>3</td>
</tr>
<tr>
<td>SECTION II</td>
<td>INSTRUCTIONS TO TENDERERS</td>
<td>5</td>
</tr>
<tr>
<td>APPENDIX TO INSTRUCTION TO TENDERERS</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>EVALUATION CRITERIA</td>
<td>20-22</td>
<td></td>
</tr>
<tr>
<td>SECTION III</td>
<td>CONDITIONS OF CONTRACT</td>
<td>23-43</td>
</tr>
<tr>
<td>APPENDIX TO CONDITIONS OF CONTRACT</td>
<td>44-46</td>
<td></td>
</tr>
<tr>
<td>SECTION IV</td>
<td>SPECIFICATIONS</td>
<td>47</td>
</tr>
<tr>
<td>SECTION VI</td>
<td>PRELIMINARIES</td>
<td>48-69</td>
</tr>
<tr>
<td>SECTION VII</td>
<td>STANDARD FORMS</td>
<td>70-86</td>
</tr>
<tr>
<td>SECTION VIII</td>
<td>BILLS OF QUANTITIES AND DRAWINGS</td>
<td>87</td>
</tr>
</tbody>
</table>
SECTION I

INVITATION FOR TENDERS

TENDER REF. NO: KU/TNDR/W/002/PCUWT-MNUC/2020-2021

TENDER NAME: RESTRICTED TENDER FOR PROPOSED CONSTRUCTION OF UNDERGROUND WATER TANK (1 MILLION LTRS) AT MAMA NGINA UNIVERSITY COLLEGE, GATUNDU

1.1 Kenyatta University invites sealed tenders from eligible tenderers for proposed construction of underground water tank (one million litres) for proposed lecture theatre at Mama Ngina University College, Gatundu. Eligible bidders should be licensed by the National Construction Authority in category NCA 4 and above in building or civil works category.

1.2 Tender documents can be downloaded free of charge from our website, www.ku.ac.ke or click on the link http://www.ku.ac.ke/index.php/about-ku/procurement OR http://www.tenders.go.ke link to GOK tenders websites free of charge.

Candidates who choose to download the documents must notify the Procurement Office immediately by email for record purposes: procurement@ku.ac.ke

1.3 Prices quoted should be net, inclusive of all taxes, and must be in Kenya Shillings and shall remain valid for 90 days from the closing date of the tender.

1.4 Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and be deposited in the Tender Box at (Kenyatta University – Procurement Department Reception) or be addressed to (Kenyatta University P.O. Box 43844 – 00100 G.P.O Nairobi) so as to be received on or before Friday 31st July, 2020 at 10:00 a.m.

1.5 Tenders will be opened immediately thereafter in the presence of the candidates representatives who choose to attend at Kenyatta University.

1.6 Mandatory site visit on Friday 31st July, 2020 at 10.00 AM. Attendance register will be signed by all representatives. The Site is located adjacent to Mutomo Primary School near Gatundu Town, Gatundu South Constituency, Kiambu County, Kenya.
SECTION II

INSTRUCTIONS TO TENDERERS

TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. GENERAL</td>
<td>7</td>
</tr>
<tr>
<td>2. TENDER DOCUMENTS</td>
<td>10</td>
</tr>
<tr>
<td>3. PREPARATION OF TENDERS</td>
<td>10-12</td>
</tr>
<tr>
<td>4. SUBMISSION OF TENDERS</td>
<td>13</td>
</tr>
<tr>
<td>5. TENDER OPENING AND EVALUATION</td>
<td>14-15</td>
</tr>
<tr>
<td>6. AWARD OF CONTRACT</td>
<td>16</td>
</tr>
<tr>
<td>7. CORRUPT AND FRAUDULENT PRACTICES</td>
<td>17</td>
</tr>
</tbody>
</table>
SECTION II (a)

INSTRUCTIONS TO TENDERERS AS ISSUED BY PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA) DUE TO COVID 19 PANDEMIC.

(i) Bidders intending to participate in this bidding process will be required to provide working email addresses and telephone numbers through email: procurement@ku.ac.ke, for registration purposes.

(ii) Bidders or their representatives who choose to witness the bid opening exercise are required to notify or register via: email procurement@ku.ac.ke. The approval to attend the session shall be granted to the first three firms this is to avoid large crowd due to COVID 19 pandemic.

(iii) In any case where by bidders fail to attend the bid opening exercise, this will not invalidate the process. The results shall be communicated to the bidders via email or any other acceptable electronic means of communication.

(iv) Bidders are encouraged to use courier services in submission of their bid document and be received before the tender closing date and time.

(v) Bidders are encouraged to make personal arrangements to acquaint themselves with the site before submission of bids.
INSTRUCTIONS TO TENDERERS

1.  

1.1 This Invitation to tender is open to all tenderers licensed by the National Construction Authority in category NCA 4 and above in building or civil works category.

1.2 All tenderers shall provide the Qualification Information, a statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or has not been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for the project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to tender.

1.3 All tenderers shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

1.4 In the event that pre-qualification of potential tenderers has been undertaken, only tenders from pre-qualified tenderers will be considered for award of Contract. These qualified tenderers should submit with their tenders any information updating their original pre-qualification applications or, alternatively, confirm in their tenders that the originally submitted pre-qualification information remains essentially correct as of the date of tender submission.

1.5 Where no pre-qualification of potential tenderers has been done, all tenderers shall include the following information and documents with their tenders, unless otherwise stated:

(a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer:

(b) total monetary value of construction work performed for each of the last five years:

(c) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts;

(d) major items of construction equipment proposed to carry out the Contract and an undertaking that they will be available for the Contract.
(e) qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.

(f) reports on the financial standing of the tenderer, such as profit and loss statements and auditor’s reports for the past five years;

(g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);

(h) authority to seek references from the tenderer’s bankers;

(i) information regarding any litigation, current or during the last five years, in which the tenderer is involved, the parties concerned and disputed amount; and

(j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.

1.6 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated:

(a) the tender shall include all the information listed in clause 1.5 above for each joint venture partner;

(b) the tender shall be signed so as to be legally binding on all partners;

(c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

(d) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of all partners of the joint venture; and

(e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

1.7 To qualify for award of the Contract, tenderers shall meet the following minimum qualifying criteria;

(a) annual volume of construction work of at least 2.5 times the estimated annual cashflow for the Contract;

(b) experience as main contractor in the construction of at least

(c) two works of a nature and complexity equivalent to the Works
over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);

(d) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Works;

(e) a Contract manager with at least five years’ experience in works of an equivalent nature and volume, including no less than three years as Manager; and

(f) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than 4 months of the estimated payment flow under this Contract.

1.8 The figures for each of the partners of a joint venture shall be added together to determine the tenderer’s compliance with the minimum qualifying criteria of clause 1.7 (a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 1.7 (a), (b) and (e) for an individual tenderer, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture’s tender. Subcontractors’ experience and resources will not be taken into account in determining the tenderer’s compliance with the qualifying criteria, unless otherwise stated.

1.9 Each tenderer shall submit only one tender, either individually or as a partner in a joint venture. A tenderer who submits or participates in more than one tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the tenderer’s participation to be disqualified.

1.10 The tenderer shall bear all costs associated with the preparation and submission of his tender, and the Employer will in no case be responsible or liable for those costs.

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

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

1.13 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.
2. **Tender Documents**

2.1 The complete set of tender documents comprises the documents listed here below and any addenda issued in accordance with clause 2.4 here below:

(a) These Instructions to Tenderers
(b) Form of Tender and Qualification Information
(c) Conditions of Contract
(d) Appendix to Conditions of Contract
(e) Specifications
(f) Drawings
(g) Bills of Quantities
(h) Forms of Securities

2.2 The Tenderer shall examine all instructions, forms and specifications in the tender documents. Failure to furnish all information required by the tender documents may result in rejection of his tender.

2.3 Prospective Tenderer making inquiries of the tendering documents may notify Kenyatta University in writing or by cable, telex or facsimile at the address indicated in the letter of invitation to tender. Kenyatta University will respond to any request for clarification received earlier than seven [7] days prior to the deadline for submission of tenders. Copies of the response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.

2.4 Before the deadline for submission of tenders, Kenyatta University may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all Tenderers. Prospective Tenderers shall acknowledge receipt of each addendum in writing to Kenyatta University.

2.5 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their tenders, Kenyatta University shall extend, as necessary, the deadline for submission of tenders in accordance with clause 4.2 here below.

3. **Preparation of Tenders**

3.1 All documents relating to the tender and any correspondence shall be in English Language.

3.2 The tender submitted by the Tenderer shall comprise the following:

(a) The Tender;
(b) Tender Security, shall be either in form of;
   i. a bank guarantee;
   ii. a guarantee by a licensed insurance company in Kenya as provided by the Authority;
   iii. a letter of credit; or

(c) Priced Bill of Quantities/Schedule of Rates for lump-sum Contracts

(d) Any other materials required to be completed and submitted by Tenderers.

3.3 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities/Schedule of Rates. Items for which no rate or price is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities/Schedule of Rates. All duties, taxes and other levies payable by the Contractor under the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the Tenderer.

3.4 The rates and prices quoted by the Tenderer shall not be subject to any adjustment during the performance of the Contract.

3.5 The unit rates and prices shall be in Kenya Shillings.

3.6 Tenders shall remain valid for a period of ninety (90) days from the date of submission. However in exceptional circumstances, the Employer may request that the tenderers extend the period of validity for a specified additional period. The request and the tenderers’ responses shall be made in writing. A tenderer may refuse the request without forfeiting the Tender Security. A tenderer agreeing to the request will not be required or permitted to otherwise modify the tender, but will be required to extend the validity of Tender Security for the period of the extension, and in compliance with Clause 3.7 - 3.11 in all respects.

3.7 The tenderer shall furnish, as part of the tender, a Tender Security in the amount and form specified in the appendix to invitation to tenderers. This shall be in the amount not exceeding 2 percent of the tender price.

3.8 The format of the Tender Security should be in accordance with the form of Tender Security included in Section G - Standard forms or any other form acceptable to the Employer. Tender Security shall be valid for 30 days beyond the validity of the tender.

3.9 Any tender not accompanied by an acceptable Tender Security shall be rejected. The Tender Security of a joint venture must define as “Tenderer” all joint venture partners and list them in the following manner: a joint venture consisting of”…………”,”…………”,and “…………”.

12
3.10 The Tender Securities of unsuccessful tenderers will be returned within 28 days of the end of the tender validity period specified in Clause 3.6.

3.11 The Tender Security of the successful tenderer will be discharged when the tenderer has signed the Contract Agreement and furnished the required Performance Security.

3.12 The Tender Security may be forfeited

(a) if the tenderer withdraws the tender after tender opening during the period of tender validity;

(b) if the tenderer does not accept the correction of the tender price, pursuant to Clause 5.7;

(c) in the case of a successful tenderer, if the tenderer fails within the specified time limit to

(i) sign the Agreement, or

(ii) furnish the required Performance Security.

3.13 Tenderers shall submit offers that comply with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. Alternatives will not be considered, unless specifically allowed in the invitation to tender. If so allowed, tenderers wishing to offer technical alternatives to the requirements of the tendering documents must also submit a tender that complies with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. In addition to submitting the basic tender, the tenderer shall provide all information necessary for a complete evaluation of the alternative, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated tender conforming to the basic technical requirements shall be considered.

3.14 The tenderer shall prepare one original of the documents comprising the tender documents as described in Clause 3.2 of these Instructions to Tenderers, bound with the volume containing the Form of Tender, and clearly marked “ORIGINAL”. In addition, the tenderer shall submit copies of the tender, in the number specified in the invitation to tender, and clearly marked as “COPIES”. In the event of discrepancy between them, the original shall prevail.

3.15 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer, pursuant to Clause 1.5 (a) or 1.6 (b), as the case may be. All pages of the tender where alterations or additions have been made shall be initialed by the person or persons signing the tender.
3.16 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.

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

3.18 The tender security shall be in the amount of 1 per cent of the tender price.

4. Submission of Tenders

4.1 The tenderer shall seal the original and all copies of the tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES” as appropriate. The inner and outer envelopes shall:

(a) be addressed to Kenyatta University at the address provided in the invitation to tender;

(b) bear the name and identification number of the Contract as defined in the invitation to tender; and

(c) Provide a warning not to open before **Friday 31st July, 2020 at 10:00 a.m.**

4.2 Tenders shall be delivered to Kenyatta University at the address specified above not later than **Friday 31st July, 2020 at 10:00 a.m.** however, the Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with Sub-Clause 2.5 in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline will then be subject to the new deadline.

4.3 Any tender received after the deadline prescribed in clause 4.2 will be returned to the tenderer un-opened.

4.4 Tenderers may modify or withdraw their tenders by giving notice in writing before the deadline prescribed in clause 4.2. Each tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with clause 3.13 and 4.1, with the outer and inner envelopes additionally marked “MODIFICATION” and “WITHDRAWAL”, as appropriate. No tender may be modified after the deadline for submission of tenders.

4.5 Withdrawal of a tender between the deadline for submission of tenders and the expiration of the period of tender validity specified in the invitation to tender or as extended pursuant to Clause 3.6 may result in the forfeiture of the Tender Security pursuant to Clause 3.11.

4.6 Tenderers may only offer discounts to, or otherwise modify the prices of their tenders by submitting tender modifications in accordance with Clause 4.4 or be included in the original tender submission.
5. Tender Opening and Evaluation

5.1 The tenders will be opened by the Employer, including modifications made pursuant to Clause 4.4, in the presence of the tenderers’ representatives who choose to attend at the time and in the place specified in the invitation to tender. Envelopes marked “WITHDRAWAL” shall be opened and read out first. Tenderers’ and Employer’s representatives who are present during the opening shall sign a register evidencing their attendance.

5.2 The tenderers’ names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as may be considered appropriate, will be announced by the Employer at the opening. Minutes of the tender opening, including the information disclosed to those present will be prepared by the Employer.

5.3 Information relating to the examination, clarification, evaluation, and comparison of tenders and recommendations for the award of Contract shall not be disclosed to tenderers or any other persons not officially concerned with such process until the award to the successful tenderer has been announced. Any effort by a tenderer to influence the Employer’s officials, processing of tenders or award decisions may result in the rejection of his tender.

5.4 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may ask any tenderer for clarification of the tender, including breakdowns of unit rates.

The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.7.

5.5 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender (a) meets the eligibility criteria defined in Clause 1.7; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the tendering documents. A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the works; (b) which limits in any substantial way, inconsistent with the tendering documents, the Employer’s rights or the tenderer’s obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.

5.6 If a tender is not substantially responsive, it will be rejected, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
5.7 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:

(a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and

(b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.

(c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.

(d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder’s Work (i.e. Corrected tender sum less P.C. and Provisional Sums)

(e) The Error Correction Factor shall be applied to all Builder’s Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.

(f) the amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11.

5.8 The Employer will evaluate and compare only the tenders determined to be substantially responsive in accordance with Clause 5.5.

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

(a) making any correction for errors pursuant to clause 5.7;

(b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Dayworks where priced competitively.

(c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and
(d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 4.6

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

5.11 The tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.

5.12 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to an non-indigenous sub-contractor.

6. **Award of Contract**

6.1 Subject to Clause 6.2, the award of the Contract will be made to the tenderer whose tender has been determined to be substantially responsive to the tendering documents and who has offered the lowest evaluated tender price, provided that such tenderer has been determined to be (a) eligible in accordance with the provision of Clauses 1.2, and (b) qualified in accordance with the provisions of clause 1.7 and 1.8.

6.2 Notwithstanding clause 6.1 above, the Employer reserves the right to accept or reject any tender, and to cancel the tendering process and reject all tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the action.

6.3 The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the “Letter of Acceptance”) will state the sum (hereinafter and in all Contract documents called the “Contract Price”) that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time the other tenderers shall be informed that their tenders have not been successful.

The contract shall be formed on the parties signing the contract.

6.4 The Agreement will incorporate all agreements between the Employer and the successful tenderer. Within 14 days of receipt the successful tenderer will sign the Agreement and return it to the Employer.
6.5 Within 21 days after receipt of the Letter of Acceptance, the successful tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and specified form

6.6 Failure of the successful tenderer to comply with the requirements of clause 6.5 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.

6.7 Upon the furnishing by the successful tenderer of the Performance Security, the Employer will promptly notify the other tenderers that their tenders have been unsuccessful.

6.8 Preference where allowed in the evaluation of tenders shall not be allowed for contracts not exceeding one year (12 months)

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

6.10 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

6.11 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

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

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

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

6.15 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

6.16 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

7. **Corrupt and fraudulent practices**

7.1 Kenyatta University requires that the tenderer observes the highest standard of ethics during the procurement process and execution of the contract. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.
7.2 Kenyatta University will reject a tender if it determines that the tenderer recommended for award has engaged in corrupt and fraudulent practices in competing for the contract in question.

7.3 Further a tenderer who is found to have indulged in corrupt and fraudulent practices risks being debarred from participating in public procurement in Kenya.

Appendix to Instructions to Tenderers

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

<table>
<thead>
<tr>
<th>INSTRUCTIONS TO TENDERERS REFERENCE</th>
<th>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible Tenderers</td>
<td>Open to tenderers licensed by the National Construction Authority in category NCA 4 above in Building or civil works category.</td>
</tr>
<tr>
<td>Tender Security</td>
<td>2% of total tender price</td>
</tr>
<tr>
<td>Format and Signing of Tender</td>
<td>All Required documents must be arranged chronologically as listed in the evaluation criteria and clearly marked</td>
</tr>
<tr>
<td>Closing Date</td>
<td>Friday 31st July, 2020 at 10:00a.m.</td>
</tr>
<tr>
<td>Site Visit</td>
<td>Tuesday 28th July, 2020 at 10:00 a.m. bidders to assemble at the site given on page 6</td>
</tr>
<tr>
<td>Tender validity</td>
<td>90 days</td>
</tr>
<tr>
<td>Tender Name</td>
<td>Proposed construction of underground water tank (one million ltrs) at Mama Ngina University College-Gatundu.</td>
</tr>
</tbody>
</table>
EVALUATION CRITERIA FOR PROPOSED CONSTRUCTION OF UNDERGROUND WATER TANK (ONE MILLION LITERS CAPACITY) AT MAMA NGINA UNIVERSITY COLLEGE.

<table>
<thead>
<tr>
<th>S/NO</th>
<th>DESCRIPTION</th>
<th>SCORE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Mandatory requirement</td>
<td></td>
</tr>
<tr>
<td>i.</td>
<td>Provide copy of Company Registration Certificate/ certificate of incorporation.</td>
<td>✓</td>
</tr>
<tr>
<td>ii.</td>
<td>Bid Bond of 2% of tender sum from a commercial bank or insurance company and should be valid for 120 days from date of tender opening.</td>
<td>✓</td>
</tr>
<tr>
<td>iii.</td>
<td>Provide copy of Valid Tax Compliance certificate</td>
<td>✓</td>
</tr>
<tr>
<td>iv.</td>
<td>Provide certificate of registration with National Construction Authority in category NCA 4 and above in Building or civil Works</td>
<td>✓</td>
</tr>
<tr>
<td>v.</td>
<td>Provide copy of valid trade/business license</td>
<td>✓</td>
</tr>
<tr>
<td>vi.</td>
<td>Bid documents to be submitted in two copies clearly marked “Original” and “Copy”</td>
<td>✓</td>
</tr>
<tr>
<td>vii.</td>
<td>Mandatory site visit form – This will be provided during the site visit dates indicated and must be signed by the tenderer and the client representative.</td>
<td>✓</td>
</tr>
<tr>
<td>viii.</td>
<td>Submission of valid CR12 form showing the list of directors and shareholding.</td>
<td>✓</td>
</tr>
<tr>
<td>ix.</td>
<td>Valid annual contractors practicing license from NCA for the company.</td>
<td>✓</td>
</tr>
<tr>
<td>B</td>
<td>GENERAL, FINANCIAL AND TECHNICAL REQUIREMENTS</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>FINANCIAL REQUIREMENTS</td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Provide proof of performing/undertaking similar works (underground water tank works) in the last five (5) years. Attach contracts and the relevant certificates of completion/invoices and any other relevant document for the last three years. 15 marks</td>
<td>15</td>
</tr>
<tr>
<td>b)</td>
<td>Accumulated volume of business. Provide proof of performing/undertaking similar works (concrete works) in the last five (5) years. Attach contracts and the relevant certificates of completion/invoices and any other relevant document for the last three years. These information to be presented in the manner shown on page 22&lt;br&gt;• Above Ksh 20 million………………………………………15 marks&lt;br&gt;• Below Ksh. 20 million and above ksh. 15 million………………12 marks&lt;br&gt;• Below Ksh.15 million and above Ksh.10 million………………8marks&lt;br&gt;• Below Ksh. 10 million and above 5 million…………………5 marks&lt;br&gt;Below Kshs 5 million………………………………………. 0 mark</td>
<td>15</td>
</tr>
<tr>
<td>2</td>
<td>GENERAL REQUIREMENTS</td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Attach four letters of recommendation from major clients in the last five (5) years. (LPOs will not be treated as recommendation letters). • Four letters – (1-2.5 marks) depending on the merit of the letter of award after due diligence.</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>TECHNICAL REQUIREMENTS</td>
<td></td>
</tr>
</tbody>
</table>
a) Provide detailed proposal of key technical members for the proposed project, copies and CV of the proposed team, Enclose certificates. At least Five (5) years’ experience in the position
  • Project Manager (Minimum qualification is degree in building construction field) – 9 points.
  • Site Agent (Minimum qualification is diploma in related engineering field) – 7 points.
  • Supervisor (Minimum qualification is diploma in related engineering field) – 6 points.
  • Foreman (Minimum qualification is certificate in related engineering field) – 3 points.

b) Provide a list of equipment owned/leased that are relevant to this project. In each case attach proof of ownership or agreements for the hired equipment
  • Owned or Hired……………………………..(10 marks) depending on the type of equipment indicated
These information to be presented in the manner shown on page 21

c) State your deliver period

<table>
<thead>
<tr>
<th>Document presentation and pagination, document must be tape bound</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Tape bound only .................................... 2 marks</td>
</tr>
<tr>
<td>• Separators ........................................... 2 marks</td>
</tr>
<tr>
<td>• Table of content............. ..................................... 2 marks</td>
</tr>
<tr>
<td>• Arrangement of documents to follow the order of the evaluation criteria…. 3marks</td>
</tr>
<tr>
<td>• Pagination of the whole document……... 2 marks</td>
</tr>
</tbody>
</table>

**TOTAL** 100

NB:
1. Bidders must meet all the mandatory requirements to qualify for general and technical evaluation
2. To qualify for price evaluation, the bidder must score a minimum of 70 points
3. The bidder quoting the lowest price having attained 70 points technical score shall be recommended for contract award.
4. Award will be to the lowest evaluated bidder
5. Any information provided by the bidder may be verified by the University. If information is found to be false, the company will be disqualified.
6. Dully filled and signed tender questionnaire attached.
7. Dully filled and signed confidential business questionnaire attached.
8. **The Site is located adjacent to Mutomo Primary School near Gatundu Town, Gatundu South Constituency, Kiambu County, Kenya**
Accumulated volume of business.

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of the client</th>
<th>Contract Name</th>
<th>Certificate of Completion</th>
<th>Other Relevant Documents</th>
<th>Tender sum</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

On-going projects

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of the client</th>
<th>Contract Name/Letter of award</th>
<th>Stage of Completion</th>
<th>Tender sum</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

LIST OF EQUIPMENT

<table>
<thead>
<tr>
<th>NO.</th>
<th>LIST OF EQUIPMENT OWNED</th>
<th>LIST OF EQUIPMENT HIRED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SECTION III

CONDITIONS OF CONTRACT

Table of Content

1. Definitions

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

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

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

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

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

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

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

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

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

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

“The Making good defects Certificate” is the certificate issued by Project Manager upon correction of defects by the Contractor.
“The Defects Liability Period” is the period named in the Contract Data and calculated from the Completion Date.

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

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

“Employer”, or the “Procuring entity” as defined in the Public Procurement Regulations (i.e. Central or Local Government administration, Universities, Public Institutions and Corporations, etc) is the party who employs the Contractor to carry out the Works.

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

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

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

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

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

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

“Site Investigation Reports” are those reports that may be included in the tendering documents which are factual and interpretative about the surface and subsurface conditions at the Site.
“Specifications” means the Specifications of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

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

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

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

“A Variation” is an instruction given by the Project Manager which varies the Works. “The Works” are what the Contract requires the Contractor to construct, install, and turnover to the Employer, as defined in the Appendix to Conditions of Contract.

2. Interpretation

2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.

2.2 If sectional completion is specified in the Appendix to Conditions of Contract, reference in the Conditions of Contract to the Works, the Completion Date and the Intended Completion Date apply to any section of the Works (other than references to the Intended Completion Date for the whole of the Works).

2.3 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;

(1) Agreement,
(2) Letter of Acceptance,
(3) Contractor’s Tender,
(4) Appendix to Conditions of Contract,
(5) Conditions of Contract,
(6) Specifications,
(7) Drawings,
(8) Bill of Quantities,
(9) Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.

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

3. Language and Law

3.1 Language of the Contract and the law governing the Contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

4. Project Manager’s Decisions

4.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

5. Delegation

5.1. The Project Manager may delegate any of his duties and responsibilities to others after notifying the Contractor.

6. Communications

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

7. Subcontracting

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

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

9. Personnel

9.1. The Contractor shall employ the key personnel named in the Qualification Information, to carry out the functions stated in the said Information or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Qualification Information. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor’s staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the Work in the Contract.

10. Works

10.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

11. Safety and Temporary Works

11.1. The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.

11.2. The Project Manager’s approval shall not alter the Contractor’s responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent Works, shall be subject to prior approval by the Project Manager before they can be used.

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

12. Discoveries

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

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

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

14. Possession of Site

14.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Appendix to Conditions of Contract, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.

15. Access to Site

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

16. Instructions

16.1. The Contractor shall carry out all instructions of the Project Manager which are in accordance with the Contract.

17. Extension or Acceleration of Completion Date

17.1. The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a variation is issued which makes it impossible for completion to be achieved by
the Intended Completion Date without the Contractor taking steps to accelerate the remaining Work, which would cause the Contractor to incur additional cost. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager in writing for a decision upon the effect of a Compensation Event or variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay caused by such failure shall not be considered in assessing the new (extended) Completion Date.

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

18. Management Meetings

18.1. A Contract management meeting shall be held monthly and attended by the Project Manager and the Contractor. Its business shall be to review the plans for the remaining Work and to deal with matters raised in accordance with the early warning procedure. The Project Manager shall record the minutes of management meetings and provide copies of the same to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

19. Early Warning

19.1. The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the Work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

19.2. The Contractor shall cooperate with the Project Manager in making and considering proposals on how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the Work and in carrying out any resulting instructions of the Project Manager.

20. Defects

20.1. The Project Manager shall inspect the Contractor’s work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor’s responsibilities.
The Project Manager may instruct the Contractor to search for a defect and to uncover and test any Work that the Project Manager considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor. However, if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.

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

20.3. Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Project Manager’s notice. If the Contractor has not corrected a defect within the time specified in the Project Manager’s notice, the Project Manager will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

21. Bills of Quantities

21.1. The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rate in the Bills of Quantities for each item.

21.2. If the final quantity of the Work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the Initial Contract price, the Project Manager shall adjust the rate to allow for the change.

21.3. If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bills of Quantities.

22. Variations

22.1. All variations shall be included in updated programs produced by the Contractor.

22.2. The Contractor shall provide the Project Manager with a quotation for carrying out the variations when requested to do so. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period as may be stated by the Project Manager and before the Variation is ordered.

22.3. If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of
quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of
the variation. If the cost per unit of quantity changes, or if the nature or timing of the work
in the variation does not correspond with items in the Bills of Quantities, the quotation by
the Contractor shall be in the form of new rates for the relevant items of Work.

22.4. If the Contractor’s quotation is unreasonable, the Project Manager may order the variation
and make a change to the Contract price, which shall be based on the Project Manager’s
own forecast of the effects of the variation on the Contractor’s costs.

22.5. If the Project Manager decides that the urgency of varying the Work would prevent a
quotation being given and considered without delaying the Work, no quotation shall be
given and the variation shall be treated as a Compensation Event.

22.6. The Contractor shall not be entitled to additional payment for costs that could have been
avoided by giving early warning.

22.7. When the Program is updated, the Contractor shall provide the Project Manager with an
updated cash flow forecast.

23. Payment Certificates, Currency of Payments and Advance Payments

23.1. The Contractor shall submit to the Project Manager monthly applications for payment
giving sufficient details of the Work done and materials on Site and the amounts which the
Contractor considers himself to be entitled to. The Project Manager shall check the monthly
application and certify the amount to be paid to the Contractor within 14 days. The value
of Work executed and payable shall be determined by the Project Manager.

23.2. The value of Work executed shall comprise the value of the quantities of the items in the
Bills of Quantities completed; materials delivered on Site, variations and compensation
events. Such materials shall become the property of the Employer once the Employer has
paid the Contractor for their value. Thereafter, they shall not be removed from Site without
the Project Manager’s instructions except for use upon the Works.

23.3. Payments shall be adjusted for deductions for retention. The Employer shall pay the
Contractor the amounts certified by the Project Manager within 30 days of the date of issue
of each certificate. If the Employer makes a late payment, the Contractor shall be paid
simple interest on the late payment in the next payment. Interest shall be calculated on the
basis of number of days delayed at a rate three percentage points above the Central Bank
of Kenya’s average rate for base lending prevailing as of the first day the payment becomes
overdue.
23.4. If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

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

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

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

a) On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 10% (ten percent) of the original amount of the Contract. The advance shall not be subject to retention money.

b) No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.

c) Reimbursement of the lump sum advance shall be made by deductions from the Interim payments and where applicable from the balance owing to the Contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the Contract. It shall have been completed by the time 80% of this amount is reached.
The amount to be repaid by way of successive deductions shall be calculated by means of the formula:

\[ R = A(x^1 - x^{11}) \]

\[ \frac{80 - 20}{80 - 20} \]

Where:

- \( R \) = the amount to be reimbursed
- \( A \) = the amount of the advance which has been granted
- \( X^1 \) = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 20% but not exceed 80%.
- \( X^{11} \) = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80% but not less than 20%.

d) with each reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.

24. Compensation Events

24.1. The following issues shall constitute Compensation Events:

(a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Appendix to Conditions of Contract.

(b) The Employer modifies the List of Other Contractors, etc., in a way that affects the Work of the Contractor under the Contract.

(c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the Works on time.

(d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon the Work, which is then found to have no defects.

(e) The Project Manager unreasonably does not approve a subcontract to be let.
(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site investigation reports), from information available publicly and from a visual inspection of the Site.

(g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional work required for safety or other reasons.

(h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.

(i) The effects on the Contractor of any of the Employer’s risks.

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

(k) Other compensation events described in the Contract or determined by the Project Manager shall apply.

24.2. If a compensation event would cause additional cost or would prevent the Work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

24.3. As soon as information demonstrating the effect of each compensation event upon the Contractor’s forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor’s forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager’s own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.

24.4. The Contractor shall not be entitled to compensation to the extent that the Employer’s interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.

24.5. Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.
24.6. The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

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

25. Price Adjustment

25.1. The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.

25.2. The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works. Unless otherwise stated in the Contract, if at any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case may be.

25.3. Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manner set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified thereunder;

(i) The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C.) and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.

(ii) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour
incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.

(iii) No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

25.4. The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the Works as determined by the J.B.C. and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.

25.5. Upon the J.B.C. determining that any of the said basic prices are increased or decreased then the Contract Price shall be increased or decreased by the amount to be assessed by the Project Manager based upon the difference between the price set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 23 of these Conditions issued before the date of publication of such increase or decrease.

25.6. No adjustment shall be made in respect of changes in basic prices of materials which occur after the date for Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

25.7. The provisions of sub-clause 25.1 to 25.2 herein shall not apply in respect of any materials included in the schedule of basic rates.

26. Retention

26.1. The Employer shall retain from each payment due to the Contractor the proportion stated in the Appendix to Conditions of Contract until Completion of the whole of the Works. On Completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the remaining half when the Defects Liability Period has passed and the Project Manager has certified that all defects notified to the Contractor before the end of this period have been corrected.
27. Liquidated Damages

27.1. The Contractor shall pay liquidated damages to the Employer at the rate stated in the Appendix to Conditions of Contract for each day that the actual Completion Date is later than the Intended Completion Date. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not alter the Contractor’s liabilities.

27.2. If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rate specified in Clause 23.30

28. Securities

28.1. The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a reputable bank acceptable to the Employer, and denominated in Kenya Shillings. The Performance Security shall be valid until a date 30 days beyond the date of issue of the Certificate of Completion.

29. Day works

29.1. If applicable, the Dayworks rates in the Contractor’s tender shall be used for small additional amounts of Work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

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

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

30. Liability and Insurance

30.1. From the Start Date until the Defects Correction Certificate has been issued, the following are the Employer’s risks:

(a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to;
(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or

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

(b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in Employer’s design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.

30.2. From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is the Employer’s risk except loss or damage due to;

(a) a defect which existed on or before the Completion Date.

(b) an event occurring before the Completion Date, which was not itself the Employer’s risk

(c) the activities of the Contractor on the Site after the Completion Date.

30.3. From the Start Date until the Defects Correction Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer’s risk are Contractor’s risks.

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

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

(b) loss of or damage to Equipment;

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

(d) personal injury or death.

30.4. Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager’s approval before the Start Date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.
30.5. If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

30.6. Alterations to the terms of insurance shall not be made without the approval of the Project Manager. Both parties shall comply with any conditions of insurance policies.

31. Completion and taking over

31.1. Upon deciding that the Works are complete, the Contractor shall issue a written request to the Project Manager to issue a Certificate of Completion of the Works. The Employer shall take over the Site and the Works within seven [7] days of the Project Manager’s issuing a Certificate of Completion.

32. Final Account

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

33. Termination

33.1. The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;

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

(b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
(c) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

(d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.

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

(f) the Contractor does not maintain security, which is required.

33.2. When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Clause 33.1 above, the Project Manager shall decide whether the breach is fundamental or not.

33.3. Notwithstanding the above, the Employer may terminate the Contract for convenience.

33.4. If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible. The Project Manager shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

34. Payment upon Termination

34.1. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the Work done and materials ordered and delivered to Site up to the date of the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor.

34.2. If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the Work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works.
34.3. The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on the Site, plant, equipment and temporary works.

34.4. The Contractor shall, during the execution or after the completion of the Works under this clause remove from the Site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor. Until after completion of the Works under this clause the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Project Manager shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

35. Release from Performance

35.1. If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop Work as quickly as possible after receiving this certificate and shall be paid for all Work carried out before receiving it.

36. Corrupt gifts and payments of commission

The Contractor shall not;

(a) Offer or give or agree to give to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the Employer.
(b) Enter into this or any other contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.

Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement Regulations issued under The Exchequer and Audit Act Cap 412 of the Laws of Kenya.

37. Settlement of Disputes

37.1. In case any dispute or difference shall arise between the Employer or the Project Manager on his behalf and the Contractor, either during the progress or after the completion or termination of the Works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of any of the following professional institutions;

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

On the request of the applying party, the institution written to first by the aggrieved party shall take precedence over all other institutions.

37.2. The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising thereunder or in connection therewith, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.
37.3. Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

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

37.5. Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:
   37.5.1. The appointment of a replacement Project Manager upon the said person ceasing to act.
   37.5.2. Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
   37.5.3. Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
   37.5.4. Any dispute or difference arising in respect of war risks or war damage.

37.6. All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Employer and the Contractor agree otherwise in writing.

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

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

37.9. The award of such Arbitrator shall be final and binding upon the parties.
APPENDIX TO CONDITIONS OF CONTRACT

THE EMPLOYER IS

Name: KENYATTA UNIVERSITY.

Address: P.O BOX 43844 – 00100 NAIROBI.

Name of Authorized Representative: DVC (FINANCE AND DEVELOPMENT) OR HIS/HER APPOINTEE


The Project Manager is

Name: DVC (FINANCE AND DEVELOPMENT) OR HIS/HER APPOINTEE

Address: P.O BOX 43844 – 00100.

Telephone: 020 – 8710901 - 19

The name (and identification number) of the Contract is: - PROPOSED CONSTRUCTION OF UNDERGROUND WATER TANK (1 MILLION LTRS) AT MAMA NGINA UNIVERSITY COLLEGE, GATUNDU

The Works consist of: - proposed construction of underground water tank (1 million ltrs) at Mama Ngina University College, Gatundu

The Site Possession Date shall be One (1) week from contract signing date

The Commencement Date shall be One (1) week from site possession date

The Contract period for the whole of the Works shall be AS AGREED

The Completion date shall be AS AGREED

The following documents also form part of the Contract: AS LISTED IN CLAUSE 2.3 OF CONDITIONS OF CONTRACT.
The Contractor shall submit program for the Works within **SEVEN DAYS (7) DAYS FROM POSSESSION DATE**

The Defects Liability period is **TWELVE (12) MONTHS** from practical Completion date.

The Site is located adjacent to Mutomo Primary School near Gatundu Town, Gatundu South Constituency, Kiambu County, Kenya

Other Contractors, utilities etc., to be engaged by the Employer on the Site include those for the execution of:

1. **GENERAL ELECTRICAL WORKS**

2. **MECHANICAL WORKS**

3. **ANY OTHER SUB CONTRACTOR NECESSARY FOR COMPLETION OF THE WORKS**

The minimum insurance covers shall be;

2. The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor’s faulty design is **KSHS 3,000,000.00**

3. The minimum cover for loss or damage to Equipment is **KSHS 3,000,000.00**

4. The minimum for insurance of other property is **KSHS 2,500,000.00**

5. The minimum cover for personal injury or death insurance
   - For the Contractor’s employees is **KSHS 3,000,000.00**
   - And for other people is **KSHS 3,000,000.00**

The following events shall also be Compensation Events:

1. **NONE (ONLY AS LISTED IN CLAUSE 24 OF THE CONDITIONS OF CONTRACT**

The period between Program updates is **FOURTEEN (14) DAYS.**
The amount to be withheld for late submission of an updated Program is; **WHOLE CERTIFICATE.**

The proportion of payments retained is **10%** (ten percent.)

The limit of retention is **5%** (five percent.)

The payment clauses **SHALL NOT** apply as stated in Clause 23.3 & 23.4

The liquidated damages for the whole of the Works is Kenya Shillings Fifty Thousand (**Kshs.50, 000.00**) per week

The limit of liquidated damages shall be **10% OF THE CONTRACT SUM**

The Performance Security shall be ten percent (**10%**) of the contract sum

The rate of exchange for calculation of foreign currency payments is **NOT APPLICABLE.**

Advance Payment **SHALL NOT BE** granted.

The terms of the Agreement and Conditions of Contract for Building Works published by The Joint Building Council (JBC), Kenya, 1999 Edition **OR NEW EDITION** shall form part of this contract except for clauses:

14.00  Insurances of works (Employer’s liability)
15.00  Insurance of the works (works of alteration etc)
18.10  Performance Bond by Employer
34.14  Payments (Retention Money)
34.15  Payments (Joint account)

For the avoidance of doubt, where there is conflict of terms and conditions between the JBC Standard form of contract and this contract, this contract shall take precedence
SECTION IV

SPECIFICATIONS

Notes for preparing Specifications

1.0 Specifications applicable are those by the Ministry of Public Works General Specifications dated March 1976 (together with any amendments issued thereof). The Contractor should obtain a copy from the Ministry of Lands, Housing and Urban Development. No liability will be admitted nor claim allowed in respect of errors in Contractors tender arising from the lack of knowledge on the said specification.
## SECTION V

### PARTICULAR PRELIMINARIES

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong></td>
<td><strong>DEFINITION OF TERMS</strong></td>
</tr>
<tr>
<td><strong>EMPLOYER</strong></td>
<td>The term “Employer” wherever used in these Bills of Quantities and in all other Contract Documents shall mean <strong>Kenyatta University</strong> of <strong>P. O. Box 43844-00100, Nairobi</strong></td>
</tr>
<tr>
<td><strong>PROJECT MANAGER</strong></td>
<td>The term “Project Manager” wherever used in these Bills of Quantities and in all other Contract Documents shall mean <strong>University Architect</strong> of <strong>P. O. Box 43844-00100, Nairobi</strong></td>
</tr>
<tr>
<td><strong>PROJECT ARCHITECT</strong></td>
<td>The term “Project Architect” wherever used hereinafter and in all other Contract Documents shall mean <strong>Kenyatta University Architects</strong> of <strong>P.O. Box 43844-00100, Nairobi</strong>.</td>
</tr>
<tr>
<td><strong>PROJECT QUANTITY SURVEYOR</strong></td>
<td>The term “Project Quantity Surveyor” wherever used hereinafter and in all other Contract Documents shall mean <strong>Kenyatta University Quantity Surveyors</strong> of <strong>P.O. Box 43844 - 00100, Nairobi</strong>.</td>
</tr>
<tr>
<td><strong>PROJECT CIVIL &amp; STRUCTURAL ENGINEER</strong></td>
<td>The term “Project Civil &amp; Structural Engineer” wherever used hereinafter and in all other Contract Documents shall mean <strong>Kenyatta University &amp; State Department of Public Works Engineers</strong> of <strong>P.O. Box 43844 - 00100, Nairobi</strong>.</td>
</tr>
<tr>
<td><strong>PROJECT MECHANICAL &amp; ELECTRICAL ENGINEER</strong></td>
<td>The term “Project Mechanical &amp; Electrical Engineer” wherever used hereinafter and in all other Contract Documents shall mean <strong>Kenyatta University State Department of Public Works Engineers</strong> of <strong>P.O. Box 43844 - 00100, Nairobi</strong>.</td>
</tr>
</tbody>
</table>
### A DESCRIPTION OF SITE

The term “the Site” wherever used hereinafter and in all Contract Documents shall mean the lands and other places on, under or through which the works are to be executed or carried out and any other lands or places provided by the Employer for the purpose of the Contract. The Contractor is advised to visit the site and will be deemed to have acquainted himself with regard to the nature and position, means of access, risk of injury or damage to existing property, conditions under which the work will have to be carried out, the supply of and conditions affecting labour and the facilities for obtaining the articles of materials referred to in these Bills of Quantities.

No claim by the Contractor will be allowed on the grounds of any such matter or otherwise. The Contractor must obtain the approval of the Project Manager regarding the use of any materials found on site.

### B SINGULAR AND PLURAL

Words importing the Singular only shall also include Plural and vice versa where the context requires.

### C THE WORKS

The term “the Works” wherever used hereinafter and in all Contract Documents shall mean all or any portions of the Works as described, materials and articles wherever the same are being manufactured or prepared which are to be used in the execution of this Contract, and whether the same be on Site of the Works or not.
### A PRICING ITEMS FOR PRELIMINARIES

Prices **shall be inserted** against items of ‘preliminaries’ in the tenderer’s priced Bill of Quantities. The Contractor is advised to read and understand all preliminaries. **Preliminary items not priced shall be deemed to have been included in the rates of items in the Bill of Quantities.**

### DESCRIPTION OF THE WORKS

B The works to be carried out under this Contract involve construction of rectangular Underground water tank and pump room, associated mechanical works, electrical works. The works generally shall involve excavations, concrete works, steel reinforcement, waterproofing, and other finishes as measured or provided for in Bills of Quantities

The approximate dimensions and capacity **for guidance purpose only,** are as follows:

- **Underground Water Tank** - 20.3x12.6x5.5m deep - One Million Litres

### LOCATION OF THE SITE

C The site is located at The Proposed Mama Ngina University College which adjacent to Mutomo Primary School near Gatundu Town, Gatundu South Constituency, Kiambu County, Kenya

### MEASUREMENTS

D In the event of discrepancy between the Bill of Quantities and the actual works, the site measurements shall generally take precedence. However, such discrepancies between any Contract documents shall immediately be reported to the Project Manager in accordance with Clause 22 of the Conditions of Contract. The discrepancies shall then be treated as a variation and be dealt with in accordance with Clause 22 of the said Conditions.

### CONDITIONS OF CONTRACT

E The Contractor will be required to enter into a Contract with the Employer under the terms of the Agreement and Conditions of Contract for Building Works, **The Public Procurement and Asset Disposal Oversight Authority 2015 (PPOA) And/or Joint Building Council (JBC) 1999** (or amended) copies of which may be inspected at the Project Manager’s by appointment during normal working hours.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong></td>
<td><strong>PRICING ITEMS FOR PRELIMINARIES</strong></td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>The works to be carried out under this Contract involve construction of rectangular Underground water tank and pump room, associated mechanical works, electrical works. The works generally shall involve excavations, concrete works, steel reinforcement, waterproofing, and other finishes as measured or provided for in Bills of Quantities</td>
</tr>
<tr>
<td><strong>C</strong></td>
<td>The site is located at The Proposed Mama Ngina University College which adjacent to Mutomo Primary School near Gatundu Town, Gatundu South Constituency, Kiambu County, Kenya</td>
</tr>
<tr>
<td><strong>D</strong></td>
<td>In the event of discrepancy between the Bill of Quantities and the actual works, the site measurements shall generally take precedence. However, such discrepancies between any Contract documents shall immediately be reported to the Project Manager in accordance with Clause 22 of the Conditions of Contract. The discrepancies shall then be treated as a variation and be dealt with in accordance with Clause 22 of the said Conditions.</td>
</tr>
<tr>
<td><strong>E</strong></td>
<td>The Contractor will be required to enter into a Contract with the Employer under the terms of the Agreement and Conditions of Contract for Building Works, <strong>The Public Procurement and Asset Disposal Oversight Authority 2015 (PPOA) And/or Joint Building Council (JBC) 1999</strong> (or amended) copies of which may be inspected at the Project Manager’s by appointment during normal working hours</td>
</tr>
</tbody>
</table>
### CLEARING AWAY

The Contractor shall remove all temporary works, rubbish, debris and surplus materials from the site as they accumulate and upon completion of the works, remove and clear away all plants, equipment, rubbish, unused materials, and stains and leave in a clean tidy state to the satisfaction of the Project Manager. The whole of the works shall be delivered up clean, complete and perfect in condition in every respect to the satisfaction of the Project Manager.

### CLAIMS

It shall be a condition of this Contract that upon it becoming reasonably apparent to the Contractor that he has incurred losses and/or expenses due to any of the Contract Conditions, or by any other reason whatsoever, he shall present such claim or intent to claim notice to the Project Manager within the Contract period. No claim shall be entertained upon the expiry of the said Contract period.

### PAYMENTS

Payment will be done on monthly basis by the Project Manager on application by the Contractor. All payments shall be made by Client Department upon certification by the Project Manager. Subcontractors shall be paid through the Main Contractor. The Main Contractor must confirm that they have paid subcontractors to be legible for subsequent certificates.

### PREVENTION OF ACCIDENTS, DAMAGE OR LOSS

The Contractor is instructed to take reasonable care in the execution of the works so as to prevent accidents, damage or loss and disruption of normal activities being carried out by the Client. The Contractor shall allow in his rates any expenses he deems necessary by taking such care within the site.
<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
</tr>
</thead>
</table>
| A | **WORKING CONDITIONS**  
The Contractor shall allow in his rates for any interference that he may encounter in the course of execution of the works. |
| B | **SIGNBOARD.**  
Allow for providing, erecting, maintaining throughout the Contract period and clearing afterwards a mild steel signboard as designed and approved by the Project Manager. The signboard shall give details of the consultants, employer, main contractor and subcontractors and the approval details of the project. |
| C | **LABOUR CAMPS**  
The Contractor shall NOT be allowed to house his labourers on site. Allow also for transporting workers to and from site during the Contract Period as may be necessary. |
| D | **PROJECT MANAGER’S SITE OFFICE**  
Allow for maintaining throughout the project period temporary site office size 8x10m long comprising 50x100mm cypress timber structure, flat roof covered with 30gauge corrugated iron sheets, 32gauge corrugated iron sheet cladded walls, well finished flooring, doors, windows and all necessary office furniture (20no. arm chairs, table, calendar, visitors and site instruction books).  
The contractor to allow in his pricing for provision of refreshments during site meetings throughout the project duration. |
| E | **PRICING NOTES**  
The tenderer shall include for all cost in executing the whole of the works, including transport, replacing damaged items, fixing, all to comply with the said Conditions of Contract. |

Carried to collection KSHS
<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
</tr>
</thead>
</table>
| A    | SECURITY OF THE WORKS  
The Contractor shall allow for providing adequate security for the works and workers during the Contract. No claim will be entertained for lack of enough security in this respect |
| B    | CONSTRUCTION PERIOD  
The Contractor should note that these works are urgent and must be completed within the agreed contract period. |
| C    | PAYMENT FOR MATERIALS ON SITE  
All materials for incorporation in the works must be in the site stores before they are considered for payment, unless specifically exempted by the Project Manager. This is to include materials of the Main Contractor, Nominated Sub-Contractors and Nominated Suppliers. |
| D    | EXISTING SERVICES  
Prior to the commencement of any work, the Contractor is to ascertain from the relevant authority the exact position, depth and level of all existing services in the and he/she shall make whatever provisions that may be required by the authority for support, maintenance and protection of such services. |
| E    | FIXED SUM CONTRACT  
This a fixed price contract and the contractor must allow in his tender for any increase in the cost of labour and materials during duration of the contract. No claim for increase in cost arising from fluctuation in materials, labour, duties, government taxes or day today currency fluctuations will be allowed. |

Carried to collection KSHS
ITEM | DESCRIPTION
---|---
A | PERFORMANCE BOND
A performance bond in the form of unconditional bank or Insurance Company guarantee required is 10% of the bid price. On award of contract, no payment on account for the works executed will be made to the Contractor until he has submitted the Performance Bond to the Project Manager duly signed, sealed and stamped from an approved bank.
B | BID SECURITY
The tenderer shall furnish as part of his bid, a bid security in the sum prescribed. The bid security shall from a reputable bank or a registered insurance company.
C | TENDER DOCUMENT
Tender documents are listed in the Instruction to Tenderers and all documents in connection therewith, as specified above must be delivered in the addressed envelope which should be properly sealed and deposited at the offices as specified in the letter accompanying these documents. Tenders will be opened at the time specified in the letter accompanying these documents. Tenders delivered or received later than the above time will not be opened.
D | VALUE ADDED TAX
The Contractor’s VAT ACT, 2020 or any other amendments thereafter which requires payment of VAT on all contracts. The Contractor **must** therefore include V.A.T in their rates.

Carried to collection KSHS
<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>KSHS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SECTION SUMMARY OF PARTICULAR PRELIMINARIES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Carried from page 48</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Carried from page 49</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Carried from page 50</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Carried from page 51</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Carried from page 52</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Carried from page 53</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Carried from page 54</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Carried to summary of preliminaries</td>
<td>Kshs</td>
</tr>
</tbody>
</table>
GENERAL PRELIMINARIES

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Kshs</th>
<th>Cts</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>PRICING OF ITEMS OF PRELIMINARIES AND PREAMBLES</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prices shall be inserted against items of preliminaries in the Contractor's priced Bills of Quantities and Specifications.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Contractor shall be deemed to have included in his prices or rates for various items in the Bills of Quantities of Specifications for all costs involved in complying with all the requirements for the proper execution of the whole of the works in the Contract.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Throughout these bills, units of measurement and terms are abbreviated and shall be interpreted as follows</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CM</td>
<td>Shall mean cubic metre</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SM</td>
<td>Shall mean square metre</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LM</td>
<td>Shall mean linear metre</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MM</td>
<td>Shall mean millimetre</td>
<td></td>
<td></td>
</tr>
<tr>
<td>KG</td>
<td>Shall mean kilogram</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NO</td>
<td>Shall mean numbers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PRS</td>
<td>Shall mean pairs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BS</td>
<td>Shall mean the British Specification published by the British Standard Institution, 2 Park Street, London W.1 England</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DITTO</td>
<td>Shall mean the whole of the preceding description except as qualified in the description in which it occurs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M.S</td>
<td>Shall mean measured separately</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a.b.d</td>
<td>Shall mean as above described.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### METHOD OF MEASUREMENT

The Bills of quantities have been prepared in accordance with the general principles of the standard Method of Measurement of Building Works.

### SUFFICIENCY OF TENDER

The Contractor be deemed to have satisfied himself before tendering as to the correctness and sufficiency of the Tender for the Works and of the rates and prices stated in the priced Bills of Quantities which rates and prices shall cover all his obligations under the Contract and all matter and things necessary for the proper completion and maintenance of the works.

### EXCEPTION TO THE STANDARD METHOD OF MEASUREMENT

#### Attendance;

Clause B19(a) of the Standard Method of Measurement is deleted and the following Clause is substituted:

Attendance on nominated Sub-Contractors shall be given as an item in each case and shall be deemed to include: allowing use of standing scaffolding, mesh rooms, sanitary accommodation and welfare facilities; provision of special scaffolding where necessary, providing space for office accommodation, and for storage of plant and materials; providing light and water for the works; clearing away rubbish; unloading checking providing electric power and removing and replacing duct covers, pipe chasings and the like necessary for the execution and testing of Sub-Contractor's work and being responsible for the accuracy of the same.

#### Fix Only;

"Fix Only" Shall mean take delivery on site where necessary, distribute to position, hoist and fix only.
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Kshs</th>
<th>Cts</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>PLANT, TOOLS AND VEHICLES</td>
<td>Allow for providing all scaffolding, plants, tools and vehicles required for the works except in so far as may be stated otherwise herein and except for such items specifically and only required for use of nominated Sub-Contractors as described herein. No timber used for scaffolding, formwork or temporary works of any kind should be afterwards in the permanent works.</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>TRANSPORT</td>
<td>Allow for transport of workmen, materials, etc. to and from the site at such hours and by such routes as may be permitted by competent Authorities</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>MATERIALS AND WORKMANSHIP</td>
<td>All materials and workmanship used in the execution of the works shall be of the best quality and description unless otherwise stated. The Contractor shall order all materials to be obtained from overseas immediately after the contract is signed and shall also order for materials to be obtained from local sources as early as necessary to ensure that they are onsite when require for use in the works. The Bills of Quantities shall not be used for the purposes of ordering materials.</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>SIGN FOR MATERIALS SUPPLIED</td>
<td>The Contractor shall be required to sign receipts for all articles and materials supplied by the Project Manager at the time of taking delivery thereof, as having received them in good order and condition, and will thereafter be responsible for any such loss or damage and for replacement of such any loss with articles and/or materials which shall be supplied by the Project Manager at the current market prices including Customs Duty and VAT, all at the Contractors own cost and expenses, to the satisfaction of the PROJECT MANAGER.</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>STORAGE OF MATERIALS</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Contractor shall provide at his own risk and cost where directed on the site weather proof lock-up sheds and make good damaged or disturbed surfaces upon completion to the satisfaction of the PROJECT MANAGER.

The contractor to provide storage for any NOMINATED SUB-COMTRACTORS

<table>
<thead>
<tr>
<th>Carried to collection</th>
<th>Kshs</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Kshs</th>
<th>Cts</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>SAMPLES</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Contractor shall furnish at his own cost any samples of materials or workmanship including concrete test cubes required for the works that may be called for by the PROJECT MANAGER for his approval. The PROJECT MANAGER may reject any materials or workmanship in his opinion not to the approved sample. The PROJECT MANAGER shall arrange for testing of such materials as he/she may at his/her discretion deem desirable, but the testing shall be made at the expense of the Contractor and not at the expense of the PROJECT MANAGER. The Contractor shall pay for the testing in accordance with the current scale of testing charges laid down by Ministry of Public Works. The procedure for submitting samples of materials for testing and the method of marking for identification shall be laid down by the PROJECT MANAGER. The Contractor shall allow in his tender for such samples and tests except for those in connection with nominated subcontractor's work.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>GOVERNMENT ACT REGARDING WORK PEOPLE ETC.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Allow for complying with Government Acts, order and Regulations in connection with the employment of Labor and other matters related to the execution of the works. In particular, the Contractors attention is drawn to the provisions of the Factory Act of, 1950 and the tenderer must include for all costs arising or resulting from compliance with any Act, Order or Regulation relating to insurance, pensions, and holidays for workpeople or so the safety, and welfare of the work people. The Contractor must make himself fully acquainted with current Acts and Regulations, including police regulations regarding movements, housing, security and control of labor, labor camps, passes for transport, etc. It is important that the Contractor, before tendering obtains information regarding all such regulations and/or restrictions which may affect the organization of the works, supply and control of labor, etc, and allow accordingly in his tender. No claim shall be entertained for lack of knowledge in this respect.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SECURITY OF WORKS, ETC.

The Contractor shall be entirely responsible for the security of the works, materials, plant, personnel, etc, both his own and subcontractor's and must provide all necessary watching, lighting and precautions necessary to ensure security against theft, loss or damage and the protection of the public.

<table>
<thead>
<tr>
<th>Carried to collection</th>
<th>Kshs</th>
</tr>
</thead>
</table>

A
PUBLIC AND PRIVATE ROADS
Maintain as required throughout the execution of the works and make good any damage to Public or Private roads arising from or subsequent upon the execution of the works to the satisfaction of the local and other competent authority and the Project Manager.

B
EXISTING PROPERTY
The Contractor shall take every precaution to avoid damage to existing property including roads, cables, drains, and other services and he will be held responsible for and shall make good all such damages arising from the execution of this Contract at his own expense at his own cost to the satisfaction of the Project Manager.

C
VISIT THE SITE AND EXAMINE DRAWINGS
The Contractor is advised to examine the drawings and visit the site location of which is described in the Particular Preliminaries hereof. He shall be deemed to have acquainted him/ herself therewith as to its nature, position, means of access or any other matter which may affect his tender. No claim arising from his failure to comply with this advice shall be entertained.

D
ACCESS TO SITE AND TEMPORARY ROADS
Means of accessing the site shall be agreed with the PROJECT MANAGER prior to commencement of the works and the Contractor must allow for building any necessary temporary access road for the transport of materials, plant and workmen as may be required for the complete execution of the works including the provision of temporary culverts, crossings, or any other means of accessing the site. Upon completing the works, the Contractor shall remove temporary access roads, temporary culverts, etc; and make good and reinstate all works and surfaces disturbed to the satisfaction of the PROJECT MANAGER.

E
AREA TO BE OCCUPIED BY THE CONTRACTOR
The area of the site which may be occupied by the Contractor for site office, storage and for the purpose of erecting workshops etc; shall be defined on site by the PROJECT MANAGER.

<table>
<thead>
<tr>
<th>Carried to collection</th>
<th>Kshs</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Kshs</th>
<th>Cts</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>WATER AND ELECTRICITY SUPPLY</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Contractor shall provide at his own cost all</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>necessary water, electric light and power</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>required for use in the works. The Contractor</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>must make his own arrangement for connection</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>to the nearest suitable water mains available</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>and for metering the water used. He must also</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>provide temporary water tank and meters as</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>required at his own cost and clear away when</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>no longer required and make good on completion</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>to the entire satisfaction of the PROJECT</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MANAGER. The Contractor shall pay all charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>in connection herewith. No guarantee is given or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>implied that sufficient water will be available</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>from mains and the Contractor must make his own</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>arrangement for augmenting this supply at his</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>own cost.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>SANITATION OF THE WORKS</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Contractor is advised to examine the drawings and visit the site location of which is described in the Particular Preliminaries hereof. He shall be deemed to have acquainted himself/ herself therewith as to its nature position, means of access or any other matter which may affect his tender. No claim arising from his failure to comply with this advice shall be entertained.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Kshs</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td><strong>PRIME COST OR PC SUMS</strong>&lt;br&gt;The term &quot;Prime Cost or PC Sum&quot; whenever used in these Bills of Quantities shall be expended upon the authority of the Project Manager.</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td><strong>PROGRESS CHART</strong>&lt;br&gt;The Contractor shall provide within two weeks of Possession of Site and in Agreement with the PROJECT MANAGER a Progress Chart for the whole of the works including the works of Nominated Subcontractors; one copy to be handed to the PROJECT MANAGER and a further copy to be retained on site. Progress to be recorded and chart to be amended as necessary as the work proceeds.</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td><strong>ADJUSTMENT OF PC SUMS</strong></td>
<td></td>
</tr>
</tbody>
</table>
In the final account, all P.C Sums shall be deducted and the amount properly expended upon the PROJECT MANAGER'S order in respect of each of them added to the Contract Sum. The Contractor shall produce to the PROJECT MANAGER such quotations, invoices or bills, properly receipted, as may be necessary to show the actual details of the sums paid by the Contractor. Items of profit upon P.C Sums shall be adjusted in the final account pro-rata to the amount paid. Items of attendance (as previously described) following P.C Sums shall be adjusted to the physical extent of the work executed (not pro-rata to the amount paid) and shall apply even though the Contractors Priced Bills shows a percentage in the rate column in respect of them.

Should the Contractor be permitted to tender and his tender be accepted of any work for which a P.C Sum is included in the Bills of Quantities, profit and attendance will be allowed as it would be if the work were executed by a Nominated Subcontractor.

<table>
<thead>
<tr>
<th>Carried to collection</th>
<th>Kshs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>A</td>
<td>ADJUSTMENT OF PROVISIONAL SUMS</td>
</tr>
<tr>
<td></td>
<td>In the final account all Provisional Sums shall be deducted and the amount properly executed in respect of them upon the PROJECT MANAGER's order added to the Contract Sum. Such works shall be valued as described for Variations in Condition No.22 of the Conditions of Contract, but the value of such work or articles for the work to be supplied by a Nominated Subcontractor, the value of such work or article to be supplied by a Nominated Supplier, the value of such work or article shall be treated as a P.C Sum and profit and attendance comparable to that contained in the priced Bills of Quantities for similar items added.</td>
</tr>
<tr>
<td>B</td>
<td>NOMINATED SUB-CONTRACTORS</td>
</tr>
</tbody>
</table>
When any work is ordered by the PROJECT MANAGER to be executed by nominated Sub-contractors. The Main Contractor shall enter into a Sub-contract as described in Condition No.7 of the Conditions of Contract and shall thereafter be responsible for such sub-contractors in every respect. Unless otherwise described, the Contractor is to provide for such Sub-contractors any or all the facilities in these Preliminaries. They should price for these with the nominated Subcontract Contractor's work concerned in the P.C Sums under the description "Add for Attendance"

C **DIRECT CONTRACTS**

Notwithstanding the foregoing conditions, the Employer reserves the right to place a "Direct Contract" for any goods or services required in the works which are covered by a P.C Sum in the Bills of Quantities and to pay for the same direct. In any such instances, profit relative to the P.C Sum the priced Bills of Quantities will be adjusted as described for P.C Sums and allowed.

D **ATTENDANCE UPON OTHER TRADESMEN, ETC.**

The Contractor shall allow for the attendance of trade upon trade and shall afford any tradesmen or any other persons employed for the execution of any work not included in this Contract every facility for carrying out the work and also for use in his ordinary scaffolding. The Contractor, however, shall perform such carting away for and making good after the work of such tradesmen or persons as may be ordered by the PROJECT MANAGER and the work will be measured and paid for to the extent executed at rates provided in these bills.

<table>
<thead>
<tr>
<th>Carried to collection</th>
<th>Kshs</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong></td>
<td>INSURANCE</td>
</tr>
<tr>
<td>The Contractor shall insure as required and as outlined in the Appendix to the Conditions of Contract. No payment on account in respect of the works shall be made to the Contractor unless he/she has satisfied the PROJECT MANAGER either by production of an Insurance Policy certificate that the foregoing Insurance Clauses have been complied within all respects. Thereafter the PROJECT MANAGER shall from time to time ascertain that premiums are duly paid up by the Contractor who shall if called upon to do so, produce receipted premium renewals for the PROJECT MANAGER's inspection.</td>
<td></td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>PROVISIONAL WORK</td>
</tr>
</tbody>
</table>
All work described as "Provisional" in these Bills of Quantities is subject to re-measurement in order to ascertain the actual quantity executed for which payment will be made. All "Provisional" and other work liable to adjustment under this Contract be left uncovered for a reasonable period of time to enable all measurements needed to be taken by the PROJECT MANAGER. Immediately the work is ready for measuring, the Contractor shall give notice to the PROJECT MANAGER. If the Contractor makes default in these respects he/she shall if the PROJECT MANAGER so directs uncover the work to enable all measurements to be taken afterwards reinstate at his own expense.

<table>
<thead>
<tr>
<th>C</th>
<th>ALTERATION TO BILLS, PRICING, ETC.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any unauthorized alteration or qualification made to the text of the Bills of Quantities may cause the Tender to be disqualified and in any case be ignored. The Contractor shall be deemed to have made allowance in his/her prices generally to cover any items against which no price has been inserted in the Priced Bills of Quantities. All items of measured work shall be priced in detail and the Tenders containing Lump Sums to cover trades or groups of work must be broken down to show the prices of each item before they will be accepted.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>D</th>
<th>BLASTING OPERATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blasting shall only be allowed with the express permission of the PROJECT MANAGER in writing. All blasting operations shall be carried out at the Contractor's sole risk and cost in accordance with any Government regulations in force for the time being, and any special regulations laid down by the PROJECT MANAGER governing the use and storage of explosives.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Kshs</th>
<th>Cts</th>
</tr>
</thead>
<tbody>
<tr>
<td>M</td>
<td>MATERIALS ARISING FROM EXCAVATIONS</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Carried to collection Kshs
Materials of any kind obtained from excavations shall be the property of the Client. Unless the PROJECT MANAGER directs otherwise such materials shall be dealt with as provided in the Contract. Such materials shall only be used in the works, in substitution for materials which the Contractor will otherwise have had to supply with the written permission of the PROJECT MANAGER. Should such permission be given, the Contractor shall make due allowance for materials so used at a price to be agreed.

**B  PROTECTION OF THE WORKS**

Provide protection of the whole of the works contained in the Bills of Quantities, including casing, casing up, covering or such other means as may be necessary to avoid damage to the satisfaction of the PROJECT MANAGER and remove such protection when no longer required and make good any damage which nevertheless have been done at completion free of cost to the Government.

**C  REMOVAL OF RUBBISH, ETC.**

Removal of rubbish and debris from the buildings and site as it accumulates and at the completion of the works and remove all plant, scaffolding, and unused materials at completion.

**D  WORKS TO BE DELIVERED UP CLEAN**

Clean and flush all gutters, rainwater and waste pipes, manholes and drains, wash (except where such treatment might cause damage) and clean all floors, sanitary fittings, glass inside and outside and any other parts of the works and remove all marks, blemishes, stains and defects from joinery, fittings and decorated surfaces generally, polish door furniture and bright parts of metal work and leave the whole of the buildings water tight, clean, perfect and fit for occupation to the approval of the PROJECT MANAGER.

<table>
<thead>
<tr>
<th>Carried to collection</th>
<th>Description</th>
<th>Kshs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Kshs</td>
<td>Cts</td>
</tr>
<tr>
<td>A</td>
<td>GENERAL SPECIFICATION.</td>
<td></td>
</tr>
</tbody>
</table>
For the full description of materials and workmanship, method of execution of the works and notes for pricing, the Contractor is referred to Ministry of Public Works and Housing General Specification dated 1976 or any subsequent revision thereof, and which shall be allowed for in all respects unless it conflicts with the General Preliminaries, Trade Preambles or other items in these Bills of Quantities.

### B MATERIALS ON SITE

All materials for incorporation into the works must be stored on or adjacent to the site before payment is effected unless specifically exempted by the PROJECT MANAGER. This includes the materials of the Main Contractor, Nominated Subcontractors and Nominated Suppliers.

### C HOARDING

The Contractor shall enclose the site of the works under construction with a hoarding 2400mm high consisting of iron sheets on 100x50mm timber posts firmly secured at 1800mm centres with two 75x50mm timber rails. The Contractor is in addition required to take precautions necessary for the safe custody of the works, materials, plant, public and Employer's property on the site.

### D CONTRACTOR'S SUPERINTENDENCE/ SITE AGENT

The Contractor shall constantly keep on the works a literate English and Kiswahili speaking Agent Representative, competent and experienced in the kind of work involved who shall give his whole experience in the kind of work involved and shall give his whole time to the superintendence of the works. Such Agent or Representative shall receive on behalf of the Contractor all directions and instructions from the PROJECT MANAGER and such directions shall be deemed to have been given to the Contractor in accordance with the Conditions of Contract.

<table>
<thead>
<tr>
<th>Carried to collection</th>
<th>Kshs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td><strong>SECTION SUMMARY OF GENERAL PRELIMINARIES</strong></td>
</tr>
<tr>
<td></td>
<td>Carried from page 56...............................</td>
</tr>
<tr>
<td></td>
<td>Carried from page 57...............................</td>
</tr>
<tr>
<td></td>
<td>Carried from page 58...............................</td>
</tr>
<tr>
<td></td>
<td>Carried from page 59...............................</td>
</tr>
<tr>
<td></td>
<td>Carried from page 60...............................</td>
</tr>
<tr>
<td></td>
<td>Carried from page 61...............................</td>
</tr>
<tr>
<td></td>
<td>Carried from page 62...............................</td>
</tr>
<tr>
<td></td>
<td>Carried from page 63...............................</td>
</tr>
<tr>
<td></td>
<td>Carried from page 64...............................</td>
</tr>
<tr>
<td></td>
<td>Carried from page 65...............................</td>
</tr>
<tr>
<td></td>
<td>Carried from page 66...............................</td>
</tr>
<tr>
<td></td>
<td><strong>Carried to summary of preliminaries</strong></td>
</tr>
</tbody>
</table>

Kshs
## SUMMARY OF PRELIMINARIES

Particular Preliminaries from page 55 ..............................

General Preliminaries from page 67 ..............................

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Kshs</th>
<th>Cts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Carried to Grand Summary</td>
<td>Kshs</td>
<td></td>
</tr>
</tbody>
</table>
STANDARD FORMS

List of Standard Forms

(i) Form of Invitation for Tenders
(ii) Form of Tender
(iii) Letter of Acceptance
(iv) Form of Agreement
(v) Form of Tender Security
(vi) Performance Bank Guarantee
(vii) Performance Bond
(viii) Qualification Information
(ix) Tender Questionnaire
(x) Confidential Business Questionnaire
(xi) Request for Review Form
I. FORM OF INVITATION FOR TENDERS

To: ________________________________ [name of Contractor]

____________________________________ [address]

Dear Sirs:

Reference: __________________________________________ [Contract Name]

You have been prequalified to tender for the above project.

We hereby invite you and other prequalified tenderers to submit a tender for the execution and completion of the above Contract.

A complete set of tender documents may be purchased by you from ________________________________

___________________________________________ [mailing address, cable/telex/facsimile numbers].

Upon payment of a non-refundable fee of Kshs __________________________

All tenders must be accompanied by ____________ number of copies of the same and a tender security in the form and amount specified in the tendering documents, and must be delivered to __________________________________________

[address and location]

at or before _______________________(time and date). Tenders will be opened immediately thereafter, in the presence of tenderers’ representatives who choose to attend.

Please confirm receipt of this letter immediately in writing by cable/facsimile or telex.

Yours faithfully,

______________________________________________ Authorised Signature

______________________________________________ Name and Title
II. FORM OF TENDER

TO: __________________________ [Name of Employer] ____________ [Date]

________________________ [Name of Contract]

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications and Bills of Quantities/Schedule of Rates for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs.__________________________ [Amount in figures] Kenya Shillings

__________________________ [Amount in words]

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

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

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

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

Dated this __________________ day of _______ 20________________

Signature ___________________in the capacity of____________________

_________________________ [Name of Contractor]

of__________________________ [Address of Contractor]

Witness: Name______________________________

Address____________________________________

Signature___________________________________
III. LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: ______________________
   ______________________
   ______________________
   ______________________

RE: Tender No. ______________

Tender Name ______________

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

________________________________________________________

1. Please acknowledge receipt of this letter of notification signifying your acceptance.

2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.

3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) __________________________________________

________________________________________________________

SIGNED FOR ACCOUNTING OFFICER
IV. FORM OF AGREEMENT

THIS AGREEMENT, made the ___________ day of ________ 20 ______

between___________________________of [or whose registered office is situated
at]___________________________________(hereinafter called “the Employer”) of the one part

AND

________________________________________________________of [or whose registered office is
situated at]_________________________________________(hereinafter called “the Contractor”) of the
other part.

WHEREAS THE Employer is desirous that the Contractor executes

________________________________________________________________________

(name and identification number of Contract ) (hereinafter called “the Works”) located
at______________________________[Place/location of the Works]and the Employer has accepted the
tender submitted by the Contractor for the execution and completion of such Works and the remedying of
any defects therein for the Contract Price of Kshs___________________________[Amount in
figures],Kenya Shillings_____________________________________________

[Amount in words].

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively
assigned to them in the Conditions of Contract hereinafter referred to.

2. The following documents shall be deemed to form and shall be read and construed as part of this
Agreement i.e.

   (i) Letter of Acceptance

   (ii) Form of Tender

   (iii) Conditions of Contract Part I

   (iv) Conditions of Contract Part II and Appendix to Conditions of Contract

   (v) Specifications
3. In consideration of the payments to be made by Kenyatta University to the Contractor as hereinafter mentioned, the Contractor hereby covenants with Kenyatta University to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

4. Kenyatta University hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

The common Seal of ______________________________

Was hereunto affixed in the presence of ______________________________

Signed Sealed, and Delivered by the said ______________________________

Binding Signature of Kenyatta University ______________________________

Binding Signature of Contractor ______________________________

In the presence of (i) Name_______________________________________

Address_____________________________________

Signature_____________________________________

[ii] Name _______________________________________

Address_____________________________________

Signature_____________________________________

75
V. FORM OF TENDER SECURITY

WHEREAS ………………………………. (hereinafter called “the Tenderer”) has submitted his tender dated ……………………… for the works of …………………… (name of Contract)

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

THE CONDITIONS of this obligation are:

1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers

Or

2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:

(a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or

(b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;

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

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

[signature of the Bank]

[seal]

[date]

[witness]
VI. PERFORMANCE BANK GUARANTEE

To: _________________________(Name of Employer) __________(Date)__________(Address of Employer)

Dear Sir,

WHEREAS ______________________ (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. _____________ dated _________ to execute _______________ (hereinafter called “the Works”);

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

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

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

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

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

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

SIGNATURE AND SEAL OF THE GUARANTOR ___________________

Name of Bank ____________________________________________

Address ________________________________________________
VII. PERFORMANCE BOND

By this Bond, We______________________________
of (or whose registered office is situated at)______________________________________as Principal
(hereinafter called “the Contractor”) and
______________________________________________________of [or whose registered office is
situated at]________________________________________ as Surety (hereinafter called “the
Surety”), are held and firmly bound unto_____________________________________of [or whose
registered office is situated at]___________________________________________
as Obligee (hereinafter called “the Employer”) in the amount of
Kshs.______________________________[amount of Bond in figures]Kenya
Shillings____________________________________________________________
[amount of Bond in words], for the payment of which sum well and truly, the Contractor and the Surety
bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS the Contractor has entered into a Contract with the Employer dated the ________________
day of ______________ 20 ______________ for the execution
of____________________________________________
[name of Contract] in accordance with the Contract documents, 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.

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 Employer to be, in default under the Contract, the Employer having performed the Employer’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 Employer for completing
the Contract in accordance with its terms and conditions, and upon determination by the Employer
and the Surety of the lowest responsive tenderer, arrange for a Contract between such tenderer and
Employer 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 the Employer to the Contractor under the Contract, less the amount properly paid by the Employer to the Contractor; or

(3) Pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

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

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors and assigns of the Employer.

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 ______________________ SIGNED ON ______________________

On behalf of ______________________ On behalf of ______________________

[insert name of Contractor] [insert name of Surety]

By _________________________________ By _________________________________

In the capacity of ______________________ In the capacity of ______________

In the presence of; Name _______________ In the presence of; Name ____________

Address__________________________ Address________

Signature________________________ Signature_______

Date______________________________ Date________________
VIII. QUALIFICATION INFORMATION

1. **Individual Tenderers or Individual Members of Joint Ventures**

1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate);

   Place of registration: ______________________________

   Principal place of business ____________________________

   Power of attorney of signatory of tender ________________

1.2 Total annual volume of construction work performed in the last five years

<table>
<thead>
<tr>
<th>Year</th>
<th>Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Currency</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Project name</th>
<th>Name of client and contact person</th>
<th>Type of work performed and year of completion</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1.4 Major items of Contractor’s Equipment proposed for carrying out the Works. List all information requested below.

<table>
<thead>
<tr>
<th>Item of Equipment</th>
<th>Description, Make and age (years)</th>
<th>Condition(new, good, poor) and number available</th>
<th>Owned, leased (from whom?), or to be purchased (from whom?)</th>
</tr>
</thead>
<tbody>
<tr>
<td>__ __________(etc.)</td>
<td>_______________________________</td>
<td>__________________</td>
<td>__________________</td>
</tr>
<tr>
<td>__________________</td>
<td>_______________________________</td>
<td>__________________</td>
<td>__________________</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
<th>Years of experience (general)</th>
<th>Years of experience in proposed position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Manager</td>
<td></td>
<td>___________________________</td>
<td>____________________________</td>
</tr>
<tr>
<td>_____________________________</td>
<td></td>
<td>___________________________</td>
<td>____________________________</td>
</tr>
<tr>
<td>_____________________________</td>
<td></td>
<td>___________________________</td>
<td>____________________________</td>
</tr>
<tr>
<td>_____________________________</td>
<td></td>
<td>___________________________</td>
<td>____________________________</td>
</tr>
<tr>
<td>(etc.)</td>
<td></td>
<td>___________________________</td>
<td>____________________________</td>
</tr>
</tbody>
</table>

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

________________________________________________________________________

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

____________________________________________________________

____________________________________________________________

_____________________________________________

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

__________________________________________________________________

__________________________________________________________________

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

____________________________________________________________

____________________________________________________________

1.10 Proposed program (work method and schedule) for the whole of the Works.

2 Joint Ventures

2.0 The information listed in 1.1 – 2.0 above shall be provided for each partner of the joint venture.

2.1 The information required in 1.11 above shall be provided for the joint venture.

2.2 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture

2.3 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:

a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and

c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge
IX. TENDER QUESTIONNAIRE

Please fill in block letters.

1. Full names of tenderer

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

3. Telephone number(s) of tenderer

4. Telex address of tenderer

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

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

_______________________
Signature of Tenderer

Make copy and deliver to:______________________ (Name of Employer)
X. **CONFIDENTIAL BUSINESS QUESTIONNAIRE**

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

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

*Part 1 – General*

**Business Name** .................................................................

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

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

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

**Nature of Business** .............................................................

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

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

**Name of your bankers** ..........................................................

**Branch** ................................................................................

*Part 2 (a) – Sole Proprietor*

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

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

*Citizenship details* .................................................................
Part 2 (b) – Partnership

Give details of partners as follows:

<table>
<thead>
<tr>
<th>Name in full</th>
<th>Nationality</th>
<th>Citizenship Details</th>
<th>Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Part 2(c) – Registered Company:

Private or public……………………………………………………………………

State the nominal and issued capital of the Company-

Nominal Kshs…………………………………………………………………

Issued Kshs……………………………………………………………………

Give details of all directors as follows:

Name in full | Nationality | Citizenship Details | Shares. |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Part 2(d) – Interest in the Firm:

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

I certify that the information given above is correct.

……………………… ……………………………………………………………

(Title) (Signature) (Date)

• Attach proof of citizenship
FORM RB 1

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO……………..OF…………20……...

BETWEEN
…………………………………………….APPLICANT
AND
…………………………………………….RESPONDENT

(Procuring Entity)

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

REQUEST FOR REVIEW

I/We……………………………, the above named Applicant(s), of
address: Physical address…………….Fax
No…..Tel. No……Email ……………, hereby request the
Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds, namely:-
1.
2.
etc.
By this memorandum, the Applicant requests the Board for an order/orders that: -
1.
2.
etc

SIGNED ………………..(Applicant)
Dated on…………….day of …………./of ………….20…

FOR OFFICIAL USE ONLY

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

SIGNED
Board Secretary
SECTION V

APPENDIX I: BILL OF QUANTITIES/ SCHEDULE OF RATES AND DRAWINGS