



REPUBLIC OF KENYA  
COUNTY GOVERNMENT OF WEST POKOT  
P.O. Box 222-30600  
KAPENGURIA  
Email: [info@westpokot.go.ke](mailto:info@westpokot.go.ke)  
[www.westpokot.go.ke](http://www.westpokot.go.ke)

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**DEPARTMENT OF ROADS AND PUBLIC WORKS**

**PROPOSED KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE  
36M SPAN FOOTBRIDGE AT WEST POKOT SUB-COUNTY  
–COUNTY GOVERNMENT OF WEST POKOT**

**TENDER NO: CGWP/T/034/2018-2019**

**NEGOTIATION NUMBER: 706971**

(i)

**MARCH 2019**

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**PROPOSED KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE UP TO 36M SPAN  
FOOTBRIDGE AT KAPENGURIA CONSTITUENCY**

**TENDER NO: CGWP/T/034/2018-2019**

Supplied as part of the Contract **Proposed Katikomor-Kungwal-Suam Footbridge Up To 36m Span Footbridge at West Pokot Sub-County.**

Issued by: -

**Chief Engineer (Structural),  
Department of Roads and  
Public Works,  
P O Box 222-30600,  
KAPENGURIA.**

The contract for the above-mentioned works entered into this ..... Day of  
..... 20..... by  
the

Undersigned refers to these Bills of Quantities and the Ministry of Works General Specification dated March, 1976 (together with any amendments issued thereto) shall be read and construed as part of the said contract.

.....

**THE CONTRACTOR**

.....

**THE CHIEF OFFICER  
DEPARTMENT OF ROADS  
AND PUBLIC WORKS**

Date: .....

Date:.....

**SPECIAL NOTES**

The Contractor is required to check the numbers of the pages of these Bills of Quantities and should he find any missing or in duplicate or figures indistinct he must inform the **Chief Officer, Ministry of Roads ,Transport, Infrastructure, Public Works- County Government of West Pokot, Kapenguria** at once and have the same rectified.

Should the Contractor be in doubt about the precise meaning of any item or figure for any reason whatsoever, he must inform the **Chief Officer, Ministry of Roads ,Transport, Infrastructure, Public Works- County Government of West Pokot, Kapenguria** in order that the correct meaning may be decided before the date for submission of tenders.

No liability will be admitted nor claim allowed in respect of errors in the Contractor's Tender due to mistakes in the Specifications which should have been rectified in the manner described above.

**SIGNATURE PAGE AND NOTES**

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## SECTION I

### INVITATION FOR TENDERS

Tender reference no. (CGWP/T/034/2018-2019)

#### **TENDER FOR THE CONSTRUCTION OF A 36M SPAN KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE IN KAPENGURIA CONSTITUENCY.**

The County Government of West Pokot through the Ministry of Transport, Infrastructure, Public Works & Roads (Department of Public Works) intends to construct 36M Span KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE IN WEST POKOT SUB COUNTY. The brief overview of the scope of works is as described here below:-

- Construction / erection of structural steel deck
- Construction of reinforced concrete base and columns
- Construction of approaches and abutments

Tenders are hereby invited for this project and interested eligible candidates may obtain further information from the office of the **Head of Supply Chain Management Services Treasury Building Ground Floor.**

The tender documents with detailed specifications shall be downloaded free of charge from County Government Website [www.westpokot.go.ke](http://www.westpokot.go.ke) or IFMIS PORTAL: [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) and Public Procurement Information portal [www.tenders.go.ke](http://www.tenders.go.ke). Completed tender documents **MUST** be submitted through the IFMIS SUPPLIER PORTAL: [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) as per the requirements contained in the document so as to be received on or before **1<sup>st</sup> April, 2019** and **TIME** indicated in the Ifmis Portal.

All document must be paginated in the format (1, 2, 3, 4.....)

Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for (120) days from the closing date of the tender.

Tenders will be projected on the screen immediately thereafter in the presence of the Tenderers or candidates representatives who choose to attend at the **Treasury Building, Main boardroom Ground Floor**

Tenderers **must** submit a Bid Bond of **2%** of the Tender sum in form of a bank guarantee from a reputable bank or an approved Insurance Company by PPRA, valid for a minimum period of one hundred and fifty (150) days from the date of tender opening.

#### **NOTE:**

Bidders who may experience challenges in accessing or uploading tender documents in the IFMIS TENDER PORTAL should contact the IFMIS helpdesk Tel (0800721477) at the National Treasury or Contact Supply chain Management services office Treasury Building Ground Floor.

The system will automatically LOCK OUT at the time and date of the tender closing on the **IFMIS PORTAL**

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**MANUAL SUBMISSIONS will not be accepted.** All tenders must be submitted through the IFMIS platform.

**HEAD OF SUPPLY CHAIN MANAGEMENT SERVICES  
FOR: CHIEF OFFICER.**

**DEPARTMENT OF PUBLIC WORKS- COUNTY GOVERNMENT OF WEST POKOT**

**SECTION II**

**INSTRUCTIONS TO TENDERERS**

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## INSTRUCTIONS TO TENDERERS.

1. **1. General/Eligibility/Qualifications/Joint venture/Cost of tendering**
- 11 The Employer as defined in the Appendix to Conditions of Contract, invites tenders for Works Contract as described in the tender documents. The successful tenderer will be expected to complete the Works by the Intended Completion Date specified in the tender documents.
- 12 All tenderers shall provide the Qualification Information, a statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or has not been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for the project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to tender.
- 13 All tenderers shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 14 In the event that pre-qualification of potential tenderers has been undertaken, only tenders from pre-qualified tenderers will be considered for award of Contract. These qualified tenderers should submit with their tenders any information updating their original pre-qualification applications or, alternatively, confirm in their tenders that the originally submitted pre-qualification information remains essentially correct as of the date of tender submission.
- 15 Where no pre-qualification of potential tenderers has been done, all tenderers shall include the following information and documents with their tenders , unless otherwise stated:
  - (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer:
  - (b) total monetary value of construction work performed for each of the last five years:
  - (c) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts;  
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  - (d) major items of construction equipment proposed to carry out the Contract and an undertaking that they will be available for the Contract.
  - (e) qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.

- (f) reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the past five years;
  - (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
  - (h) authority to seek references from the tenderer's bankers;
  - (i) Information regarding any litigation, current or during the last five years, in which the tenderer is involved, the parties concerned and disputed amount; and
  - (j) Proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.
- 16 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated:
- (a) the tender shall include all the information listed in clause 1.5 above for each joint venture partner;
  - (b) the tender shall be signed so as to be legally binding on all partners;
  - (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - (d) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of all partners of the joint venture; and
  - (e) The execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 17 To qualify for award of the Contract, tenderers shall meet the following minimum qualifying criteria;
- (a) annual volume of construction work whose value is equal to the estimated annual cash flow for the Contract;
  - (b) experience as main contractor in the construction of at least one project whose nature and complexity is equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);
  - (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Works;
  - (d) a Contract manager with <sup>STD/6</sup> at least five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and
  - (e) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than 4 months of the estimated payment flow under this Contract.
- 18 The figures for each of the partners of a joint venture shall be added



together to determine the tenderer's compliance with the minimum qualifying criteria of clause 1.7 (a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 1.7 (a), (b) and (e) for an individual tenderer, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's tender. Subcontractors' experience and resources will not be taken into account in determining the tenderer's compliance with the qualifying criteria, unless otherwise stated. Each tenderer shall submit only one tender, either individually or as a partner in a joint venture. A tenderer who submits or participates in more than one tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the tenderer's participation to be disqualified.

- 1.9 The tenderer shall bear all costs associated with the preparation and submission of his tender, and the Employer will in no case be responsible or liable for those costs.
- 1.10 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.
- 1.11 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 1.12 The price to be charged for the tender document shall not exceed Kshs.1,000/=
- 1.13 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

## 2. Tender Documents

- 2.1 The complete set of tender documents comprises the documents listed below and any addenda issued in accordance with Clause 2.4.
  - (a) These Instructions to Tenderers
  - (b) Form of Tender and Qualification Information
  - (c) Conditions of Contract
  - (d) Appendix to Conditions of Contract
  - (e) Specifications
  - (f) Drawings
  - (g) Bills of Quantities
  - (h) Forms of Securities
- 2.2 The tenderer shall examine all Instructions, Forms to be filled and Specifications in the tender documents. Failure to furnish all information required by the tender documents, or submission of a tender not substantially responsive to the tendering documents in every respect will be at the tenderer's risk and may result in rejection of his tender.
- 2.3 A prospective tenderer making an inquiry relating to the tender documents may notify the Employer in writing or by cable, telex or

facsimile at the address indicated in the letter of invitation to tender. The Employer will only respond to requests for clarification received earlier than seven days prior to the deadline for submission of tenders. Copies of the Employer's response will be circulated to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.

- 2.4 Before the deadline for submission of tenders, the Employer may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all tenderers. Prospective tenderers shall acknowledge receipt of each addendum in writing to the Employer.
- 2.5 To give prospective tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders, in accordance with Clause 4.2 here below.

### 3. Preparation of Tenders

- 3.1 All documents relating to the tender and any correspondence shall be in English language.
- 3.2 The tender submitted by the tenderer shall comprise the following:
  - (a) These Instructions to Tenderers, Form of Tender, Conditions of Contract, Appendix to Conditions of Contract and Specifications;
  - (b) Tender Security;
  - (c) Priced Bill of Quantities ;
  - (d) Qualification Information Form and Documents;
  - (e) Alternative offers where invited; and
  - (f) Any other materials required to be completed and submitted by the tenderers.
- 3.3 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 when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause relevant to the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the tenderer.

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- 3.4 The rates and prices quoted by the tenderer shall only be subject to adjustment during the performance of the Contract if provided for in the Appendix to Conditions of Contract and provisions made in the Conditions of Contract.
- 3.5 The unit rates and prices shall be in Kenya Shillings.
- 3.6 Tenders shall remain valid for a period of sixty (60) days from the

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

3.7 The tenderer shall furnish, as part of the tender, a Tender Security in the amount and form specified in the appendix to invitation to tenderers.

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

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

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

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

3.12 The Tender Security may be forfeited

- (a) if the tenderer withdraws the tender after tender opening during the period of tender validity;
- (b) if the tenderer does not accept the correction of the tender price, pursuant to Clause 5.7;
- (c) in the case of a successful tenderer, if the tenderer fails within the specified time limit to
  - (i) sign the Agreement, or
  - (ii) Furnish the required Performance Security.

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d) Tenderers shall submit offers that comply with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. Alternatives will not be considered, unless specifically allowed in the invitation to tender. If so allowed, tenderers wishing to offer technical alternatives to the requirements of the tendering documents must also submit a tender that complies with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. In addition to submitting the basic tender, the tenderer shall provide all information necessary for a complete evaluation of the

alternative, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of

the lowest evaluated tender conforming to the basic technical requirements shall be considered.

- 3.13 The tenderer shall prepare one original of the documents comprising the tender documents as described in Clause 3.2 of these Instructions to Tenderers, bound with the volume containing the Form of Tender, And clearly marked "ORIGINAL". In addition, the tenderer shall submit copies of the tender, in the number specified in the invitation to tender, and clearly marked as "COPIES". In the event of discrepancy between them, the original shall prevail.
- 3.14 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer, pursuant to Clause 1.5 (a) or 1.6 (b), as the case may be. All pages of the tender where alterations or additions have been made shall be initialed by the person or persons signing the tender.
- 3.15 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 3.16 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

#### 4. Submission of Tenders

- 4.1 The tenderer shall seal the original and all copies of the tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as "ORIGINAL" and "COPIES" as appropriate. The inner and outer envelopes shall:
- (a) be addressed to the Employer at the address provided in the invitation to tender;
  - (b) bear the name and identification number of the Contract as defined in the invitation to tender; and
  - (c) Provide a warning not to open before the specified time and date for tender opening.

4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender. However, the Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with Sub-Clause 2.5 in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline will then be subject to the new deadline.

- 4.2 Any tender received after the deadline prescribed in clause 4.2 will be returned to the tenderer un-opened.
- 4.3 Tenderers may modify or withdraw their tenders by giving notice in writing before the deadline prescribed in clause 4.2. Each tenderer's modification or withdrawal notice shall be prepared, sealed,

marked, and delivered in accordance with clause 3.13 and 4.1, with the outer and inner envelopes additionally marked “**MODIFICATION**” and “**WITHDRAWAL**”, as appropriate. No tender may be modified after the deadline for submission of tenders.

- 4.4 Withdrawal of a tender between the deadline for submission of tenders and the expiration of the period of tender validity specified in the invitation to tender or as extended pursuant to Clause 3.6 may result in the forfeiture of the Tender Security pursuant to Clause 3.11.
- 4.5 Tenderers may only offer discounts to, or otherwise modify the prices of their tenders by submitting tender modifications in accordance with Clause 4.4 or be included in the original tender submission.

## 5. Tender Opening and Evaluation

- 5.1 The tenders will be opened by the Employer, including modifications made pursuant to Clause 4.4, in the presence of the tenderers’ representatives who choose to attend at the time and in the place specified in the invitation to tender. Envelopes marked “**WITHDRAWAL**” shall be opened and read out first. Tenderers’ and Employer’s representatives who are present during the opening shall sign a register evidencing their attendance.
- 5.2 The tenderers’ names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as may be considered appropriate, will be announced by the Employer at the opening. Minutes of the tender opening, including the information disclosed to those present will be prepared by the Employer.
- 5.3 Information relating to the examination, clarification, evaluation, and comparison of tenders and recommendations for the award of Contract shall not be disclosed to tenderers or any other persons not officially concerned with such process until the award to the successful tenderer has been announced. Any effort by a tenderer to influence the Employer’s officials, processing of tenders or award decisions may result in the rejection of his tender.
- 5.4 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may ask any tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.7.
- 5.5 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender (a) meets the eligibility criteria defined in Clause 1.7;(b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the tendering documents. A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents,

without material deviation or reservation. A material deviation or reservation is one (a) which

affects in any substantial way the scope, quality, or performance of the works; (b) which limits in any substantial way, inconsistent with the tendering documents, the Employer's rights or the tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.

5.6 If a tender is not substantially responsive, it will be rejected, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

5.7 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:

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

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

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

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

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

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

5.8 The Employer will ~~evaluate~~<sup>STP/12</sup> and compare only the tenders determined to be substantially responsive in accordance with Clause 5.5.

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

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

- (b) Excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Day works where priced competitively.
  - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and
  - (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 4.6
- 5.10 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in tender evaluation.
- 5.11 The tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.
- 5.12 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a Non-indigenous sub-contractor.

## 6. Award of Contract

- 6.1 Subject to Clause 6.2, the award of the Contract will be made to the tenderer whose tender has been determined to be substantially responsive to the tendering documents and who has offered the lowest evaluated tender price, provided that such tenderer has been determined to be (a) eligible in accordance with the provision of Clauses 1.2, and (b) qualified in accordance with the provisions of clause 1.7 and 1.8.
- 6.2 Notwithstanding clause 6.1 above, the Employer reserves the right to accept or reject any tender, and to cancel the tendering process and reject all tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the action. The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum (hereinafter and in all Contract documents called the "Contract Price") that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time the other tenderers shall be informed that their tenders have not been successful.

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

- 6.3 The Agreement will incorporate all agreements between the Employer and the successful tenderer. Within 14 days of receipt the successful tenderer will sign the Agreement and return it to the Employer.
- 6.4 Within 21 days after receipt of the Letter of Acceptance, the successful tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and specified form
- 6.5 Failure of the successful tenderer to comply with the requirements of clause 6.5 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.
- 6.6 Upon the furnishing by the successful tenderer of the Performance Security, the Employer will promptly notify the other tenderers that their tenders have been unsuccessful.
- 6.7 Preference where allowed in the evaluation of tenders shall not be allowed for contracts not exceeding one year (12 months)
- 6.8 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 6.9 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 6.10 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 6.11 Where contract price variation is allowed, the variation shall not exceed 15% of the original contract price.
- 6.12 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.
- 6.13 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination. The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 6.14 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

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## **7. Corrupt and Fraudulent practices**

- 7.1 The procuring entity requires that tenderers observe the highest standards of ethics during procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.



## SECTION III

## CONDITIONS OF CONTRACT

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## CONDITIONS OF CONTRACT

### I. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Site Investigation Reports”** are those reports that may be included in the tendering documents which are factual and interpretative about the surface and subsurface conditions at the Site.

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

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

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

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

**“A Variation”** is an instruction given by the Project Manager which varies the Works.

**“The Works”** are what the Contract requires the Contractor to construct, install, and turnover to the Employer, as defined in the Appendix to Conditions of Contract.

## 2. Interpretation

- 21 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 22 If sectional completion is specified in the Appendix to Conditions of Contract, reference in the Conditions of Contract to the Works, the Completion Date and the Intended Completion Date apply to any section of the Works (other than references to the Intended Completion Date for the whole of the Works).
- 23 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;
- (1) Agreement,
  - (2) Letter of Acceptance,
  - (3) Contractor's Tender,
  - (4) Appendix to Conditions of Contract,
  - (5) Conditions of Contract,
  - (6) Specifications,
  - (7) Drawings,
  - (8) Bill of Quantities,
  - (9) Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.

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

## 3. Language and Law

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

## 4 Project Manager's Decisions

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

## 5 Delegation

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

## 6 Communications

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

## 7 Subcontracting

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

## 8 Other Contractors

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

## 9 Personnel

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

## 10 Works

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

10.2

## II Safety and Temporary Works

- 11.1 The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained. The Project Manager's approval shall not alter the

Contractor's responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent Works, shall be subject to prior approval by the Project Manager before they can be used.

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

## 12. Discoveries

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

## 13. Work Program

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

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

## 14. Possession of Site

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

## 15. Access to Site

- 15.1 The Contractor shall <sup>STD/20</sup>allow the Project Manager and any other person authorized by the Project Manager, access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out. Instructions
- 15.2 The Contractor shall carry out all instructions of the Project Manager which are in accordance with the Contract.

## 16. Extension or Acceleration of Completion Date

- 16.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining Work, which would cause the Contractor to incur additional cost. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager in writing for a decision upon the effect of a Compensation Event or variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay caused by such failure shall not be considered in assessing the new (extended) Completion Date.
- 16.2 No bonus for early completion of the Works shall be paid to the Contractor by the Employer.

## **17. Management Meetings**

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

## **18. Early Warning**

- 18.1 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.
- 18.2 The Contractor shall cooperate with the Project Manager in making and considering proposals on how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the Work and in carrying out any resulting instructions of the Project Manager.

## **19. Defects**

STD/21

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

treated as a variation and added to the Contract Price.

- 19.2 The Project Manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.
- 19.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Project Manager's notice. If the Contractor has not corrected a defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

## 20. Bills Of Quantities

- 20.1 The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rate in the Bills of Quantities for each item.
- 20.2 If the final quantity of the Work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the Initial Contract price, the Project Manager shall adjust the rate to allow for the change.
- 20.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bills of Quantities.

## 21. Variations

- 21.1 All variations shall be included in updated programs produced by the Contractor.
- 21.2 The Contractor shall provide the Project Manager with a quotation for carrying out the variations when requested to do so. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period as may be stated by the Project Manager and before the Variation is ordered.
- 21.3 If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the variation does not correspond with items in the Bills of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 21.4 If the Contractor's quotation is unreasonable, the Project Manager may order the variation and make a change to the Contract price, which shall be based on the Project Manager's own forecast of the effects of the variation on the Contractor's costs.



- 21.5 If the Project Manager decides that the urgency of varying the Work would prevent a quotation being given and considered without delaying the Work, no quotation shall be given and the variation shall be treated as a Compensation Event.
- 21.6 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 21.7 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.

## **22. Payment Certificates, Currency of Payments and Advance Payments**

- 22.1 The Contractor shall submit to the Project Manager monthly applications for payment giving sufficient details of the Work done and materials on Site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the monthly application and certify the amount to be paid to the Contractor within 14 days. The value of Work executed and payable shall be determined by the Project Manager.
- 22.2 The value of Work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed; materials delivered on Site, variations and compensation events. Such materials shall become the property of the Employer once the Employer has paid the Contractor for their value. Thereafter, they shall not be removed from Site without the Project Manager's instructions except for use upon the Works.
- 22.3 Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. If the Employer makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the Central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.
- 22.4 If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute. Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
- 22.5 The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Appendix to Conditions of Contract. If the Contractor indicated

foreign currencies for payment other than the currencies of the countries of origin of related goods and services the Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The Employer and the Project Manager shall be notified promptly by the Contractor of an changes in the expected foreign currency requirements of the Contractor during the execution of the Works as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.

22.6 In the event that an advance payment is granted, the following shall apply:-

- a) On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 10% (ten percent) of the original amount of the Contract. The advance shall not be subject to retention money.
- b) No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.
- c) Reimbursement of the lump sum advance shall be made by
  - a) deductions from the Interim payments and where applicable from the balance owing to the Contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the Contract. It shall have been completed by the time 80% of this amount is reached.

The amount to be repaid by way of successive deductions shall be calculated by means of the formula:

$$R = A(x1 - x11) 80 - 20$$

Where:

R = the amount to be reimbursed  
 A = the amount of the advance which has been granted  
 $x^1$  = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 20% but not exceed 80%.

$x^{11}$  = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80%but not less than 20%.

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

## 23. Compensation Events

23.1 The following issues shall constitute Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Appendix to Conditions of Contract.
- (b) The Employer modifies the List of Other Contractors, etc., in a way that affects the Work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon the Work, which is then found to have no defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site investigation reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The effects on the Contractor of any of the Employer's risks.
- (j) The Project Manager unreasonably delays issuing a Certificate of Completion.
- (k) Other compensation events described in the Contract or determined by the Project Manager shall apply.

24.1 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.

23.2 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.

- 23.3 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.
- 23.4 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.
- 23.5 The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

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

#### 24. Price Adjustment

- 24.1 The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.
- 24.2 The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works. Unless otherwise stated in the Contract, if at any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case may be.
- 24.3 Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manner set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified there under
- 24.4 The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C.) and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.
- (i) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or

decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out

in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.

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

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

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

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

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

## 25. Retention

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

## 26. Liquidated Damages

26.1 The Contractor shall pay liquidated damages to the Employer at the rate stated in the Appendix to Conditions of Contract for each day that the actual Completion Date is later than the Intended Completion Date. The Employer may deduct liquidated damages

from payments due to the Contractor. Payment of liquidated damages shall not alter the Contractor's liabilities.

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

## 27. Securities

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

## 28. Day works

- 28.1 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.
- 28.2 All work to be paid for as Dayworks shall be recorded by the Contractor on Forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the Work being done.
- 28.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

## 29. Liability and Insurance

- 29.1 From the Start Date until the Defects Correction Certificate has been issued, the following are the Employer's risks:
- (a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to; 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
    - (i) Negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
  - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in Employer's design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.

- 29.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant,

and Materials is the Employer's risk except loss or damage due to;

- (a) A defect which existed on or before the Completion Date.
- (b) an event occurring before the Completion Date, which was not itself the Employer's risk
- (c) The activities of the Contractor on the Site after the Completion Date.

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

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

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

29.4 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.

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

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

### **Completion and taking over**

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

### **30. Final Account**

STD/29

30.1 The Contractor shall issue the Project Manager with a detailed account of the total amount that the Contractor considers payable to him by the Employer under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 30 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still

unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate. The Employer shall pay the Contractor the amount due in the Final Certificate within 60 days.

### 31. Termination

31.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These

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

- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
- (c) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.
- (e) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) The Contractor does not maintain a security, which is required.

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

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

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

### 32. Payment upon Termination STD/30

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



32.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the Work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works.

32.3 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on the Site, plant, equipment and temporary works.

32.4 The Contractor shall, during the execution or after the completion of the Works under this clause remove from the Site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

Until after completion of the Works under this clause the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Project Manager shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

### 32.5. Release from Performance

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

### 33. Corrupt gifts and payments of commission

The Contractor shall not;

(a) Offer or give or agree to give <sup>ETD/31</sup> to any person in the service of the

Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for the Employer or for showing or forbearing to show favour or disfavor to any person in relation to this or any other contract for the Employer.

- (b) Enter into this or any other contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.

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

#### 34. Settlement Of Disputes

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

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

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

34.2 The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising there under or in connection therewith, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

34.3 Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

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

assistance of third parties. Proof of such attempt shall be required.

34.5 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:

37.5.1 The appointment of a replacement Project Manager Upon the said person ceasing to act.

37.5.2 Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.

37.5.3 Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.

37.5.4 Any dispute or difference arising in respect of war risks or war damage.

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

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

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

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

**SECTION IV – APPENDIX TO CONDITIONS OF CONTRACT**

The **EMPLOYER** is:

Name: **COUNTY GOVERNMENT OF WEST POKOT, DEPARTMENT OF PUBLIC WORKS**

Address: **P. O BOX 222 -30600, KAPENGURIA.**

Name of Authorized Representative: **CHIEF OFFICER, DEPARTMENT OF PUBLIC WORKS.**

Telephone: **+254-07**

The **PROJECT MANAGER** is:

Name: **DIRECTOR (STRUCTURAL), DEPARTMENT OF PUBLIC WORKS.**

Address: **P. O BOX 222 -30600, NAIROBI.**

Telephone:

The name (and identification number) of the Contract is **PROPOSED KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE UP TO 36M SPAN FOOTBRIDGE IN WEST POKOT SUB-COUNTY.**

**TENDER NO: CGWP/T/034/2018-2019**

The Works consist of **THE WORKS TO BE CARRIED OUT UNDER THIS CONTRACT INVOLVES CONSTRUCTION OF FOOTBRIDGE AND ASSOCIATED WORKS WITH IT.**

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

The Intended Completion Date for the whole of the Works shall be **24 WEEKS FROM DATE OF POSSESSION.**

The following documents also form part of the Contract:  
**AS LISTED IN CLAUSE 2.3 OF CONDITIONS OF CONTRACT.**

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

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

The Site is located at River Suam in Kapenguria Constituency- County Government of West Pokot

STD/34

The Defects Liability period is 180 days.

The minimum insurance covers shall be;

1. The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor's faulty design is:
2. The minimum cover for loss or damage to Equipment is **Kshs 2,000,000.00**
3. The minimum for insurance of other property is **Kshs 2,000,000.00**
4. The minimum cover for personal injury or death insurance
  - For the Contractor's employees is **Kshs 1,500,000.00**
  - And for other people is **Kshs 1,500,000.00**

The following events shall also be Compensation Events:

1. NONE (ONLY AS LISTED IN CLAUSE 24 OF THE CONDITIONS OF CONTRACT).
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

The period between Program updates is **7 days**.

The amount to be withheld for late submission of an updated Program is **WHOLE CERTIFICATE**

The proportion of payments retained is **10% percent (IFMIS ONLY ACCEPTS 10%)**

The Limit of Retention is **10% percent**.

The Price Adjustment Clause **SHALL apply**.

The liquidated damages for the whole of the Works is **Kshs. 20,000.00** (per week or part thereof)

The Performance Security shall be for the following minimum amounts equivalent as a **Percentage of the Contract Price 5% percent**.

The Completion Period for the Works is **24[Weeks]**

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

The schedule of basic rates used in pricing by the Contractor is as attached *[Contractor to Attach]*. **PRICE INCREASE WILL BE BASED ON JBC INDICES.**

Advance Payment **SHALL NOT BE** granted.

The CONTRACTOR'S UNIT RATES should be inclusive of  
STD/35

VAT.

## SECTION V - SPECIFICATIONS

Specifications will be as published by the County Government of West Pokot, Ministry of Roads and Public Works General Specifications dated March, 1976 (together with any amendments issued thereto).

SECTION VI - DRAWINGS

## **SECTION VII - BILL OF QUANTITIES**

All quantities are measured in accordance to the Standard Method of Measurement of Building and Associated Civil Works for Eastern Africa (2008 Edition)



## SPECIFICATION

### **01** GENERAL DESCRIPTION OF WORKS

1. The site for the proposed works is in **COUNTY GOVERNMENT OF WEST POKOT –WEST POKOT SUB-COUNTY**). The works involves **Construction of Footbridge and Associated Works with it.**

### **2.** PRICING OF ITEMS

No prices will be inserted against items of particular preliminaries. The contractor shall be deemed to have included in his prices or rates of the various items in the Bills of Quantities or specifications for all costs involved in complying with all the requirements for the proper execution of the whole of the works in the contract.

### **3.** SCOPE OF THE WORKS

These are given without warranty and for guidance only:-

- (i) Construction / erection structural steel bridge deck.
- (ii) Construction of reinforced concrete bases and columns
- (iii) Associated Civil Works – Protection works and approaches

### **4.** DRAWINGS

All drawings are deemed to be self-explanatory. However, where doubts exist, the contractor should liaise with the Engineer before proceeding with the works. The scales are as shown, and only figured dimensions are to be applied.

### **5.** SITE OFFICE

The contractor shall be required to provide and maintain a site office for the DR and his team together with all standard furniture, fittings and telephone. The contractor shall be responsible for paying all connections, rent and call charges in connection therewith.

### **6.** LABOUR CAMP

The contractor is not permitted to house labour on site. He will be responsible for the transportation of workmen to and from site at his own cost and risk.

## **02** MANAGEMENT OF THE CONTRACT

The Chief Engineer (Structural), MOTIH & UD will be responsible for the contract management and site supervision. All materials and workmanship will comply with the latest edition of MOPW General Specification of Civil Engineering works.

## **03** EXTENT OF CONTRACT AND ALTERATION OF DESIGN

1. The works specified under this contract shall include all general works preparatory to execution of all matters, things, requisites and work of any kind necessary for the due and satisfactory construction, completion and maintenance of the work to the intent and meaning of the drawings and this specification, and further drawings and orders, that may be issued by the Engineer from time to time, compliance by the contractor with all the General Conditions of Contract, whether specifically mentioned or not in the clause of this specification, all materials, apparatus, plant, machinery, tools, fuel, water, timbering and tackle of every description; transport, offices, stores, workshops, staff, labour, the provision of proper and sufficient protective works, temporary fencing, lighting and watching required for the safety of the public and protection of the works and adjoining lands, first aid equipment, sanitary, accommodation for the staff and workmen; the effecting and maintenance of all insurances, the payment of all wages, salaries, fees, royalties, duties or other charges arising out of the execution of the works and the regular clearance of rubbish, re-instatement and clearing and leaving perfect on completion. The Contract will be deemed to have included in his rates the cost of complying with the requirements of this specification and General Conditions of the Contract unless otherwise specified.
2. Should the Contractor have comments regarding soundness of the design of any part of the work, or should he consider that the execution of the design is impossible on any part of the Contract, the contractor is required to notify the Engineer in writing at the time of tender and provide factual evidence substantiating his opinion when required to do so by the Engineer.
3. Notices given by the contractor in respect of the above after the tender is submitted will not be considered as the basis of a claim for additional costs or extensions of the time.

The Engineer may require to alter the design of any part of the structure should site conditions warrant such a change, and the rates entered in the Bills of Quantities should be applicable for the similar items. The rates for the items of the work not covered by the Bill of Quantities shall be established by the Engineer.

#### **04** PROGRAMME FOR EXECUTION OF THE WORKS

In accordance with the terms of clause 14 of the General Conditions of the Contract, the contractor shall submit to the Engineer within 28 days from the order to commence a fully detailed programme showing the order, procedure and method by which he proposes to carry out the construction and completion of the works.

The information to be supplied to the Engineer shall include drawings showing the general arrangement of the temporary offices and other temporary structures, which the Contractor proposes to use together with details of the construction plant and temporary works and all other devices, which he proposes to adopt for the construction and completion of the whole of the works and in addition details of the labour strength, skilled and unskilled and supervision arrangements.

The order in which it is proposed to execute the permanent works is subject to adjustment and approval by the Engineer and the Contract Price shall be held to include for any reasonable and necessary adjustment required by the Engineer during the course of the work.

The contractor will be deemed to have considered the effect of seasonal weather variations, when programming his operations. It must be clearly understood, that rains of up to 75mm per day will be deemed to be normal and expected. No claims by the contractor for extension of time due to rains of floods less than 75mm per day as measured by the Meteorological Department will be considered by the Engineer.

The contractor, when preparing his programme has to consider the time for the delivery of any imported material and the Engineer's normal working hours.

The Engineer's normal working hour shall be defined as 8 a.m. to 5 p.m. on week days with Saturdays and Sundays set aside for rest. If the contractor wishes to execute permanent works outside these hours, he shall obtain the written permission of the Engineer to make provision for supervision of such works.

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 by the prescribed completion date, and he shall from time to time review his progress and make such amendments to his rate of execution of the works as may be necessary to fulfill his obligations.

If in the opinion of the Engineer the plant or the equipment used by the contractor for any specific item of the work does not fulfil the requirements of the specifications in respect of the workmanship quality and safety of structures, such items of plant and equipment shall be replaced with similar or equivalent items of plant or equipment to the ~~SP/3~~ satisfaction of the Engineer. No extra payment will be made in respect of such replacements.

## **05** TEMPORARY WORKS

After the contract is placed and before the work commences the contractor shall submit to the Engineer drawings showing the general arrangement of his offices, quarters, workshop etc. and other temporary works with diagrams and descriptions, showing how he proposes to execute such temporary works and how they fit into his programme for the permanent works, all to be subject to adjustment and approval by the Engineer.

The Contractor shall be fully responsible for the sufficiency, stability and safety of all temporary works and their care in accordance with the Conditions of Contract.

The contractor shall at his own expenses, supply in advance to the Engineer for his approval, detailed drawings and calculations of stability of such temporary works as the Engineer may direct, but no approval given or implied by the Engineer shall relieve the contractor of his responsibilities in connection with the temporary works.

Unless otherwise instructed, upon completion of the contract and after receiving approval in writing from the Engineer, the contractor shall take down and remove all structures forming part of his own camp and that of the Engineer, and shall arrange for the disconnection of water supply, remove all drains and culverts, backfill trenches, fill in all latrine pits, soakages and other sewage disposal excavations, with the exception of items and services to revert the ownership of the Employer, and shall restore the site as far as practicable to its original Condition and leave it neat and tidy to the satisfaction of the Engineer.

## **06** SITE PERSONNEL

The Engineer will require the contractor to submit a list of professional and sub-professional personnel to be employed on the site stating their qualifications and experience.

The contractor shall be responsible for ensuring, that all personnel of Non- Kenyan origin employed on site by himself or his Sub-contractors or who are otherwise connected with the construction contract through the Contractor must be approved and cleared individually in writing by the appropriate Government Official to work on the project. Where personnel are not approved, the contractor shall be responsible at his own expense for obtaining and employing suitable and approved personnel.

The Engineer reserves the right to determine suitability of the persons employed by the contractor and may request replacement at any time of any member of the team employed by the contractor, if in the opinion of the Engineer the presence of such a person is deleterious to the execution of the Contract. The engineer's decision is final and binding.

The Contractor shall keep constantly a literate English speaking Agent or Engineer as his representative on the site, **SP/4** competent and experienced in the type of works involved, who shall give his whole time to the supervision of the Contractor's operations.

The name of such Agent or Representative shall be submitted in writing to the Engineer for approval and he shall receive on behalf of the contractor all directions and instructions from the Engineer or his representative and such directions and instructions shall be deemed to have been given to the contractor in accordance with the Conditions of Contract.

## **07** NOTICE OF OPERATIONS

1. No important operations shall be carried out without the consent of the Engineer in writing, or without full and complete notice also in writing, being given to the Engineer by the contractor sufficiently in advance of the time of the operation as to enable the Engineer to make such arrangements as he may deem necessary for its inspection.
2. The contractor shall supply, from time to time, to the Engineer in writing, full information with respect of locations in which the work is being prepared.
3. The contractor shall give the Engineer not less than 24 hours' notice of his intentions to set out or give levels for any part of the works, in order that arrangements may be made for checking. Any bench marks, setting out pegs or other line or level markings installed or made by the Engineer shall be carefully preserved by the contractor. Working shall be suspended for such times as may be necessary for checking the lines and levels on any part of the work.

## **08** SETTING OUT

It will be the responsibility of the contractor to obtain before commencing work the value and location of the benchmarks to be used for the works from the Engineer. All temporary benchmarks will be referred hereto. The contractor shall construct such temporary benchmarks as the Engineer may direct and agree the level thereof with the Contractor. The establishment of such temporary benchmarks will be deemed to be part of the contractor's responsibility in setting out the works and no additional payment will be allowed.

Should the contractor discover any error in the alignment or levels of the basic setting out, he shall at once notify the Engineer, who will then issue amended drawings or instructions regarding the correction of the error.

The contractor shall establish temporary benchmarks at less than 500m intervals and shall provide the Engineer with a schedule of their levels and location.

The Contractor shall allow in the bill of quantities for complying with the provisions of this clause and any abortive setting out occasioned by error in the alignment or levels of the Contractor's basic setting out.

## **09**    INFORMATION FROM BORINGS AND PITS

When certain exploratory borings have been made by the Engineer on the site of the works and the results obtained are shown on the drawings, the contractor is warned, that this information is given without guarantee of correctness, and any conclusion which the contractor may draw from such information are entirely his own responsibility.

The contractor will satisfy himself by his own investigation and experience as to the strata and ground conditions actually occurring. He shall allow for such investigations in his rates and prices and arrange his method of working to take account of such strata and any natural or artificial variations which may occur. In this connection the Contractor's attention is drawn to his obligations with regard to the inspection and examination of the site as detailed in clause 11 of the Conditions of Contract.

The Engineer reserves the right to adjust foundation levels and other levels for construction below ground level, in the light of information, that becomes available as general excavation proceeds upon the site

## **11**    HEALTH, SAFETY AND ACCIDENT

The contractor shall ensure, so far as is reasonably practicable, and to the satisfaction of the Engineer the health, safety and welfare at work of his employees including those of his Sub-Contractors and of all other persons on the site.

From the time any portion of the works is commenced, until the end of the maintenance period, the contractor shall be responsible for protecting the public from anything dangerous to persons or property and for the safe and easy passage of pedestrians and vehicular traffic.

The contractor shall designate one of his senior staff, who shall have specific knowledge of safety regulations and experience of safety precautions on similar works and who shall advise on all matters affecting the safety of workmen and on measures to be taken to promote safety in compliance with the factories act Cap.514, as a safety officer,

The contractor shall provide protective clothing and equipment, first aid stations with such personnel and equipment as are necessary. The appropriate information, instructions, training and supervision will be arranged by the contractor to ensure the safety and health of all the persons employed on the works, all in accordance with the laws of Kenya.

The contractor shall provide adequate waterborne sanitation and refuse collection and disposal complying with the laws of Kenya and all local by- laws, and to the satisfaction of the Engineer, for all houses, offices, workshops erected on site. Construction of pit latrines will not be permitted unless the Engineer has given his approval in writing.                    **SP/6**

During the period of execution of the works the contractor shall ensure that no pollution of existing watercourses or of reservoir catchment areas is allowed to take place as a result of his operation.

## 12 PRIVATELY OWNED AND PUBLIC UTILITY SERVICES

The contractor shall make himself acquainted with the position of all existing works and services inter alia sewers, storm water drains, cables for electricity and telephone and lighting poles and water mains before any excavations commences.

The contractor will be held responsible for damage caused in the course of the execution of the works to such existing works and services and shall indemnify the Employer against any claims arising from such damage (including consequential damages). Any damage caused must be made good at the contractor's own expense.

Such existing works and services, where exposed by the execution of the works, must be properly shored, hung-up and supported to the satisfaction of the Engineer and of the Authority concerned. The contractor shall exercise special care, when refilling trenches or other excavations around such existing works or services.

Poles supporting cables etc. adjacent to the works will be kept securely in place, until the work is completed and will then be made as safe and permanent as before.

Notwithstanding the foregoing requirements and without lessening the Contractors responsibility, the contractor shall inform the Engineer immediately when existing works have been exposed and conform to any requirements of the Authority concerned and not the Engineer.

6. Any damage to or interference with existing services occasioned during the progress of the works, will be deemed to be the responsibility of the contractor, who shall undertake to make good at his own expense any damage so caused to the existing underground services or other features, and shall be liable in respect of all claims arising from such damage or interference, however occasioned.

7. Only when, and as directed by the Engineer the position of an existing work or service can be changed by the contractor to meet the requirements of the proposed work. The cost of such work will be paid for on a day work basis, except where a specific item has been provided in the bills of quantities.

## 13 EXISTING ROADS AND ACCESSES

1. The contractor shall comply with all requirements of the Employer, owners or the competent Authority concerning the use of tracked equipment or other construction plant on any public or private road.

2. The cost of providing all diversions, signs, operators, flagmen and all reinstatement to the approval of the Engineer will be deemed to be included into rates entered in the bills of quantities, as will the cost of any road opening permit.
3. Before excavating across any public road, the contractor shall give 10 days' notice in writing to the Engineer and the County Government or the Ministry of Roads and Public Works his intention to excavate. He shall satisfy the Engineer, the County Government or the Ministry of Roads and Public Works, Roads Department and the Police as to the precautions he proposes to take and the signs and lights to be provided and operated. On any road or track at least 4 red lights shall be suitably placed on either side of the trench and diversions shall be clearly marked, signed and maintained.
4. The contractor shall further give to the Engineer a 24 hours' notice before excavating across a private road. Existing access to lands, property and all other things will be maintained by the contractor during the continuance of the works to the Engineer's satisfaction. The cost of such maintenance will be deemed to be covered by and included in the rates entered onto the bills of quantities.
5. When a road, used by the contractor for transporting labour or construction plant or for delivery of any material for the works is closed under section 71 of the traffic ordinance 1962, or amendments thereto, the contractor shall obey such closure and shall use alternative roads.

#### 14 COMPLIANCE WITH STATUTES AND REGULATIONS

In addition to the requirements of clause 26 of the General Conditions of Contract, the contractor shall be responsible for acquainting himself with all current valid statute ordinances or by-laws or building regulations, which may affect the works and shall include in his rates for all costs arising from compliance with the same. This applies in particular to the training levy and similar taxes for which no claims on the part of the contractor will be entertained.

The contractor shall also keep in close touch with Police and other Government officials of the area regarding their requirements, in the control of traffic or other matters, and shall provide all assistance or facilities, which may be required by such officials in the execution of their duties.

The contractor's attention is drawn to legal notice No.237 of October, 1971, which requires payment by the Contractor for Training Levy at the rate of 0.25% of the contract sum on all contracts of more than Kshs.50,000.00 – in value and his tender must include for all costs arising or resulting thereof. The training levy shall be paid by the contractor without delay. The original receipt shall be given to the Engineer for verification. No payment certificate will be certified by the Engineer, until the contractor complies with the above legal notice.



## 15 PROTECTION FROM WATER

Except as otherwise specified, the contractor shall be responsible for dealing with water, whether from existing drainage systems, water courses, underground springs, precipitation or any other source or cause. In discharging and diverting water, he shall avoid flooding or damaging other works or services, causing erosion and/or polluting water courses.

The contractor shall keep the whole of the works free from water and shall provide all dams, cofferdams, pumping, piling, shoring, temporary drains, sumps etc. necessary for this purpose.

Well in advance of commencing the permanent works, the contractor shall at his own expense cut drains and ditches and carry out any other measures necessary to effectively drain the original ground and/or shall so programme his works, that the necessity of temporarily draining the original ground is partially or totally obviated by working in the dry season.

The contractor shall at his own expense take all necessary precautions to prevent damage due to erosion and siltation during construction. Precautions will include temporary drainage berms, scour, checks, riprap and the like. Spoil or stockpile material shall be dumped in such a way that it does not interfere with streams, watercourses or any of the drainage works.

Any damage to the works or to adjacent properties resulting from the Contractor's failure to take the necessary precautions shall be made good at the Contractor's expense.

## 16 WATER SUPPLY

The Contractor shall provide clean and sufficient supply of fresh water both for construction of the works and for all offices and workshops etc, including the arrangements, pipelines, meters etc, for connecting to local water mains, the provision of storage tanks or water conveyance where necessary, payment of all fees and water charges.

The water shall be reasonably clear of suspended solids and free from any matter in quantities considered by the Engineer to be deleterious to the proposed work. Water supplied to the Engineer's offices, laboratories, etc, shall be drinkable to the satisfaction of the Medical Officer in the area.

No separate payment shall be made for the provision of water or its attendant facilities and the contractor shall allow for all these in his tender rates.

In the event that a water main is not available on or near the site, or that any available mains will not have sufficient capacity to provide water adequate for works, then the Contractor shall provide temporary tanks or other means of collecting and distributing water on the site.

## 17 LIGHT, POWER AND TELEPHONE

1. The contractor shall make his own arrangements for the supply of light, power and telephone required for the construction of the works and shall pay all fees and charges in connection therewith.
2. The contractor shall arrange with the appropriate authority for a temporary meter and supply of electricity and provide all temporary wiring, power and lighting points as he may consider necessary. In the event of no fixed electricity supply being available, the contractor shall provide the necessary power generating plant at his own expense.

## 18 WORKING AREA

1. The Contractor shall restrict his operations to those areas made available to him by the Engineer and shall at all times provide and maintain an adequate access for the Employer's employees and vehicles to carry out their normal duties in and around the existing works.
2. The Contractor shall, before entering upon any land purchased, rented, or for the use, of which compensation has been paid, ensure that all formalities have been completed and the agreement of the Owner, Tenant and the Engineer has been obtained.
3. The contractor shall not enter or occupy land outside the lands provided above without the written permission of the owner or competent authority. The Contractor shall make necessary arrangements and bear all costs involved in acquiring any additional land needed for his operations.

## 19 CO-ORDINATION OF THE WORKS

1. The Employer reserves the right to execute works on the site which are not included in the Contract. He will employ for this purpose either his own employees or another Contractor. The contractor shall ensure that neither his own operations nor trespass by his employees will interfere with the operations of the Employer nor his contractor employed on such works.
2. The contractor will be required to carefully co-ordinate his activities and work, both on and off site, with the activities and work of the other contractors, sub-contractors, statutory undertakings and all supervisory staff for the works appointed by the Employer. He shall allow all the works to proceed without undue hindrance and will co-operate to expedite execution of the works.
3. If any dispute or difference of any kind whatsoever shall arise between the contractor or statutory undertakings regarding the phasing, progress or execution of the works, then the Engineer shall have full power to direct in what order the works, or any portion thereof shall be commenced, carried on or completed and he may from time to time require the whole or any portion of the works to be discontinued or the execution thereof postponed for such a period as he may think fit.
4. The contractor shall respect any works executed by others and articles and supplied or installed by others and will be held responsible for any loss or damage thereto, if caused by him or his sub-contractors.

## 20 COPIES OF ORDERS AND TEST CERTIFICATES OF MATERIALS

1. Before entering into any sub-contract for the supply of any material or article, the contractor shall obtain the Engineer's approval in writing of the sub-contractor from whom he proposes to obtain such materials or goods. Should the Engineer at any time be dissatisfied with such materials or goods or with the method of operations carried out at such sub-contractor's works or place of business, he shall be empowered to control his previous given approval of such sub-contract and shall specify any other supplier, whom he may choose, or shall approve another sub-contractor for the supply of such materials or goods.
2. The Contractor shall then obtain such said materials or goods from such other supplier and shall bear any additional cost thereof together with the costs and consequences of replacing any unsatisfactory materials already incorporated in the works.
3. The Contractor shall deposit with the Engineer samples of such materials and manufactured articles including the manufacturer's specification, when and where appropriate.
4. When instructed by the Engineer, the contractor shall submit test-certificates from the suppliers of the materials and goods to be used for the contract to the Engineer. Such certificates shall certify that the materials or goods concerned have been tested in accordance with the requirements of the specifications and shall give the results of all tests carried out. The contractor shall provide adequate means of identifying the materials and goods delivered to the site with the corresponding certificates.
5. The Contractor shall provide the Engineer with copies of all orders for the supply of materials and goods required in connection with the works as the Engineer may require.
6. All materials and manufactured articles shall be stored on site in a manner acceptable to the Engineer. The contractor shall carefully protect from weather vermin all works, materials and manufactured articles, which may be affected.

## 21 PROGRESS, PHOTOGRAPHS AND RECORD DRAWINGS

Colour negatives showing the progress of the works shall be taken every month by the Contractor from the positions to be selected by the Engineer. The contractor shall supply proof prints of each negative, from which the Engineer shall select negatives. The contractor shall produce 2 sets of those selected photographs, each set shall comprise of 2 numbers, 200 x 150mm colour prints, which shall be handed over to the Engineer together with all the negatives. Each photograph shall be marked with the number of the negative and a statement shall be submitted giving the location and date when taken and a brief description or title.

The photographs shall be mounted on A4 loose leaf sheets, minimum 200g, with transparent plastic sheets.

After the work has been completed, the contractor shall furnish 'as built' drawings, showing the works as constructed together with all other information that may either be required or be useful for the operation and maintenance of the works in the future, such as alignment and depth of cover of pipelines, type of soil, rock levels, type dimensions and location of structures, size of pipelines and cables encountered during excavation.

All drawings shall be A 1 in size to the ink border and drawn on a perm trace paper.

## **22 SURVEY EQUIPMENT FOR THE ENGINEER**

The contractor will make available the following survey equipment for use by the Engineer and the contractor for the duration of the contract. The survey equipment will be provided in proper adjustment and good working order.

1 No. wild Nk2 theodolite or equivalent with tripod. 1 No. 50m metric steel tape.  
1 No. 30 metric linen or plastic tape. 1 No. 3 m metric steel tape.  
5 No. ranging rods.  
1 No. Engineer's automatic level, Wild NA2 or equivalent with tripod. 1No. Metric levelling staff

A supply of wooden pegs, steel survey pins, hammer and other such surveying accessories.

The contractor will maintain the equipment and replace items as necessary all to the satisfaction of the Engineer and for the entire duration of the contract.

The equipment will be deemed to be the property of the Employer during the Contract and will revert to the contractor at the end of the contract.

## TENDER EVALUATION CRITERIA

Evaluation will be done in six stages as follows:-

1. Determination of responsiveness
2. Technical evaluation
3. Financial evaluation
4. Combination of technical and financial evaluation
5. Determination of the lowest evaluated tenderer
6. Recommendation for award.

### STAGE 1. (TENDER RESPONSIVENESS)

<sup>i</sup> In accordance with the requirements of the Instruction to Tenderers under Clause 5, only substantially responsive tenders will be subject to detailed evaluation. For purposes of Clause 5, a responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. The mandatory conditions to be complied with are:-

- a) Certified copy of registration/incorporation
- b) Certified copy of registration with NCA 7 and Above (Civil Works)
- c) Valid tax compliance certificate
- d) Attach single business permit for County Government
- e) Attach certified CR 12 certificate
- f) Bid security (from approved institutions, proper validity period, minimum amount, as per the sample form)
- g) Litigation history (Sworn affidavit to be provided)
- h) Confidential business questionnaire (Properly filled and signed)
- i) Form of tender to be duly filled, signed, witnessed and stamped
- j) Certificate of tenderers visit to site

ii) In addition

- (A) a company should attach at least 3 copies or more of completion certificates of Kshs 20,000,000.00 and above of each in road construction for the last 5 years.
- (B) Should attach a works programme to proof that it can complete the above works within 24 weeks contract period if awarded.

iii) A company shall fulfill all the above conditions in order to proceed to technical evaluation

iv) Any company that does not fulfill any of the above conditions shall be disqualified from further evaluation at this stage.

**STAGE 2. (TECHNICAL EVALUATION)**

- I. The technical analysis will be allocated 70% score
- II. The tenderer **MUST** show proof of equipment, plant & machinery, vehicles, similar works, financial capability and relevant personnel for the works etc.
- III. The criteria for technical analysis will be as follows:

Item	Criteria	Score	Max score
1. Similar Works	b) Complete projects max. 5 projects in the last 5 years of similar magnitude others prorated		20
2. Equipment Holding	Attach list of equipment holding – logbooks or lease agreements		20
3. Qualified personnel with relevant skills	a) Directors of the company (any one (1) director  b) 2no. Key personnel but of different speciality with over 5 years experience (Site Agent, Surveyor and Foreman)	Diploma Degree  Diploma Degree Registered with professional body	15
4. Financial status KES - Audited financial reports	Financial statement of 2016 Financial statement of 2017 Financial statement of 2018 Bank statements Letters of access to credit lines		15
		<b>TOTAL SCORE</b>	<b>70</b>

- I. All companies that get a total score of 50 and below (out of 70) will be disqualified from further evaluation and will not proceed to financial evaluation.
- II. All companies that score 50 and above (out70) will proceed to financial evaluation.

**STAGE 3. (FINANCIAL EVALUATION)**

**(I) MATERIAL DEVIATIONS, MARKET PRICES AND CONSISTENCY OF RATES**

The bidder's prices shall be evaluated further by comparing them to the market prices. Total score of 30% shall be allocated to financial evaluation as follows:-

**(a) Front loading for main elements(10 marks)**

The elemental total shall be compared against the market price as per engineer's estimates where the elemental total does not exceed +10% of the

elemental market price, scores will be allocated as follows:-

(i) Excavations	1mks
(ii) Excavation in Rock	1mks
(iii) Concrete	2mks
(iv) Reinforcement	2mks
(v) 100x100x4mm SHS	2mks
(vi) Gabion Baskets	2mks
<b>TOTAL</b>	<b>10mks</b>

**(b) Market rates for main items. (10marks)**

The unit rate shall be compared against the market rate. Where the unit rate lies within the margin of -10% and + 10% of the market rate, scores will be allocated as follows:-

ITEM	MARKS
a) Excavations	1mks
b) Excavation in Rock	1mks
c) Concrete	2mks
d) Reinforcement	1mks
e) 100x100x4mm SHS	1mks
f) Gabion Baskets	2mks
g) Chequered Plate	2mks
<b>Total</b>	<b>10mks</b>

**(c) Consistency of Rates (10 marks)**

The tenderer's rates shall be thoroughly evaluated for consistency or lack of consistency. Specific emphasis will be given to work items of similar nature occurring in different elements or bills of the priced bill of quantities. If there is consistency in the rates; scores will be allocated as follows:-

ITEM	MARKS

(i) Excavations	4 mks
(ii) 50x50x4mm SHS	4 mks
(iii) Reinforcement	2 mks
<b>TOTAL</b>	<b>10 mks</b>



**STAGE 4. (COMBINATION OF TECHNICAL AND FINANCIAL EVALUATION)**

The scores for technical and financial analysis shall be combined and a total score for each tenderer will be determined as follows:-

Bidder	Total Technical Score (70)	Total Financial Score (30)	Combined Score (100)
1			
2			
3			

**STAGE 5. DETERMINATION OF THE LOWEST EVALUATED TENDERER**

The lowest evaluated bidder shall be determined as follows: Clause 5.7 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as per clause 5.7:

Bidder	Bidder's price (Form of Tender)	Bidder's Corrected price (Evaluated tender)	Error	ECF (%)	Ranking as per 5 above
1					
2					
3					

**STAGE 6. RECOMMENDATION FOR AWARD**

A recommendation will be made to award this tender to the tenderer with the highest score as determined in 5 above at the price indicated in the form of tender.

## SECTION VIII – STANDARD FORMS

- (i) Form of Invitation for Tenders
- (ii) Form of Tender
- (iii) Letter of Acceptance
- (iv) Form of Agreement
- (v) Form of Tender Security
- (vi) Performance Bank Guarantee
- (vii) Bank Guarantee for Advance Payment
- (viii) Qualification Information
- (ix) Tender Questionnaire
- (xi) Confidential Business Questionnaire
- (x) Statement of Foreign Currency Requirement
- (xi) Details of Sub-Contractors
- (xi) Letter of Notification of Award

**FORM OF INVITATION FOR TENDERS**

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

To: \_\_\_\_\_ *[name of Contractor]*

\_\_\_\_\_ *[Address]*

\_\_\_\_\_

\_\_\_\_\_

Dear Sirs:

*Reference:* \_\_\_\_\_ *[Contract Name]*

You have been pre-qualified to tender for the above project.

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

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

\_\_\_\_\_ *[Mailing Address, cable/telex/facsimile numbers].*

Upon payment of a non-refundable fee of Kshs \_\_\_\_\_

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

\_\_\_\_\_ *[Address And location]*

at or before \_\_\_\_\_ *(time And DATE)*. Tenders will be opened immediately thereafter, in the presence of tenderers' representatives who choose to attend.

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

or telex. Yours faithfully,

\_\_\_\_\_ *Authorized Signature*

\_\_\_\_\_ *Name And Title*



**LETTER OF ACCEPTANCE [letterhead paper of the Employer]**

\_\_\_\_\_ *[DATE]*

To: \_\_\_\_\_  
*[NAME of the CONTRACTOR]*

\_\_\_\_\_  
*[Address of the CONTRACTOR]*

Dear Sir,

This is to notify you that your Tender dated \_\_\_\_\_ for the execution of  
\_\_\_\_\_

*[Name of the CONTRACT and identification number, AS given in the Tender documents]*  
for the Contract

Price of Kshs. \_\_\_\_\_ *[Amount in figures]* Kenya  
Shillings \_\_\_\_\_ *(Amount in words)* ] in accordance with the  
Instructions to Tenderers is hereby accepted.

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

Authorized Signature .....

Name and Title of Signatory .....

Attachment : Agreement

## FORM OF AGREEMENT

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_  
between \_\_\_\_\_ of [or whose registered  
office is situated at] \_\_\_\_\_  
(hereinafter called “the Employer”) of the one part AND  
\_\_\_\_\_ of [or whose registered office is  
situated at] \_\_\_\_\_  
(hereinafter called “the Contractor”) of the other part.

WHEREAS THE Employer is desirous that the Contractor executes

---

(*Name And identification number of Contract*) (hereinafter called “the Works”) located  
at \_\_\_\_\_ [*Place/location of the Works*] and the Employer has  
accepted the tender submitted by the Contractor for the execution and  
completion of such Works and the remedying of any defects therein for the  
Contract Price of  
Kshs \_\_\_\_\_ [*Amount in figures*], Kenya  
Shillings \_\_\_\_\_ [*Amount in words*].

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.
  - (i) Letter of Acceptance
  - (ii) Form of Tender
  - (iii) Conditions of Contract Part I
  - (iv) Conditions of Contract Part II and Appendix to Conditions of Contract
  - (v) Specifications
  - (vi) Drawings
  - (vii) Priced Bills of Quantities
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

**FOR AND BEHALF OF THE EMPLOYER.**

Name:.....

Title:.....

Binding  
Signature:.....

Date:.....

**Witnessed by**

Name:.....

Address:.....

Signature:.....

Date:.....

**FOR AND ON BEHALF OF THE CONTRACTOR.**

Name of the  
Contractor:.....

Full name of Contractor`s authorized  
representative:.....  
.....

Title:.....

Binding Signature:.....  
Date:.....

**Witnessed by**

Name:.....

Address.....

Signature.....

Date.....

## FORM OF TENDER SECURITY

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

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

THE CONDITIONS of this obligation are:

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

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

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

\_\_\_\_\_  
*[Date]*

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

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

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



**PERFORMANCE BANK GUARANTEE**

To: \_\_\_\_\_ (*Name of Employer*) \_\_\_\_\_ (*Date*)  
\_\_\_\_\_ (*Address of Employer*)

Dear Sir,

WHEREAS \_\_\_\_\_ (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. \_\_\_\_\_ (~~hereinafter called "the Works"~~); \_\_\_\_\_

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

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

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Kshs. \_\_\_\_ (*Amount of GUARANTEE in figures*) Kenya Shillings \_\_\_\_\_ (*Amount of GUARANTEE in words*), and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of Kenya Shillings \_\_\_\_\_ (*Amount of GUARANTEE in words*),

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

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

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

SIGNATURE AND SEAL OF THE GUARANTOR \_\_\_\_\_

Name of Bank \_\_\_\_\_ Address \_\_\_\_\_

Date \_\_\_\_\_

**BANK GUARANTEE FOR ADVANCE PAYMENT**

To: \_\_\_\_\_ [Name of Employer] \_\_\_\_\_ (Date)  
\_\_\_\_\_ [Address of Employer]

Gentlemen,

Ref: \_\_\_\_\_ [Name of Contract]

In accordance with the provisions of the Conditions of Contract of the above-mentioned Contract, We, \_\_\_\_\_ [Name And Address of Contractor] (hereinafter called "the Contractor") shall deposit with \_\_\_\_\_ [Name of Employer] a bank guarantee to guarantee his proper and faithful performance under the said Contract in an amount of Kshs. \_\_\_\_\_ [Amount of GUARANTEE in figures] Kenya Shillings \_\_\_\_\_ [Amount of GUARANTEE in words].

We, \_\_\_\_\_ [BANK or FINANCIAL institution], as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to \_\_\_\_\_ [Name of Employer] on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding Kshs \_\_\_\_\_ [Amount of GUARANTEE in figures] Kenya Shillings \_\_\_\_\_ [Amount of GUARANTEE in words], such amount to be reduced periodically by the amounts recovered by you from the proceeds of the Contract.

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 Employer] 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.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until

\_\_\_\_\_ (Name of Employer) receives full payment of the same amount from the Contract.

Yours faithfully,

Signature and Seal \_\_\_\_\_ Name of the Bank or financial institution

Address \_\_\_\_\_

Date \_\_\_\_\_

Witness:

Name: \_\_\_\_\_ Address: .....

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

**QUALIFICATION INFORMATION**

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

1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate);  
 Place of registration: \_\_\_\_\_ Principal place of business \_\_\_\_\_

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

Year	Volume	
	Currency	Value

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

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

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

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?)
_____	_____	_____	
_____ (etc .)	_____	_____	

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

## 2 Joint Ventures

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

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

- 2.6 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture
- 2.7 Attach the Agreement among all partners of the joint venture ( and which is legally binding on all partners), which shows that:
  - a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
  - c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

**TENDER QUESTIONNAIRE**

Please fill in block letters.

2. Full names of tenderer

.....

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

.....

4. Telephone number (s) of tenderer

.....

5. Telex address of tenderer

.....

6. Name of tenderer's representative to be contacted on matters of the tender during the tender period

.....

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

.....

.....

\_\_\_\_\_  
Signature of

Tenderer Make copy and deliver to:\_\_\_\_\_ (*Name of Employer*)

**CONFIDENTIAL BUSINESS QUESTIONNAIRE**

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

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

*Part 1 – General*

Business Name .....

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

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

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

Nature of Business.....

Current Trade License No..... Expiring date.....

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

Name of your bankers.....

Branch.....

*Part 2 (A) – Sole Proprietor*

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

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

\*Citizenship details .....

*Part 2 (b) – Partnership*

*Give DETAILS of PARTners AS follows:*

	<i>Name in full</i>	<i>NATIONALITY</i>	<i>Citizenship Details</i>	<i>SHARES</i>
1.	.....	.....	.....	.....
2.	.....	.....	.....	.....
3.	.....	.....	.....	.....

***Part 2(c) – Registered Company:***

Private or public.....

State the nominal and issued capital of the

Company- Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows:

Name in full . Nationality. Citizenship Details\*. Shares.

1.....

2.....

3.....

4.....

***Part 2(d) – Interest in the Firm:***

Is there any person / persons in ..... (*NAME of Employer*) who has interest in this firm? Yes/No... ..... (*Delete AS necessary*)

I certify that the information given above is correct.

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

- Attach proof of citizenship



**STATEMENT OF FOREIGN CURRENCY REQUIREMENTS**

(See Clause 23] of the Conditions of Contract)

In the event of our Tender for the execution of \_\_\_\_\_ (*name of Contract*) being accepted, we would require in accordance with Clause 21 of the Conditions of Contract, which is attached hereto, the following percentage:

(Figures)..... (Words).....  
of the Contract Sum, (Less Fluctuations) to be paid in foreign currency.

Currency in which foreign exchange element is required:

.....

..... Date:

The ..... Day of .....

20.....

Enter 0% (zero percent) if no payment will be made in foreign currency.

Maximum foreign currency requirement shall be \_\_\_\_\_ (percent) of the Contract Sum, less Fluctuations.

\_\_\_\_\_  
(Signature of Tenderer)

**DETAILS OF SUB-CONTRACTORS**

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

Failure to comply with this requirement may invalidate the tender.

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

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

.....

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

.....

.....

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

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

.....

.....

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

.....

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

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

\_\_\_\_\_

\_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RE: Tender No. \_\_\_\_\_ Tender Name \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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

*(FULL PARTICULARS)* \_\_\_\_\_

\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

DEPARTMENT OF PUBLIC WORKS

Project: KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE UP TO 36M SPAN

**BILL NO.1 GENERAL AND PROVISIONAL SUMS**

BILL NO.1 GENERAL AND PROVISIONAL SUMS

ITEM	DESCRIPTION	UNIT	QNTY	RATE	KSH.	CTS
1/01	Provide and erect project 2 No.signboards to Engineer's approval.	No.	2			
1/02	Allow for a provisional sum of Kshs.300, 000.00 for Project Management.	SUM				
1/03	Include percentage of P.C sum in item 1/02 for the contractors' cost and profit.	%	10%			
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Project: KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE UP TO 36M SPAN

COLLECTION PAGE

BILL. 1: GENERAL AND PROVISIONAL SUMS

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Total for General and Provisional Sums	
Carried to Summary	

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Project: KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE UP TO 36M SPAN

BILL NO.2 SUB-STRUCTURE

ITEM	DESCRIPTION	UNIT	QNTY	RATE	KSHS.	CTS.
2/01	(All provisional) Site preparation Cut down trees, grub up roots and stumps; including cutting into small logs.	NO	20			
2/02	Excavations Excavate over site top soil average 200mm deep: remove from site	SM	200			
2/03	Excavate for column bases starting from stripped level not exceeding 1.5 metres deep.	CM	113			
2/04	Ditto for pits from reduced level over 1.50 metres but not exceeding 3.00 metres deep including planking and strutting of sides of excavations	CM	38			
2/05	Extra over excavations for breaking up/excavating in rocks. Class I	CM	151			
2/06	Allow for keeping excavations free from mud and all water including springs and running water by pumping ,bailing or other approved means	ITEM				
2/07	Disposal and Filling Load surplus excavated material and spread on site as directed by Engineer	CM	31			
2/08	Return fill and ram excavated material around foundations.	CM	369			
	Carried to collection page					

BILL NO.2 SUB-STRUCTURE

ITEM	DESCRIPTION	UNIT	QNTY	RATE	KSHS.	CTS.
2/9	Concrete 50 mm thick concrete blinding under foundations. (Grade 10/20)	SM	50			
2/10	Insitu Vibrated Reinforced Concrete: Grade 25 (20mm aggregate):in- Foundation Bases	CM	38			
2/11	Column  High yield square twisted bar reinforcement to BS 4449; including bends, hooks, binding wire, distance blocks and spacers Supporting all in position.	CM	4			
2/12	20mm diameter	Kg	1028			
2/13	16 mm diameter	Kg	2465			
2/14	10mm diameter	Kg	248			
2/15	Sawn formworks Sides of foundations bases	SM	30			
2/16	Vertical sides of columns	SM	72			
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COLLECTION PAGE BILL. 2: SUBSTRUCTURE

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	Brought forward from Page -04		
	Total for Substructure		
	Carried to Summary		



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Project: KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE UP TO 36M SPAN

BILL NO.3 SKELETAL STEELSTRUCTURE

ITEM	DESCRIPTION	UNIT	QNTY	RATE	KSHS.	CTS
	<p>All work in this section shall be executed in accordance with M.O.W. structural steel specifications 1973, and ammendments thereafter,</p> <p>rates to include for all materials, labour, stiffeners, welding, cutting , shaping, drilling all gusset plates fastenings and connection and all other items necessary for satisfactory incorporation into the works.</p> <p><u>Bridge structure members;</u></p> <p>Steel trusses fabricated forming modular units to make up 42 metre span hoisted approximately 4 metres above river valley</p> <p>Safety Cage Top and Bottom Members</p>					
3/01	<p>Fabricate and assemble in</p> <p>100 x 100 x 4 mm SHS including welding and bolting</p>	LM	144			
3/02	<p>Fabricate and assemble in</p> <p>50 x 50 x 4 mm L sections including welding and bolting</p> <p>Safety Cage Diagonal members</p>	LM	470			
3/03	<p>Fabricate and assemble in</p> <p>50 x 50 x 4 mm SHS including welding and bolting</p> <p>Safety Cage Vertical members</p>	LM	211			

3/04	Fabricate and assemble in 75 x 75 x 6 mm L sections including welding and bolting	Kg	716			
3/05	Fabricate and assemble in 50 x 50 x 4 mm SHS sections including welding and bolting	LM	302			
3/06	Safety Cage Lateral support members Fabricate and assemble in 50 x 50 x 6 mm L sections including welding and bolting	Kg	475			
3/07	Deck Level Wind Bracing Fabricate and assemble in 60 x 40 x 3 mm RHS including welding and bolting	LM	89			
3/08	Supply and fix BRC A65 standard wire gauge welded to vertical and horizontal members to approval	SM	130			
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ITEM	DESCRIPTION	UNIT	QNTY	RATE	KSHS.	CTS
3/08	Deck Cross Bearers Fabricate and assemble in 100 x 50 x 4 mm RHS sections including welding and bolting at 1,500mm c/c	LM	122			
3/09	Fabricate and assemble in 50 x 50 x 4 mm SHS sections including welding and bolting at 500mm c/c	LM	72			
3/10	Fabricate and assemble in 203 x 203 x 46Kg/m UC sections.	Kg	3864			

3/11	<p>Bolts Holding down bolts 20mm diameter including head, nuts and washer grade 4.6 and 250mm long embedded in concrete.</p> <p>Plates; The following are MS plates to be used in members Connections.</p>	NO	24			
3/12	<p>500 x 500x 18mm Anchor plate c/w boltholes</p>	NO	4			
3/15	<p>Decking The following are mild steel chequered plates of 6 mm thick for decking including 2 No. 10 mm drain holes at 1200 mm centres.</p>	SM	72			
3/16	<p>Prepare and apply one primer coat and two coats of gloss paint to general surfaces of metal as per clause 1911(11) on paint works and as directed by the Engineer.</p>	SM	394			
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36M SPAN

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BILL. 3: SKELETAL STEEL STRUCTURE

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	Total for Skeletal Steel Structure		
	Carried to Summary		

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Project: KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE UP TO 36M SPAN

BILL NO.4: APPROACH WORKS & ABUTMENT PROTECTION

ITEM	DESCRIPTION	UNIT	QNTY	RATE	KSHS.	CTS
4/01	Gabions Provide 1.0x1.0x2.0m gabion baskets manufactured from heavy-duty galvanized (zinc coated) steel wire of double twist hexagon weave, having a nominal mesh opening of 60mm x 80mm, mesh wire size min 2.5mm dia and selvedge wire min 3.2mm	NO	96			
4/03	Provide rock fill to gabions. Shall be of minimum rock size of 100 mm and the maximum rock size of 250 mm. and be dense, hard, clean and durable stone as quarried or naturally occurring rounded stone to BS 5628-3:2001. as specified and approved by the Engineer	CM	192			
4/04	Approach ramp footpath Provide hand packed hardcore on approach ramp as directed by the Engineer	CM	114			
4/05	Provide 100mm thick well compacted murrum layer on approach ramp.	SM	96			
4/06	Stone pitching Construct grouted stone-Pitching /rip rap revetment as directed by the Engineer.	SM	300			
Carried to summary page						

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**Project: KATIKOMOR-KUNGWAL-SUAM FOOTBRIDGE UP TO 36M SPAN**

ITEM	DESCRIPTION	UNIT	QNTY	RATE	KSHS.	CTS
	<b>Summary;</b>					
	BILL No. 1	.....	.....	.....		
	BILL No. 2	.....	.....	.....		
	BILL No. 3	.....	.....	.....		
	BILL No. 4	.....	.....	.....		
	SUBTOTAL					
	1.....					
	Contigencies 5%					
	SUBTOTAL					
	2.....					
	ADD 16 % VAT					
	<b>TOTAL CARRIED TO FORM OF TENDER</b>					

**SUMMARY**

Amount in Words:

**CONTRACTOR'S**

NAME:.....

ADDRESS:.....

SIGNATURE:.....

DATE:.....

**WITNESS**

NAME:.....

ADDRESS:.....

SIGNATURE:.....

DATE:.....