

**REPUBLIC OF KENYA**



**COUNTY GOVERNMENT OF KIRINYAGA  
P.O. BOX 260 - 10304,  
KUTUS.**

**DEPARTMENT OF TRANSPORT, ROADS AND PUBLIC WORKS**

**OPEN TENDER**

**FOR**

**PROPOSED GRADING AND MURRAMING OF KARIE - CANAL - MUTUA  
- NDIGA ROAD IN KANGAI WARD**

**TENDER NEGOTIATION NO: 843345-2020/2021**

**County Specific Procurement**

***(Reserved for AGPO)***

County Government of Kirinyaga  
P.O. Box 260-10304  
KUTUS  
Website: [www.Kirinyaga.go.ke](http://www.Kirinyaga.go.ke)

**JANUARY, 2021**

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## SECTION I - INVITATION FOR TENDER

**TENDER NAME: PROPOSED GRADING AND MURRAMING OF KARIE - CANAL - MUTUA - NDIGA ROAD IN KANGAI WARD**

**TENDER NEGOTIATION NO: 843345-2020/2021**

The County Government of Kirinyaga invites sealed bids from all, interested, eligible and qualified AGPO companies for the above-mentioned works.

Interested and eligible **AGPO** candidates may obtain detailed information and inspect the tender documents at Kirinyaga County Headquarters, Kutus, Supply Chain Management Office, Room B15 during normal working hours. Interested and eligible tenderers may obtain further information from and inspect the tender documents at Director Supply Chain Management Office, 1st Floor, Kirinyaga County Headquarters, Kutus during normal working hours.

A complete set of tender documents may be obtained by interested bidders from the Public Procurement Information Portal website <http://tenders.go.ke> or the County website [www.kirinyaga.go.ke](http://www.kirinyaga.go.ke). Bidders who download the documents from the website **MUST** forward their particulars (Name, contacts, physical address and the tender no./ description) immediately to [procurement@kirinyaga.go.ke](mailto:procurement@kirinyaga.go.ke) for recording and any further clarifications or addendums.

Tenders must be accompanied by dully filled, signed and stamped Tender Securing Declaration Form for **AGPO** registered groups in the format provided.

Prices quoted should be inclusive of all taxes and delivery costs and must be expressed in Kenya shillings and shall remain valid for a period of **120 days** from the closing date of the tender.

***Tenderers shall ensure that the submitted bid (documents) is (are) serialized/paginated, intact and in PDF format. (i.e., each page in the submitted bid shall have serial identification and uploaded in PDF format).***

Tenderers shall electronically upload copies of all the relevant certificates and documents on e-procurement system in support of their bids on or before **TUESDAY 2<sup>ND</sup> FEBRUARY, 2021 AT 11.00 A.M**

Preliminary and Technical bid documents shall automatically close immediately after the indicated date & time above mentioned. Thereafter the bids will be electronically opened in the presence of tenderers who choose to attend at the 3rd floor Conference Room, Kirinyaga County Headquarters, Kutus or as may be indicated in the Tender Document

The tenderers' representatives who choose to attend shall sign a register evidencing their attendance.

**HEAD, SUPPLY CHAIN MANAGEMENT  
FOR: COUNTY SECRETARY**

## SECTION II - INSTRUCTIONS TO TENDERERS

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## SECTION II - INSTRUCTION TO TENDERERS

### A. GENERAL

#### 2.1 Scope of Bid

- 2.1.1. The Employer, as defined in the Conditions of Contract Part II hereinafter “the Employer” wishes to receive bids for the construction of works as described in Section 1, clause 102 of the Special Specifications –“Location and extent of the Works”
- 2.1.2. The successful bidder will be expected to complete the Works within the period stated in the Appendix to Bid from the date of commencement of the Works.
- 2.1.3. Throughout these bidding documents, the terms bid and BID and their derivatives (bidder/Bidder, bid/bided, bidding/Bidding etc) are synonymous, and day means calendar day. Singular also means plural.

#### 2.2 Source of Funds

The source of funding is the County Government of Kirinyaga through RMLF funds or CRF Funds.

#### 2.3 Corrupt Practices

- 2.1.4. The Government requires that the bidders, suppliers, sub-contractors and supervisors observe the highest standard of ethics during the procurement and execution of such contracts. In this pursuit of this policy, the government;
  - a) Defines for the purposes of this provision, the terms set forth below as follows:
    - (i) *“corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in the execution, and*
    - (ii) *“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practices among bidders ( prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Employer of the benefits of free and open competition*
  - b) Will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the Contract, and
  - c) Will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a government contract if it at any times determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Government financed contract.

#### 2.4 Eligibility

This invitation to tender is open to all tenderers who are qualified as stated in the appendix.

## **2.5 Qualification Requirements**

To be qualified for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility under Sub clause 2.1. above and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to update the following information already submitted during prequalification: -

- (a) Details of experience and past performance of the tenderer on the works of a similar nature and details of current work on hand and other contractual commitments.
- (b) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site.
- (c) Major items of construction plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.
- (d) Details of sub-contractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Condition of Contract.
- (e) A draft Program of Works in the form of a bar chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Engineer.
- (f) Details of any current litigation or arbitration proceedings in which the tenderer is involved as one of the parties.

## **2.6 Joint Ventures**

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

- (a) The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners
- (b) One of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners

- (c) The partner in charge shall be authorized to incur liabilities and receive instructions for an on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender)
- (e) A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

## **2.7 Cost of Tendering**

- 2.7.1 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, regardless of the conduct or outcome of the tendering process.
- 2.7.2 The price to be charged for the tender document shall not exceed Kshs.5,000/=
- 2.7.3 The procuring entity shall allow the tenderer to view the tender document free of charge before purchase.

## **2.8 Site Visit**

- 2.8.1 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.
- 2.8.2 The bidders shall be responsible for the accuracy of their bids and bid proposals.
- 2.8.3 The bidder is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than two weeks before the submission deadline. Any modification of the Bidding Documents which may become necessary as a result of questions raised or clarifications issued shall be made by the Employer exclusively through the issue of an Addendum published on the County website.
- 2.8.4 A Mandatory pre-tender site meeting shall be held as specified in the appendix to instruction of tender. A representative of the Employer will be available to meet the intending tenderers at the venue.

## **B. BIDDING DOCUMENTS**

### **2.9 Tender Documents**

2.9.1 The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 7 of these instructions to tenderers.

- (a) Invitation to Bid
- (b) Instructions to Bidders and Conditions of Tender
- (c) Appendix to Instruction to Tenderers
- (d) Conditions of Contract - Part I
- (e) Conditions of Contract - Part II
- (f) Road Maintenance Manual (May 2010 Edition)
- (g) Standard Specifications
- (h) Special Specifications
- (i) Form of Bid, Appendix to Form of Bid and Bid Security
- (j) Bills of Quantities
- (k) Schedules of Supplementary information
- (l) Form of Contract Agreement
- (m) Form of Performance Security
- (n) Drawings
- (o) BID Addenda (BID Notices)
- (p) Declaration Form

2.9.2 The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 22 of Instructions to Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.

2.9.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (whether they submit a tender or not) shall treat the details of the documents as "private and confidential".

### **2.10 Inquiries by tenderers**

2.10.1 A tenderer making an inquiry relating to the tender document may notify the Employer in writing or by telex, cable or facsimile at the Employer's mailing address indicated in the Invitation to Tender. The Employer will respond in writing to any request for clarification which he receives earlier than 7 days prior to the deadline for the submission of tenders. Written copies of the Employer's response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased the tender documents.



2.10.2 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.

## **2.11 Amendment of Tender Documents**

2.9.1 At any time prior to the deadline for submission of tenders the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.

2.9.2 Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them.

2.9.3 In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Employer may, at his discretion, extend the deadline for the submission of tenders.

## **C. PREPARATION OF BIDS**

### **2.12 Language of Tender**

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

### **2.13 Documents Comprising the Tender**

2.13.1 The tender to be prepared by the tenderer shall comprise:

- a) Duly filled-in the Form of Bid and Appendix to form of bid;
- b) Bid security;
- c) Priced Bills of Quantities;
- d) Schedules of information
- e) Qualification Criteria
- f) Any other materials required to be completed and submitted in accordance with the Instructions to Bidders embodied in these bidding documents.

2.13.2 The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 13.2 regarding the alternative forms of Tender Surety].

## **2.14 Tender Prices**

- 2.14.1 All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Bills of Quantities shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialed by the person or persons signing the tender.
- 2.14.2 A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not. Items against which no rate or price is entered by the tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.
- 2.14.3 The prices and unit rates in the Bills of Quantities are to be the full [all-inclusive] value of the Work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause prior to the deadline for submission of tenders, shall be included in the rates and prices and the total Tender Price submitted by the tenderer.
- 2.14.4 Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.
- 2.14.5 Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.
- 2.14.6 Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Bills of Quantities for Contingencies and Variation of Prices [V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.
- 2.14.7 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of basic unit rates for the supply of items listed in the Conditions of Contract clause 70 where appropriate. The Employer may require the tenderer to justify such rates so obtained from the suppliers or manufacturers.
- 2.14.8 The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the Provisions of the

Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other supporting information as required under clause 70 of the Conditions of Contract Part II.

2.14.9 Contract price variations shall not be allowed within the first 12 months of the contract.

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

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

## **2.15 Currencies of Tender and Payment**

2.15.1 Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.

## **2.16 Tender Validity**

2.16.1 The tender shall remain valid and open for acceptance for a period of One twenty days (120) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 7.4 here above) whichever is the later.

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

## **2.17 Tender Security**

2.17.1 The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix to Instructions to Tenderers.

2.17.2 The tender security shall not exceed 2 percent of the tender price.

2.17.3 The Tender Security shall be valid at least thirty (30) days beyond the tender validity period

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

2.17.5 The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible but not later than twenty-eight (28) days after expiration of the tender validity period. The Tender Surety of the successful tenderer will be

returned upon the tenderer executing the Contract and furnishing the required Performance Security.

2.17.6 The Tender Surety may be forfeited:

- a) if a tenderer withdraws his tender during the period of tender validity: or
- b) in the case of a successful tenderer, if he fails, within the specified time limit
  - i. to sign the Agreement, or
  - ii. to furnish the necessary Performance Security
- c) if a tenderer does not accept the correction of his tender price pursuant to clause 23.

## **2.18 No Alternative Offers**

2.18.1 The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix.

Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture. A tenderer who submits or participates in more than one tender will be disqualified.

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

## **2.19 Format and Signing of Tenders**

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

## **D. SUBMISSION OF BIDS**

### **2.20 Deadline for Submission of Tenders**

The Tenders to be submitted to County Government of Kirinyaga through **IFMIS SUPPLIER PORTAL**: [supplier.treasury.go.ke](http://supplier.treasury.go.ke) not later than **TUESDAY 2<sup>ND</sup> FEBRUARY, 2021 AT 11.00 A.M** the system shall not permit submission after the said date and time or unless otherwise specified under Appendix to Instructions to Tenderers.

- (a) be addressed to the Employer 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 the specified time and date for tender opening.

2.20.1 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender. 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.

2.20.2 Any tender received after the deadline prescribed in clause 2.17 will be returned to the tenderer un-opened.

2.20.3 Tenderers may modify or withdraw their tenders by giving notice in writing before the deadline prescribed in clause 2.17. Each tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with clause 2.18, 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.

2.20.4 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 2.17 may result in the forfeiture of the Tender Security pursuant to Clause 2.14.

2.20.5 Tenderers may only offer discounts to, or otherwise modify the prices of their tenders by submitting tender modifications in accordance with Clause 2.18 or be included in the original tender submission.

## **2.21 Modification and Withdrawal of Tenders**

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

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

- 2.21.3 No tender may be modified subsequent to the deadline for submission of tenders.
- 2.21.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the period of tender validity specified on the tender form. Withdrawal of a tender during this interval will result in the forfeiture of the Tender Surety.
- 2.21.5 Subsequent to the expiration of the period of tender validity prescribed by the Employer, and the tenderer having not been notified by the Employer of the award of the Contract or the tenderer does not intend to conform with the request of the Employer to extend the period of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Surety.

## **E. BID OPENING AND EVALUATION**

### **2.22 Tender Opening**

- 2.22.1 The Employer will open the tenders in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.22.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 19, will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the documents have been properly signed and whether the tenders are generally in order.
- 2.22.3 At the tender opening, the Employer will announce the tenderer's names, total tender price, tender price modifications and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.
- 2.22.4 The Employer shall prepare minutes of the tender opening including the information disclosed to those present.
- 2.22.5 Tenders not opened and read out at the tender opening shall not be considered further for evaluation, irrespective of the circumstances.

### **2.23 Process to be Confidential**

- 2.23.1 After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenderers or other persons not officially concerned with such process until the award of Contract is announced.

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

## **2.24 Clarification of Tenders**

- 2.24.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 24.
- 2.24.2 No tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

## **2.25 Determination of Responsiveness**

- 2.25.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.
- 2.25.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.
- 2.25.3 Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.
- 2.25.4 A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.

## **2.26 Correction of Errors**

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

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error.
- (c) 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 Bills 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 Prime Cost 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 valuations 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 13.

## **2.27 Conversion to Single Currency**

- 2.27.1 For compensation of tenders, the tender price shall first be broken down into the respective amounts payable in various currencies by using the selling rate or rates of the Central Bank of Kenya ruling on the date twenty-one (21) days before the final date for the submission of tenders.
- 2.27.2 The Employer will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Day works where priced competitively) to Kenya Shillings at the selling rates stated in clause 25.1.



## **2.28 Evaluation and Comparison of Tenders**

- 2.28.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 23.
- 2.28.2 In evaluating tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:
- (a) Making any correction for errors pursuant to clause 24.
  - (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.
- 2.28.3 The Employer reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Employer, shall not be taken into account in tender evaluation.
- 2.28.4 Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.
- 2.28.5 If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 29 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.
- 2.28.6 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 a non-indigenous sub-contractor.
- 2.28.7 Preference where allowed in the evaluation of tenders shall not exceed 15%
- 2.28.8 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.28.9 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

- 2.28.10 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.
- 2.28.11 Poor past performance shall not be used as an evaluation criterion unless specifically provided for in the appendix.

## **F. AWARD OF CONTRACT**

### **2.29 Award Criteria**

- 2.29.1 Subject to Sub-clause 27.2, the Employer will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works as required in Sub-clause 2.1 and 2.2 here above.
- 2.29.2 The Employer reserves the right to accept or reject any tender, and to annual the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.

### **2.30 Notification of Award**

- 2.30.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, telefax or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.
- 2.30.2 At the same time that the Employer notifies the successful tenderer that his tender has been accepted, the Employer shall notify the other tenderers that the tenders have been unsuccessful.
- 2.30.3 Within fourteen [14] days of receipt of the Form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.
- 2.30.4 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.

## **2.31 Signing of Agreement**

- 2.31.1 At the same time that the Employer notifies the successful bidder that its bid has been accepted, the Employer will send the bidder the Agreement in the form provided in the bidding documents, incorporating all agreements between the parties.
- 2.31.2 After 21 days of receipt of the Agreement, the successful bidder shall sign the Form of Agreement and return it to the Employer, together with the required performance security.

## **2.32 Performance Guarantee**

- 2.32.1 Within twenty-eight [28] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in the amount stated in the Appendix to Instructions to Tenderers and in the format stipulated in the Conditions of Contract.
- 2.32.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by a reputable Bank approved by the Employer and located in the Republic of Kenya and shall be divided into two elements namely, a performance security payable in foreign currencies (based upon the exchange rates determined in accordance with clause 60(5) of the Conditions of Contract) and a performance security payable in Kenya Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.
- 2.32.3 Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract. The Employer may award the Contract to the next ranked tenderer.

## **2.33 Advance Payment**

- 2.33.1 An advance payment, if approved by the Employer, shall be made under the Contract, if requested by the Contractor, in accordance with clause 60(1) of the Conditions of Contract. The Advance Payment Guarantee shall be denominated in the proportion and currencies named in the form of foreign currency requirements. For each currency, a separate guarantee shall be issued. The guarantee shall be issued by a Bank located in the Republic of Kenya, or a foreign Bank through a correspondent Bank located in the Republic of Kenya, in either case subject to the approval of the Employer.

## **2.34 Contract Effectiveness**

2.34.1 The Contract will be effective only upon signature of the Agreement between the Contractor and the Employer.

## APPENDIX TO INSTRUCTIONS TO TENDERERS

### Notes on the Appendix to Instructions to Tenderers

The following appendix to instructions to tenderers shall complement or amend the provisions of the instructions to tenderers (Section II). Wherever there is a conflict between the provisions 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.

ITT Clause Number	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
2.4	<i>Indicate eligible tenderers: <b>County Specific Procurement</b> for AGPO Companies</i>
2.5	Particulars of eligibility and qualifications documents of evidence required. Copies of: <div style="margin-left: 40px;"> <b>i) Certificate of Incorporation</b>  <b>ii) Certificate of valid tax compliance</b>  <b>iii) Proof of AGPO Certificate</b> </div>
2.8.4	The tenderer is advised to attend a <b>MANDATORY</b> Pre-Bidding / Site Visit Meeting on <b>Tuesday 26<sup>th</sup> January 2021 AT 11.00 A.M</b> and obtain all information that may be necessary for preparing the tender documents. Thereafter a duly authorized Pre- Bid Certificate will be issued
2.12	The Language of all correspondence and documents related to the Tender is: <b>English</b>
2.14	Prices shall be quoted in <b>Kenya Shillings</b>
2.16	The Tender validity period shall be <b>120 days.</b>
2.17	<b>The Tender Security shall be:</b> <i>A duly completed Tender Securing Declaration Form, duly filled, signed and stamped by the Tenderer in the format provided Section VIII-Standard Forms.</i>
2.20	<div style="margin-left: 20px;"> (1) The tenderers shall upload copies of all the relevant certificates online vide <b>IFMIS SUPPLIER PORTAL: <a href="http://supplier.treasury.go.ke">supplier.treasury.go.ke</a></b> and will close automatically after the closing date and time.  (2) The tenderers shall sign all statements, documents and certificates uploaded to take responsibility for their correctness and authenticity. </div>

2.20.1	<p><b>The Tender opening be as follows:</b></p> <p>Tender documents shall be electronically opened immediately after the closing date and time, that is <b>TUESDAY 2<sup>ND</sup> FEBRUARY, 2021 AT 11.00 A.M</b></p> <p>Tenders will be opened immediately thereafter in the presence of the bidders or their representatives who choose to attend the opening at The County Headquarters, 3rd Floor, Conference Room.</p> <p>The tenderers' representatives who choose to attend shall sign a register evidencing their attendance.</p>
2.22	<p>Tenderers are required to submit the following MANDATORY DOCUMENTS which will be used during PRELIMINARY EXAMINATION to determine responsiveness, notwithstanding any other requirement in the tender document:</p> <ol style="list-style-type: none"> <li>1. Copy of Certificate of Incorporation/Business Name certified by commissioner of oaths</li> <li>2. Certificate A copy of valid Tax compliance Certificate certified by commissioner of Oaths (will be checked with KRA TCC.)</li> <li>3. A Certified Copy of RECENT CR 12 Form (24 Months) from Registrar of company. For AGPO Tenders BIDDERS should be provided a valid certificate of Registration from Treasury for the relevant special group and National ID(s) for the directors</li> <li>4. Registration with National Construction Authority (NCA) 8 and above as a Road Works contractor valid at the date of tender of submission.</li> <li>5. Copy of Valid Contractors Annual Practicing License from National Construction Authority (NCA) as a Road Works contractor</li> <li>6. Financial audited accounts for two (2) previous years endorsed, signed and stamped by a registered external auditor.</li> <li>7. Duly filled, signed and stamped confidential business questionnaire by an individual entrusted with the powers of attorney</li> <li>8. Duly filled, signed and stamped Priced Bills of Quantities.</li> <li>9. Duly filled, signed and stamped Form of Tender</li> <li>10. Duly filled, signed and stamped self-declaration forms (r 62).</li> <li>11. Duly filled, signed and stamped Tender Securing Declaration Form.</li> <li>12. Tenderers shall ensure that the submitted bid (documents) is (are) serialized/paginated, intact and in PDF format. (i.e., in the format of 1,2,3,4,5.....) from the first page to the last page and uploaded in PDF format).</li> <li>13. Since this is a County Specific Procurement reserved for Kirinyaga County Residents, any acceptable evidence/proof is required e.g. proof of physical location of the company by attaching evidence (title deed, lease agreement, utility bills) etc.</li> <li>14. Bidders should attach a Pre- Bid Certificate issued at a Pre-bid Meeting/Site visit which shall be held on Tuesday 26<sup>th</sup> January, 2021</li> </ol>

## EVALUATION PROCESS / EVALUATION CRITERIA

### STAGE 1. MANDATORY/PRELIMINARY REQUIREMENTS

The following **must** be submitted together with the Bid

1. All entries must be typed or written in ink. Mistakes must not be erased but should be crossed out and corrections made and initialed by the persons signing the tender.

**Bidders shall attach copies of the under listed documents and Must be certified (signed and stamped) by commissioner of oaths/advocate registered in Kenya:**

1. Copy of Certificate of Incorporation/Business Name certified by commissioner of oaths
2. Certificate A copy of valid Tax compliance Certificate certified by commissioner of Oaths (will be checked with KRA TCC.)
3. A Certified Copy of RECENT CR 12 Form (24 Months) from Registrar of company. For AGPO Tenders BIDDERS should be provided a valid certificate of Registration from Treasury for the relevant special group and National ID(s) for the directors
4. Registration with National Construction Authority (NCA) 8 and above as a Road Works contractor valid at the date of tender of submission.
5. Copy of Valid Contractors Annual Practicing License from National Construction Authority (NCA) as a Road Works contractor
6. Financial audited accounts for two (2) previous years endorsed, signed and stamped by a registered external auditor.
7. Duly filled, signed and stamped confidential business questionnaire by an individual entrusted with the powers of attorney
8. Duly filled, signed and stamped Priced Bills of Quantities.
9. Duly filled, signed and stamped Form of Tender
10. Duly filled, signed and stamped self-declaration forms (r 62).
11. Duly filled, signed and stamped Tender Securing Declaration Form.
12. Tenderers shall ensure that the submitted bid (documents) is (are) serialized/paginated, intact and in PDF format. (i.e., in the format of 1,2,3,4,5.....) from the first page to the last page and uploaded in PDF format).
13. Since this is a County Specific Procurement reserved for Kirinyaga County Residents, any acceptable evidence/proof is required e.g. proof of physical location of the company by attaching evidence (title deed, lease agreement, utility bills) etc.
14. Bidders should attach a Pre- Bid Certificate issued at a Pre-bid Meeting/Site visit which shall be held on Tuesday 26<sup>th</sup> January, 2021

**Bidders that will not comply with the above criteria shall be considered non-responsive**

## **STAGE 2. TECHNICAL EVALUATION**

<b>2. TECHNICAL EVALUATION</b>		
<b>CRITERIA</b>	<b>DESCRIPTION</b>	<b>MAX SCORE %</b>
<b>(A) LEGAL CAPACITY (must be registered company (partnership, sole etc.)</b>		
<b>Legal Capacity</b>	1. No History of Non-Performing Contracts	2.5
	2. No Pending Litigation	2.5
<b>TOTAL (Legal Capacity)</b>		<b>5.00</b>
<b>(C) CONSTRUCTION EXPERIENCE</b>		
<b>Construction experience</b>	<b>(A)General Construction Experience</b>	
	Experience under Roads and Bridges construction contracts in the role of contractor, subcontractor, or management contractor for at least the last 2 years prior to the applications submission deadline. Provide list showing project name, contract period, contract sum, commencement date, completion date, and percentage currently.	10.00
	<b>(B)Specific Construction Experience</b>	
	Participation as contractor, management contractor or subcontractor, in at least three (3) public (government) contracts within the last two (2) years, each with a value of at least KShs. 1,00,000.00), that have been successfully and substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, Methods/technology or other characteristics as described in Scope of Works. Attach certified copies of completion certificates	15.00
	<b>(C) Work methodology</b>	
	Methodology/Detailed Workplan for implementing of works..... <b>2mrks</b>	6.00
	Proposed Equipment Scheduling/Work statement..... <b>2mrks</b>	
	Methodology on safety during the construction period..... <b>2mrks</b>	
<b>TOTAL (Construction experience)</b>		<b>30.00</b>
<b>(D) Construction Equipment Capacity</b>		
<b>Essential Equipment Availability</b>	<b>Proof of essential Roads construction equipment ownership or proposal for timely acquisition. Attach evidence of either (owned, leased, hired etc) including Models, photos, capacities, current working conditions, etc</b>	
	Roads and Building works Plant & Equipment, Mixers/Graders/Crane/Excavators etc	15.00

	Reliable Transport – Tipper/ Lorry. Pick up	10.00
<b>TOTAL (Construction Equipment Capacity)</b>		<b>25.00</b>
<b>(E) KEY PERSONNEL</b>		
<b>Key Personnel competences</b>	Qualification and experience of key personnel. Attach certified copies of C.Vs and certificates).	
	(i)Head Office staff: Directors, Managers, Accountants, etc;	3.00
	(ii) Construction Manager (the overall in charge person(s) to be assigned for the site) with at least five years' experience in works of an equivalent nature and volume. Minimum National Diploma in Road Construction related field. HND – 10%; ND – 8%	10.00
	(iii) Site Agent/ Foreman with at least five years' experience in works of an equivalent nature and volume. Minimum Certificate in Roads/Bridges Construction or NCA accreditation.	6.00
<b>TOTAL (key personnel)</b>		<b>23.00</b>
<b>GRAND TOTAL</b>	<b>(Totals for; A, B, C, D, &amp; E)</b>	<b>100.00</b>

**In addition to the mandatory requirements above, a minimum technical score of 70% shall be required to proceed to evaluation of the financial bids.**

### **STAGE 3. FINANCIAL EVALUATION**

The winning bidder will be the lowest bidder among those who will have passed the technical evaluation as outlined in (1 & 2) above except where the bidder has not satisfied all other requirements stated in the bid document. The financial evaluation will include:

#### **(1)Arithmetic Errors**

The bid shall be checked for arithmetic errors based on the rates and the total sums indicated in the bills of quantities. Confirmation shall be sought in writing from the tenderers whose tender sums will be determined to have a significant arithmetic error to their disadvantage, to confirm whether they stand by their tender sums.

#### **(2)Comparison of rates**

The evaluation committee will compare rates from different bidders and note consistency of rates and front loading. The evaluation committee will judge and make an appropriate decision giving evidence.

The following evaluation criteria shall be applied not withstanding any other requirement in the tender documents.

### **Selection Process**

Quality Cost Based Selection

#### **STEP 1: Preliminary evaluation**

This will be an elimination stage which will be done as per criteria above



## STEP 2: Technical Evaluation

Tenderers will be required to provide technical details on their product that meets the provided technical requirement. Only Tenderers who score 70% and above will be considered to be technically responsive and therefore be considered for further evaluation

**Technical Evaluation shall be based as per the evaluation criteria provided above**

Only bidders who score 70% and above will be subjected to financial evaluation. Those who score below 70% will be eliminated at this stage from the entire evaluation process and will not be considered further.

## STEP 3: Financial Evaluation

The financial submissions of the required services will be divided by the lowest bidder's financial quote to determine the financial score of each bidder using the formulae below:

**FM**

**Sf = 100 X / F** where: Sf is the financial score; Fm is the lowest priced financial proposal and F is the price of the proposal under consideration.

Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (**T=the weight given to the Technical Proposal as**

**80%: P = the weight given to the Financial Proposal as 20%)**

**Combined Technical and Financial scores is: :- S = St x T % + Sf x P %**

Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T=the weight given to the Technical Proposal: P = the weight given to the Financial Proposal; T + p = 1)

**The table below summarizes the overall evaluation process and the proposed weighting of each stage.**

AREA RATING	RATING/SCORE
STEP 1: Preliminary evaluation	Elimination
STEP 2: Technical Evaluation	80
STEP 3: Financial Evaluation	20
Combined Technical and Financial Score	100

## STAGE 4 - RECOMMENDATION FOR AWARD

The successful bidder shall be the tenderer with the **highest Combined Technical and Financial scores** among those who will have passed the technical evaluation as outlined in (1 & 2) above except where the bidder has not satisfied all other requirements stated in the bid documents

N:B

***The Procuring Entity will verify information submitted. Any form of forgery or misinformation from the bidder shall lead to cancellation of the bid/award, institution of legal proceedings and blacklisting for all future contracts.***

### **SECTION III: CONDITIONS OF CONTRACT**

#### **PART I: GENERAL CONDITIONS OF CONTRACT**

The Conditions of Contract Part 1 – General Conditions shall be those forming Part 1 of the Conditions of Contract for works of Civil engineering construction Fourth Edition 1987, reprinted in 1992 with further amendments, prepared by the Federation Internationale des Ingenieurs Conseils (FIDIC)

Copies of the FIDIC Conditions of Contract can be obtained from:

FIDIC Secretariat P.O.Box 86  
1000 Lausanne 12 Switzerland

Fax: 41 21 653 5432 Telephone: 41 21 653 5003

## **PART II: CONDITIONS OF PARTICULAR APPLICATION**

The following Conditions of Particular Application shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The Particular Condition is preceded by the corresponding clause number of the General Conditions to which it relates.

## SECTION IV: CONDITIONS OF CONTRACT

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## 1. Definitions

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

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

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

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

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

**“The Contractor”** refers to the person or corporate body 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 Defects Liability Certificate”** is the certificate issued by Project Manager upon correction of defects by the Contractor.

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

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

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

**“Employer”, or the “Procuring entity”** as defined in the Public Procurement Regulations (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**

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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**

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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**

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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**

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

### **6. Communications**

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



## **7. Subcontracting**

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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**

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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**

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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**

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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**

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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**

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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**

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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.

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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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:

$$R = \frac{A(x^1 - x^{11})}{80 - 20}$$

Where:

- R = the amount to be reimbursed  
A = the amount of the advance which has been granted  
X<sup>1</sup> = 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<sup>11</sup> =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**

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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**

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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**

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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**

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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**

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

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

29.3 The Contractor shall be paid for Day-works subject to obtaining signed Day-works forms.

## **30. Liability and Insurance**

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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**

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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**

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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**

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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 authorised 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 a 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**

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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.

34.5 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**

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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**

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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 favor or disfavor 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**

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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.



## **SECTION V: APPENDIX TO CONDITIONS OF CONTRACT**

Name of Employer: **COUNTY GOVERNMENT OF KIRINYAGA**

**P.O BOX 260 -10304, KUTUS**

Name of Authorized Representative: **CHIEF OFFICER, TRANSPORT, ROADS AND PUBLIC WORKS - P.O BOX 390 KERUGOYA**

The Project Manager is

Name: **DIRECTOR OF ROADS, COUNTY DEPARTMENT OF TRANSPORT, ROADS AND PUBLIC WORKS, KIRINYAGA COUNTY.**

Address: **P.O BOX 390 KERUGOYA**

Telephone: **020 215 3369/ 0789 218 976**

Email: ***kirinyagacountyworks@gmail.com***

***The name (and identification number) of the Contract is***

**PROPOSED GRADING AND MURRAMING OF KARIE - CANAL - MUTUA - NDIGA ROAD IN KANGAI WARD**

**TENDER NEGOTIATION NO: 843345-2020/2021**

Scope of the Works: ***AS PER BILLS OF QUANTITIES IN THIS TENDER DOCUMENT AND THE CONTRACT AGREEMENT***

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

The Intended Completion Date for the whole of the Works is stated in the Appendix to the Conditions of Contract herein.

The Site Possession Date shall be the date site is handed over to the Contractor by the Project Manager.

The following documents also form part of the Contract:

Documents listed in **clause 2.2.1** conditions of contract

The Contractor shall submit a revised program for the Works within 7 days of delivery of the Letter of Acceptance.

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

The Sites are located at **KANGAI WARD.**

The Defects Liability period is **180** days from the date of Practical Completion.

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

None

The minimum insurance covers shall be;

- Contractor's **ALL RISK INSURANCE**

1. The minimum cover for insurance of the Works and of Plant and Materials in respect of contractor's faulty design is **N/A**
2. The minimum cover for loss or damage to Equipment is **N/A**
3. The minimum for insurance of other property is **N/A**
4. The minimum cover for personal injury or death insurance
  - For the Contractor's employees is Kshs 5,000,000 (Five Million)
  - And for other people is Kshs 5,000,000 (Five Million)

The following events shall also be Compensation Events:

**1. Those listed in the conditions of contract**

The period between Program updates is 7 days.

The amount to be withheld for late submission of an updated Program is **Kshs "Full Certificate"**

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

Limit of retention is **10%** of contract sum.

The Price Adjustment Clause **SHALL NOT** apply

The liquidated damages for the whole of the Works is Kshs. **0.05%** of the Contract Sum per day

The Performance Security shall be for the following minimum amounts equivalent as a percentage of the Contract Price **Five** percent (**5%**)

The Completion Period for the Works is **24 WEEKS FROM DATE OF POSSESSION**

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

The schedule of basic rates used in pricing by the Contractor is as attached [*Contractor not to attach*].

Advance Payment **shall not be granted.**

Prices for **V.A.T.** should be given WITHIN THE RATES

## **SECTION VI-      STANDARD FORMS**

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## FORM OF POWER OF ATTORNEY

**(All bidders shall complete this form otherwise; their bids shall be considered as non-responsive)**

We \_\_\_\_\_ (Name of Bidder)

having our offices located in \_\_\_\_\_ (Name of Town and Building) duly authorise

\_\_\_\_\_ (Name of person appointed to act for and on behalf of the bidder) to act for and on our behalf on all matters pertaining to the execution of works as stipulated under

**PROPOSED GRADING AND MURRAMING OF KARIE - CANAL - MUTUA - NDIGA ROAD IN KANGAI WARD**

Duly signed and delivered:

Name of appointed attorney: \_\_\_\_\_

Signature of appointed attorney: \_\_\_\_\_

Witnessed by:

1. Name of First Company Director: \_\_\_\_\_

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

2. Name of Second Company Director: \_\_\_\_\_

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

Company Seal:

\_\_\_\_\_

\_\_\_\_\_ **Name and Title**

## FORM OF TENDER

Office of the County Secretary,  
County Government of Kirinyaga,  
P.O. Box 260 - 10304  
KUTUS

Date: .....,

Dear Sir,

**REF: PROPOSED GRADING AND MURRAMING OF KARIE - CANAL - MUTUA - NDIGA ROAD IN KANGAI WARD**

In accordance with the Instructions to Tenderers, Conditions of Bid, Specifications and Bills of Quantities for the execution of the above named works, we, the undersigned offer to perform the works and remedy any defects therein for the sum of:

Kshs.....***[Amount in figures]***

Kenya

Shillings.....

.....

..... ***[Amount in words]***

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 .....[period] weeks.

We agree to abide by this tender for **a period of 120 days from the date of bid opening** and shall remain binding upon us and may be accepted at any time before that date.

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

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

Dated this ..... day of .....20.....

Signature .....in the capacity  
of .....

duly authorized to sign tenders for and on behalf of:

..... **[Name of Bidder]**

Of..... **[Address of Bidder]**

**PIN No.** .....

**VAT CERTIFICATE No.** .....

**Witness:** Name .....

Address .....

Signature .....

## 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



## FORM OF CONTRACT AGREEMENT

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ between **COUNTY GOVERNMENT OF KIRINYAGA** of [or whose registered office is situated at] **P.O BOX 260 - 10304, KUTUS, KENYA** (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 certain works should be executed, viz

**PROPOSED GRADING AND MURRAMING OF KARIE - CANAL - MUTUA - NDIGA ROAD IN KANGAI WARD TENDER NEGOTIATION NO.....** (hereinafter called "the Works") located at **KANGAI WARD, KIRINYAGA COUNTY** 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.
  - a. The Conditions of Contract (FIDIC IV) Part 2
  - b. The Conditions of Contract (FIDIC IV) Part 1
  - c. The Special Specification
  - d. The Standard Specifications
  - e. The Priced Bill of Quantities
  - f. The Letter of Award and Acceptance
  - g. Schedules of Supplementary Information
  - h. The Drawings
  - i. Other documents as may be agreed and listed
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works

and remedy any defects therein in conformity in all respects with the provisions of the Contract.

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

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

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

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

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

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

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

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

## FORM OF TENDER SECURITY

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

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

THE CONDITIONS of this obligation are:

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

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

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

\_\_\_\_\_  
[date]

\_\_\_\_\_  
[signature of the Bank]

\_\_\_\_\_  
[witness]

\_\_\_\_\_  
[seal]

## FORM OF PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)

To  
The Chief Officer,

County Department of Roads, Transport and Public Works **P.O BOX 390 KERUGOYA**

WHEREAS ..... (hereinafter called “the Contractor”)

has undertaken in pursuance of Contract No. ....Dated .....to execute the

**PROPOSED GRADING AND MURRAMING OF KARIE - CANAL - MUTUA - NDIGA ROAD IN KANGAI WARD,** ( hereinafter called the “Contract”)

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 in the

Appendix to Form of Bid 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 in figures)

Kshs.....

.....(amount in words)

and we undertake to payment to you, upon your first written demand and without cavil or argument, any sum or sums within and up to the limits as aforesaid without your needing to prove or show grounds or reasons for the sum specified therein.

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

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

This Guarantee shall be valid until 28 days after issuing of the Defects Liability Certificate.

AUTHORIZED SIGNATURE OF THE BANK .....

Name of Signatory.....

Name of bank.....

Address.....Date .....

## **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*)

## 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:*

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

### ***Part 2(c) – Registered Company:***

Private or public.....

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.

1.  
.....

2.  
.....

3.  
.....

4.  
.....

**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



## **TENDER – SECURING DECLARATION FORM**

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

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

**Tender No.** \_\_\_\_\_

**For:** \_\_\_\_\_

**To: The County Government of Kirinyaga  
P. O. Box 260 -10304  
Kutus**

We, the undersigned, declare that:

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

Signed:

---

*[insert signature of person whose name and capacity are shown]*  
In the capacity of:

---

*[insert legal capacity of person signing the Bid Securing Declaration]*

Name:

---

*[insert complete name of person signing the Bid Securing Declaration]*

Duly authorized to sign the bid for and on behalf of:

---

*[insert complete name of Bidder]*

Dated on ..... day of ..... *[insert date of signing]*

## QUALIFICATION INFORMATION

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

1.1 Constitution or legal status of tenderer (attach copy of 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

Year	Volume	
	Currency	Value

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.

Project name	Name of client and contact person	Type of work performed and year of completion	Value of Contract	Completion Status

1.4 Major items of Contractor's Equipment proposed for carrying out the Works. List all information requested below.

2

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

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

Position	Name	Years of experience (general)	Years of experience in proposed position
Project Manager, etc.			

- 1.6 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.

### 3 Joint Ventures

- 3.4 The information listed in 1.1 – 1.10 above shall be provided for each partner of the joint venture.

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

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

- 3.7 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.

### **DETAILS OF DOMESTIC SUB-CONTRACTORS**

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

Failure to comply with this requirement may invalidate the tender.

(1) Portion of Works to be sublet: .....

[i] Full name of Sub-contractor  
and address of head office: .....

.....

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

.....

(2) Portion of Works to sublet: .....

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

.....

.....

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

.....

\_\_\_\_\_  
[Signature of Tenderer)

\_\_\_\_\_  
Date

**SELF DECLARATION FORMS(r 62)**

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)**

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

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

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

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

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

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

Bidder Official Stamp

**Note:** This form MUST be filled, signed and submitted by all the bidders participating  
in this tender. This is a mandatory requirement under the new Public Procurement  
Asset and Disposal Act 2015 that came into effect on 7<sup>th</sup> January 2016

**FORM SD2**  
**SELF DECLARATION FORMS (r 62)**  
**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)**  
**SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN**  
**ANY CORRUPT OR FRAUDULENT PRACTICE.**

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

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

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

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

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

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

.....  
(Title) (Signature) (Date)  
Bidder's Official Stamp

**Note:** This form MUST be filled, signed and submitted by all the bidders participating in this tender. This is a mandatory requirement under the new Public Procurement Asset and Disposal Act 2015 that came into effect on 7<sup>th</sup> January 2016

**FORM RB 1**  
**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

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

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

**REQUEST FOR REVIEW**

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

- 1.
  - 2.
- etc.

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

- 1.
  - 2.
- etc

SIGNED .....(Applicant)

Dated on.....day of ...../...20...

---

**FOR OFFICIAL USE ONLY**

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

SIGNED  
Board Secretary



### KEY PERSONNEL

DESIGNATION	NAME	NATIONALITY	SUMMARY OF QUALIFICATIONS AND EXPERIENCE
Headquarters: 1. Director 2. 3. 4. 5. etc.			
Site Office: 1. Site Superintendent 2. 3. 4. 5. etc.			

I certify that the above information is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

**SCHEDULE OF COMPLETED CIVIL WORKS CARRIED OUT BY THE TENDERER  
IN THE LAST EIGHT YEARS**

DESCRIPTION OF WORKS AND CLIENT	TOTAL VALUE OF WORKS (KSHS)	CONTRACT PERIOD (YEARS)	YEAR COMPLETED

I certify that the above Civil Works were successfully carried out and completed by ourselves.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

\*Value in Kshs using Central Bank of Kenya mean exchange rate at a reference date 30 days before date of tender opening.

**SCHEDULE OF ONGOING PROJECTS**

DESCRIPTION OF WORK AND CLIENT	CONTRACT PERIOD	DATE OF COMMEN- CEMENT	DATE OF COMPLETION	TOTAL VALUE OF WORKS (KSHS.)	PERCENTAGE COMPLETED TO DATE

I certify that the above Civil Works are being carried out by ourselves and that the above information is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

### OTHER SUPPLEMENTARY INFORMATION

1. Financial reports for the last five years, balance sheets, profit and loss statements, auditors' reports etc. List them below and attach copies.  
.....  
.....  
.....
2. Evidence of access to financial resources to meet the qualification requirements. Cash in hand, lines of credit etc. List below and attach copies of supporting documents  
.....  
.....  
.....
3. Name, address , telephone, telex, fax numbers of the Tenderer's Bankers who may provide reference if contacted by the Employer.  
.....  
.....  
.....
4. Information on current litigation in which the Tenderer is involved.

OTHER PARTY (IES)	CAUSE OF DISPUTE	AMOUNT INVOLVED (KSHS)

I certify that the above information is correct.

.....  
*Title*

.....  
*Signature*

.....  
*Date*

## SECTION VII- SPECIFICATIONS, DRAWINGS AND BILLS OF QUANTITIES/SCHEDULE OF RATES

### **Notes for preparing Specifications**

1.0 Specifications must be drafted to present a clear and precise statement of the required standards of materials and workmanship for tenderers to respond realistically and competitively to the requirements of the Employer and ensure responsiveness of tenders. The Specifications should require that all materials, plant and other supplies to be incorporated in the permanent Works be new, unused, of the most recent or current models and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsible for the design of any part of the permanent Works, the extent of his obligations must be stated.

2.0 Specifications from previous similar projects are useful and it may not be necessary to re- write specifications for every works contract.

3.0 There are considerable advantages in standardizing **General Specifications** for repetitive Works in recognized public sectors, such as highways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in construction works, although not necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General Specifications to the particular Works.

4.0 Care must be taken in drafting Specifications to ensure they are not restrictive. In the specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized International Standards may also be used.

5.0 The Employer should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in tender documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential tenderers.

The Employer should provide a description of the selected parts of the Works with appropriate reference to Drawings, Specifications, Bills of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and Specifications.

Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology and

other relevant details. Technical alternatives permitted in this manner shall be considered by the Employer each on its own merits and independently of whether the tenderer has priced the item as described in the Employer's design included with the tender documents

#### Health Care and Welfare

In addition to providing, equipping and maintaining adequate first aid stations throughout the works in accordance with the Laws of Kenya, the Contractor shall provide and maintain on Site during the duration of the Contract, a fully equipped dispensary. This shall be with a qualified Clinical Officer/Nurse who shall offer the necessary medical advice on AIDS/HIV and related diseases to the Engineer's and Contractor's Site staff. The Contractor shall allow for this in the rates and be responsible for all site welfare arrangements at his own cost.

## SECTION VII–SPECIFICATIONS, DRAWINGS AND BILLS OF QUANTITIES/SCHEDULE OF RATES

### **Notes for preparing Bills of Quantities**

#### **1.0 Preamble to Bill of Quantities**

- a) The Bill of Quantities shall form part of the Contract Documents and is to be read in conjunction with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications and Drawings.
- b) The brief description of the items in the Bill of Quantities is purely for the purpose of identification, and in no way modifies or supersedes the detailed descriptions given in the conditions of Contract and Specifications for the full direction and description of work and materials.
- c) The Quantities set forth in the Bill of Quantities are estimated and provisional, representing substantially the work to be carried out, and are given to provide a common basis for tendering and comparing of Tenders. There is no guarantee to the Contractor that he will be required to carry out all the quantities of work indicated under any one particular item or group of items in the Bill of Quantities. The basis of payment shall be the Contractor's rates and the quantities of work actually done in fulfillment of his obligation under the Contract.
- d) The prices and rates inserted in the Bills of Quantities will be used for valuing work executed, and the Engineer will measure the whole of the works executed in accordance with this Contract.
- e) A price or rate shall be entered in ink against every item in the Bill of Quantities with the exception of items, which already have provisional sums, affixed thereto. The Tenderers are reminded that no "nil" or "included" rates or "lump-sum" discounts will be accepted. The rates for various items should include discounts if any. Tenderers who fail to comply will be disqualified.
- f) Provisional sums (including Day works) in the Bill of Quantities shall be expended in whole or in part at the discretion of the Engineer in accordance with Sub-clause 52.4 and Clause 58 of part of the Conditions of Contract.
- g) The price and rates entered in the Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional plant to be used, labour, insurance, supervision, compliance, testing, materials, erection, maintenance or works, overheads and profits, taxes and duties together with all general risks, liabilities and obligations set out or implied in the Contract, transport,

electricity and telephones, water, use and replenishment of all consumables, including those required under the Contract by the Engineer and his staff.

- h) Errors will be corrected by the Employer for any arithmetic errors in computation or summation as follows:
  - (a) Where there is a discrepancy between amount in words and figures, the amount in words will govern; and
  - (b) Where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer, there is an obviously gross misplacement of the decimal point in the unit price, in which event the total amount as quoted will govern and the unit rate will be corrected.
  - (c) If a Tenderer does not accept the correction of errors as outlined above, his Tender will be rejected.
- i) The Bills of Quantities, unless otherwise expressly stated therein, shall be deemed to have been prepared in accordance with the principles of the latest edition of the Civil Engineering Standard Method of Measurement (CESMM).
- j) “Authorised” “Directed” or “Approved” shall mean the authority, direction or approval of the Engineer.
- k) Unless otherwise stated, all measurements shall be net taken on the finished work carried out in accordance with the details shown on the drawings or instructed, with no allowance for extra cuts or fills, waste or additional thickness necessary to obtain the minimum finished thickness or dimensions required in this Contract. Any work performed in excess or the requirements of the plans and specifications will not be paid for, unless ordered in writing by the Engineer.
- l)
  - (a) Hard material, in this Contract, shall be defined as the material which, in the opinion of the Engineer, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and which cannot be extracted by ripping with a dozer tractor of at least 150 brake horse power (112 kilowatt) with a single, rear-mounted, hydraulic ripper. Boulders of more than 0.2m<sup>3</sup> occurring in soft material shall be classified as hard material.
  - (b) Soft material shall be all material other than hard material.

2.0 The objectives of the Bills of Quantities are;

- (a) to provide sufficient information on the quantities of Works to be performed to enable tenders to be prepared efficiently and accurately; and



- (b) when a Contract has been entered into, to provide a priced Bills of Quantities for use in the periodic valuation of Works executed.

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

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

**(a) Preliminaries.**

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

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

**(b) Work Items**

- (i) The items in the Bills of Quantities should be grouped into sections to distinguish between those parts of the Works which by nature, location, access, timing or any other special characteristics may give rise to different methods of construction or phasing of the Works or considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bills of Quantities.
- (ii) The brief description of the items in the Bill of Quantities should in no way modify or supersede the detailed descriptions given in the Contract drawings, Conditions of Contract and Specifications.
- (iii) Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage or waste. Quantities should be rounded up or down where appropriate.

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

<i>Unit</i>	<i>Abbreviation</i>	<i>Unit</i>	<i>Abbreviation</i>
cubic meter	m <sup>3</sup> or cu m	millimeter	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m <sup>2</sup> or sq m
lump sum	sum	square	mm <sup>2</sup> or sq mm
meter	m	millimeter	wk
metric ton (1,000 kg)	t	week	

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

### **(c) Day work Schedule**

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

- (i) a list of the various classes of labour, and materials for which basic Daywork rates or prices are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Work executed on a Daywork basis; and
- (ii) a percentage to be entered by the tenderer against each basic Daywork Subtotal amount for labour, materials and plant representing the Contractor's profit, overheads, supervision and other charges.

### **(d) Provisional Quantities and Provisional Sums**

- (i) Provision for quantity contingencies in any particular item or class of Work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bills of Quantities, and *not* by increasing the quantities for that item or class of Work beyond those of the Work normally expected to be required. To the extent not covered above,

a general provision for physical contingencies (quantity overruns) should be made by including a “Provisional Sum” in the Summary of the Bills of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a “Provisional Sum” in the Summary of the Bills of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

- (ii) Provisional Sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialized Works should be included as a section of the main Bill of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name (s) of the specialized firms he proposes to engage to carry out the specialized Works as his approved domestic sub-contractors. Only Provisional Sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities.
- (iii) Unless otherwise provided in the Contract, the Provisional Sums included in the Bills of Quantities should always be expended in whole or in part at the discretion of the Engineer after full consultation with the Employer.

**(e) Summary**

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

**GRADING AND MURRAMING OF KARIE - CANAL - MUTUA - NDIGA ROAD.**

<b>Road name:</b>	<b>Grading and Murraming of Karie - Canal - Mutua - Ndiga road in Kangai ward.</b>				
<b>Road No.:</b>	<b>Unclassified</b>				3.4 km
<b>Contract No. :</b>	-----				
<b>Bill of Quantities</b>					Page: 1
<b>Bill No.1</b>	<b>General: Office administration and overheads/Preliminaries</b>				<b>Project:</b>
<b>Item No.</b>	<b>Description</b>	<b>Units</b>	<b>Quantity</b>	<b>Unit Bid Rate(Ksh)</b>	<b>Amount KSh</b>
1.01	Provide and erect Bill Boards	No.	2.00		
1.02	Allow a prime cost sum for the REs miscellaneuos account	Lump Sum	200,000.00	1.00	200,000.00
1.03	Extra over Item No 1.02 for profits and overheads	%			
	<b>Total Carried Forward to Summary:</b>				

<b>Road name:</b>	<b>Grading and Murraming of Karie - Canal - Mutua - Ndiga road in Kangai ward.</b>				
<b>Road No.:</b>	<b>Unclassified</b>				3.4 km
<b>Contract No. :</b>	-----				
<b>Bill of Quantities</b>					Page: 2
<b>Bill No.5</b>	<b>EARTH WORKS</b>				<b>Project:</b>
<b>Item No.</b>	<b>Description</b>	<b>Units</b>	<b>Quantity</b>	<b>Unit Bid Rate(Ksh)</b>	<b>Amount KShs</b>
5.01	Provide, place and compact soft purchased patching materials to surface defects or gravel road.	M <sup>3</sup>	4,320		
	<b>Total Carried Forward to Summary:</b>				

<b>Road name:</b>	<b>Grading and Murraming of Karie - Canal - Mutua - Ndiga road in Kangai ward.</b>				
<b>Road No.:</b>	<b>Unclassified</b>				3.4 km
<b>Contract No. :</b>	-----				
<b>Bill of Quantities</b>					Page: 3
	<b>Bill No.8: CULVERT AND DRAINAGE WORKS</b>				<b>Project:</b>
<b>Item No.</b>	<b>Description</b>	<b>Units</b>	<b>Quantity</b>	<b>Unit Bid Rate(Ksh)</b>	<b>Amount KShs</b>
8.01	Excavation for 2 km long side drains in soft materials	M <sup>3</sup>	1,200.00		
8.02	Excavation for 600 mm dia. Culverts, Side drains and mitre drains in soft materials	M <sup>3</sup>	60.00		
8.03	Provide , lay and join 600mm inner dia concrete pipes	M	30		
8.04	Provide and place class 25(20) to wing walls, aprons and headwalls	M <sup>3</sup>	4.50		
8.05	Provide and place class 20(20) to culvert bed and surround	M <sup>3</sup>	19.5		
8.06	Formwork Class F1 Finish (Smooth)	M <sup>2</sup>	14.00		
8.07	Formwork Class F3 Finish (Rough)	M <sup>2</sup>	30.00		
8.08	Provide Rock fill as culvert back fill material	M <sup>3</sup>	25		
	<b>Total Carried Forward to Summary:</b>				

<b>Road name:</b>	<b>Grading and Murraming of Karie - Canal - Mutua - Ndiga road in Kangai ward.</b>				
<b>Road No.:</b>	<b>Unclassified</b>				3.4 km
<b>Contract No. :</b>	-----				
<b>Bill of Quantities</b>					Page: 4
	<b>Bill No.10: GRADING AND GRAVELLING WORKS</b>				<b>Project:</b>
<b>Item No.</b>	<b>Description</b>	<b>Units</b>	<b>Quantity</b>	<b>Unit Bid Rate(Ksh)</b>	<b>Amount KShs</b>
10.01	Light grading without watering or compaction, open accesses as necessary.	M <sup>2</sup>	20,400.0		
10.02	Supply, spread, water and compact supplied gravel material, into 150mm thick layer, to 95% MDD	M <sup>3</sup>	2,040.00		
	<b>Total Carried Forward to Summary:</b>				

<b>Road name:</b>	<b>Grading and Murraming of Karie - Canal - Mutua - Ndiga road in Kangai ward.</b>	
<b>Road No.:</b>	<b>Unclassified</b>	3.4 km
<b>Contract No. :</b>	-----	
<b>Bill of Quantities</b>		Page: 7
	<b>Summary</b>	<b>Project:</b>
<b>Item No.</b>	<b>Description</b>	<b>Amount (KShs)</b>
1	General: Office administration and overheads/Preliminaries	
5	EARTH WORKS	
8	CULVERTS AND DRAINAGE WORKS	
10	GRADING AND GRAVING WORKS ON APPROCHES	
	<b><i>Sub Total 1</i></b>	
	Add 14% VAT	
	<b>Total carried to the Form of Tender</b>	



