



# **TANA WATER WORKS DEVELOPMENT AGENCY**

## **DE-SLUDGING OF KIAGI WASTEWATER TREATMENT PLANT**

**TENDER NO: TWWDA/T/013/2022-2023**

## **TENDER DOCUMENTS**

**SEPTEMBER 2022**

### **Employer**

Tana Water Works Development  
Agency  
P. O. Box 1292 – 10100  
**NYERI**

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## **ABBREVIATIONS AND ACRONYMS**

<b>CDS</b>	Contract Data Sheet
<b>GCC</b>	General Conditions of Contract
<b>IFT</b>	Invitation for Tender
<b>ITT</b>	Instruction to Tenderers
<b>PE</b>	Procuring Entity
<b>PM</b>	Project Manager
<b>PPADA 2015</b>	Public Procurement and Asset Disposal Act, 2015
<b>PPADR 2020</b>	Public Procurement and Asset Disposal Regulations, 2020
<b>PPRA</b>	Public Procurement Regulatory Authority
<b>STD</b>	Standard Tender Documents
<b>SOR</b>	Statement of Requirements
<b>SP</b>	Service Provider
<b>TDS</b>	Tender Data Sheet
<b>VAT</b>	Value Added Tax

## **INTRODUCTION**

- 1.1 Procurement for works under public-financed projects is carried out in accordance with policies and procedures laid down in The Public Procurement and Asset Disposal Act, 2015.
- 1.2 This Standard Bidding Document (SBD) for procurement of works has been prepared for use by the Procuring Entities in Kenya in the procurement of Works through National Competitive Tendering procedures.
- 1.3 This SBD is mandatory for use in works contracts of a value not exceeding KShs.200 million, as defined in The Public Procurement and Asset Disposal Act, 2015.
- 1.4 The following guidelines should be observed when using the document:
  - (i). Specific details should be furnished in the Invitation for Tenders and in the Contract Data Sheet (where applicable). The Tender document issued to Tenderers should not have blank spaces or options;
  - (ii). The Instructions to Tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through the Tender Data Sheet and Contract Data Sheet respectively;
  - (iii). Information contained in the Invitation for Tenders shall conform to the data and information in the Tender documents to enable prospective Tenderers to decide whether or not to participate in the Tender and shall indicate any important Tender requirements;
  - (iv). The Invitation for Tenders shall be as an advertisement in accordance with the regulations or a letter of invitation addressed to Tenderers who have been prequalified following a request for prequalification.
- 1.5 The cover of the document shall be modified to include:
  - a. Tender number;
  - b. Tender name;
  - c. Name of Procuring Entity;

## SECTION I: INVITATION FOR TENDERS (IFT)

1. Tana Water Works Development Agency has funds for use during the financial year(s) 2022/23. It is intended that part of the proceeds of the fund will be used to cover eligible payments under the contract for the **De-Sludging of Kiagi Wastewater Treatment Plant Project**.
2. TWWDA, the Procuring Entity now invites sealed Tenders from eligible contractors registered with NCA 6 and above and Ministry of Water, Irrigation and Sanitation Class “E” for carrying out the **De-Sludging of Kiagi Wastewater Treatment Plant Project**.
3. Tendering will be conducted through the Open tender procedures specified in the Public Procurement and Asset Disposal Act, 2015, and is open to all Tenderers as defined in the Regulations. Any prequalified firm/s in this category of works/service/s is also encouraged to tender for the works whereof their bids shall be accorded appropriate exceptions in accordance with the procurement laws.
4. Interested eligible Tenderers may obtain further information and inspect the Tendering Documents at the offices of the Tana Water Works Development Agency, Maji House, along Baden Powell Road, P.O. Box 1292-10100, Nyeri from 8.00 a.m to 5.00 p.m from Mondays to Thursdays and from 8:00 am to 4:00 pm on Fridays except on public holidays or from the website [www.tanawwda.go.ke](http://www.tanawwda.go.ke). at their convenience.
5. A complete set of Tender Document(s) can be obtained for free on the IFMIS Tender Portal <http://supplier.treasury.go.ke> and on the Tana Water Works Development Agency website [www.tanawwda.go.ke](http://www.tanawwda.go.ke). or from TWWDA’s Procurement Office during normal working hours upon payment of non-refundable fee of Kshs1,000 cash or Bankers Cheque Payable either through Account No. **1101998733 (KCB)** or Mpesa Paybill No **221599**, Account No: **Name of the Company Bidding**
6. Two (2) hard copies (one original and one copy) of tender documents must be submitted enclosed in a plain sealed envelope marked with the tender name and tender reference number, addressed to the **Chief Executive Officer, Tana Water Works Development Agency P.O. Box 1292 – 00100 Nyeri, Maji House, Baden Powell Road** and deposited in the **tender Box at Tana Water Works Development Agency** at the reception, so as to be received on or before **Wednesday, 12<sup>th</sup> October 2022** at 10.00 am and opened thereafter at TWWDA Board Room in the presence of the Bidders or their representatives who choose to attend.
7. Late or incomplete Tenders shall not be accepted.

## **SECTION II: INSTRUCTIONS TO TENDERERS (ITT)**

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## **A. Introduction**

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| <b>1. Scope of Tender</b>    | <p><b>1.1</b> The Procuring Entity indicated in the <b>Tender Data Sheet</b> (TDS) invites Tenders for the De-sludging works as specified in the <b>Tender Data Sheet</b> and Sections VI (Technical Specifications) and VII (Drawings).</p> <p><b>1.2</b> The successful Tenderer will be expected to complete the works by the required completion date specified in the <b>Tender Data Sheet</b>.</p> <p><b>1.3</b> The objectives of the works are listed in the <b>Tender Data Sheet</b>. These are mandatory requirements. Any subsequent detail is offered to support these objectives and must not be used to dilute their importance.</p>   |
| <b>2. Source of Funds</b>    | <p><b>2.1</b> The Government of Kenya has set aside funds for the use of the Procuring Entity named in the <b>Tender Data Sheet</b> during the Financial Year indicated in the <b>Tender Data Sheet</b>. It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the works as described in the <b>Tender Data Sheet</b>.</p> <p><b>2.2</b> Payments will be made directly by the Procuring Entity (or by financing institution specified in the <b>Tender Data Sheet</b> upon request of the Procuring Entity to so pay) and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring Entity.</p>   |
| <b>3. Eligible Tenderers</b> | <p><b>3.1</b> A Tenderer may be a natural person, private or public company, government-owned institution, subject to sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the <b>Tender Data Sheet</b>, all parties shall be jointly and severally liable.</p> <p><b>3.2</b> The Invitation for Tenders is open to all suppliers as defined in the Public Procurement and Asset Disposal Act, 2015 and The Public Procurement and Asset Disposal Regulations, 2020 except as provided hereinafter.</p> <p><b>3.3</b> National Tenderers shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya, such as the Ministry of Public Works or the Energy Regulatory Commission.</p> <p><b>3.4</b> A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may</p> |

be considered to have a conflict of interest with one or more parties in this Tendering process, if they:

- a) Are associated or have been associated in the past directly or indirectly with employees or agents of the Procuring Entity or a member of a board or committee of the Procuring Entity;
- b) Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the Procuring Entity to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the works under this Invitation for Tenders;
- c) Have controlling shareholders in common; or
- d) Receive or have received any direct or indirect subsidy from any of them; or
- e) Have the same legal representative for purposes of this Tender; or
- f) Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
- g) Submit more than one Tender in this Tendering process, However, this does not limit the participation of subcontractors in more than one Tender, or as Tenderer and subcontractor simultaneously.

**3.5** A Tenderer will be considered to have a conflict of interest if they participated as a consultant in the preparation of the design or technical specification of the project and related services that are the subject of the Tender.

**3.6** Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the Government of Kenya in accordance with GCC sub-Clause 3.2.

**3.7** Government owned enterprises in Kenya may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration board or authorities and if they are not a dependent agency of the Government.

- 3.7 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
- 4. One Tender per Tenderer**
- 4.1 A firm shall submit only one Tender, in the same Tendering process, either individually as a Tenderer or as a partner in a joint venture pursuant to ITT Clause 5.
- 4.2 No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process.
- 4.3 A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity.
- 4.4 A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.
- 5. Alternative Tenders by Tenderers**
- 5.1 Tenderers shall submit offers that comply with the requirements of the Tendering documents, including the basic Tenderer's technical design as indicated in the specifications and Drawings and Bill of Quantities. Alternatives will not be considered, unless specifically allowed for in the **Tender Data Sheet**. If so allowed, sub-Clause 5.2 and 5.3 shall govern.
- 5.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **Tender Data Sheet** as will the method of evaluating different times for completion.
- 5.3 If so allowed in the **Tender Data Sheet**, Tenderers wishing to offer technical alternatives to the requirements of the Tendering documents must also submit a Tender that complies with the requirements of the Tendering documents, including the basic technical design as indicated in the specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity.
- 6. Cost of Tendering**
- 6.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

**7. Site Visit and Pre-Tender Meeting**

- 7.1** The Tenderer, at the Tenderer's own responsibility and risk, is advised to visit and examine the Site of 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.
- 7.2** The Procuring Entity may conduct a site visit and a pre-Tender meeting. The purpose of the pre-Tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.3** The Tenderer's designated representative is invited to attend a site visit and pre-tender meeting which, if convened, will take place at the venue and time stipulated in the **Tender Data Sheet**.
- 7.4** The Tenderer is requested as far as possible, to submit any questions in writing or by electronic means to reach the procuring Entity before the pre-Tender meeting. It may not be practicable at the meeting to answer all questions, but questions and responses will be transmitted in accordance with sub-Clause 7.5.
- 7.5** Minutes of the pre-tender meeting, including the text of the questions raised and the responses given together with any responses prepared after the pre-Tender meeting will be transmitted within the time stated in the **Tender Data Sheet** to all purchasers of the Tendering documents. Any modification of the Tendering documents listed in sub-Clause 8.1 that may become necessary as a result of the pre-tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT sub Clause 10.2 and not through the minutes of the pre-Tender meeting.
- 7.6** Non-attendance during the site visit or pre-Tender meeting will not be a cause for disqualification of a Tenderer unless specified to the contrary in the **Tender Data Sheet**.

**B. Tendering Documents**

**8. Content of Tendering Documents**

- 8.1** The works required, Tendering procedures, and contract terms are prescribed in the Tendering Documents. In addition to the Section I Invitation for Tenders, Tendering documents which should be read in conjunction with any addenda issued in accordance with ITT sub Clause 10.2 include:

Section II	Instructions to Tenderers
Section III	Tender Data Sheet
Section IV	General Conditions of Contract
Section V	Contract Data Sheet

Section VI	Specifications
Section VII	Drawings
Section VIII	Bill of Quantities
Section IX	Forms of Tender
	<ul style="list-style-type: none"> <li>• Form of Tender</li> <li>• Appendix to Tender</li> <li>• Confidential Business Questionnaire</li> <li>• Integrity Declaration</li> <li>• Letter of Acceptance</li> <li>• Form of Contract Agreement</li> </ul>
Section X	Forms of Security
	<ul style="list-style-type: none"> <li>• Tender Security Form</li> <li>• Tender Securing Declaration</li> <li>• Performance Bank or Insurance Guarantee</li> <li>• Advance Payment Guarantee</li> </ul>
Section XI	Form RB 1 Application to Public Procurement Administrative Review Board

- 8.2** The number of copies to be completed and returned with the Tender is specified in the **Tender Data Sheet**.
- 8.3** The Invitation for Tenders (Section I) issued by the Procuring Entity is not part of the Tendering Documents and is included for reference purposes only. In case of discrepancies between the Invitation for Tenders and the Tendering Documents listed in sub-Clause 8.1 above, the said Tendering Documents will take precedence.
- 8.4** The Procuring Entity is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from the authorized staff of the Procuring Entity.
- 8.5** The Tenderer is expected to examine all instructions, forms, terms and specifications in the Tendering documents. Failure to furnish all information required by the Tendering Documents or to submit a Tender substantially responsive to the Tendering documents in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

## **9. Clarification of Tendering Documents**

- 9.1** A prospective Tenderer requiring any clarification of the Tendering documents may notify the Procuring Entity in writing, e-mail or facsimile at the Procuring Entity's address indicated in the **Tender Data Sheet**.
- 9.2** The Procuring Entity will within the period stated in the **Tender Data Sheet** respond in writing to any request for clarification provided that such request is received not later than the period

indicated in the **Tender Data Sheet** prior to the deadline for the submission of Tenders prescribed in sub-Clause 22.1.

- 9.3** Copies of the procuring entity's response will be forwarded to all Purchasers of the Tendering documents, including a description of the inquiry, but without identifying its source.
- 9.4** Should the Procuring Entity deem it necessary to amend the Tendering documents as a result of a clarification, it shall do so following the procedure under ITT Clause 10.

**10. Amendments of the Tendering Documents**

- 10.1** Before the deadline for submission of Tenders, the Procuring Entity may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, modify the Tendering documents by issuing addenda.
- 10.2** Any addendum issued shall be part of the Tender documents pursuant to sub-Clause 8.1 and shall be communicated in writing, by e-mail or facsimile to all who have obtained the Tendering documents directly from the Procuring Entity.
- 10.3** In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity at its discretion shall extend, as necessary, the deadline for submission of Tenders, in accordance with sub-Clause 22.2

**C. Preparation of Tenders**

**11. Language of Tender**

- 11.1** The Tender, and all correspondence and documents related to the Tender exchanged by the Tenderer and the Procuring Entity shall be written in the Tender language stipulated in the **Tender Data Sheet**. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the above stated language, in which case, for purposes of interpretation of the Tender, the translation shall prevail.

**12. Documents Constituting the Tender**

- 12.1** The Tender submitted by the Tenderer shall consist of the following components:
- a) The Form of Tender (in the format indicated in Section IX) completed in accordance with ITT Clause 15, 16 and 17;
  - b) Information requested by Instructions to Tenderers ITT sub-Clause 13.2; 13.3 and 13.4;

- c) Tender Security or Tender Securing Declaration in accordance with Instructions to Tenderers ITT Clause 19;
- d) Priced Bill of Quantities;
- e) Qualification Information Form and Documents;
- f) Alternative offers where invited in accordance with Instructions to Tenderers ITT Clause 5;
- g) Written confirmation authorizing the signatory of the Tender to commit the Tenderer in accordance with Instructions to Tenderers ITT sub Clause 19.2; and
- h) And any information or other materials required for completing and submitting by Tenderers, as specified in the **Tender Data Sheet**.

**13. Documents  
Establishing  
Eligibility and  
Qualifications of the  
Tenderer**

- 13.1** Pursuant to ITT Clause 13, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.
- 13.2** In the event that pre-qualification of potential Tenderers has been undertaken, only Tenders from pre-qualified Tenderers will be considered for award of contract. These qualified Tenderers should submit their Tenders with any information updating the original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission. The update or confirmation should be provided in Section IX.
- 13.3** If the Procuring Entity has not undertaken pre-qualification of potential Tenderers, to qualify for award of the contract, Tenderers shall meet the minimum qualifying criteria specified in the **Tender Data Sheet**:
- 13.4** Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **Tender Data Sheet**:
  - a) The Tender shall include all the information listed in the **Tender Data Sheet** pursuant to sub-Clause 13.3 above for each joint venture partner;

- b) The Tender shall be signed so as to be legally binding on all partners;
- c) One of the partners will 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;
- d) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of a joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
- e) 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 statement to this effect shall be included in the authorization mentioned under (c) above as well as in the Tender and in the Agreement (in case of a successful Tender); and
- f) A copy of the joint venture agreement entered into by all partner shall be submitted with the Tender. Alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful Tender shall be signed by all partners and submitted with the Tender, together with a copy of the proposed Agreement.
- g) The Tender Security and Tender Securing Declaration as stated in accordance with ITT Clause 19, and in case of a successful Tender, the Agreement, shall be signed so as to be legally binding on all partners.

#### **14. Lots Package**

- 14.1** When Tendering for more than one contract under the lots arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being tendered in regard to:
  - a) Average annual turnover;
  - b) Particular experience including key production rates;
  - c) Financial means, etc;
  - d) Personnel capabilities; and
  - e) Equipment capabilities.
- 14.2** In case the Tenderer fail to fully meet any of these criteria, it may be qualified only for those lots for which the Tenderer meets the above requirement.



- |                              |   |
|------------------------------|---|
| <b>15. Form of Tender</b>    | <b>15.1</b> The Tenderer shall fill the Form of Tender furnished in the Tendering Documents. The Form of Tender must be completed without any alterations to its format and no substitute shall be accepted.  |
| <b>16. Tender Prices</b>     | <p><b>16.1</b> The Contract shall be for the whole Works, as described in sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Tenderer.</p> <p><b>16.2</b> The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Bill of quantities.</p> <p><b>16.3</b> All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 15 days prior to the deadline for submission of Tenders, shall be included in the rates, prices and total Tender price submitted by the Tenderer.</p> <p><b>16.4</b> The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if provided for in the <b>Tender Data Sheet</b> and the provisions of the Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the <b>Contract Data Sheet</b>.</p> |
| <b>17. Tender Currencies</b> | <p><b>17.1</b> The unit rates and prices shall be quoted by the Tenderer in the currency as specified in the <b>Tender Data Sheet</b>.</p> <p><b>17.2</b> Tenderers shall indicate details of their expected foreign currency requirements in the Tender, if any. The rates of exchange to be used by the Tenderers in arriving at the local currency equivalent shall be the selling rates for similar transactions established by the authority specified in the <b>Tender Data Sheet</b> prevailing on the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Tenderer. In any case, payments will be computed using the rates quoted in the Tender.</p> <p><b>17.3</b> Tenderers may be required by the Procuring Entity to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices and in the Contract Data Sheet are reasonable and responsive to sub-Clause 17.1.</p>  |

## **18. Tender Validity Period**

- 18.1** Tenders shall remain valid for the period specified in the **Tender Data Sheet** after the Tender submission deadline prescribed by the Procuring Entity, pursuant to ITT Clause 22. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 18.2** In exceptional circumstances, prior to expiry of the original Tender validity period, the Procuring Entity may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing or by cable. A Tenderer may refuse the request without forfeiting its Tender Security or causing to be executed its Tender Securing declaration. A Tenderer agreeing to the request will not be required or permitted to otherwise modify the Tender, but will be required to extend the validity of its Tender Security or Tender Securing declaration for the period of the extension, and in compliance with ITT Clause 19 in all respects.
- 18.3** In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial Tender validity period, the contract price will be increased by a factor specified in the request for extension. The Tender evaluation shall be based on the Tender price without taking into consideration on the above correction.

## **19. Tender Security and Tender Securing Declaration**

- 19.1** Pursuant to ITT Clause 12, where required in the **Tender Data Sheet**, the Tenderer shall furnish as part of its Tender, a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet**. A Tender Securing Declaration as specified in the **Tender Data Sheet** in the format provided in section X shall be provided as a mandatory requirement.
- 19.2** The Tender Security or Tender Securing Declaration is required to protect the Procuring Entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to ITT sub-Clause 19.9.
- 19.3** The Tender Security shall be denominated in the currency of the Tender and shall be in the following form:
- a) A **Bank Guarantee**
- 19.4** The Tender Security shall be in accordance with the Form of the Tender Security included in Section X or another form approved by the Procuring Entity prior to the Tender submission.

- 19.5** The Tender Security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 19.8 are invoked.
- 19.6** Any Tender not accompanied by a Tender Security in accordance with sub-Clauses 19.1 or 19.3 shall be rejected by the Procuring Entity as non-responsive, pursuant to ITT Clause 28.
- 19.7** The Procuring Entity shall immediately release any Tender Security if:
- a) The procuring proceedings are terminated;
  - b) The Procuring Entity determines that none of the submitted Tenders is responsive;
  - c) A contract for the procurement is entered into.
- 19.8** The Tender Security shall be forfeited and the Tender Securing Declaration executed if the Tenderer:
- a) Withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which Tenders must remain valid;
  - b) Rejects a correction of an arithmetic error pursuant to sub-Clause 29.2;
  - c) Refuse to enter into a written contract in accordance with ITT Clause 40;
  - d) Fails to furnish the Performance Security in accordance with ITT Clause 41.
- 19.9** The Tender Security and Tender Securing Declaration of a joint venture must be in the name of the joint venture submitting the Tender.
- 19.10** A Tenderer shall be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time indicated in the Tender Securing Declaration:
- a) If the Tenderer withdraws its Tender, except as provided in ITT sub-Clauses 18.2 and 29.2; or
  - b) In the case of a successful Tenderer, if the Tenderer fails within the specified time limit to:

(i) Sign the contract; or

(ii) Furnish the required Performance Security.

**20. Format and Signing of Tender**

**20.1** The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT Clause 12 of these Instructions to Tenderers, with the Form of Tender, and clearly marked **“ORIGINAL”**. In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **Tender Data Sheet**, and clearly marked as **“COPIES”**. In the event of discrepancy between them, the original shall prevail.

**20.2** The original and all copies of the Tenders shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **Tender Data Sheet** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender, except for un-amended printed literature, shall be initialled by the person or persons signing the Tender.

**20.3** Any interlineations, erasures, or overwriting shall be valid only if they are initialled by the person or persons signing the Tender.

**20.4** The Tenderer shall furnish information as described in the Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to contract execution if the Tenderer is awarded the contract

**D. Submission of Tenders**

**21. Sealing and Marking of Tenders**

**21.1** The Tenderer shall seal the original copy of the Tender in an envelope, duly marked as **“ORIGINAL”**. **A copy will also be submitted.** The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.

**21.2** The inner and outer envelopes shall:

- a) Be addressed to the Procuring Entity at the address given in the **Tender Data Sheet**; and
- b) Bear the Project name indicated in the **Tender Data Sheet**, the Invitation for Tenders (IFB) title and number indicated in the **Tender Data Sheet**, and a statement: **“DO NOT**

**OPEN BEFORE,”** to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to ITT sub-Clause 22.1.

**21.3** In addition to the identification required in sub-Clause 21.2, the inner envelopes shall also indicate the name and address of the Tenderer to enable the Tender be returned unopened in case it is declared late, pursuant to sub-Clause 22.1 and for matching purpose under ITT Clause 23

**21.4** If the outer envelope is not sealed and marked as required by ITT sub clause 21.2, the Procuring Entity shall assume no responsibility for misplacement or premature opening of the Tender.

**22. Deadline for Submission of Tenders**

**22.1** Tenders shall be received by the Procuring Entity at the address specified under ITT sub-Clause 21.2 no later than the date and time specified in the **Tender Data Sheet**.

**22.2** The Procuring Entity may, in exceptional circumstances and at its discretion, extend the deadline for the submission of Tenders by amending the Tendering documents in accordance with ITT Clause 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.

**22.3** The extension of the deadline for submission of Tenders shall not be made later than the period specified in the **Tender Data Sheet** before the expiry of the original deadline.

**23. Late Tenders**

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

**23.2** Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected and returned unopened to the Tenderer

**24. Modification, Substitution and Withdrawal of Tenders**

**24.1** A Tenderer may modify or substitute or withdraw its Tender after it has been submitted, provided that written notice of the modification, including substitution or withdrawal of the Tender, is received by the Procuring Entity prior to the deadline prescribed for submission of Tenders prescribed under ITT sub-Clause 22.1.

**24.2** The Tenderer's modification or substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 20 and 21 with the outer and inner envelopes additionally marked

**“MODIFICATION”** or **SUBSTITUTION** or **“WITHDRAWAL”** as appropriate. The notice may also be sent by electronic mail and facsimile, but followed by a signed confirmation copy, postmarked no later than the deadline for submission of Tenders.

- 24.3** No Tender may be withdrawn, replaced or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Tender Form. Withdrawal of a Tender during this interval shall result in the Tenderer’s forfeiture of its Tender Security or execution of Tender Securing Declaration, pursuant to the ITT sub-Clause 19.9.
- 24.4** Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the **Tender Data Sheet** or as extended pursuant to sub-Clause 22.2 shall result in the forfeiture of the Tender Security and execution of Tender Securing Declaration pursuant to ITT sub-Clause 19.9.
- 24.5** Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender modifications in accordance with this Clause, or included in the original Tender submission.

## **E. Opening and Evaluation of Tenders**

### **25. Opening of Tenders**

- 25.1** The Procuring Entity will open all Tenders including modifications, substitution or withdraw notices made pursuant to ITT Clause 24, in public, in the presence of Tenderers or their representatives who choose to attend and other parties with legitimate interest and Tender proceedings, at the place on the date and at time specified in the **Tender Data Sheet**. The Tenderers’ representatives who are present shall sign a register as proof of their attendance.
- 25.2** Envelopes marked **“WITHDRAWAL”** shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 24 shall not be opened but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the “Power of Attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. Subsequently, all envelopes marked **"MODIFICATION"** shall be opened and the submissions therein read out in appropriate detail. Thereafter all envelopes marked or **"SUBSTITUTION"** opened and the submissions therein read out in appropriate detail.

- 25.3** All other envelopes shall be opened one at a time. The Tenderers' names, the Tender prices, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, the presence or absence of Tender security, and such other details as the appropriate tender opening committee may consider appropriate, will be announced by the Secretary of the Tender Opening Committee at the opening.
- 25.4** Tenders or modifications that are not opened and not read out at Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.
- 25.5** Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer's representative shall indemnify the Procuring Entity against any claim or failure to read out the correct information contained in the Tenderer's Tender.
- 25.6** No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 23.
- 25.7** The Secretary of the appropriate tender opening committee shall prepare minutes of the Tender opening. The record of the Tender opening shall include, as a minimum: the name of the Tenderers and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security or Tender Securing Declaration.
- 25.8** The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and affect the record.
- 25.9** A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request.

## **26. Confidentiality**

- 26.1** Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a Contract shall not be disclosed to Tenderers

or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.

**26.2** Any effort by a Tenderer to influence the Procuring Entity's processing of Tenders or award decisions may result in the rejection of his Tender.

**26.3** Notwithstanding sub-Clause 26.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

## **27. Clarification of Tenders**

**27.1** To assist in the examination, evaluation, comparison of Tenders and post-qualification of the Tenderer, the Procuring Entity may, at its discretion, ask a Tenderer for clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered.

**27.2** The request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of Tenders in accordance with ITT Clause 29.

**27.3** From the time of Tender opening to the time of Contract award if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tender it should do so in writing.

## **28. Preliminary Examination of Tenders**

**28.1** Prior to the detailed evaluation of Tenders, the Procuring Entity will determine whether:

- a) The Tender has been submitted in the required format;
- b) Any Tender Security submitted is in the required form, amount and validity period;
- c) The Tender has been signed by the person lawfully authorized to do so;
- d) The required number of copies of the Tender have been submitted;
- e) The Tender is valid for the period required;
- f) All required documents and information have been submitted; and



g) Any required samples have been submitted.

**28.2** The Procuring Entity will confirm that the documents and information specified under ITT Clause 12 and ITT Clause 13 have been provided in the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected.

**28.3** The Procuring Entity may waive any minor informality, nonconformity, or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer

**28.4** A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tendering documents, without material deviation or reservation. A material deviation or reservation is one that:

- a) Affects in any substantial way the scope, quality, or execution of the Works;
- b) Limits in any substantial way, inconsistent with the Tendering documents, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
- c) If rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

**28.5** If a Tender is not substantially responsive, it will be rejected by the Procuring Entity, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

## **29. Correction of Errors**

**29.1** Tenders determined to be substantially responsive will be checked by the Procuring Entity for any arithmetic errors. Errors will be corrected by the Procuring Entity as follows:

- a) If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;
- b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

- c) Where there is a discrepancy between the amounts in figures and in words, the amount in figures will govern.

**29.2** The amount stated in the Tender will, be adjusted by the Procuring Entity in accordance with the above procedure for the correction of errors and, with, the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and the Tender Security may be forfeited and the Tender Securing Declaration may be executed in accordance with sub-Clause 19.9.

**30. Conversion to Single Currency**

**30.1** To facilitate the evaluation and comparison, the Procuring Entity will convert all Tender prices expressed in the amounts in various currencies in which the Tender prices are payable to Kenya Shillings at the selling exchange rate established for similar transactions by the Central Bank of Kenya ruling on the date specified in the **Tender Data Sheet**.

**31. Comparison of Tenders**

**31.1** The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive in accordance with ITT Clause 28.

**31.2** In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender price by adjusting the Tender price as follows:  
Making any correction for errors pursuant to ITT Clause 29;  
Excluding provisional sums and the provision, if any for contingencies in the Bill of Quantities, but including Day work, where priced competitively; and Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with sub-Clause 24.5.

**31.3** The Procuring Entity may waive any minor informality or non-conformity, which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative standing of any Tenderer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the Tendering documents or otherwise result in unsolicited benefits for the Procuring Entity will not be taken into account in Tender evaluation.

**32. National Preference**

**32.1** In the evaluation of Tenders, the Procuring Entity shall apply exclusive preference to citizens of Kenya where:

- a) The funding is 100% from the Government of Kenya or a Kenyan body;

- b) The amounts are below the prescribed threshold of KShs.200 million;
- 32.2** To qualify for the preference the candidate shall provide evidence of eligibility by:
  - a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or
  - b) Providing proof of being a “citizen contractor” in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya.
- 32.3** The Minister of Finance may prescribe additional preference and/or reservation schemes, for example for procurements above these thresholds. If such additional preference schemes apply, details will be given in the **Tender Data Sheet**.
- 33. Determination of the Lowest Evaluated Tender**
  - 33.1** The Tender with the lowest evaluated price from among those which are eligible, compliant and substantially responsive shall be the lowest evaluated Tender.
- 34. Post-qualification of Tenderer**
  - 34.1** If specified in the **Tender Data Sheet**, post-qualification shall be undertaken.
  - 34.2** The Procuring Entity will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in sub-Clause 13.3.
  - 34.3** The determination will take into account the Tenderer’s financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer’s qualifications submitted by the Tenderer, pursuant to sub-Clause 13.3, as well as such other information as the Procuring Entity deems necessary and appropriate. Factors not included in these Tendering documents shall not be used in the evaluation of the Tenderer’s qualifications.
  - 34.4** An affirmative determination will be a prerequisite for award of the contract to the Tenderer. A negative determination will result in rejection of the Tenderer’s Tender, in which event the Procuring Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer’s capabilities to perform satisfactorily.

## **F. Award of Contract**

### **35. Criteria of Award**

**35.1** Subject to ITT Clause 35 and 36, the Procuring Entity will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tendering documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:

- a) Eligible in accordance with the provisions of ITT Clause 3;
- b) Is determined to be qualified to perform the Contract satisfactorily;
- c) Successful negotiations have been concluded.

**35.2** If, pursuant to sub-Clause 14.1, this Contract is being awarded on a “lot and package” basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderer for award of more than one Contract.

### **36. Clarifications**

**36.1** Clarifications may be undertaken with the lowest evaluated Tenderer relating to the following areas:

- a) A minor alteration to the technical details of the statement of requirements;
- b) Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the Tendering documents;
- c) A minor amendment to the Contract Data Sheet;
- d) Finalizing payment arrangements;
- e) Mobilization arrangements;
- f) Agreeing final delivery or work schedule to accommodate any changes required by the Procuring Entity;
- g) The methodology or staffing; or
- h) Clarifying details that were not apparent or could not be finalized at the time of Tendering.

- 36.2** Clarifications shall not change the substance of the tender.
- 37. Procuring Entity's Right to Accept any Tender and to Reject any or all Tenders**
- 37.1** Notwithstanding ITT Clause 35, the Procuring Entity reserves the right to accept or reject any Tender, and to cancel the Tendering process and reject all Tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers.
- 37.2** Notice of the rejection of all Tenders shall be given promptly within 14 days to all Contractors that have submitted Tenders.
- 37.3** The Procuring Entity shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds.
- 38. Procuring Entities Right to Vary Quantities at the Time of Award**
- 38.1** The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of goods or related services originally specified in these Tendering documents (schedule of requirements) provided this does not exceed by the percentage indicated in the **Tender Data Sheet**, without any change in unit price or other terms and conditions of the Tender and Tendering documents.
- 39. Notification of Award**
- 39.1** The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to expiration of the Tender validity period by e-mail or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Contractor in consideration of the provision and maintenance of the Work(s) as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").
- 39.2** The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security in accordance with ITT Clause 41 and signing the Contract in accordance with sub-Clause 40.2
- 39.3** At the same time as the person submitting the successful Tender is notified, the Procuring Entity will notify each unsuccessful Tenderer, the name of

the successful Tenderer and the Contract amount and will discharge the Tender Security and Tender Securing Declaration of the Tenderer pursuant to ITT sub Clause 19.7.

- 39.4** If, after notification of award, a Tenderer wishes to ascertain the grounds on which its Tender or application for pre-qualification was unsuccessful, it should address its request to the secretary of the Tender Committee that authorized the award of contract. The secretary of the Tender Committee shall, within fourteen days after a request, provide written reasons as to why the Tender, proposal or application to be pre-qualified was unsuccessful. However, failure to take this opportunity to clarify the grounds for rejection does not affect the Tenderer's right to seek immediate review by the Public Procurement Administrative Review Board under Clause 45.

#### **40. Signing of Contract**

- 40.1** Promptly, and in no case later than 14 days, after notification, Procuring Entity shall send the successful Tenderer the Agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.
- 40.2** Within the period specified in the notification or Tender Data Sheet but not earlier than fourteen (14) days since notification of award of contract, the successful Tenderer shall sign and date the contract and return it to the Procuring Entity.

#### **41. Performance Security**

- 41.1** Within thirty (30) days but after 14 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the **Tender Data Sheet** and the Contract Data Sheet, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.
- 41.2** If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee or Insurance Bond, it shall be issued either:
- a) At the Tenderer's option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm through a correspondent bank or insurance firm located in Kenya;

- b) With the consent of the Procuring entity, directly by a foreign bank acceptable to the Procuring entity.

**41.3** Failure of the successful Tenderer to comply with the requirement of sub-Clause 41.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security, in which event the Procuring Entity may make the award to the next lowest evaluated Tenderer or call for new Tenders.

## **42. Advance Payment**

**42.1** The Procuring Entity will provide an Advance Payment as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the **Tender Data Sheet**.

**42.2** The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section X. For the purpose of receiving the Advance Payment, the Tenderer shall make an estimate of, and include in its Tender, the expenses that will be incurred in order to commence work. These expenses will relate to the purchase of equipment, machinery, materials, and on the engagement of labour during the first month beginning with the date of the Procuring Entity's "Notice to Commence" as specified in the Contract Data Sheet.

## **43. Adjudicator**

**43.1** The Procuring Entity proposes the person named in the Tender Data Sheet to be appointed as Adjudicator under the Contract, at an hourly fee specified in the **Tender Data Sheet**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data Sheet at the request of either party.

## **G. Review of Procurement Decisions**

### **44. Right to Review**

**44.1** A Tenderer who claims to have suffered or risk suffering, loss or damage or injury as a result of breach of a duty imposed on a Procuring Entity or an Approving Authority by the Public Procurement and Asset Disposal Act, 2015 and The Public Procurement and Asset Disposal Regulations, 2020, the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:

- a) The choice of procurement method;
- b) a decision by the Procuring Entity to reject all Tenders, proposals or quotations;
- c) Where a contract is signed in accordance to Section 68 of the Public Procurement and Disposal Act, 2015;
- d) Where an appeal is frivolous.

### **45. Time Limit on Review**

**45.1** The Tenderer shall submit an application for review in the number of copies and pay fees as prescribed by The Public Procurement and Asset Disposal Regulations, 2020 within fourteen (14) days of the time the Tenderer became or should have become aware of the circumstances giving rise to the complaint or dispute.

### **46. Submission of Applications for Review by the Public Procurement Administrative Review Board**

**46.1** Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 at the address shown in the **Tender Data Sheet**. The secretary to the review board shall immediately after filing of the request, serve a copy thereof on the Procuring Entity or Director-General as the case may be.

**46.2** The application for administrative review shall be in accordance with the requirements of Regulation 73 of the Public Procurement and Disposals Regulations, 2020, including:

- a) Reasons for the complaint, including any alleged breach of the Act or Regulations;
- b) An explanation of how the provisions of the Act and or Regulation has been breached or omitted, including the dates and name of the responsible public officer, where known;



- c) Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request;
- d) Remedies sought;
- e) Any other information relevant to the complaint.

**47. Decision by the Public Procurement Administrative Review Board**

**47.1** The Administrative Review Board shall within thirty days after receipt of an application for administrative review deliver a written decision which shall indicate:

- a) Annulling anything the Procuring Entity has done in the procurement proceedings, including annulling the procurement proceedings in their entirety;
- b) Giving directions to the Procuring Entity with respect to anything to be done or redone in the procurement proceedings;
- c) Substituting the decision of the Review Board for any decision of the Procuring Entity in the procurement proceedings;
- d) Order the payment of costs as between parties to the review.

**47.2** The decision made by the Review Board shall, be final and binding on the parties unless judicial review thereof commences within fourteen (14) days from the date of the Review Board's decision.

**48. Appeal on the decision of the Review Board**

**48.1** Any party to the review aggrieved by the decision of the Review Board may appeal to the High Court and the decision of the High Court shall be final.

### SECTION III: TENDER DATA SHEET

28.	22.3	The extension of the deadline (if any) for submission of Tenders shall be made not later than <b>7 days</b> before the expiry of the original deadline.
<b>E. Opening and Evaluation of Tenders</b> <b>Tender Data Sheet (TDS)</b>  <b>Instructions to Tenderers Clause Reference</b>		
<b>TDS Reference Number</b>	<b>ITT Clause Number</b>	<b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b>
<b>A. Introduction</b>		
1.	1.1	The Procuring Entity is <b>TANA WATER WORKS DEVELOPMENT AGENCY</b>
2.	1.1	Name of Project is <b>DE-SLUDGING OF KIAGI WASTEWATER TREATMENT PLANT</b>
3.	1.2	The expected completion date of the works is <b>3 Months from issuance of commencement letter</b>
4.	1.3	The Objectives of the Project are: <b>De-Sludging of Kiagi Wastewater Treatment Plant</b>
5.	2.1	Name of financing institution is <b>GOVERNMENT OF KENYA</b>  Name of the Procuring Entity is <b>TANA WATER WOKS DEVELOPMENT AGENCY</b>  Financial Year <b>2022– 2023</b>  Describe works under the contracts: <b>De-Sludging of 1<sup>st</sup> Stabilization Pond (Primary)</b> <b>De-Sludging of 2<sup>nd</sup> Stabilisation Pond (Secondary)</b>
6.	2.2	The loan/ credit number is N/A

7.	5.1	Alternative Tenders are “ <i>not allowed</i> ” in this Tender.
8.	5.2	Alternative time for completion NOT <b>applicable</b>
9.	3.1	Only Tenderers registered as <b>Civil Engineering Contractors</b> in Class <b>NCA 6</b> with the <b>National Construction Authority and Ministry of Water, Sanitation and Infrastructure Class “E” and above for water works construction.</b>
10.	7.3	Pre-Tender site meeting will take place <b>at the site on Friday 30<sup>th</sup> September 2022 at 9.00 a.m.</b> The place of converging shall be at Mathira Water and Sanitation Company (MAWASCO) Office grounds, <b>Karatina in Mathira East Constituency, Nyeri County</b>
11.	7.5	The minutes of the pre-Tender meeting will be transmitted within <b>7days and these minutes shall form part of the contract agreement</b>
	7.6	Non-attendance at the pre-tender meeting will result in <b>disqualification</b>

#### B. Tendering Documents

12.	8.2	The number of copies to be completed and returned with the Tender is <b>2 copies (One Original and One Copy)</b>
13.	8.1	Address for clarification of Tendering Document <b>info@tanawwda.go.ke</b> and <b>ceo@tanawwda.go.ke</b>
14.	8.2	Period to Respond to request for clarification by the Procuring Entity <b>5 days</b>  Period Prior to deadline for submission of Tenders for Tenderers to request clarification <b>7 days</b>

#### C. Preparation of Tenders

15.	11.1	Language of Tender and all correspondence shall be <b>English</b>
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16.	13.3	<p><b>Other information or materials required to be completed and submitted by Tenderers:</b></p> <p>a) <b>Copies of original documents</b> defining the constitution or legal status, place of registration, and principal, place of business; written power of attorney authorizing the signatory of the Tender to commit the Tenderer.</p> <p>b) <b>The minimum required annual volume</b> of construction work for the successful Tenderer in any of the last 3 years shall be: <b>KShs.20 Million</b></p> <p>c) <b>Evidence of experience</b> as prime contractor in the construction of at least two projects of a nature and complexity equivalent to the Works of this Contract in the last three years (to comply with this requirement, the works should be at least 75 percent complete).</p> <p>d) <b>The essential equipment</b> to be made available for the Contract by the successful Tenderer (proposals for timely acquisition or own, lease, hire, etc) shall be:</p> <ul style="list-style-type: none"> <li>i) Lorry/Tipper</li> <li>ii) Excavator</li> </ul> <p>e) A Project Manager with a minimum of 5 years' experience in works of an equivalent nature and volume.</p> <p>f) Site Agent with a minimum of 4 years' experience in works of an equivalent nature and volume</p> <p>g) Inspector of works with a minimum of 4 years' experience in works of an equivalent nature and volume</p> <p>h) Surveyor with a minimum of 4 years' experience in works of an equivalent nature and volume</p> <p>i) <b>Evidence of adequate</b> working capital for this contract.</p> <p>j) Information regarding <b>litigation</b>, current and past</p>	
17.	13.4	In the case of joint venture each partner shall submit information required under Clause ITT Clause 13.4.	
18.	16.4	The price shall be <b>Fixed</b> Information to be submitted with the Tender are as per the questionnaire	
19.	17.1	The currency in which the prices shall be quoted shall be: <b>Kenyan Shillings</b>	
20.	17.2 30.2	<p>The authority for establishing the rates of exchange shall be the Central Bank of Kenya.</p> <p>The applicable date for exchange rates for tendering and evaluation purposes is 28 days earlier than the final deadline for the submission of tenders.</p>	

21.	18.1	The Tender validity period shall be <b>180 days</b> .
22.	19.1	The amount of Tender Security Amount shall be <b>2% of tender Sum</b> in form of a <b>Bank Guarantee</b> .
23.	20.1	In addition to the original of the Tender, the Tenderer should submit 1 copy of the Tender.
24.	20.2	Written confirmation of authorization of <b>Power of Attorney</b>

  

<b>D. Submission of Tenders</b>		
25.	21.2 a)	Tenders shall be submitted to: <b>Tana Water Works Development Agency, P.O. Box 1292 - 10100 Maji House, Baden Powell Road, NYERI.</b>
26.	21.2 b)	Project name <b>DE-SLUDGING OF KIAGI WASTEWATER TREATMENT PROJECT.</b>  Tender number: <b>TWWDA/T/013/2022 – 2023</b> Time and date for submission <b>Wednesday, 12<sup>th</sup> October, 2022 at 10.00am.</b>
27.	22.1	The deadline for Tender submission is a) Day: Wednesday b) Date <b><u>12/10/2022</u></b> c) Time <b>at 10.00 am.</b>

  

29.	25.1	<p>The Tender opening shall take place at:</p> <p><b>Tana Water Works Development Agency</b></p> <p>Building/Plot No. <b>Maji House</b></p> <p>Floor/Room No. <b>Board Room</b></p> <p>City/Town: <b>Nyeri</b></p> <p>Country: <b>Kenya</b></p> <p>Date: <b>12/10/2022</b> <span style="float: right;">Time <b>10.00am</b></span></p>
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<b>30.</b>	<b>32.3</b>	Additional Preference <b>N/A</b>
<b>31.</b>	<b>34.1</b>	Post- qualification shall <b>be undertaken for all firms which have never been engaged by TWWDA</b>
<b>32.</b>	<b>38.1</b>	Percentage for quantities increase or decrease should <b>not exceed 25%</b>
<b>F. Award of Contract</b>		
<b>33.</b>	<b>41.1</b>	The amount of Performance Security shall be <b>10% of the tender sum in the form a Bank Guarantee</b>
<b>34.</b>	<b>42.1</b>	The Advance Payment shall <b>NOT BE applicable</b>
<b>35.</b>	<b>43.1</b>	The proposed adjudicator for the project is from name recommended by the Kenya chapter of chartered institute of arbitrators, P.O Box 50163-00200, Nairobi
<b>G. Review of Procurement Decisions</b>		
<b>37.</b>	<b>46.1</b>	The address for submitting appeals to Administrative Review Board : The Secretary, Public Procurement Administrative Review Board , The Public Procurement Regulatory Authority, 10 <sup>th</sup> Floor, National Bank House, P.O. Box 58583-00200, NAIROBI, Kenya. Tel: +254 (0) 20 3244000 Email: <a href="mailto:info@ppra.go.ke">info@ppra.go.ke</a> Website: <a href="http://www.ppra.go.ke">www.ppra.go.ke</a>

## **SECTION IV: GENERAL CONDITIONS OF CONTRACT**

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## A. General

### 1. Definitions

#### 1.1 Boldface type is used to identify defined terms.

The **Adjudicator** is the person appointed jointly by the Procuring Entity and the Contractor to resolve disputes in the first instance, as provided for in Clauses 27 and 28 hereunder.

**Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Tender.

**Compensation Events** are those defined in Clause 47 hereunder.

The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 58.1.

The **Contract** is the Contract between the Procuring Entity and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3 below.

The **Contractor** is a person or corporate body whose Tender to carry out the Works has been accepted by the Procuring Entity.

The **Contractor's Tender** is the completed Tendering document submitted by the Contractor to the Procuring Entity.

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.

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

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

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

The **Defects Liability Period** is the period named in the **Contract Data Sheet** 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.

The **Procuring Entity** 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 to construct the Works.

The **Initial Contract Price** is the Contract Price listed in the Procuring Entity's Letter of Acceptance.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the **Contract Data Sheet**. 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.

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

The **Site** is the area defined as such in the **Contract Data Sheet**.

**Site Investigation Reports** are those that were included in the Tendering documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

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

The **Start Date** is given in the **Contract Data Sheet**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

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 that are needed for construction or installation of the Works.

A **Variation** is an instruction given by the Project Manager that varies the Works.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Procuring Entity, as defined in the **Contract Data Sheet**.

“**Force Majeure**” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

## **2. Interpretation**

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way round. Headings have no significance. Words have their normal meaning under the language of the Contract 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 **Contract Data Sheet**, references 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 Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the order of priority given in the **Contract Data Sheet**:
- (1) Agreement;
  - (2) Letter of Acceptance;
  - (3) Contract Data Sheet;
  - (4) Conditions of Contract;
  - (5) Technical Specifications;
  - (6) Contractor’s Tender;
  - (7) Drawings;
  - (8) Bill of Quantities; and
  - (9) Any other document listed in the **Contract Data Sheet** as forming part of the Contract.

## **3. Language, Law, Fraud and Corruption**

- 3.1 The language of the Contract and the law governing the Contract are stated in the **Contract Data Sheet**.

- 3.2 The Government requires that Procuring Entities (including beneficiaries of Government funded projects) as well as Tenderers/Suppliers/Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. It is the responsibility of the Procuring Entity to ensure that Tenderers, suppliers, and contractors and their subcontractors observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy:

For the purpose of this provision, the following definitions are provided:

- (i). **“Corruption”** has the meaning assigned to it in the Anti-Corruption and Economic Crime Act 2003 and includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;
- (ii). **“Fraudulent Practice”** includes a misrepresentation of fact in order to influence a procurement or disposal process or the execution of a contract to the detriment of the Procuring Entity and includes collusive practices amongst Tenderers prior to or after Tender submission designed to establish Tender prices at artificial non-competitive levels and deprive the Procuring Entity of the benefits of free and open competition;
- (iii). **“Collusive Practice”** means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of the Procuring Entity prior to or after Tender submission, designed to establish Tender prices at artificial non-competitive levels and to deprive the Procuring Entity of the benefit of free and open competition;
- (iv). **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of any of them to influence improperly the actions of a Procuring Entity;
- (v). **“Obstructive Practice”** means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making

false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and /or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

A Procuring Entity has the right to require that Tenderers, suppliers, and contractors and their subcontractors permit persons duly appointed by EACC/PPRA/KNAO to inspect their accounts and records and other documents relating to the Tender submission and contract performance;

The Procuring Entity will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt, fraudulent practices or others stated under Clause 44.1.a in competing for the contract;

In pursuit of the policy defined in sub-Clause 44.1 the Procuring Entity will cancel the portion of the funds allocated to a contract for goods, works, or services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Procuring Entity or Approving Authority or of a beneficiary of the funds during the procurement or the execution of that contract;

In the event that the Procuring Entity or Approving Authority does not take timely and appropriate action satisfactory to the Government of Kenya to remedy the situation, then the Director-General may order an investigation of procurement proceedings for the purpose of determining whether there has been a breach of the Public Procurement and Disposal Act, 2015.

3.3 The Director-General may, on the advice of the Advisory Board, debar a person from participating in procurement proceedings on the ground that the person has committed an offence under the Public Procurement and Disposal Act, 2015. A debarment shall be for a period of time of not less than five years. Before a person is so debarred, he/she will be given an opportunity to make representations to the Director-General and may request the Review Board to review the debarment.

3.4 Any communication between the Tenderers and the Procuring Entity related to matters of alleged fraud or corruption must be made in writing.

- |                                       |  |
|---------------------------------------|--|
| <b>4. Confidentiality</b>             | 4.1 The Service Providers, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.  |
| <b>5. Project Manager's Decisions</b> | 5.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Procuring Entity and the Contractor in the role representing the Procuring Entity.   |
| <b>6. Delegation</b>                  | 6.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.   |
| <b>7. Communications</b>              | 7.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.  |
| <b>8. Subcontracting</b>              | 8.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Procuring Entity in writing. Subcontracting shall not alter the Contractor's obligations.   |
| <b>9. Other Contractors</b>           | 9.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the Schedule of Other Contractors, as referred to in the <b>Contract Data Sheet</b> . The Contractor shall also provide facilities and services for them as described in the Schedule. The Procuring Entity may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification  |
| <b>10. Personnel</b>                  | <p>10.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the <b>Contract Data Sheet</b>, who shall be appropriately qualified and registered with the appropriate bodies to carry out the functions stated in the Schedule 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 Schedule.</p> <p>10.2 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.</p> |

**11. Procuring Entity's and Contractor's Risks**

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

**12. Procuring Entity's Risks**

12.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Procuring Entity'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 Procuring Entity 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 Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

12.2 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 a Procuring Entity's risk except loss or damage due to:

(a) A Defect which existed on the Completion Date;

(b) An event occurring before the Completion Date, which was not itself an Procuring Entity's risk; or

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

**13. Contractor's Risks**

13.1 From the Starting 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 Procuring Entity's risks are Contractor's risks.

**14. Insurance**

14.1 The Contractor shall provide, in the joint names of the Procuring Entity and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the **Contract Data**



**Sheet** for the following events which are due to the Contractor's risks:

- (a) Loss of or damage to the Works, Plant, and Materials;
- (b) Loss of or damage to Equipment;
- (c) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) Personal injury or death.

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

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

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

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

**15. Site Investigation Reports**

15.1 The Contractor, in preparing the Tender, shall rely on any Site Investigation Reports referred to in the **Contract Data Sheet**, supplemented by any information available to the Tenderers.

**16. Queries about the Contract Data Sheet**

16.1 The Project Manager will clarify queries on the **Contract Data Sheet**.

**17. Contractor to Construct the Works**

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

**18. Commencement and Completion**

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

- 19. Approval by the Project Manager**
- 19.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 19.2 The Contractor shall be responsible for the design of Temporary Works.
- 19.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 19.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 19.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before their use.
- 20. Protection of the Environment**
- 20.1 The Contractors shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.
- 20.2 The Contractors shall ensure that emissions, surface discharges and effluent from his activities shall not exceed prescribed values in the environmental laws.
- 21. Labour Laws**
- 21.2 The Contractor shall comply with all the relevant labour laws applicable in the Country, including laws relating to workers employment, working hours, health, safety, welfare, and immigration, and shall allow them all their legal rights.
- 21.2 The Contractor shall require his employees to obey all applicable laws, including those concerning safety at work.
- 22. Health and Safety**
- 22.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of his personnel.
- 22.2 The Contractor shall ensure that first aid facilities are available at all times at the site and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- 22.3 The Contractor shall notify the Procuring Entity details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to the property, as the Procuring Entity may reasonably require.

	22.4 The Contractor shall conduct an HIV-Aids awareness programme, and shall take other such measures as specified in the <b>Contract Data Sheet</b> to reduce the risk of transfer of HIV virus between and among Contractor personnel, the Procuring Entity's Staff and the surrounding community.
<b>23. Discoveries</b>	23.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Procuring Entity. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
<b>24. Possession of the Site</b>	24.1 The Procuring Entity 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 <b>Contract Data Sheet</b> , the Procuring Entity will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.
<b>25. Access to the Site</b>	25.1 The Contractor shall allow the Project Manager and any 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.
<b>26. Instructions, Inspections and Audits</b>	<p>26.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.</p> <p>26.2 The Contractor shall permit the Kenya Government to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Kenya Government, if so required by the Kenya Government</p>
<b>27. Disputes</b>	27. 1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
<b>28. Procedure for Disputes</b>	<p>28.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.</p> <p>28.2 The Adjudicator shall be paid by the hour at the rate specified in the <b>Tender Data Sheet</b> and <b>Contract Data Sheet</b>, together with reimbursable expenses of the types specified in the <b>Contract Data Sheet</b>, and the cost shall be divided equally between the Procuring Entity and the Contractor, whatever decision is reached by the</p>

Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

28.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the **Contract Data Sheet**.

## **29. Replacement of Adjudicator**

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

## **B. Time Control**

### **30. Programme**

- 30.1 Within the time stated in the **Contract Data Sheet**, the Contractor shall submit to the Project Manager for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 30.2 An update of the Programme shall be a programme 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.
- 30.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the **Contract Data Sheet**. If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the **Contract Data Sheet** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.
- 30.4 The Project Manager's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events

### **31. Extension of the Intended Completion Date**

- 31.1 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.
- 31.2 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 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 by this failure shall not be considered in assessing the new Intended Completion Date.

- 32. Acceleration**
- 32.1 When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.
- 32.2 If the Contractor's priced proposals for acceleration are accepted by the Procuring Entity, they shall be incorporated in the Contract Price and treated as a Variation.
- 33. Delays Ordered by the Project Manager**
- 33.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 34. Management Meetings**
- 34.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 34.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 35. Early Warning**
- 35.1 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.
- 35.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for 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 instruction of the Project Manager.

## **C. Quality Control**

### **36. Identifying Defects**

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

36.2 The procuring entity through the Accounting Officer will, upon commencement of the project works, appoint a project/contract Implementation team, pursuant to the PPAD Act 2015, section 151.

### **37. Tests**

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

### **38. Correction of Defects**

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

38.2 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.

38.3 If the Contractor has not corrected a defect within the time specified in the Procuring Entity's notice, a penalty for lack of performance will be paid by the Contractor. The amount to be paid will be calculated as a percentage of the cost of having the defect correct, assessed as described in Clause 39.

### **39. Uncorrected Defects**

39.1 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, and the Contractor will pay this amount.

## **D. Cost Control**

### **40. Bill of Quantities**

40.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

40.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

**41. Changes in the Quantities**

41.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.

41.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Procuring Entity.

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

**42. Variations**

42.1 All Variations shall be included in the updated Programmes produced by the Contractor.

**43. Payments for Variations**

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

43.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work is above the limit stated in Sub-Clause 41.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

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

43.4 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.

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



#### **44. Cash Flow Forecasts**

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

#### **45. Payment Certificates**

45.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

45.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor within twenty eight 28 days of receipt of the certificate from the contractor.

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

45.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.

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

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

45.7 The Project Manager shall not be bound to certify any payment, if the net amount, after all retentions and deductions would be less than minimum amount of Interim Payment Certificate stated in the **Contract Data Sheet**.

#### **46. Payments**

46.1 Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 90 days of the date of each certificate. If the Procuring Entity makes a late payment, the Contractor shall be paid interest on the late payment in the next payment Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made as indicated in the **Contract Data Sheet**.

46.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the

date upon which the increased amount would have been certified in the absence of dispute.

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

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

#### **47. Compensation Events**

47.1 The following shall be Compensation Events:

- (a) The Procuring Entity does not give access to a part of the Site by the Site Possession Date stated in the **Contract Data Sheet**.
- (b) The Procuring Entity modifies the Schedule of Other Contractors 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 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 Procuring Entity, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Procuring Entity 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 advance payment is delayed.

- (j) The effects on the Contractor of any of the Procuring Entity's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.
- (l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.

47.2 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.

47.3 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.

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

#### **48. Taxes**

48.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 50.

#### **49. Currencies**

49.1 Where payments are made in currencies other than the Kenya Shillings, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Tender.

#### **50. Price Adjustment**

50.1 The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 45.1, shall be adjusted in respect of the rise or fall in the cost of labour, Contractor's Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause based on the prevailing consumer price index obtained from the

Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya.

50.2 To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

50.3 The adjustment to be applied to amount payable to the Contractor as certified in Payment Certificates shall be determined formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be as follows;

$$P_n = a + b \frac{L_n - L_o}{L_o} + c \frac{M_n - M_o}{M_o} + d \frac{E_n - E_o}{E_o} + \text{etc.}$$

where;

**P<sub>n</sub>** is a price adjustment factor to be applied to the amount in each specific currency for the payment of the work carried out in the subject month, where such variations and day work are not otherwise subject to adjustment;

**a** is a constant, specified in the **Appendix to Tender**, representing the nonadjustable portion in contractual payments;

**b, c, d, etc.**, are weightings or coefficients representing the estimated proportion of each cost element (labour, materials, equipment usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the **Appendix to Tender**; the sum of a, b, c, d, etc., shall be one;

**L<sub>n</sub>, M<sub>n</sub>, E<sub>n</sub>, etc.**, are the current cost indices or reference prices of the cost elements in the specific currency of origin for month “**n**,” determined pursuant to Sub-Clause 50.5, applicable to each cost element; and

**L<sub>o</sub>, M<sub>o</sub>, E<sub>o</sub>, etc.**, are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 50.5

The value of net work done, certified by the Project Manager, in any monthly Interim or Final Certificate as payable by the Procuring Entity to the Contractor before deduction of any retention money shall be increased or decreased by an amount of 'F'.

$$F = Pn \times Pc$$

where;

The effective value **Pc** of work done which is to be subjected to increase or decrease shall be the difference between:

- (i) the amount which, in the opinion of the Project Manager, is due to the Contractor under Clause 45 (before deduction of retention money and before deducting sums previously paid on account) less:
  - any amount for payment or repayment of any advance payment;
  - any amount for materials on site (if any);
  - any amounts for nominated sub-contractors (if any)
  - any amounts for any other items based on actual cost or current prices; or
  - any sums for increase or decreases in the Contract Price paid under this Sub-Clauseand
- (ii) the amount calculated in accordance with (i) above of this Sub-clause and included in the last preceding statement.

50.4 The sources of indices shall be those listed in the **Appendix to Tender**, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor's proposed source of supply of inputs on the basis of which his Contract Price and expected foreign currency requirements shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his Tender the tabulation of Weightings and Source of Indices in the **Appendix to Tender**, which shall be subject to approval by the Engineer.

50.5 The base cost indices or prices shall be those prevailing on the day 28 days prior to the latest date for submission of Tenders. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.

50.6 If the Contractor fails to complete the Works within the time for completion prescribed under Clause 58 adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favourable to the Procuring Entity, provided that if an extension of time is granted pursuant to Clause 28, the above provision shall apply only to adjustments made after the expiry of such extension of time.

50.7 The weightings for each of the factors of cost given in the **Appendix to Tender** shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced, or inapplicable as a result of varied or additional work already executed or instructed under Clause 43 or for any other reason.

## **51. Retention**

51.1 The Procuring Entity shall retain from each payment due to the Contractor the proportion stated in the **Contract Data Sheet** until Completion of the whole of the Works.

51.2 On completion of the whole of the Works, half the total amount retained shall be paid to the Contractor and the other half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

51.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” Bank guarantee.

## **52. Liquidated Damages**

52.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the **Contract Data Sheet** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the **Contract Data Sheet**. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.

52.2 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 rates specified in Sub-Clause 46.1.

- 52.3 If the Contractor has not corrected a defects within the time specified in the Procuring Entity's notice, the Procuring Entity will assess the cost of having the defect corrected, the Contractor will pay this amount, and a penalty for lack of performance calculated as described in Clause 38.

### **53. Bonus**

- 53.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the **Contract Data Sheet** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

### **54. Advance Payment**

- 54.1 The Procuring Entity shall make advance payment to the Contractor of the amounts stated in the **Contract Data Sheet** by the date stated in the **Contract Data Sheet**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procuring Entity in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.
- 54.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 54.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

### **55. Performance Securities**

- 55.1 The Performance Security shall be provided to the Procuring Entity no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days

from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

- 56. Dayworks**
- 56.1 If applicable, the Dayworks rates in the Contractor's Tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 56.2 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.
- 56.3 The Contractor shall be paid for day works subject to obtaining signed Day works forms.
- 57. Cost of Repairs**
- 57.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost.

#### **E. Finishing the Contract**

- 58. Completion Certificate**
- 58.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.
- 59. Taking Over**
- 59.1 The Procuring Entity shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.
- 60. Final Account**
- 60.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- 61. Operating and Maintenance Manuals**
- 61.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **Contract Data Sheet**.



61.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **Contract Data Sheet**, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the **Contract Data Sheet** from payments due to the Contractor.

## **62. Termination**

62.1 The Procuring Entity or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

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

- (a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Project Manager;
- (b) The Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) The Procuring Entity or the Contractor is made 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 Procuring Entity to the Contractor within 84 days of the date of the Project Manager's certificate;
- (e) The Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) The Contractor does not maintain a Security, which is required; and
- (g) The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the **Contract Data Sheet**.
- (h) If the Contractor, in the judgment of the Procuring Entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph:

“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 contract execution and includes inter alia,

bribery and extortion or coercion which involves threats of injury to person ,property or reputation, and.

“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 Procuring Entity, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.

62.3 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 Sub-Clause 62.2 above, the Project Manager shall decide whether the breach is fundamental or not.

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

62.5 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.

### **63. Payment upon Termination**

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

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

### **64. Property**

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

### **65. Release from Performance**

65.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Procuring Entity or the Contractor, the Project Manager shall

certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

**66. Suspension of  
Financing**

- 66.1 In the event that the source of financing is suspended to the Procuring Entity, from which part of the payments to the Contractor are being made:
- (a) The Procuring Entity is obligated to notify the Contractor of such suspension within 7 days of having received the financing agency's suspension notice.
  - (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 46.1, the Contractor may immediately issue a 14-day termination notice.

**SECTION V: CONTRACT DATA SHEET (CDS)**

## 67. Contract Data Sheet

### Instructions for completing the Contract Data Sheet

CDS Clause	GCC Clause	Description
1	1.1	<p><b>A. General</b></p> <p><b>(Itemise Definitions to take the same numbering as per the General Conditions)</b></p> <p>The Procuring Entity is <b>Tana Water Works Development Agency</b>  <b>P.O. Box 1292 - 10100</b>  <b>Maji House,</b>  <b>Baden Powell Road,</b>  <b>NYERI.</b></p> <p>The Adjudicator is <b>Chairman, Institute of Engineers of Kenya</b></p> <p>The Defects Liability Period is <b>6 Months</b></p> <p>The Project Manager is <b>CHIEF MANAGER TECHNICAL SERVICES.</b></p> <p>The name and identification number of the Contract is. <b>DE-SLUDGING OF KIAGI WASTEWATER TREATMENT PROJECT</b>  <b>Contract No: TWWDA/T/013/2022 – 2023</b></p> <p>The Works consist of <b>De-Sludging of 1No.Primary Anaerobic Pond and 1No. Secondary Anaerobic Pond.</b></p> <p>The objectives of the contract is to <b>De-sludge Kiagi Wastewater Ponds.</b></p> <p>The Start Date shall be <b>14 Days on Issuance of Commencement Letter.</b></p> <p>The Intended Completion Date for the whole of the Works shall be <b>3 Months</b> from commencement.</p> <p>The following documents also form part of the Contract:</p>

		<ol style="list-style-type: none"> <li>1. Contact Agreement</li> <li>2. Letter of Acceptance</li> <li>3. Form of Tender</li> <li>4. Tender Data Sheet</li> <li>5. Contract Data Sheet</li> <li>6. Conditions of Contract</li> <li>7. Specifications</li> <li>8. Drawings</li> <li>9. Priced Bills of Quantities</li> </ol> <p>The Site is located in <b>Kiagi village, Karatina in Mathira East Sub County, Mathira Constituency of Nyeri County.</b></p>
<b>2.</b>	<b>2.2</b>	Indicate whether there is sectional completion: <b>N/A</b>
<b>3.</b>	<b>2.3(9)</b>	List other documents that form part of the contract if any: <b>See CDS Clause 1 above</b>
		<ol style="list-style-type: none"> <li>a) Pre-tender site visit minutes</li> <li>b) Pre-contract signing negotiations minutes</li> <li>c) Any addenda issued</li> </ol>
<b>4.</b>	<b>3.1</b>	The language of the Contract documents is <b>English</b> . The law that applies to the Contract is the <b>Kenyan Law</b> .
<b>5.</b>	<b>9.1</b>	Include the Schedule of Other Contractors, if any.
<b>6.</b>	<b>10.1</b>	<p>Include the Schedule of Key Personnel.</p> <ol style="list-style-type: none"> <li>a) A Project Manager with a minimum of 5 years' experience in works of an equivalent nature and volume.</li> <li>b) Site Agent with a minimum of 4 years' experience in works of an equivalent nature and volume</li> <li>c) Inspector of works with a minimum of 4 years' experience in works of an equivalent nature and volume</li> <li>d) Surveyor with a minimum of 4years' experience in works of an equivalent nature and volume</li> </ol>
<b>7.</b>	<b>14.1</b>	<p>The minimum insurance covers shall be:</p> <ol style="list-style-type: none"> <li>(a) loss of or damage to the Works, Plant, and Materials</li> <li>(b) loss of or damage to Equipment.</li> <li>(c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract and</li> <li>(d) personal injury or death.</li> </ol>

<b>8.</b>	<b>15.1</b>	Site Investigation Reports available to the Tenderers are: <b>N/A</b>
<b>9.</b>	<b>22.4</b>	<p>The other measures include:</p> <ul style="list-style-type: none"> <li>a. Minimising the number of migrant workers employed on the project and household in the site camp</li> <li>b. Providing access to voluntary counselling and testing (VCT)</li> <li>c. Providing psychological support and health care including prevention and treatment of opportunistic infections for workers infected and affected, as well as their families</li> <li>d. Providing condoms (male and female) to workers</li> <li>e. Provide hand washing Facility, Masks, sanitizers to workers and observe GOK Protocols on Covid -19</li> </ul>
<b>10.</b>	<b>24.1 &amp; 47.1</b>	The Site Possession Date shall be <b>within 14 days of issuance of Commencement letter.</b>

<b>12.</b>	<b>28.3</b>	Arbitration will take place at in accordance with rules and regulations published in Kenya in accordance with the provisions of the Arbitration Act of the Laws of Kenya or any other enactment replacing or modifying the same for the time being in force, by a single arbitrator appointed by the Chairman of the Engineer's Board of Kenya on application by either party
<b>13.</b>	<b>29.1</b>	Appointing Authority for the Adjudicator: <b>Chairman of the Engineer's Board of Kenya</b>
<b>B. Time Control</b>		
<b>14.</b>	<b>30.1</b>	The Contractor shall Submit a Programme for the Works within <b>14 days</b> of delivery of the Letter of Acceptance.
<b>15.</b>	<b>30.3</b>	The period between Programme updates is <b>28 days.</b>
<b>16.</b>	<b>30.3</b>	The amount to be withheld by the Project Manager in the case the contractor does not submit an updated programme is: <b>N/A.</b>
<b>C. Quality Control</b>		

17.	38.1	The Defects Liability Period is 6 <b>Months</b> .
<b>D. Cost Control</b>		
18.	45.7	Minimum Amount of Interim Payment Certificate will be <b>30% of the Contract Amount</b>
19.	46.1	The interest rate shall be <b>N/A</b> above prevailing interest rate for commercial borrowing from the contractor's bank
20.	47.1(a)	The Site Possession Date shall be 7 days <b>on signing of Contract Agreement</b>
21.	50	The contract is <b>not</b> subject to price adjustment.
22.	51.1	The amount of retention is <b>10%</b> of value of works of Interim Payment Certificate'.
		Limit of retention will be <b>10%</b> of contract price.
23.	52.1	The rate of liquidated damages is <b>0.15 %</b> of contract price per day
	52.1 62.2 (g)	The maximum amount of liquidated damages is <b>10% of Contract Price</b>
24.	53.1	The bonus for early completion is <b>N/A</b>
25.	54.1	The amount of advance payment shall be <b>N/A</b>
26.	55.1	The Performance Security shall be <b>10%</b> of the contract price.
<b>E. Finishing the Contract</b>		
27.	61.1	As built drawings: <b>N/A</b>
28.	61.2	The amount to be withheld by the Project Manager in the case the contractor does not submit as built drawings is: <b>N/A</b>  The amount to be withheld by the Project Manager in the case the contractor does not submit operating manual is: <b>N/A</b>
29.	63.1	The percentage to apply to the value of the work not completed, representing the Procuring Entity's additional cost for completing the Works, is <b>10%</b> .



## **SECTION VI: TECHNICAL SPECIFICATIONS**

## **TECHNICAL SPECIFICATIONS.**

### **1. GENERAL SPECIFICATIONS**

#### **1.1 Introduction**

These specifications cover the Desludging works as listed in the Bills of Quantities and shall be read in conjunction with the Contract Documents as listed in Volume I, Instructions to Tenderers.

All references given are intended solely for the convenience of those using the above documents and shall in no way exclude the application of the other clauses in the documents which may, in the opinion of the Engineer have any bearing on the point in question.

##### **1.1.1 Location**

The site for the proposed is **Kiagi village in Karatina, Mathira constituency, Mathira East Sub-county in Nyeri County.**

##### **1.1.2 Scope of Works**

The Works consist of **Desludging of 1No Primary Stabilisation Pond and 1 No Secondary Stabilisation Pond.**

#### **1.2 Extent of Contracts**

The works specified under this contract shall include all general works preparatory to the desludging works and materials and work of any kind necessary for the due and satisfactory completion and maintenance of the works to the intent and meaning of the specifications and instructions that may be issued by the Engineer from time to time whether specifically mentioned or not into the clauses of this specification.

#### **1.3 Precedence of Contract Documents**

Should the provisions of any clauses of any or all of the Contract Documents to be shown to be mutually at variance or exclusive, the following order of precedence shall be applied in order to establish which of the said provisions mutually at variance or exclusive, shall be deemed to be true and correct intent of the contract entered into by Employer, and the Contractor shall forthwith be absolved from any liability under the provisions not so proved to be the true and correct intent of the contract, provided that in the execution of the contract the Contractor has, or shall have complied with such true and correct intent.

- (i) Provision of the Standard or Special Specifications shall take precedence over those of the General Conditions of Contract.

- (ii) Provision of the Special Specifications shall take precedence over the Standard Specifications unless otherwise indicated.
- (iii) Details shown or noted on the Contract drawings shall take precedence over the requirements of both the Standard and the Special Specifications.
- (iv) Detailed Drawings shall take precedence over General Drawings.
- (v) Within the Standard Specifications, the provisions of any section particular to the provisions at variance shall take precedence over the General Section, and within any section clauses particular to the provisions at variance shall take precedence over those not so particular. The foregoing order of precedence shall apply also to sections and clauses of the Special Specifications.
- (vi) Where there is conflict in units of measurement quoted in Standard Specifications and units quoted in Bills of Quantities the units in latter will apply.

Notwithstanding any fore-written provisions, should the application of the foregoing order of precedence fail to resolve any variance or mutual exclusions as to the true and correct intent of the contract to the satisfaction of the Engineer, the Engineer may exercise the right to arbitrarily give a ruling as to the true and correct intention of the contract, and the Contractor shall have the right to claim additional payment for any additional expenses incurred by him as a consequence of such variance or exclusion and arbitrary ruling.

#### **1.4 Standards**

In the specifications, Bills of Quantities reference has been made to relevant British Standard Specifications and Codes of Practice- to which the materials and workmanship should comply with. However, the materials and workmanship complying with equivalent Kenya Bureau of Standards (KEBS) or International Standards Organization (I.S.O) standard for that particular material or workmanship will also be acceptable.

Mixture of different Standards in one trade will not be allowed. For instance, if pipes are to be provided to KEBS Standard, then all the pipes in the works are to be to KEBS Standard.

Where the dimension in one standard does not completely correspond to the dimension of the other standard which is being used for construction of works, ruling of the Engineer will be sought and any decision given by the Engineer will be final and binding upon the Contractor.

#### **1.5 Quality of Materials and Workmanship**

The materials and workmanship shall be of the best of their respective kinds and shall be to the approval of the Engineer. In reading of these Specifications, the words "to the approval of the Engineer" shall be deemed to be included in the

description of all materials incorporated in the works, whether manufactured or natural, and in the description of all operations for the due execution of the works.

No materials of any description shall be used without prior approval by the Engineer and any condemned as unfit for use in the works shall be removed immediately from the site, and without recompense to, the Contractor. All works or parts thereof shall be in accordance with the latest edition of either Kenya Bureau of Standards (KEBS) Specification or British Standard (B.S) Specifications and British Codes of Practices (C.P) as published by British Standard Institution.

All materials shall be of approved manufacture and origin and the best quality of their respective kind, equal to sample and delivered on to the site a sufficient period before they are required to be used in the works to enable the Engineer to take such samples as he may require for testing or approval, and the Contractor shall furnish any information required by the Engineer as to the quality, weight, strength, description, etc. of the materials. No materials of any description shall be used without prior approval by the Engineer and any condemned as unfit for use in the works shall be removed immediately from the site by, and without recompense to, the Contractor.

#### **1.6 Trade Names**

Trade Names and Catalogue References are given solely as the guide to the quality and alternative manufacturers of the materials or goods of equivalent quality will be accepted at the discretion of the Engineer.

#### **1.7 Samples**

All material delivered to the site or intended for the works not equal or better than the samples approved by the Engineer shall be removed and replaced at the Contractor's expense.

#### **1.8 Testing**

As provided in Clause 36 of the Conditions of Contract and in accordance with the Specification quoted for any material used on works of this contract, tests may be called upon by the Engineer to be carried out at the place of manufacture or on the site. The Contractor may assume that the tests will be required on soils, workmanship, and materials whether natural or manufactured to verify their compliance with the specifications. Samples of all such materials and manufactured articles together with all necessary labour, materials, plant and apparatus for sampling and for carrying out of the tests shall be supplied by the Contractor at his own expense.

The Contractor will be reimbursed receipted cost of testing carried out by the laboratory as the work progresses.

## **1.9 Programme for the Execution of Works**

- (i) In accordance with Clause 14 of the Conditions of Contract, the Contractor upon receiving Engineer's order to commence shall within 7 days draw up a working programme setting out order in which the works are to be carried out with appropriate dates thereof together with delivery dates for materials. The Contractor shall together with his work programme supply an expenditure chart showing monthly anticipated expenditure.
- (ii) The programme shall be deemed to have taken into account normal variations in climatic conditions to provide for completion of the works in the order and within the times specified therein.
- (iii) The order in which it is proposed to execute the permanent works shall be subject to adjustment and approval by the Engineer, and Contractor's price shall be held to include for any reasonable and necessary adjustment required by the Engineer during the course of the works.
- (iv) The Contractor shall carry out the contract in accordance with the programme agreed with the Engineer, but he shall in no manner be relieved by the Engineer's approval of the programme of his obligations to complete the works in the prescribed order and by the prescribed completion date and he shall from time to time review his progress and make such amendments to his rate or executions of the works as may be necessary to fulfil these obligations.
- (v) Once the proposed programme is approved by the Engineer, the Contractor shall not depart from the programme without the written consent of the Engineer. In the event of unforeseen difficulties or disturbances arising, which forces the Contractor to depart from the approved programme of works, he shall advise the Engineer in writing of such occurrences without delay and submit proposals for any necessary remedial measures, for which he shall obtain the Engineer's approval before putting such measures into effect.
- (vi) The Contractor shall furnish the Engineer with a monthly statement of all works done on the contract and of all materials on site.

## **1.10 Substantial (Practical) Completion**

Substantial or Practical Completion of Works is to be understood as a state of completion, which leaves out only minor outstanding items that can be readily completed within a period of less than 1 month without interfering with the normal operation of the works.

The works will not be considered as substantially or practically completed without the works being capable of being used by the Employer in accordance with the purpose of the works. This means amongst other things and where relevant, that all final tests have been carried out and clearance of the site upon

completion of the works has been carried out, all to the satisfaction of the Engineer.

#### **1.11 Nominated Sub-Contractors and Nominated Supplies**

The Contractor shall be responsible for Nominated Sub-Contractor in responsibility to ensure that each Sub-Contractor commences and completes the work in a manner so as to conform with the working programme, as specified above.

It is also the responsibility of the Contractor to ensure a satisfactory progress of the works and to ensure that the works are completed to a standard satisfactory to the Engineer.

The Contractor shall accept liability for and bear the cost of General and Specific Attendance on Nominated Sub-Contractors which shall be deemed to include for:-

- (i) Providing equipment and labour for unloading and hoisting Sub-Contractor's materials.
- (ii) Providing space for office accommodation, and for storage of plant and materials; allowing use of sanitary accommodation; the supply of all necessary water, power, lighting and watching and clearing away all rubbish.
- (iii) Carting away for and making good after the work of Sub-Contractors as may be required will be measured and valued separately in the Bills of Quantities.

Before placing any orders with nominated Sub-Contractors or nominated Suppliers, the Contractor should enter into an agreement with the nominated Sub-Contractor/nominated Suppliers to ensure that the Conditions and delivery of materials to site comply with the conditions of contract and the working programme.

Particular clause should be inserted in the agreement with the nominated Suppliers ensuring the validity of the rates for the supply of materials as per the delivery schedule.

Nominated Suppliers who are unable to meet the delivery schedule will not be given allowance for any increases in prices incurred after the delivery time agreed in the delivery schedule.

#### **1.12 Entry upon Land, Working Site and Adjoining Lands**

The Employer shall provide land, right of ways and way leaves for work specified in the contract.

If nothing else is mentioned, the Contractor will be allotted for execution of the works only the actual area as necessary for the extent of the construction.

The Contractor shall give notice to the Engineer at least 14 days before he wishes to enter onto the land required to carry out the Contract.

The Contractor shall not enter onto any land or commence any operations until such time as he receives formal confirmation from the Engineer that all necessary compensation formalities have been completed and that permission has been obtained from the landowner to enter the land and commence operations. Should the Contractor enter onto any land or commence operations without first obtaining this confirmation, he shall be liable in whole or in part, at the sole discretion of the Engineer, for all additional costs and/or legal charges which might arise therefore.

The Contractor shall on his own accord obtain rights of admission, and Right of using all other areas which are necessary for storing and manufacturing, or for setting up site offices and Resident Engineer's office or whatsoever will be necessary.

No separate payment will be made to the Contractor on account of these items and the Contractor must make due allowance for them in his rates.

The Contractor shall take care to prevent injury, damage and trespass on lands, fences and other properties near and adjacent to the works and must in this connection make all necessary arrangements with adjoining landowners, or into the case of Government Property with officers appointed for this purpose, and ensure the Workmen's observance of all Government rules and Ordinances regarding game protection and other matters and provide, maintain and clear away on completion of the Works, all temporary fencing which may be required for execution of the works.

Before completion of the works, the Contractor must make good or compensate any such injury, damage or trespass on Lands, fences and other properties which have no otherwise been provided for in the Contract.

### **1.13 Preservation of Survey Beacons**

Ordinance Survey Beacons, Bench marks, etc., or around the site of the works shall not be disturbed unless permission has been obtained by the Engineer from the Survey of Kenya.

In the event of unauthorized disturbance of such beacons, bench marks etc., in the course of the works being carried out, the Contractor shall be responsible for reporting same to the Engineer and the Survey of Kenya, and for payment of any fees due to said Survey of Kenya for replacement of such disturbed

beacons, bench marks, etc. The Contractor shall not replace such disturbed beacons bench marks, etc. on his own accord.

#### **1.14 Land for Camp Site**

The Employer shall make available free of charge to the Contractor all land on under or through which the works other than Temporary Works are to be executed or carried out all as indicated in the Drawings or as detailed in the Specifications. Such land shall exclude land for Resident Engineer's offices and land required by the Contractor for his own camps, offices, houses, temporary works or any other purpose.

#### **1.15 Existing Services**

Drains, pipes, cables and similar services encountered in the course of the Works shall be guarded from damage by the Contractor at his own cost to safeguard a continued uninterrupted use to the satisfaction of the owners thereof, and the Contractor shall not store materials or otherwise occupy any part of the site in the manner likely to hinder the operation of such services.

The Contractor shall on the Engineer's direction arrange for the construction of permanent or temporary diversions of the said drains etc. together with their reinstatement in liaison with the respective Departments, Bodies, Corporations or Authorities. The cost of such works or diversions including reinstatement shall be charged against the appropriate provision sum provided into the Bills of Quantities. The Contractor shall be at liberty, subject to the approval of the works, bear the cost of reinstatement of addition diversion. No services may be tampered with by the Contractor and all works in connection with any kind of services shall be carried out by their respective owners.

It is the responsibility of the contractor to inform the Engineer immediately any existing service is exposed.

#### **1.16 Damage to Services**

The Contractor shall be held liable for all damage and interference to mains and pipes, to electric cables or lines of any kind either above or below ground caused by him or his Sub-contractors in execution of the Works, whether such services are located on the Contractor's Drawings or not. The contractor must make good or report to the appropriate authorities the same without delay and do any further work considered by the Engineer or owner. The Contractor shall provide for these contingencies in the rates inserted in the Bills of Quantities.

#### **1.17 Temporary Roads and Traffic Control**

The contractor shall provide and maintain all temporary roads, bridges and other works as required.

#### **1.18 Road Closure**



Where a road used by the Contractor for delivery of any materials used in the works is closed under Section 71 of the Traffic Ordinance Act 1962 or amendments thereto, the contractor shall obey such closure order and use alternative roads.

#### **1.19 Weather Conditions**

The Contractor shall be deemed to take into account all possible weather conditions when preparing his tender and he shall not be entitled for extra payment by the reason of the occurrence or effect of high winds, excessive rainfall, temperature or any other meteorological phenomena.

#### **1.20 Protection from Weather**

All materials shall be stored on site in a manner approved by the Engineer and the Contractor shall carefully protect from the weather all works and materials which may be affected thereby.

No separate payment will be made for this and Contractor will allow in his rate for this.

#### **1.21 Liaison with Police, etc.**

The Contractor shall keep himself in close contact with the Police, Labour Officers and other officials in the areas concerned regarding their requirements in the control of workmen, passage through townships, or other matters and shall provide all assistance and/or facilities which may be required by such officials in execution of their duties in connection with the works. Any instruction given by the traffic police concerning fencing off of trenches or other excavations must be followed explicitly.

#### **1.22 Provision of Water**

The Contractor shall provide water for use in the Works. He shall supply all hydrants, hose, vessels and appliances necessary for the distribution there-of and shall provide pumps, tanks, carts, vessels and appliances, transport and labour when and where-ever it is necessary for water to be carted for use at the works. All water used in connection with the works shall if possible be obtained from a public water supply and the Contractor shall make all necessary arrangements and pay all the charges for connection to main and for water used.

#### **1.23 Temporary Lighting**

The Contractor shall provide all artificial lighting and power for use on the works, including all sub-contractors and specialists requirements and including all temporary connections, wiring, fittings, etc., and clear away on completion. The contractor shall pay all fees and charges and obtain all permits in connections there with.

### **1.27 Sanitation**

The medical Officer of health or other Sanitary Authority shall be informed when Works are contemplated and when works are about to commence.

The site shall be kept in a clean and proper sanitary condition. No nuisance shall be committed on or around work, and latrines for the workmen and staff shall be provided in accordance with the requirements of the medical officer or Sanitary Authorities. The Contractor shall be responsible for the sanitary discipline of his labour.

The Engineer's representative has the right to order, who in the opinion of the Engineer's representative does not have a satisfactory sanitary discipline, off the site with immediate effect. The Contractor shall make sure that his personnel working on the site are medically fit, and he shall bear the cost of any medical test required to determine that his personnel are free from infectious diseases.

The Contractor shall follow the safety rules set down by the Factories Inspectorate, Ministry of Labour.

### **1.28 Medical Facilities**

Contractors attention is drawn to Legal Notice No. 79 of 22<sup>nd</sup> September 1978 by which it is mandatory that every Contractor employing more than twenty people should appoint (in writing) a safety supervisor. A safety supervisor advise the management on all matters regarding safety, hygiene and welfare of the people affected by the Contractor's undertaking on the site. The safety officer may in addition carry out other duties. The contractor shall provide adequate first-aid equipment on the site and ensure that at least two of his site staff are completely trained in first aid.

### **1.29 Signboards**

The contractor shall erect signboards as shown on the drawing in prominent positions adjacent to the works to the satisfaction of the Engineer. The location of the signboards shall be specified by the Resident Engineer.

### **1.30 Setting Out and Survey Equipment**

The Contractor must before commencing any construction works, make sure that levels shown on the drawings correspond with levels found on the site.

Should any discrepancy be discovered between the level shown on the drawings and those found on the site, which may affect the level and dimensions of any part of the works, the Contractor shall notify the Engineer, who if necessary, will issue drawings showing the amended level and dimensions.

The Contractor shall allow for in his rates, the cost of the necessary qualified and experienced staff to set out the works and during the continuance of the Contract for the sole use of the Engineer, provide approved new and accurate instruments together with all other requisites, all necessary chainmen and other attendance and transport required for setting out and checking the works or purpose in connection therewith.

The major requirements are as minimum but not limited to following:

<u>Description</u>	<u>No.</u>
(a) 2 m ranging rods	6
(b) Modern Universal Theodolite and Tripod	1
(c) Automatic level and Tripod	1
(d) 4 level staff with levelling bubble	2
(e) 100 m steel tape	2
(f) 50 m steel tape	2
(g) 3 m pocket tapes	3

The contractor shall clear the site and set out the Works well in advance to enable the Engineer to inspect and approve the setting out prior to commencement of the Works. The Contractor shall amend at his own cost any error due to inaccurate setting out.

Any checking or approval by the Engineer of the setting out, bench marks, plans or schedule will not relieve the Contractor of his responsibilities under the Contract. The Contractor shall provide plan showing the position of his site offices, storage, sheds, accommodation, Engineer's Representatives office etc., to the permanent works for the approval of the Engineer before commencing erection of his camp.

### **1.31 Backfilling of Holes and trenches**

The Contractor shall immediately upon approval of any work at his own expense and to the satisfaction of the Engineer backfill all holes trenching and temporary quarries which have been made (except permanent borrow pits), level all moulds or heaps of earth that may have been raised or made and clear away all rubbish caused by the execution of the work. The Contractor shall bear and pay all costs charges damages and expenses of any kind whatsoever which may occur by reason of holes and trenches connected with the works or materials, tools or plant being left or placed in improper situation.

### **1.32 Inspection of Works**

No part of the works shall be built in or covered over until it has been inspected and approved by the Engineer and the Contractor must give due notice in writing to the Engineer's representative when any part of the works are ready for inspection.

### **1.33 Cleaning Up of Site**

Before final acceptance upon the completion of the Works, the Contractor shall, at his own expenses, remove and dispose of all rubbish and remove all equipment, surplus materials camp and buildings, which the contractor has provided, and temporary works ordered by the Engineer and shall leave the Site absolutely clear thereof and in good order and condition to the entire satisfaction of the Engineer.

### **1.34 Contractor's Superintendence**

The Contractor shall give or provide all necessary superintendence during the execution of the works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor or his competent and authorized Agent or representative approved in writing by the Engineer (which approval may at any time be withdrawn) is to be constantly on the works and shall give his while time to the superintendence of the same. If such approval shall be withdrawn by the Engineer, the Contractor shall after receiving written notice or such withdrawal, remove the Agent from the Site within the time stated in the notice and shall replace him by another Agent approved by the Engineer.

### **1.35 Transport of Workmen**

The Contractor shall include in his rates for all transport of staff and workmen to and from and in connection with the various parts of the works, and all costs incurred in recruiting and transporting labour to the site, where such labour is from outlying areas and costs of returning labour on termination of the contract.

### **1.36 Normal Working Hours**

The contractor shall inform the Engineer in writing, at the time of submitting the work programme, the normal working hours. The Contractor shall respect all Public Holidays. Where the Contractor wishes to work outside these hours, he shall request the Engineer in writing at least 24 hours in advance for consideration.

### **1.37 Transport, Travelling and Leave**

In his rates, the contractor shall allow for and be responsible for all charges which may arise out of the transport to the site of materials, plant or equipment from any source, all applicable customs duties, all licences or other costs whatsoever together with all handling, packing and insurances. The prices shall also include all charges arising out of the provision of transport to the site of staff and labour from any source and shall include all costs in respect of fares, insurances, customs, medical or other fees, subsistence, leave and all other matters.

### **1.38 Compliance with Statutes and Local Regulations**

In addition to requirements of Clause 26 of the Conditions of Contract, the Contractor shall be responsible for acquainting himself with all current valid Statute Ordinance or Bye-Laws or Regulations provided in the Bills of Quantities. This applies to training Levy and other similar taxes for which no claims on the part of the Contractor other than the one inserted in the Bills of Quantities will be allowed.

### **1.39 Accommodation for Workmen**

The Contractor shall provide and maintain suitable shelters and mess facilities for his workmen and supervisory staff. The facilities shall be of sufficient size and to a standard considered satisfactory by the Engineer. The Contractor shall throughout the contract provide an adequate supply of potable water for the workmen.

#### **1.40 Storage Space and Sheds**

Suitable temporary stores and workshop shall be erected and later removed on completion of the works. All building shall be adequate for protection of the equipment or materials to be kept there-in and shall be constructed and located to the satisfaction of the Engineer

#### **1.41 Office for the Contractor**

The Contractor shall erect an office near the works on the site to be kept open at all hours during which the work is in progress.

Any notice to be given to or served upon the Contractor shall be deemed and taken to be effectively given or served upon by the delivery there-of at such office on the Site.

#### **1.42 Office for the Engineer's Representative**

The contractor shall if required by special specification rent and maintain offices, laboratories, survey and laboratory equipment and furniture for the Engineer and his staff.

#### **1.46 Housing for the Engineers Staff**

The employer shall provide housing for Engineers Staff

#### **1.47 Insurance**

All buildings, furniture and equipment provided by the Contractor for the Engineer's representative shall be insured by the Contractor against loss or damage by accident, fire, theft and other risks ordinarily insured against for the duration of the contract. The theft shall include personal belongings of the tenants in the Resident Engineer's staff houses.

#### **1.48 Transport for Engineer's Representative**

The Employer shall provide transport for the Engineer's Representative.

#### **1.49 Removal of Camps**

On the completion of the contract, the contractor shall, if so requested take down and remove all structures connected with his camp and shall take up all pipes, drains and culverts, backfill trenches, fill up all latrine pits, soak ways and other sewage disposal excavations and shall restore the site as far as practicable to its origin condition and leave it neat and tidy to the satisfaction of the Engineer.

#### **1.50 Site Meetings**

Site meetings will normally be held monthly, but will be called for wherever the progress of works so require or when demanded by the Engineer.

The Contractor shall at all meetings be represented by a responsible representative other than the site Agent, who has the powers to commit the Contractor in all matters concerning the Contract.

In the event, no responsible representative of the Contractor is present at the meetings, any decision taken by the Engineer at the meeting will be binding upon the Contractor.

### **2. SITE PREPARATION**

#### **2.1 Fence removal and reinstatement after works.**

The contractor shall unless otherwise directed remove the fence, crops and vegetation and other vegetable growth and grub up all roots, take down all huts, buildings and any other obstruction except services mentioned in Clause 2.13 and handle and transport salvaged usable materials, to a site approved by the Engineer. All salvaged and usable materials are the property of the respective owners. The clearing and demolition here-in described shall be carried out to a width of the minimum excavation plus 1.50 m on either side.

With exception of the salvaged material fore-mentioned, the Contractor shall maintain and preserve the fence for later reinstatement or otherwise remove the whole of the rubbish from the site to an approved tip or number of tips provided by him and as directed by the Engineer.

Trees shall be cut down to as near the ground level as possible and the rate entered in the Bill of Quantities shall include for cutting down, removing branches and foliage, cutting into suitable lengths, grubbing up stumps and roots, stacking up, burning or disposing off as directed.

Before commencing any site clearance, general clearance, clearance of pipelines etc., the contractor shall inform the Engineer's Representative of his intention.

The Engineer's Representative will by visiting the section of works concerned, determine the extent of the clearance expressly required.

Payment for clearance for site preparation will be authorized on the basis of what is expressly required and at the discretion of the Engineer's Representative.

## **2.2 Damage to Land, etc.**

Except where necessary for the proper execution of the Works, the Contractor shall not interfere with any fence, hedge, trees, land or crop forming the boundary of the site, or elsewhere. In the event of any interference, the Contractor shall make good any damage to such fence, hedges, trees, land or crop to the satisfaction of the Engineer and the owner thereof.

Where the work is to be executed in private land, the Employer will be responsible for negotiating and obtaining rights of way and the serving of all notices as may be required upon the owners and/or occupiers of the land and it shall be the obligation of the Contractor to keep the Employer and the Engineer fully informed concerning the rate of progress and of his intention to enter and begin work with any way leave as provided for under the Conditions of Contract and required by this Specification.

## **2.3 Clearing the Site on Completion**

On completion of the Work, the Contractor shall clear the Site of all plant, building, spoils, dumps, rubbish, etc. and leave the Site to the satisfaction of the Employer.

Borrow pits and temporary quarries shall be made good and covered with vegetable soil. Dumps for waste materials shall be covered with at least 0.5 m of soil of which at least a 0.1m layer in top shall be vegetable soil.

# **3. EARTHWORKS.**

## **3.1 General**

Excavation shall be made to such lengths, depths and inclinations as may be necessary for the works or as shown on the drawings or as the Engineer may direct.

## **3.2 Definitions of Materials**

For the purpose of these specifications, materials of earthworks are defined as follows:

- (a) **Rock:** Solid mass of mineral material, exceeding 0.25 m cubic metres in volume, such hardness and texture that it cannot be broken down with a hand-drifting pick.



- (b) **Common Material:** All earth materials which do not meet the common requirement of rock as defined in "Rock" above.

### **3.3 Classification of Excavation**

The Engineer or his representative and the Contractor or his representative shall be present during classification of materials.

Where the terms "Rock excavation" and "Common excavation" or "Excavation" are used in these specifications the following definitions shall apply.

#### **3.3.1 Rock Excavation**

Rock excavation includes all solid rock in place which cannot be removed until loosed by blasting, barring, wedging, and all boulders or detached pieces of solid rock more than 0.25 cubic metres in volume. Solid rock under this class, is defined as sound rock of such hardness and texture that it cannot be loosened or broken down by hand-drifting picks

All materials containing more than 50 per cent by volume of boulders exceeding 0.25 cubic metre in volume shall be classified as rock excavation.

#### **3.3.2 Common Excavation**

Common excavation includes all material other than rock excavation including, but not restricted to earth, gravel, and also such hard and soft or disintegrated rock together with all boulders or detached pieces of solid rock not exceeding 0.5 cubic metre in volume.

### **3.4 Stripping of Topsoil**

#### **3.4.1 Stripping**

Stripping shall consist of removing transporting and disposing of topsoil, stumps, roots buried logs, debris humus and similar objectionable matter.

Areas to be stripped are all areas required for permanent constructional works, borrow-pits and embankment fills.

The limits of stripping shall extend 2 metres beyond the limits of excavation or toes of fills. The depth of stripping shall normally be 0.2m, but deeper stripping might be needed to remove stumps

#### **3.4.2 Disposal**

Materials from stripping suitable as topsoil shall be spread in approved areas. All other non-combustible materials shall be buried in approved disposal area, covered with minimum of 0.5 m of excavation spoil. These disposal areas shall be left with neatly graded surfaces and stable slopes that assure drainage.

Alternatively, the non-combustible material shall be removed from the area by the Contractor.

### **3.5 Excavations**

#### **3.5.1 Excavation in sludge drying beds**

All open cut excavation shall be performed in accordance with this section to the lines, grades and dimensions as directed by the Engineer. The Engineer reserves his right to at any time during the progress of the work to vary the slopes or dimensions of the excavation from those previously specified and in accordance to As-built levels and slopes provided in the drawings and as directed by the Engineer.

All necessary precautions shall be taken to preserve the material below and beyond the lines of all excavation in the soundest possible condition. Any damage to the work due to the Contractor's operations, including shattering of the material beyond the required excavation lines, shall be repaired at the expense of and by the Contractor. Any and all excess excavation for the convenience of the Contractor for any purpose or reason, except as may be ordered in writing by the Engineer and whether or not due to the fault of the contractor shall be at the expense of the Contractor. Where required to complete the work, all such excess excavation and over-excavation shall be filled with compacted concrete Grade concrete 10 furnished and placed at the expenses of and by the Contractor.

If excavations are carried out in roads, footpaths, separators or within 5m of buildings, the contractor is requested to execute the work in a way that will minimise damage and disturbances. In general vertically sided excavation will be required in such places and the necessary timbering or other support must be provided. The Undercutting of excavation sides will not be permitted.

The Engineer reserves his right to direct the contractor as to the length of trenches or parts of bulk excavations which shall be opened up at any one time. In case of excavations in roads, and in other cases which in the opinion of the Engineer are likely to cause interference to the public, the Contractor shall organize his operations in such a way as to reduce to a minimum the interval between opening up and Backfilling the excavations.

No permanent work shall commence until the Engineer has inspected and approved the excavation.

#### **3.5.2 Excavation in Sludge lagoons**

The Sludge lagoons shall be drained off excess water to enable excavation works to commence. The Contractor shall employ an Excavator machine to remove excess material in the lagoons to the satisfaction and as directed by the Engineer as per the As-built drawings provided.

##### **Mechanical Excavation**

- (a) A mechanical excavator shall be employed only if the sub-

Soil is suitable and will allow timbering of trenches or other excavations to be kept sufficiently closed up to ensure that no slips fall or disturbance of the ground takes place or there are no pipes, cables, mains or other services or property which may be disturbed or damaged by its use.

- (b) When mechanical excavators are used, a sufficient depth of materials shall be left over the bottom of the excavation to ensure that the ground at finished excavation level is not damaged or disturbed in any way. The excavations shall then be completed by hand to the finished levels required to the satisfaction of the Engineer according to the As-built drawings.

### **3.5.3. Excavation to be kept Free from Water**

Where excavations are required below the existing water level, the Contractor shall make arrangements to keep the excavation dry and shall produce drawings and written explanations of the method to be used to enable the Engineer to determine the adequacy of the method, before commencing the excavation.

The Contractor shall give due regard to the possibility of floods and provide all pumps, timbering, coffer dams, sheet piling and other equipment necessary for keeping the excavations free from water.

Every precaution shall be taken not to diminish the bearing capacity of the soil below foundation. Well points or pump pits are to be outside the foundation area to prevent flows in upward direction.

All sumps and drains are to be filled in or otherwise made good as directed by the Engineer on completion of the relevant part of the works.

The costs of all the above precautions shall be allowed for in the rates inserted in the Bills of Quantities.

### **3.5.4 Reinstatement of Surfaces**

Generally all trenches and backfilled excavations shall be reinstated to equal surface as before excavation.

Trenches in any existing road shall be refilled to the level of natural soil below the road with sub-soil in 75mm layers, each layer being carefully tamped with hammers. The remaining top layer shall be filled to the road surface with materials equal in type, quantity and compaction to materials used for the existing road.

The trench shall then be left to settle for 30 days. At the expiration of this period, the surface shall be made up to level and tamped or rolled to the approval of the Engineer, who will decide on the particular surfacing employed in accordance with the existing surface of the road.

Before expiration of the maintenance period, the Contractor shall make good any defaults in reinstatements.

### **3.5.5 Removal of Surplus Excavated**

Excavated material, which is not added either for backfilling trenches or other excavations or use in embankments or otherwise, shall be removed and disposed-off to tipping places obtained by the Contractor. All rubbish and waste material shall similarly be removed by the Contractor. All surplus excavated material especially with the sludge lagoons shall be spread and levelled in the tipping places in accordance with such directions as the Engineer may give, and the Contractor's rate for disposal shall include for the costs of such operations.

The contractor shall take every practical precaution against causing any nuisance, damage, injury or inconvenience in handling stacking, carting or disposal of excavated materials or any other operations matter or thing in connection therewith.

No excavated material shall be placed in any position here it may be washed away or may be liable to fall or spread into any private property or across a road or footpath, should such occur, the Contractor shall forthwith remove the same at his own costs.

Should the Engineer direct the Contractor to tip surplus excavated materials in a particular place (other than the tipping places obtained by the Contractor) the Contractor shall abide by such instruction and shall make no charge in consequence thereof unless the place specified entails a longer haul (more than 10Km from site sludge drying bed) than what would be incurred by tipping at the place or places obtained by the Contractor.

Where excavation lines are not shown on the drawings, the excavation will be measured to the most practicable lines, grades, and dimensions as directed by the Engineer.

In the case of bulk excavations, the Contractor shall unless otherwise directed by the Engineer prior to the commencement of any excavation prepare grid plans of the various sites showing the existing ground levels at intervals of not more than 10m. For any particular part of excavation the mean ground level shall be determined from the above aforesaid grid plan and the depth shall be calculated from the above mean ground level.

Pipe trenches are measured in linear metres as one item for each pipe size with a minimum width and depth as indicated on the drawings. Extra excavation for deeper trenches will be measured on cubic metres and paid for where ordered by the Engineer.

Rates for excavation shall include for all labour, equipment; preparation of bottoms for receiving concrete or granular soul beds; for forming joint holes

where applicable, for preserving surfaces of excavation; for returning excavated material as rammed backfill and for carting away surplus to dump.

Rate for excavation shall also include for working in a manner that causes no interference with the stability of adjacent structure and properties, for the cost of all timber or other support left in place unless ordered or approved to be left in place by the Engineer; for ground stabilization by means of de-watering, chemical processed or other approved method whether effected by floods, storms or otherwise for the provision and sealing of temporary channels, drains and dumps; ;for temporarily storing excavated materials required for backfill or other purposes; for temporarily supporting, protecting, diverting, maintaining utility services; for maintaining flows in sewers and water found necessary for the proper execution and safety of the works.

Further, the rates in the Bills of Quantities for excavation in open cut shall include the entire cost of:

- (a) Transportation of material from the excavation to points Of final use, to disposal areas, to temporary stockpiles and from temporarily stockpiles to points of final use within 10Km from the site as directed by the Engineer.
- (b) Rehandling excavated materials which have been deposited temporarily in stockpiles.
- (c) Removal of oversize materials from otherwise suitable material disposal for the same.

No extra payment shall be made to the Contractor for working in confined space or if the position of the works as set out or ordered will not allow the use of mechanical excavators.

50% of the rate for excavation, backfilling and disposal of surplus material will become due for payment when trenches have been backfilled to a dept of 150mm over the pipe barrel. Excavation for structure foundations will be authorized for payment of 50% of the rate, when the excavation has been approved and the surface blinded.

All other horizontal surfaces shall have the same surface finish except for the final trowelling with steel trowel.

#### **4 Auxiliary Works**

##### **(a) Repair of worn out slopes to lagoons**

The contractor shall repair the worn out/ damaged sections of the slopes to lagoons and adjoin with cement mortar (ration 1:3, cement sand) the precast pavement blocks to the satisfaction of the Engineer.

##### **(b) Repair of security lights**

The Contractor shall repair the compounds security lights as directed by the Engineer to satisfaction.

##### **(c) Reinstatement of Pavements**

The Contractor shall repair the access roads to motorable conditions within the compound as directed and to satisfaction of the Engineer.

## SECTION IX: TENDER FORMS

### A. Form of Tender

[date]

To: [name and address of Procuring Entity]

We offer to execute the [name and identification number of contract] in accordance with the Conditions of Contract accompanying this Tender for the Contract Price of [amount in numbers], [amount in words] [name of currency].

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one foreign equals [insert local]	Inputs for which foreign currency is required
(a)			
(b)			

The advance payment required is:-

Amount	Currency
(a)	
(b)	

We accept the appointment of [name proposed in Tender Data Sheet] as the adjudicator.

or

We do not accept the appointment of [name proposed in Tender Data Sheet] as the Adjudicator, and propose instead that [name] be appointed as Adjudicator, whose daily fees and biographical data are attached.

We are not participating, as Tenders, in more than one Tender in this Tendering process other than alternative Tenders in accordance with the Tendering documents.

Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the contract has not been declared ineligible by the Kenya Government under Kenya's laws or any other official regulations.

This Tender and your written acceptance of it shall constitute a binding Contract between us.

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

We hereby confirm that this Tender complies with the Tender validity and Tender Security required by the Tendering documents and specified in the Tender Data Sheet.

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

Name and Title of Signatory: \_\_\_\_\_

Name of Tenderer: \_\_\_\_\_

Address: \_\_\_\_\_



## **B. Tender-Securing Declaration**

Date: *[insert **date** (as day, month and year)]*

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

Alternative No.: *[insert **identification No if this is a Tender for an alternative**]*  
To: *[insert **complete name of Procuring Entity**]*

We, the undersigned, declare that:

We understand that, according to your conditions, Tenders must be supported by a Tender-Securing Declaration.

We accept that we will automatically be suspended from being eligible for Tendering in any contract with the Procuring Entity 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 Tender conditions, because we;

- a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- b) Having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender 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 ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of;

- 1) Our receipt of your notification to us of the name of the successful Tenderer; or
- 2) Thirty days after the expiration of our Tender.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Tender Securing Declaration]*

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

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert **date of signing**]*

Corporate Seal (where appropriate)

### C. Confidential Business Questionnaire

- 1 **Individual Tenderer or Individual Members of joint Ventures**
- 1.1 Constitution or legal status of Tenderer: *[attach copy]*
- Place of registration: *[insert]*
- Principal place of business: *[insert]*
- Power of attorney of signatory of Tender: *[attach]*
- Registration certificate *[attach]* current Business License *[attach]*
- 1.2 Total annual volume of construction work performed in two years, in Kenyan shillings as specified in the Tender Data Sheet; *[insert]*
- 1.3 Work performed as prime Contractor on works of a similar nature and volume over the last two years or as specified in the Tender Data Sheet in Kenyan Shillings. Also list details of work under way or committed, including expected completion dates.

Project name and country	Name of client and contact person	Contractors Participation	Type of work performed and year of completion	Value of contract
(a)				
(b)				

- 1.4 Major items of Contractor's Equipment proposed for carrying out the works. List all information requested below. Refer also to sub-Clause 12.3 of the Instructions to Tenderers.

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?)
(a)			
(b)			
(c)			
(d)			

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to sub-Clause 12.3 of the Instructions to Tenderers and Sub- Clause 10.1 of the General Conditions of Contract.

<b>Position</b>	<b>Name</b>	<b>Years of Experience (general)</b>	<b>Years of experience in proposed position</b>
(a)			
(b)			

- 1.6 Proposed sub-contractor and firms involved. Refer to Clause 7 of General Conditions of Contract.

<b>Sections of the Works</b>	<b>Value of subcontract</b>	<b>Subcontractor (name and address)</b>	<b>Experience in similar work</b>
(a)			
(b)			

- 1.7 Financial reports for the number of years specified in the Tender Data Sheet.
- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents.
- 1.9 Name, address, and telephone, e-mail address, and facsimile numbers of banks that may provide references if contracted by the Procuring Entity.
- 1.10 Information on current litigation in which the Tenderer is involved.

Other party(ies)	Cause of dispute	Amount involved
(a)		
(b)		

- 1.11 Statement of compliance with the requirements of sub-Clause 3.2 of the Instructions to Tenderers.
- 1.12 Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Tendering documents.
2. **Joint Ventures**
- 2.1 The information listed in 1.1 – 1.11 above shall be provided for each partner of the joint venture.
- 2.2 The information in 1.12 above shall be provided for the joint venture.
- 2.3 Attach the power of attorney of the signatory (ies) of the Tender authorizing signature of the Tender on behalf of the joint venture.
- 2.4 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.
3. **Additional Requirements**
- 3.1 Tenderers should provide any additional information required in the **Tender Data Sheet** or to fulfil the requirements of sub-Clauses 12.1 of the Instructions to Tenderers, if applicable.

## **D. Integrity Declaration**

### **UNDERTAKING BY TENDERER ON ANTI – BRIBERY POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME**

1. Each Tenderer must submit a statement, as part of the Tender documents, in either of the two given formats which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the Tendering company and, where relevant, of its subsidiary in the Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
2. Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the Tenderer may cover the subcontractors and consortium partners in its own statement, provided the Tenderer assumes full responsibility.
3.
  - a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
  - b) Each Tenderer will make full disclosure in the Tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the Tender and, if successful, the implementation of the contract.
  - c) The successful Tenderer will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract.
  - d) Within six months of the completion of the performance of the contract, the successful Tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that they are sufficient to establish the legitimacy of the payments made.
  - e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
4. Tenders which do not conform to these requirements shall not be considered.
5. If the successful Tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
  - a) Cancellation of the contract;

- b) Liability for damages to the public authority and/or the unsuccessful competitors in the Tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated).
- 6. Tenderers shall make available, as part of their Tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.
- 7. The Government of Kenya has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by Tenderers for this contract, and to which in turn all Tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a Tenderer may be disclosed to another Tenderer or to the public).

## ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE

*(Sections 39, 40, 41, 42, 43 & of the PPDA, 2015)*

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We .....

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No

.....

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

## **E. Letter of Acceptance**

*[Letter head paper of the Procuring Entity]*

[date]

To: *[name and address of the Contractor]*

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

We confirm that *[insert name proposed by the procuring entity]* to be the Adjudicator.

We accept that *[name proposed by Tenderer]* be appointed as Adjudicator.

Or

We do not accept that *[name proposed by Tenderer]* be appointed as adjudicator, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the adjudicator in accordance with Clause 44.1 of the Instructions to Tenderers.

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

Please return the contract dully signed.

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

Name and Title of Signatory: \_\_\_\_\_

Name of Agency: \_\_\_\_\_



## F. Form of Contract Agreement

This Agreement, made the [day] day of [month], [year] between [name and address of Procuring Entity] (hereinafter called “the Procuring Entity”) and [name and address of Contractor] (hereinafter called “the Contractor”) of the other part.

Whereas the Procuring Entity is desirous that the Contractor execute [name and identification number of contract] (hereinafter called “the Works”) with the objectives of [insert functional objectives of the works] and the Procuring Entity has accepted the Tender by the Contractor for the execution and completion of such works and the remedying of any defects therein in the sum of [contract price in words and figures] (hereinafter called “Contract Price”).

### NOW THIS AGREEMENT WITNESSES 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, and they shall be deemed to form and be read and construed as part of this Agreement;
2. In consideration of the payments to be made by the Procuring Entity to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Procuring Entity to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract;
3. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein 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 \_\_\_\_\_

In the presence of: \_\_\_\_\_

Tendering Signature of Procuring Entity \_\_\_\_\_  
\_\_\_\_\_

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

## **SECTION X: FORMS OF SECURITY**

## **A. Tender Security (Bank Guarantee)**

*[If required, the **Bank /Tenderer** shall fill in this Guarantee form in accordance with the instructions indicated in brackets.]*

*[insert bank's name, and address of issuing branch or office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

**Date:** *[insert date]*

**TENDER GUARANTEE No.:** *[insert number]*

We have been informed that *[insert name of the Tenderer; if a joint venture, list complete legal names of partners]* (hereinafter called "the Tenderer") has submitted to you its Tender dated *[insert date]* (hereinafter called "the Tender") for the execution of *[insert name of Contract]* under Invitation for Tenders No. *[insert IFT number]* ("the IFT").

Furthermore, we understand that, according to your conditions, Tenders must be supported by a Tender Guarantee.

At the request of the Tenderer, we *[insert name of bank or insurance company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in the currency of the Purchaser's Country or the equivalent amount in an international freely convertible currency]* (*[insert amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer;

- a) Has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender; or
- b) Does not accept the correction of errors in accordance with the Instructions to Tenderers (hereinafter "the ITT") of the IFT; or
- c) Having been notified of the acceptance of its Tender by the Procuring Entity during the period of Tender validity;
  - (i). Fails or refuses to execute the Contract Form, if required, or
  - (ii). Fails or refuses to furnish the Performance Security, in accordance with the ITT.

This Guarantee shall expire;

- a) If the Tenderer is the successful Tenderer, upon our receipt of copies of the Contract signed by the Tenderer and of the Performance Security issued to you by the Tenderer; or

- b) If the Tenderer is not the successful Tenderer, upon the earlier of;
- (i) Our receipt of a copy of your notification to the Tenderer that the Tenderer was unsuccessful, or
  - (ii) Thirty days after the expiration of the Tenderer's Tender.

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

---

*[signature(s) of authorized representative(s)]*

## **B. Performance Bank Guarantee [Unconditional]**

[The **Bank /successful Tenderer** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if the Procuring Entity requires this type of security.]

*[insert bank's or insurance company's name, and address of issuing branch or office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

**Date:** *[insert date]*

**PERFORMANCE GUARANTEE No.:** *[insert Performance Guarantee number]*

We have been informed that *[insert name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Contractor, we *[insert name of Bank or Insurance Company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

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

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

This guarantee shall expire not later than thirty days from the date of issuance of the Taking-Over Certificate.

*[signature(s) of an authorized representative(s) of the Bank]*

### C. Bank Guarantee for Advance Payment

*[Bank's Name and Address of Issuing Branch or Office]*

**Beneficiary:** \_\_\_\_\_ *[Name and Address of Procuring Entity]*

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

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_

We have been informed that *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the contract]* dated \_\_\_\_\_ with you, for the execution of *[name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[amount in figures]* (\_\_\_\_\_) *[amount in words]* is to be made against an advance payment guarantee.

At the request of the Contractor, we *[name of Bank or Insurance Company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (\_\_\_\_\_) *[amount in words]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

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 \_\_\_\_\_ *[name of Procuring Entity]* and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, whichever is

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

Yours truly,

Signature and seal: \_\_\_\_\_

Name of Bank: \_\_\_\_\_

Address: \_\_\_\_\_

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

**SECTION XI: APPLICATION TO PUBLIC PROCUREMENT ADMINISTRATIVE  
REVIEW BOARD**



**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

## **SECTION XII: EVALUATION CRITERIA**

**TANA WATER WORKS DEVELOPMENT AGENCY  
EVALUATION CRITERIA**

**BIDDER NO.....BIDDER NAME.....**

**D. STAGE 1 – MANDATORY REQUIREMENTS**

**In this stage bidders are to be evaluated on yes or no basis. Any bidder who does not meet any of the requirements in this stage does not proceed to stage 2. The evaluator must clearly indicate the reasons for disqualification (if any) at the bottom of the table**

	<b>MANDATORY REQUIREMENTS</b>	<b>Yes</b>	<b>No</b>	<b>Remarks (Fail or Pass) at the bottom</b>
	Submission of valid documents under listed:-			
1.	Valid Tax Compliance Certificate			
2.	List of Directors with respective shareholding & details of citizenship – Attach CR12 for the current year.			
3.	Audited Accounts for the last three years (i.e. within the period of 2019 to 2021 which must be signed by the auditor and the directors)			
4.	Evidence of annual volume of construction works in any of the last 3 years of Ksh.20 M and evidence of adequate working capital for this contract			
5.	Evidence/proof of having undertaken Four similar works in the last 3 years.			
6.	Certificate of Company Registration Certificate under the Companies Act, Cap 486 and in existence for at least Five (5) years.			
7.	A copy of current Registrations Certificate as a construction firm by The Ministry of Water and Sanitation and Infrastructure for the current year category ‘E’ and National Construction Authority category “6”			
8.	Bid Security as described in the ITB			
9.	Company profile and key staff resumes (Project Manager, Site Agent, Inspector of Works and Surveyor)			
10.	Registered office, including physical address of the current office			
11.	Proof of availability of major items required for DE-sludging works in a wastewater Treatment Plant (Tipper trucks, Poker Vibrator and Lorry, Excavator)			
12.	Form of Bid <b>MUST</b> be duly filled, stamped and signed by an authorized person and any Cancellations in the Form of Bid <b>MUST</b> be countersigned			
13.	The BoQ <b>MUST</b> be duly filled, stamped and signed by an authorized person and any cancellations in BoQs and <b>MUST</b> be Countersigned			
14.	The Bidder <b>MUST</b> provide Power of Attorney to the person signing the tender			
14.	Original Pre Bid Site visit Certificate must be attached			
	<b>REMARKS</b>			

**Reasons for disqualification (if any)**

.....

**E. STAGE 2(i)– OTHER REQUIREMENTS**

**In this stage bidders are to be evaluated on marks. Any bidder who does achieve at least 75% in this stage does not proceed to stage 3**

	<b>TECHNICAL EVALUATION REQUIREMENTS</b>	<b>Required Marks</b>	<b>Awarded Marks</b>	<b>Remarks</b>
	<p><b><u>Key Personnel Qualifications and Company's past Experience/Operation performance</u></b></p> <p><b>(a) <u>Key Personnel Qualifications and experiences – 43 points</u></b></p> <p>List / provide at least four (4) key professional staff with specific portfolio/task each with the following minimum qualification and experience:</p> <p>a) Company/ Project Manager/ Director must have a minimum of Bachelor Degree or Higher National Diploma in Civil/Water Engineering or Construction Technology [attach copies of qualification - <b>8 points</b>] – Minimum 5 years' Experience (Attach copies/testimonials) -2 point for each year – <b>(total 10 points)</b></p> <p>b) The other three must have a minimum of a Diploma in Civil /Water /Building Engineering or equivalent [attach copies of qualification certificates - 2 points each] – <b>6 points</b> with at least four years' experience in the construction industry {1 point each for years of experience} – <b>(total 15 points)</b> and;</p> <p>c) Certified CVs signed by both the employer and the employee {1point each} – <b>(total 4 points)</b></p>	<p><b>18</b></p> <p><b>21</b></p> <p><b>4</b></p>		

	<p><b><u>Company's past Experience/Operation performance – (57] points) -</u></b></p> <p>➤ The company must have undertaken and successfully completed at least four similar works for at least three years that can best demonstrate past experience in undertaking similar projects. Provide details of client as below:</p> <p>a) Names { <b>1point each</b> },</p> <p>b) Addresses { <b>1 point each</b> }</p> <p>c) Contact persons { <b>2 point each</b> }</p> <p>d) Completion certificate each { <b>4 point each or zero for less</b> }</p> <p>e) Attaching any evidence like letters of engagement, Contract award etc from the said clients { <b>4 points each or zero for none</b> }</p> <p>f) Company's evidence of ownership/Lease Agreement of at least 3 No. construction equipment (<b>3marks for each</b>)</p>	<p><b>57</b></p> <p><b>4</b></p> <p><b>4</b></p> <p><b>8</b></p> <p><b>16</b></p> <p><b>16</b></p> <p><b>9</b></p>		
	<b><u>TOTAL MARKS</u></b>	<b>100</b>		

**The evaluator should give comments on the entire evaluation of stage 2 which will form a basis of the committee's decision:**

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### **STAGE 2(ii) – FINANCIAL COMPARISONS**

**At this stage, bidders financial quotations will be compared with each other. The award will be to the lowest evaluated bidder (who will be position one).**

<b>Bidder's Name</b>	
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<b>Financial Quotation</b>	<b>Ksh</b>
<b>Position</b>	<b>Out of</b>

**Evaluation carried out by.....Sign.....**

**Confirmed by:**

- 1. ....Sign.....**
- 2. ....Sign.....**
- 3. ....Sign.....**
- 4. ....Sign.....**
- 5. ....Sign.....**

**Date.....**

## **BILL OF QUANTITIES**



## **PREAMBLE TO THE BILLS OF QUANTITIES**

### **GENERAL DIRECTIONS**

1. The Conditions of Contract together with the Specification and the Drawings shall be read in conjunction with the Bill of Quantities and in so far as they have any bearing shall be referred to for details of the description, quality, test and strength of material used and the workmanship, conditions, obligations, liabilities and instructions generally which shall be complied with in carrying out this Contract. The cost of complying with all conditions, obligations and liabilities described in the Conditions of Contract and Specification and in the Bill of Quantities, including all overhead charges shall be deemed to be spread over and included in the prices or sums stated by the Contractor in the Bill of Quantities.
2. Each item shall be priced and extended to the "Amount" column by the Contractor with the exception of the items for which a rate only is required or which already have Provisional Sums affixed thereto. If the Contractor omits to price any items in the bill of quantities then the cost of the work of such items shall be held to be spread over and included in the prices given in the other items of work. The Day work Schedule shall also be completed.

The Bill of Quantities has been divided into sections, where possible. Notwithstanding such division of the Works for convenience of pricing and re-measurement thereof, nothing contained therein shall in any way relieve nor be deemed to relieve the Contractor of his responsibility set forth elsewhere in the contract.

3. The quantities of work and material set forth in the Bill of Quantities are in estimate only and are not to be considered as limiting nor as extending the amount of work to be done and material to be supplied by the Contractor. The Works as completed in accordance with the Contract shall be measured and paid for as described in this Bill of Quantities and in accordance with the Conditions of Contract and Specification.
4. Progress payments in the Interim Certificate referred to in Clause 60 of the Conditions of Contract in respect of "sum" items in the Bill of Quantities shall be by means of interim progress instalments, such instalments not exceeding in aggregate the total of each sum item. Such interim progress instalments shall be assessed by the Engineer based on the extent that the work to be done or liabilities or charges to be incurred by the Contractor under the description of each item bears to the extent of such work, liabilities or charges actually carried out under each sum item from time to time.

Such progress payments in respect of sum items shall be subject to the terms of retention referred to in Clause 60 of the Conditions of Contract.

5. The units of measurement described in the Bill of Quantities are metric units. Abbreviations used in the Bill of Quantities are as follows:-

km	=	Kilometre
m	=	Metre
mm	=	Millimetre
m <sup>2</sup>	=	Square Metre
m <sup>3</sup>	=	Cubic Metre
mm <sup>2</sup>	=	Square Millimetre
nr.	=	Number
kg	=	Kilogramme
Mg	=	Megagramme (metric tonne)
litre	=	Litre
ml	=	Millilitre (cubic centimetres)

All rates and sums of money quoted in the Bill of Quantities shall be in Kenya Shillings and Cents.

The Contractor is referred to the Additional General Instructions Clause 1 to 17 inclusive hereafter regarding measurement and pricing of the various items in the Bill of Quantities, and these instructions shall be read in conjunction with the Specification, Conditions of Contract and Drawings as stated in 1 above.

6. The following abbreviations are used in the description of items in the Bills of Quantities:-

A.C.	=	Asbestos Cement
C.I.	=	Cast Iron (Grey Iron)
D.I.	=	Ductile Iron
E.O.	=	Extra Over
m.h.	=	Manhole
n.e.	=	Not exceeding
r.c.	=	Reinforced concrete
p.c.	=	Precast Concrete
uPVC	=	unplasticized Poly Vinyl Chloride

## **PARTICULAR INSTRUCTIONS FOR MEASUREMENTS AND PRICING OF ITEMS IN THE BILL OF QUANTITIES**

### **A. 1. Dealing with Water**

No measurement will be taken for the construction, maintenance and removal of temporary diversion works or other works including pumping required for dealing with water during the execution of the Works except where specifically required and items appear in the Bill of Quantities.

### **B. 2. Site Clearance and Demolition**

The units of measurement shall be:

(i)	General Site Clearance	square metres
(ii)	General Site clearance for pipelines	metre
(iii)	Removal of trees and stumps	number
(iv)	Demolition of building and structures	sum
(v)	Demolition of pipelines	metre

Girths of trees shall be measured 600 mm above ground level.

There will be no measurement of the stumps of trees which are themselves to be removed.

General Site clearance shall include the removal of trees with a girth less than 500 mm and stumps of diameter less than 150mm.

### **C. 3. Excavation and Earthworks**

(a) The units of measurements shall be:

(i)	Bulk excavation and filling	cubic metre
(ii)	Excavation, filling and compaction for pipelines	metre
(iii)	Excavation in rock, extra over (i) and (ii) above	cubic metre
(iv)	Preparation of surface, trimming of slopes, pitching, soiling and grassing	square metres

#### **(b) Method of Measurement**

- (i) Earthworks measured by the cubic metre. The measured volume shall be the net-in-situ volume obtained from the difference between the lines, levels and profiles of the ground or rock surface agreed with the Engineer before excavation is commenced and the lines, levels and profiles as shown on the Drawings, or as may be ordered by the Engineer as necessary for the Works. Where the Drawings do not indicate the profiles of the excavation, the measured volume shall be the volume of the voids that would be formed if the completed structure, for which the excavation is performed, were to be lifted vertically out of the ground.
- (ii) Pipelines measured by the cubic metre.

Where excavation for pipe runs is measured in the Bill of Quantities by the cubic metre then the measurement shall be taken as the vertical depth from the commencing surface down to

formation level and the width of the excavation as 400 mm wider than the nominal internal diameter of the pipe or as directed by the Engineer.

- (iii) Pipelines measured by the metre  
Depths used for classification in the Bill of Quantities shall be measured from the commencing surface to the inverts of the pipes.
- (iv) No measurement will be taken for material excavated beyond the limits and levels specified above.

**(c) Item Coverage**

No separate payment will be made beyond the rates for excavation for:-

- (i) All necessary Temporary Works including dealing with water in the excavation;
- (ii) Any over breakage and any additional working space required and refilling of same;
- (iii) Making good all slips or falls of materials;
- (iv) Trimming of excavation to correct lines levels and profiles;
- (v) Preparation of foundations as specified except where specifically provided for in separate Bill items;
- (vi) Reinstatement of ground along pipelines to its former nature except where specifically provided for in separate Bill items
- (vii) Location, uplifting, transportation, handling and sorting of approved selected material from the excavations for use in the backfilling of trench and other excavations;
- (viii) Backfilling and disposal of materials and removal of surplus to spoil dump all as specified.

**(d) Filling:**

Normal material from store forming embankments around structures shall be measured by the cubic metre as the net compacted volume of filling comprised within the sections shown on the Drawings to the approval of the Engineer. No extra payment will be made for additional material placed to allow for the effect of settlement.

**D. 4. Concrete and Reinforced Concrete**

- (a) The units of measurement shall be:

- (i) In-situ concrete other than blinding and granolithic concrete cubic metre
- (ii) Blinding concrete and granolithic concrete with the thickness stated square metre

- (b) Method of measurement:

All cast-in-situ concrete will be the quantity calculated from the dimensions shown on the Drawings or as approved by the Engineer. No deductions in the measurement will be made for:

- (i) Mortar beds;
- (ii) chamfers, ducts, chases, fillets, splays, drips, rebates, recesses, grooves and the like, not exceeding 0.005 square metres in cross sectional area;

- (iii) Bolt holes, pockets, sockets, mortices and the like formed in the concrete not exceeding 0.1 cubic metres in volume.
- (iv) Cast in components each less than 0.1 cubic metres in volume;
- (v) Reinforcement and other metal sections.

(c) Item coverage:

No separate payment will be made beyond the rates for concrete for:-

- (i) Trial mixes (for Specification Classes of concrete only);
- (ii) Supply of cement, water and processed aggregates;
- (iii) Supply and placing of mortar beds or rendering as specified;
- (iv) Mixing, transporting, placing, compacting, surface tamping to provide UI finish, protecting and curing the concrete;
- (v) hacking, cleaning and roughening by wet sand blasting, scrabbling or other means concrete surfaces on or against which further concrete is to be placed;
- (vi) Rubbing down faces;
- (vii) shuttering and water stops to construction joints, not expressly required by the Engineer, Keys and the like.
- (viii) Providing samples and testing of materials and concrete;
- (ix) Provision and use of admixtures;
- (x) Placing and compacting concrete around steel reinforcement and other cast in components;
- (xi) Placing and compacting concrete at varying heights;
- (xii) Creating falls, cambers and shaped profiles;
- (xiii) Formwork to edge of concrete in blinding layers;
- (xiv) All additional concrete to fill over break and/or working space;
- (xv) Where concretes of different cement contents are required to be placed simultaneously in the same life of concrete;
- (xvi) Placing and compacting concrete to inclined or battered faces including any necessary upper surfaces formwork inclined at an angle of less than 15E to the horizontal.

## E. 5. Precast Concrete

(a) The units of measurement shall be:

- |      |   |        |
|------|---|--------|
| (i)  | Beams, slabs, segmental units:                        | number |
| (ii) | Copings, sills and the like of uniform cross-section: | metre  |

(b) The term "precast concrete" applies to any concrete unit or member cast on site but not in its final position and to concrete units or members manufactured off site.

(c) Item coverage:

No separate payment will be made beyond the rates for precast concrete for:

- (i) trial mixes;
- (ii) reinforcement, cement and processed aggregates;
- (iii) formwork, surface finishing, lifting devices and bearing plates;
- (iv) forming sockets, holes, grooves, rebates recesses and ducts; and except where otherwise indicated,
- (v) handling, laying and fixing the units in position;
- (vi) aligning members and units, adjusting levels and soffit profiles, and temporary fixing to prevent displacement;
- (vii) cutting and trimming copings, sills and the like to size.

## **F. 6. Steel Reinforcement**

- (a) The Units of measurement shall be:

- |       |  |                 |
|-------|--|-----------------|
| (i)   | Steel rod reinforcement                    | kilogramme (kg) |
| (ii)  | Steel fabric reinforcement                 | square metres   |
| (iii) | Steel dowels of stated diameter and length | number          |

- (b) Method of measurement:

The weight of steel rod reinforcement shall be calculated on the basis that steel weighs 7,850 kgs per cubic metre. The steel rod reinforcement shall be measured as the net theoretical calculated weight of the steel actually used in the work (including laps as specified) in accordance with the bending schedules prepared by the Engineer with no allowance being made in the measurement thereof for rolling margin or otherwise. Tying wire shall not be measured.

Fabric reinforcement shall be measured as the area of work covered, the weight per square metre being stated.

- (c) Item coverage:

No separate payment will be made beyond the rates for steel reinforcement for:

- (i) Supplying, cutting to length, cleaning, bending, hooking, waste incurred by cutting, handling;
- (ii) Placing and fixing in the required position, including binding wire or other approved material;
- (iii) Placing supports and spacers;
- (iv) Extra fabric reinforcement in laps;
- (v) In the case of dowels - drilling holes or forming pockets in the structure and casting dowels into their final position.

## **G. 7. Formwork**

- (a) The units of measurement shall be:

- |       |                                       |              |
|-------|---------------------------------------|--------------|
| (i)   | General formwork                      | square metre |
| (ii)  | Formwork less than 300mm wide         | metre        |
| (iii) | Boxouts, pockets, etc. of stated size | number       |
| (iv)  | Rebates, chases, etc. of staged size  | metre        |

(b) Method of measurement

Subject to the limitations stated below general formwork will be measured as the superficial area of formwork actually in contact with the finished face of the concrete but no deduction shall be made for openings in formwork of 0.4 square metres or less.

Formwork shall not be measured:

- (i) for forming construction joints (whether shown or not on the Drawings), skewbacks, stunt ends, steppings, bonding chases, keys and the like;
- (ii) for forming boxouts, pockets, etc., of stated size that are measured by number;
- (iii) for forming rebates, chases, etc., of stated size that are measured by the metre;
- (iv) to edge of concrete in blinding layers;
- (v) to upper surfaces of concrete inclined at angle of less than 15° to the horizontal.

(c) Classification of formwork;

Plane formwork shall be classified according to its angle of inclination as follows:-

Class	Angle of inclination to the vertical
Horizontal	5°- 90°
Sloping	10°- 85°
Battered	0°- 10°
Vertical	0°

(d) Item coverage:

No separate payment will be made beyond the rates for formwork for:

- (i) falsework, centering, fabricating, assembling, cutting, fitting and fixing in position and taking all measurement necessary to produce the required profiles;
- (ii) forming cambers or falls;
- (iii) linings and taking all measures necessary to produce the required finish to the surfaces of the concrete;
- (iv) cutting and fitting around projecting members, pipes reinforcement and the like;

- (v) forming fillets, chamfers, splays, drips, rebates, recesses, grooves and the like not exceeding 0.0025 square metre in cross-sectional area, unless itemised in the Bill of Quantities.
- (vi) maintaining in place until it is struck and allowing for any variation from the minimum period for striking arising from prevailing weather conditions.
- (vii) striking, taking down and removing;
- (viii) any additional concrete provided in lieu of formwork to fill overbreak or working space.

#### **H. 8. Building in Plant, Equipment and Pipework**

Items appear in the Bill of Quantities for building-in plant equipment and pipework. The rates in the Bill of Quantities shall include for all materials, formwork, etc. required for such building-in. No additional payment will be made should the Contractor choose to form boxouts, pockets, etc., and grout in at a later date.

#### **I. 9. Unshuttered Surfaces**

The unit of measurement shall be square metre

Unshuttered surfaces are described in the Specification. Items are provided where appropriate for surface finish type U2, U3 and U4 and the rates entered under these items shall include for all material, plant and labour required to finish the unshuttered concrete as specified.

No measurement shall be made for the normal screeded finish type U1.

#### **J. 10. Breaking out Reinforced Concrete and Blockwork**

(a) The units of measurement shall be:

- (i) Breaking out, section thickness stated or shown on the Drawings -cubic metres
- (ii) Making good perimeter of permanent openings, section thickness stated or shown on the Drawings square metre
- (iii) Building in pipe work, etc of stated size                      number

(b) Method of measurement:

- (i) Breaking out. The section thicknesses stated or shown on the Drawings are nominal thicknesses only. For measurement the thicknesses of the sections shall be as measured on Site.
- (ii) Making good. For measurement purposes the perimeter shall be that existing after any making good of permanent openings. The perimeters and section thicknesses shall be as measured on site. The rates in the Bill of Quantities shall include for all materials, formwork, etc. and for filling of over break.

(c) Item coverage:

No separate payment will be made beyond the rates for breaking out for:



- (i) All equipment necessary;
- (ii) Any temporary supports, staging and the like;
- (iii) Any overbreak;
- (iv) Material for building in pipes and supporting the pipe;
- (v) Formwork;
- (vi) Removal of broken out materials off site;
- (vii) Cutting through reinforcement.

#### **K. 11. Pipes and Pipe work**

- (a) The units of measurement shall be:

- (i) Pipelines : metre
- (ii) Pipework, fittings and valves : number

- (b) Method of measurement:

- (i) Lengths of pipelines shall be measured net as laid along their centre lines.
- (ii) Short lengths of pipes, the dimensions of which are detailed in the Bill of Quantities, shall be measured by number.
- (iii) Lengths of drainage pipes built into manholes and other chambers shall be measured from the inside faces of chambers.

- (c) Item coverage:

No separate payment will be made beyond the rates for pipes and pipework for:-

- (i) Cost of supplying all pipes, jointing materials and short lengths to suit fittings;
- (ii) All necessary cutting and waste;
- (iii) All plant, labour and materials required for handling, distribution, laying and jointing in position;
- (iv) Testing of the pipe system.

#### **L. 12. Pipework Ancillaries**

- (a) The units of measurement shall be:

- (i) Beds, haunches and surrounds: metre
- (ii) Concrete stools and thrust and anchor blocks: cubic metre

- (b) Method of measurement:

- (i) Separate measurement shall not be made for beds to haunched or surrounded pipes where the same material is used for beds and haunches or beds and surrounds respectively.

- (c) Item coverage:

No separate payment will be made beyond the rates for thrust blocks, surrounds and the like for:

- (i) Excavation including working space;
- (ii) Formwork type F1 finish;
- (iii) Providing unshuttered surfaces to type U1.

### **M.13. Structural and Miscellaneous Metal Work**

(a) The units of measurement shall be:

- (i) Structural and miscellaneous metal work including stairways, landings, walkways and platforms . Megagramme (Metric tonne)
- (ii) Ladders, handrails and the like metre
- (iii) Flooring, duct covers and the like square metre
- (iv) Tanks number

(b) Method of measurement:

The weight of mild steel to B.S 4360 grades 43A1 and 43A shall be taken for measurement as 7,850 kg/cu. m.

The measurement of metal work in (a) (i), including bolts, washers, and all other fixing shall be the net theoretical calculated weights of metalwork used in the work in accordance with the Drawings or as ordered by the Engineer. No allowance shall be made in the measurement thereof for rolling margin and other permissible deviations from standard weights.

(c) Item coverage:

No separate payment will be made beyond the rates for metal work for:

- (i) Cost of supplying materials;
- (ii) moulding, fabricating, welding, drilling, machining, screwing, galvanizing or painting as may be specified.
- (iii) Handling, transporting, hoisting, fitting and fixing in position complete;
- (iv) supply of all fixings;
- (v) Painting after erection as specified;

### **N. 14. Brickwork, Blockwork and Masonry**

(a) The units of measurements shall be:

- (i) Brickwork, blockwork and masonry not exceeding 1 metre in thickness square metres

- (ii) Brickwork, blockwork and masonry exceeding 1 metre in thickness cubic metres
- (iii) Damp proof courses, wall thickness stated metre
- (b) Method of measurement:
  - (i) Volumes and areas measured for brickwork, blockwork and masonry shall include the volumes and areas of joints.
  - (ii) No deduction or addition to the volumes and areas measured shall be made for rebates, projecting courses or other surface features each less than 0.05 square metre in cross sectional area.
  - (iii) No deduction from the Volumes and areas measured shall be made for holes and openings in walls or surfaces each less than 0.25 square metre in cross-sectional area.
  - (iv) Areas shall be measured at the centre lines of brickwork, blockwork and masonry.
- (c) Item coverage:
 

No separate payment will be made beyond the rates for the rates for brickwork, blockwork and masonry for:

  - (i) Jointing, pointing and fair-faced work, in any type of bond including all rough and fair cutting;
  - (ii) Plinths, corbels, bull noses, chases, rebates, quoins, brick copings string courses and the like;
  - (iii) Centering and all temporary supports;
  - (iv) Bonding into existing work;
  - (v) Protection of work;
  - (vi) Building in pipes, holdfasts, bolts and the like and forming openings less than 0.25 square metre in cross section;
  - (vii) Ties and reinforcement.

## **O. 15. Roofing**

- (a) The units of measurement shall be:
  - (i) Galvanized corrugated sheet iron or proprietary sheet metal roofing SM
  - (ii) Translucent panels, extra over (i) above square metre
- (b) Method of measurement:
  - (i) Roofing shall be measured net as the overall area of finished roofing.
- (c) Item coverage:

No separate payment will be made beyond the rates for roofing for:

- (i) Cutting to length, waste and laps;
- (ii) Fixings, flashing, ridges and closure pieces.

**P. 16. Doors and Windows**

- (a) The unit of measurement shall be number.
- (b) The rate in the Bill of Quantities shall include for the supply and building-in of all frames, glazing and all iron mongery as specified.

**Q. 17. Refurbishment of Valves**

Valves shall be refurbished as follows:-

- (a) Cut off water by closing up stream valve.
- (b) Remove bolts attaching bonnet (top half) to body (bottom half).
- (c) Withdraw bonnet including stem (spindle) and wedge (gate), leaving body only in pipeline.
- (d) Place steel blanking plate and gasket and bolt in position.
- (e) Turn on water.

The time for the above shall be kept to an absolute minimum by loosening bolts etc. early and shall not exceed one hour.

Valve interiors shall be fully stripped inspected and cleaned (wire brushed) in a workshop and reassembled, greased with new gland packing and new external bolts and gaskets. Any worn out parts e.g. spindles shall be replaced as instructed.

When valves have been refurbished, the water shall be turned off, the blanking plate removed, the interior of the body cleaned by wire brushing and the valve reassembled. The time for the above shall be kept to an absolute minimum and shall not exceed one hour.

The rate in the BoQ for refurbishment shall include for all labour, plant and tools to turn off and on the water supply for the removal, stripping, inspection, cleaning and reassembly of the valve both on site and in the workshop, for the supply of the temporary blanking plate, gasket and bolts, and for the supply of new gland packing, new gaskets and bolts and all oils and greases.

The Contractor shall be paid extra for the material costs only of any additional parts he is instructed to renew e.g. spindles and wedges.

**R. 18. Measurement and Payment for Gabions**

- (a) Chain Link Fencing, Weld mesh etc.:

The unit of measurement for chain link fencing weld mesh etc for the manufacture of gabions will be per square metre, calculated from the area required to construct the boxes as shown on the drawings or directed by the Engineer without allowing for waste.

The rate shall include for supplying, transporting to any point on the site, cutting, waste, bending, welding or binding, placing in position and binding, and all labour, tools plant, supervision, overheads and profit.

(b) Rock Fill to Gabions:

The unit measurement shall be per cubic metre of rock fill calculated from the volume of the boxes shown on the drawing or directed by the Engineer. The rate shall include for providing and selecting rock or boulders, transporting to any point on site, hand packing inside boxes trimming and compaction of surface to receive boxes, and all labour, plant, supervision, overheads and profit.

(c) Any excavation and backfilling required to place gabions in cut will be paid for as "Excavation for Structure". No additional payment will be made for filling behind gabions placed in front of embankments or fills and any additional work shall be included in the rate for earthworks.