COUNTY ASSEMBLY OF KISUMU

PROPOSED OFFICE FIT OUT FOR KISUMU COUNTY ASSEMBLY MEGA PLAZA OFFICES

BILLS OF QUANTITIES

TENDER NUMBER: CAK/OFO/MPO/2019/2020/01

CLIENT
KISUMU COUNTY ASSEMBLY
P.O BOX 2738-40100
KISUMU

PROJECT MANAGER
DIRECTOR PUBLIC WORKS
DEPARTMENT OF ROADS, TRANSPORT AND PUBLIC WORKS
P.O. BOX 2738 - 40100
KISUMU

STANDARD TENDER DOCUMENT

FOR

PROCUREMENT OF WORKS

(BUILDING AND ASSOCIATED CIVIL ENGINEERING WORKS)

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INTRODUCTION

1.1 This standard tender document for procurement of works has been prepared for use by procuring entities in Kenya in the procurement of works (i.e. Buildings and associated Civil Engineering Works).

1.2 The following guidelines should be observed when using the document:-

(a) Specific details should be furnished in the Invitation to tender and in the special conditions of contract (where applicable). The tender document issued to tenderers should not have blank spaces or options.

(b) The instructions to tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through Appendix to instructions to tenderers and special conditions of contract respectively.

1.3

(b) Information contained in the invitation to tender shall conform to the data and information in the tender documents to enable prospective tenderers to decide whether or not to participate in the tender and shall indicate any important tender requirements

(c) The invitation to tender shall be as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have been prequalified following a request for prequalification.

1.4 The cover of the document shall be modified to include:-

I. Tender number.
II. Tender name.
III. Name of procuring entity.
IV. Delete name and address of PPOA.

SECTION I

INVITATION FOR TENDERS

COUNTY ASSEMBLY OF KISUMU
P.O. Box 86-40100
KISUMU
Uhuru Road

Date: 14th January,2020

Tender reference No. (CAK/OFO/MPO/2019/2020)

Tender Name (PROPOSED OFFICE FIT OUT FOR KISUMU COUNTY ASSEMBLY MEGA PLAZA OFFICES)

1.1 KISUMU COUNTY ASSEMBLY invites sealed tenders for the **OFFICE FIT OUT FOR KISUMU COUNTY ASSEMBLY OFFICES** situated at Mega Plaza.

1.2 Interested eligible candidates may obtain further information and inspect tender documents and the design drawings at, *(***KISUMU COUNTY ASSEMBLY HEADQUARTERS**) during normal working hours at the Procurement Office or email: kisumuassembly@gmail.com .

1.3 A complete set of tender documents may be obtained by interested candidates from the County Assembly of Kisumu Website: www.kisumuassembly.go.ke All bidders are required to forward their particulars to the Procurement Office for recording purposes and receiving any further tender clarifications and / or addenda.

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

1.5 Completed tender documents are to be enclosed in plain sealed envelopes marked "TENDER FOR OFFICE FIT OUT FOR KISUMU COUNTY ASSEMBLY OFFICES situated at Mega Plaza", Tender No. **CAK/REN/CAO/2019/2020/01** and should be addressed to

THE CLERK
KISUMU COUNTY ASSEMBLY
CAK Offices, Uhuru Road
P.O. BOX 86-40100
KISUMU

And placed in the Tender Box, located at the County Assembly of Kisumu, Administration Block, Ground Floor so as to be received on or before 11:00 a.m (East African Time) Tuesday 31st January, 2020.

Tenders must be accompanied by a Tender Security of **Kshs. 170,000** In the form of a guarantee from a reputable bank or an Insurance Company approved by PPRA, payable to the Clerk to the County Assembly of Kisumu.

1.6 Tenders will be opened immediately thereafter in the presence of the candidates or their representatives who choose to attend

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For CLERK
KISUMU COUNTY ASSEMBLY

SECTION II

INSTRUCTIONS TO TENDERERS

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INSTRUCTIONS TO TENDERERS.

1. General/Eligibility/Qualifications/Joint venture/Cost of tendering

1.1 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.

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

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

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

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

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

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

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

(d) major items of construction equipment proposed to carry out the Contract and an undertaking that they will be available for the Contract.

(e) qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.13 The price to be changed for the tender document shall not exceed Kshs.5,000/=

1.14 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 forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.

2.4 Before the deadline for submission of tenders, 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.

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. This shall be in the amount not exceeding 2 percent of the tender price

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

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

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

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

3.12 The Tender Security may be forfeited

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

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

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

(i) sign the Agreement, or

(ii) furnish the required Performance Security.

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

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

3.15 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised 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 initialled by the person or persons signing the tender.

3.16 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.

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

3.18 The tender security shall be in the amount of 0.5 – 2 per cent of the tender price.

4. Submission of Tenders

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

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(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.

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

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

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

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

5. Tender Opening and Evaluation

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

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

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

5.4 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may ask any tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.7.

5.5 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender (a) meets the eligibility criteria defined in Clause 1.7;(b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the tendering documents. A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. A material deviation or

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and

(d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 4.6

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

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

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

6. Award of Contract

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

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

6.3 The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the “Letter of Acceptance”) will state the sum (hereinafter and in all Contract

documents called the "Contract Price")that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time the other tenderers shall be informed that their tenders have not been successful.

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

6.4 The Agreement will incorporate all agreements between the Employer and the successful tenderer. Within 14 days of receipt the successful tenderer will sign the Agreement and return it to the Employer.

6.5 Within 21 days after receipt of the Letter of Acceptance, the successful tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and specified form

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

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

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

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

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

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

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

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

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

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

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

7. Corrupt and Fraudulent practices

7.1 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

1. Definitions

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

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

"Compensation Events" are those defined in Clause 24 hereunder.

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

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

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

"The Contractor's Tender"is the completed tendering document submitted by the Contractor to the Employer.

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

"Days" are calendar days; **"Months"** are calendar months.

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

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

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

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

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

"Employer", or the **"Procuring entity"** as defined in the Public Procurement Regulations (i.e. Central or Local Government administration, Universities,

Public Institutions and Corporations, etc) is the party who employs the Contractor to carry out the Works.

"Equipment" is the Contractor's machinery and vehicles brought temporarily to the Site for the execution of the Works.

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

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

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

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

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

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

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

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

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

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

"A Variation" is an instruction given by the Project Manager which varies the Works.

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

2. Interpretation

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

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

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

(1) Agreement,

(2) Letter of Acceptance,

(3) Contractor's Tender,

(4) Appendix to Conditions of Contract,

(5) Conditions of Contract,

(6) Specifications,

(7) Drawings,

(8) Bill of Quantities,

(9) Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.

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

3. Language and Law

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

4 Project Manager's Decisions

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

5 Delegation

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

6 Communications

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

7 Subcontracting

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

8 Other Contractors

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

9 Personnel

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

10 Works

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

11 Safety and Temporary Works

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

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

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

12. Discoveries

12.1 Anyth ing 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 allow the Project Manager and any other person authorised by the Project Manager, access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

16. Instructions

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

17. Extension or Acceleration of Completion Date

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

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

18. Management Meetings

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

19. Early Warning

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

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

20. Defects

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

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

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

21. Bills Of Quantities

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

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

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

22. Variations

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

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

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

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

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

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

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

23. Payment Certificates, Currency of Payments and Advance Payments

23.1 The Contractor shall submit to the Project Manager monthly applications for payment giving sufficient details of the Work done and materials on Site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the monthly application and certify the amount to

be paid to the Contractor within 14 days. The value of Work executed and payable shall be determined by the Project Manager.

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

23.3 Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. If the Employer makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the Central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.

23.4 If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

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

23.6 The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Appendix to Conditions of Contract. If the Contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services the Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The Employer and the Project Manager shall be notified promptly by the Contractor of 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.

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

a) On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of

10% (ten percent) of the original amount of the Contract. The advance shall not be subject to retention money.

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

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

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

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

Where:

R = the amount to be reimbursed

A = the amount of the advance which has been granted

X^1 = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 20% but not exceed 80%.

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

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

24. Compensation Events

24.1 The following issues shall constitute Compensation Events:

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

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

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

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

(e) The Project Manager unreasonably does not approve a subcontract to be let.

(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site investigation reports), from information available publicly and from a visual inspection of the Site.

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

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

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

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

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

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

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

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

24.5 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.

24.6 The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

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

25. Price Adjustment

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

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

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

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

(ii) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or decreased by the amount assessed

by the Project Manager based upon the difference, expressed as a percentage, between the rate set out
in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.

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

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

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

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

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

26. Retention

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

27. Liquidated Damages

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

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

28. Securities

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

29. Dayworks

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

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

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

30. Liability and Insurance

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

(a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to;

(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or

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

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

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

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

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

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

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

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

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

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

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

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

31. Completion and taking over

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

32. Final Account

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

33. Termination

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

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

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

(b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;

(c) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

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

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

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

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

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

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

34. Payment Upon Termination

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

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

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

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

be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

35. Release from Performance

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

36. Corrupt gifts and payments of commission

The Contractor shall not;

(a) Offer or give or agree to give to any person in the service of the

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

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

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

37. Settlement Of Disputes

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

the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of any of the following professional institutions;

(i) Architectural Association of Kenya

(ii) Institute of Quantity Surveyors of Kenya

(iii) Association of Consulting Engineers of Kenya

(iv) Chartered Institute of Arbitrators (Kenya Branch)

(v) Institution of Engineers of Kenya

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

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

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

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

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

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

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

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

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

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

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

37.8 The Arbitrator shall, without prejudice to the generality of his powers,

have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

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

SECTION IV – APPENDIX TO CONDITIONS OF CONTRACT

THE EMPLOYER IS

Name: -
_____

Address:
_____

Name of Authorised Representative: _____

Telephone: _____

Facsimile: _____

The Project Manager is

Name:
_____

Address:
_____

Telephone: _____

Facsimile: _____

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

_____
_____

The Works consist
of_____

_____
_____

The Start Date shall be
_____

The Intended Completion Date for the whole of the Works shall be
_____
_____

The following documents also form part of the Contract:
_____
_____

_____
_____

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

The Site Possession Date shall be _____

The Site is located at _____ and is defined in drawings
nos._____

_____
_____

The Defects Liability period is _____ days.

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

1._____

2._____

3._____

4._____

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_____

3. The minimum for insurance of other property is_____

4. The minimum cover for personal injury or death insurance

    - For the Contractor's employees is_____
    - And for other people is_____

The following events shall also be Compensation Events:

1. _____

2. _____

3. _____

4. _____

The period between Program updates is _____ days.

The amount to be withheld for late submission of an updated Program is _____

_____

The proportion of payments retained is _____ percent.

The Price Adjustment Clause _____ (shall/shall not) apply

The liquidated damages for the whole of the Works is Kshs. _____(per day)

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

The Completion Period for the Works is_____[Weeks]

The rate of exchange for calculation of foreign currency payments is _____.

The schedule of basic rates used in pricing by the Contractor is as attached *[Contractor to attach]*.

Advance Payment _____shall/ shall not be granted.

SECTION V - SPECIFICATIONS

Notes for preparing Specifications

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

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

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

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

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

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

structurally and functionally equivalent to the basic design parameters and Specifications.

Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the Employer each on its own merits and independently of whether the tenderer has priced the item as described in the Employer's design included with the tender documents.

SECTION VI - DRAWINGS

Note 1. A list of drawings should be inserted here

2. The actual drawings including Site plans should be annexed in a separate booklet.

SECTION VII - BILL OF QUANTITIES

Notes for preparing Bills of Quantities

1.0 The objectives of the Bills of Quantities are;

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

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

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

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

(a) Preliminaries.

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

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

(b) Work Items

(i) The items in the Bills of Quantities should be grouped into sections to distinguish between those parts of the Works which by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, or phasing of the Works, or considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities.

(ii) Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage or waste. Quantities should be rounded up or down where appropriate.

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

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

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

(c) Daywork Schedule

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

(i) a list of the various classes of labour, and

materials for which basic Day work rates or prices are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Work executed on a Day work basis; and

(ii) a percentage to be entered by the tenderer against each basic Day work Subtotal amount for labour, materials and plant representing the Contractor's profit, overheads, supervision and other charges.

(d) Provisional Quantities and Sums

(i) Provision for quantity contingencies in any particular item or class of Work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities, and *not* by increasing the quantities for that item or class of Work beyond those of the Work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a "Provisional Sum" in the Summary of the Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a "Provisional Sum" in the Summary of the Bill of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

(ii) Provisional sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialised Works should be included as a section of the main Bills of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name (s) of

the specialised firms he proposes to engage to carry out the specialized Works as his approved domestic sub-contractors. Only provisional sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities.

(e) Summary

The Summary should contain a tabulation of the separate parts of the Bills of Quantities carried forward, with provisional sums for Daywork, for physical (quantity) contingencies, and

for price contingencies (upward price adjustment) where applicable.

APPENDIX TO CONDITIONS OF CONTRACT

Name of Employer:

Name of Employer's Representative:

*Name of Project Manager**:***

*The name of Contract is**:***
*Tender No**:*** *……..*

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

The Tender Opening Date and Time will be on
……at **…….** At
.
The Start Date shall be as stated in the Project Manager's Notice to commence work.
The Intended Completion period for the whole of the Works shall be **……** from the date of commencement.
The Site Possession Date shall be the date site is handed over to the Contractor by the Project Manager.
The Site is located at **KISUMU COUNTY**

The Defects Liability Period is 6 **MONTHS**

Amount of Tender Security is Kshs…… (2% of the Tender Price) in the Form of Tender Security or a Banker's Cheque, from a reputable Commercial Bank, to the Employer.

The amount of Performance Security is 10% of CONTRACT PRICE in form of a Performance bank Guarantee, from a reputable Commercial Bank, acceptable to the Employer.

Retention Money **will be 10% of the INTERIM CERTIFICATE with a limit of 10% of the Contract Price or such other sum as shall become payable. SECTION VIII –**

STANDARD FORM

(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
(x) Request for Review Form

FORM OF INVITATION FOR TENDERS

_____*[date]*

To: _____ *[name of Contractor]*
_____*[address]*
_____
_____

Dear Sirs:

*Reference:*_____*[Contract Name]*

You have been prequalified to tender for the above project.

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

A complete set of tender documents may be purchased by you from ____
_____
[mailing address, cable/telex/facsimile numbers].

Upon payment of a non-refundable fee of Kshs _____

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

_____
[address and location]

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

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

Yours faithfully,

_____ Authorised Signature

_____ *Name and Title*

FORM OF TENDER

TO: _____*[Name of Employer)* _____*[Date]*
_____*[Name of Contract]*

Dear Sir,

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

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

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

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

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

Dated this _____ day of _____20_____

Signature _____in the capacity of_____

duly authorized to sign tenders for and on behalf of _____*[Name of Employer]*
of_____[*Address of Employer]*

Witness; Name_____

Address_____

Signature_____

Date_____

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.

The common Seal of _____

Was hereunto affixed in the presence of _____

Signed Sealed, and Delivered by the said _____

Binding Signature of Employer _____

Binding Signature of Contractor _____

In the presence of (i) Name_____

Address_____

Signature_____

[ii] Name _____

Address_____

Signature_____

FORM OF TENDER SECURITY

WHEREAS ……..(hereinafter called "the Tenderer") has submitted his tender dated …… for the construction of ……
…… *(name of Contract)*

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

THE CONDITIONS of this obligation are:

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

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

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

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

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

_____	_____
[date[	*[signature of the Bank]*
_____	_____
[witness]	*[seal]*

PERFORMANCE BANK GUARANTEE

To: _____(*Name of Employer*) _____*(Date)*
_____(*Address of Employer)*

Dear Sir,

WHEREAS _____(hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ (hereinafter called "the Works");

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a 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*) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

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

SIGNATURE AND SEAL OF THE GUARANTOR _____

Name of Bank _____

Address _____

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 figurers]* 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: _____

Date: _____

QUALIFICATION INFORMATION

1. Individual Tenderers or Individual Members of Joint Ventures

1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate);
Place of registration: _____

Principal place of business _____

Power of attorney of signatory of tender _____

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

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.

1. Full names of tenderer

   ……

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

   ……

3. Telephone number (s) of tenderer

   ……

4. Telex address of tenderer

   ……

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

   ……

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

   ……

   ……

_____
Signature of Tenderer

Make copy and deliver to:_____(*Name of Employer*)

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part 1 – General

Business Name ……

Location of business premises; Country/Town…….

Plot No…… Street/Road ……

Postal Address…… Tel No……..

Nature of Business……..

Current Trade Licence No…… Expiring date……

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

Name of your bankers……

Branch……

Part 2 (a) – Sole Proprietor

Your name in full…… Age……

Nationality…… Country of Origin……

*Citizenship details ……

Part 2 (b) – Partnership

Give details of partners as follows:

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

For

To:_____
_____
_____
_____

RE: Tender No

Tender Name_____

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

_____
_____

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

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

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

   *(FULL PARTICULARS)*_____
   _____

For *Chief Officer*

FORM RB 1

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO…….OF…….….20……...

BETWEEN

…….APPLICANT

AND

……RESPONDENT *(Procuring Entity*)

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

REQUEST FOR REVIEW

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

1.

2.

etc.

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

1.

2.

etc

SIGNED …….(Applicant)

Dated on…….day of ……/…20…

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on ……

day of ……....20….……

SIGNED
Board Secretary

Section B
TENDER EVALUATION CRITERIA

CONTENTS

Tender Evaluation Criteria…….11-20

Determination of Responsiveness……11-16

Detailed Technical Examination……16-17

Financial Evaluation……...18-20

Combination of Technical, Tender Sums Comparison and Financial Score…20

TENDER EVALUATION CRITERIA

After tender opening, the tenders will be evaluated in 4 stages, namely:

1. Determination of Responsiveness
2. Detailed Technical Examination
3. Financial Evaluation.
4. Combination of Technical, Tender Sums Comparison and Financial Score

STAGE 1: DETERMINATION OF RESPONSIVENESS

A) **PRELIMINARY EXAMINATION**

This stage of evaluation shall involve examination of the pre-qualification conditions as set out in the Tender Advertisement Notice or Letter of Invitation to Tender and any other conditions stated in the bid document.

These conditions may include the following:

(a) **Certified** copy of Certificate of Incorporation
(b) **Certified** copy of **VALID** Registration Certificate with the National Construction Authority in the class **5 (five)** and above.
(c) VAT and PIN registration
(d) A copy of **VALID** Tax Compliance Certificate from Kenya Revenue Authority (KRA).
(e) Must submit a tender security of Kshs. 170,000 valid for 90 days after date of tender opening.
(f) Certified copy of CR12 form from Registrar of Companies
(g) Certified copy of Single Business Permit preferably from Kisumu County.
(h) Bidders shall **SEQUENTIALLY SERIALIZE ALL PAGES** for each tender document submitted failure to which the bidders shall be disqualified.
(i) **Certified** copy of relevant (Small Works and Engineering) Certificate of Registration for access to government procurement opportunities (AGPO) from the Ministry of National Treasury for tenders in the special categories.
(j) Bid declaration for special category duly signed and stamped
(k) Bidders must respond online through IFMIS Supplier Portal using IFMIS Response **No. 768905.**
(l) Dully filled and stamped certificate of Bidders Pre-bid site visit.

Any other conditions included in the advertisement notice/Invitation letter.

Note:

Bidders are invited for site visits on Thursday 23rd day of January, 2020 starting at 11:00 a.m, East African Time.

Bidders are further adviced to report to procurement office for signing of the prebid site visit forms.

Certification must be made by a Commissioner for Oaths

Clause 13.1 of Instruction to Tenderers, "the tenderers shall furnish as part of his tenders a tender surety in the amount stated in the tender document in the Appendix to Instructions to Tenderers".

Clause 13.2 of Instruction to Tenderers, "the unconditional Tender surety shall be in Kenya shillings and be in form of a certified cheque, bank draft, an irrevocable letter of credit or a guarantee from a reputable Bank/ Insurance approved by PPOA located in the Republic of Kenya. The format of the surety shall be in accordance with the sample form included in the tender documents and the tender surety shall be valid for 150 days from the date of tender opening".

Clause 23.2 of Instruction to Tenderers: "For the purposes of this clause, a substantially responsive tender is one which conforms to all terms and condition and specifications of the tender document without material deviation or reservation and has a valid Bank/Insurance guarantee".

The employer may seek further clarification/confirmation if necessary to confirm authenticity/compliance of any condition of the tender.
The tenderers who do not satisfy any of the above requirements shall be considered Non-Responsive and their tenders will not be evaluated further.

STAGE 2: **COMPLETENESS OF TENDER DOCUMENT**

The tender document shall be examined based on clause 2.2 of the Instruction to Tenderers which states as follows:

In accordance with clause 2.2 of Instruction to Tenderers, the tenderers will be required to provide evidence for eligibility of the award of the tender by satisfying the employer of their eligibility under sub clause 2.1 of Instruction to Tenderers and adequacy of resources to effectively carry out the subject contract. The tenderers shall be required to fill the Standards Forms provided for the purposes of providing the required information. The tenderers may also attach the required information if they so desire.

The award of points for the STANDARD FORMS considered in this section shall be as shown below:

	PARAMETER	**MAXIMUM POINTS**
I.	Statement of Compliance ----------	3
II.	Tender Questionnaire - ----------	5
III.	Confidential Business Questionnaire ----------	5
IV.	Key personnel - ----------	15
V.	Contract Completed in the last Five (5) years - ----------	15
VI.	Schedules of on-going projects ----------	10
VII.	Schedules of contractors equipment ----------	10
VIII.	Audited Financial Report for the last 3 years----------	10
IX.	Evidence of Financial Resources ----------	10
X.	Name, Address and Telephone of Banks (Contractor to provide) --------	5
XI.	Litigation History----------	2
XII.	Sanctity of the tender document as in accordance with clause 5 of instruction to tenderer ----------	10
	TOTAL	**100**

The detailed scoring plan shall be as shown in table 1 below: -

TABLE 1:

Item	Description	Point Scored	Max. Point	
I	**Statement of Compliance** o Signed and stamped ---------- 3 o Signed but not stamped or vice versa ---------- 2 o Not signed nor stamped---------- ---------- 0		3	
Ii	**Tender Questionnaire Form** o Completely filled ---------- 5 o Partially filled ---- ---------- 3 o Not filled ----------0		5	
Iii	**Confidential Business Questionnaire Form.** o Completely filled ---------- 5 o Partially filled ---------- 3 o Not filled ---------- 0		5	
Iv	**Key Personnel (Attach evidence)**			15
	Director of the firm o Holder of degree or diploma in relevant Engineering field------4 o Holder of certificate in relevant Engineering field----------3 o Holder of trade test certificate in relevant Engineering field-- -------- ----------2 o No relevant certificate ----------0		4	
	At least 1No. degree/diploma of key personnel in relevant Engineering field o With over 10 years relevant experience ----------4 o With over 5 years relevant experience ---------- 3 o With under 5 years relevant experience ---------- 1		4	
	At least 1No certificate holder of key personnel in relevant Engineering field o With over 10 years relevant experience ---------- 3 o With over 5 years relevant experience ---------- 2 o With under 5 years relevant experience ----------1		3	
	At least 2No artisan (trade test certificate in relevant Engineering field) o Artisan with over 10 years relevant experience ---------- 2 o Artisan with under 10 years relevant experience ---------- 1 o Non skilled worker with over 10 years relevant experience--1		4	

v	**Contract completed in the last five (5) years (Max of 5 No. Projects)** o Project of similar nature, complexity and magnitude ----------3 o Project of similar nature but of lower value than the one in consideration---------- 2 o No completed project of similar nature ---------- 0		15	
vi	**On-going projects (Max of 5 No. Projects)** o Project of similar nature, complexity and magnitude --------- 2 o Project of similar nature but of lower value than the one in consideration –---------1 o No ongoing project of similar nature - ----------0		10	
vii	**Schedule of contractors equipment and transport (proof or evidence of ownership)** o Means of transport (Vehicle) ---------- 4 o No means of transport ---------- 0		4	10
	For each specific equipment required in the installation of the Work being tendered for. (Maximum No. of equipment to be considered – 3 No.) ---------- 2		6	
viii	**Financial report** **Audited financial report (last three (3) years)** o Turn over greater or equal to 5 times the cost of the project --10 o Turn over greater or equal to 3 times the cost of the project – 6 o Turn over greater or equal to the cost of the project ---------- 4 o Turn over below the cost of the project ---------- 2		10	
ix	**Evidence of Financial Resources (cash in hand, lines of credit, over draft facility etc)** o Has financial resources equal or above the cost of the project--10 o Has financial resources below the cost of the project ---------5 o Has not indicated sources of financial resources ----------0		10	
x	**Name, Address and Telephone of Banks (Contractor to provide)** o Provided ---------- 5 o Not provided ---------- 0		5	
xi	**Litigation History** o Filled ----------2 o Not filled ----------0		2	
xii	**Sanctity of the tender document** o Having the document intact (not tempered with in any way) ----------10 o Having mutilated or modified the tender document----------0		10	
	TOTAL		**100**	

Any bidder who scores 60 points and above shall be considered for further evaluation. Total score will be convereted to a maximum of 50%

STAGE 3: FINANCIAL EVALUATION

The evaluation shall be in two sections

1. Preliminary examinations and
2. Tender sum Comparisons

A) PRELIMINARY EXAMINATIONS

The preliminary examination in the Financial Evaluation shall be in accordance with clause 26 of Instruction to Tenderers.

The parameter to be considered under this section includes the following:
Arithmetic errors and comparison of rates

(1) Arithmetic Errors

The bid shall be checked for arithmetic errors based on the rates and the total sums indicated in the bills of quantities.

Confirmation shall be sought in writing from the tenderers whose tender sums will be determined to have a significant arithmetic error to their disadvantage, to confirm whether they stand by their tender sums. The error shall be treated as **per clause 24 of Instructions to Tenderers.**

Non compliance with the above shall lead to automatic disqualification from further evaluation.

Discount if any shall be treated as an error in pursuant to clause 26.3 of Instructions to Tenderers

(2) Comparison of rates

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

B) TENDER SUMS COMPARISONS

In this section, tender sums will be compared to the average of all sums for bidders who have qualified from STAGE 3A and score awarded to a maximum of 20 as shown below.

1 Preliminary Average

a. The tender sums of various binders, who qualify at STAGE 3A and the engineer's estimates, shall be reduced by omitting PC sums, provisional sums and contingency from the respectful amounts. The average of the reduced amounts so obtained shall be calculated.

b. Any tenderer whose tender percentage deviation is 20% higher or lower than the average obtained above, will be deemed to be unreasonably high or low and shall not be included in determining the mean in table 3, their bids will not be evaluated further. The Engineer's estimate will also be subjected to the same treatment. The tender sum comparison score will be converted to a maximum of 30%

The detailed scoring plan shall be as shown in table 3 below:

Item	Description	Score	Max. score
I	○ Tender Sums: (The tender sums of bidders, who qualify at STAGE 3A and the engineer's estimates, shall be reduced by omitting PC sums, provisional sums and contingency from the respectful amounts. The average of the adjusted tender sums so obtained shall be calculated. The deviation of the reduced amounts in respect of each bidder from the average shall then be worked out as a percentage of the average (Rounded off to one (1) decimal point) and scores allocated as follows :-) ○ Deviation of between 0% and 1% ---------- 60 ○ Deviation of between 1.1% and 2% ---------- 59 ○ Deviation of between 2.1% and 3% ---------- 56.2 ○ Deviation of between 3.1% and 4% ---------- 51 ○ Deviation of between 4.1% and 5% ---------- 48 ○ Deviation of between 5.1% and 6% ---------- 43 ○ Deviation of between 6.1% and 7% ---------- 42 ○ Deviation of between 7.1% and 8% ---------- 39 ○ Deviation of between 8.1% and 9% ---------- 36 ○ Deviation of between 9.1% and 10% ---------- 33 ○ Deviation of between 10.1% and 11% ---------- 30 ○ Deviation of between 11.1% and 12% ---------- 27 ○ Deviation of between 12.1% and 13% ---------- 24 ○ Deviation of between 13.1% and 14% ---------- 21 ○ Deviation of between 14.1% and 15% ---------- 18 ○ Deviation of between 15.1% and 16% ---------- 15 ○ Deviation of between 16.1% and 17% ---------- 12 ○ Deviation of between 17.1% and 18% ---------- 9 ○ Deviation of between 18.1% and 19% ---------- 6 ○ Deviation of between 19.1% and 20% ----------3 ○ Deviation of 20.1% and above ---------- 0		60
	TOTAL		60

TABLE 2

The Tender sum score will be carried forward to **STAGE 4**

C) FINANCIAL SCORE

The evaluation team shall compare the prices offered by the tenderers and the financial scores (Fs) will be determined using the formulae below. The financial score will be allocated a maximum of 20%.

Fs = 40 x Fm/F

Where Fs is the financial score, Fm is the lowest priced responsive financial bid and F is the price of the bid under consideration

STAGE 4 - TOTAL SCORE

The evaluation team shall combine Technical, Tender Sums Comparison and Financial Score as below:

Technical score (Ts) + Tender Sums Comparison Score (TSCs) +Financial score (Fs)

= 50% +30%+20%

RECOMMENDATION

The evaluation committee shall recommend to the client for award the lowest bidder among those who achieve a score of 75% and above in **STAGE 4** above

P

SECTION NO. 1
PRELIMINARY PARTICULARS

A. PARTIES

The "Employer" is	**Kisumu County Assembly** **P. O. Box 2738 - 40100** **Kisumu**
The "Architect" is	**County Architect -CGK** **PO Box 2738 - 40100** **Kisumu**
The " Quantity Surveyor" is	**County Quantity Surveyor-CGK** **P.O. Box 2738 - 40100** **Kisumu**
The " Service Engineer" is	**County Mechanical and Electrical-CGK** **P. O . Box 2738 -40100,** **Kisumu**
The " Structural Engineer" is	**County Structural Engineer-CGK** **P.O Box 2738 - 40100** **Kisumu**

The Employer has appointed the above listed consultants to render professional services in accordance with Clause 2.13 of the Agreement and Conditions of Contract for Building Works. For the purpose of the works which are under the control of the consultants above, the respective consultant shall be deemed to be invested with the duties and be representatives of the Architect. The contractual obligations of each Consultant will be governed by the Agreement and Conditions of Contract for Building Works.

B. SITE

The site is located on Plot L.R. No.

The site of the works shall be used solely for the purpose of executing and completing the Contract to the satisfaction of the Architect.

The Contractor shall obtain the Architect's approval for the siting of all temporary storage areas for materials. Site storage shall be the responsibility of the main contractor and his pricing shall cater for the same.

NOTE

The Contractor shall visit the site to acquaint themselves with its nature and position, scope of demolition works, and other local conditions, position of power and water supplies, access roads or any other limitations, and no claims for extras will be considered on account of lack of knowledge in this respect.

The Contractor's attention is drawn to the fact that they shall confine themselves to the area necessary for executing the works as instructed by the Architect.

The contractor must obtain the Architect's approval and directions regarding the use of any material found on the Site. Any such material utilized in the execution of the Contract shall be measured and value assessed by the Quantity Surveyor and the amount credited to the Employer.

Carried To Collection **Kshs**

A. DRAWINGS

The Drawings used in preparing the Bills of Quantities are scheduled in Appendix "A" at the end of these Bills. Drawings may be inspected at the offices of the Architect or Quantity Surveyor by prior appointment

Carried To Collection **Kshs**

CONTRACT PARTICULARS

A. FORM OF CONTRACT

The Contractor will be required to enter into a Contract which will be the current Form of Agreement and Conditions of Contract for Building Works published by the Joint Building Council of Kenya (1999 Edition, with Quantities) excepting in so far as varied hereafter.

The Contractor's attention is called to the following Clauses of the Conditions of Contract which shall be read as incorporated herein and they shall allow any sums which they consider necessary for the carrying out and observance of such Conditions.

Clause 1 Definitions.

Clause 2 Articles of Agreement.
Sub clause 2.6,2.9 and 2.12 shall be deleted

Clause 3 General Obligations of the Employer.
Sub clause 3.4 shall be deleted

Clause 4 General Obligations of the Contractor.

Clause 5 General Obligations of the Architect.

Clause 6 General Obligations of the Quantity Surveyor.

Clause 7 Contract Documents.

i) A list of drawings from which the tender documents have been prepared is appended (See appendix A)

ii) Before submitting tenders,Tenderers are advised to examine all the drawings and satisfy themselves details as no claim by reason of ignorance to this connection shall be entertained.

iii) The tenderer shall satisfy themselves to the correctness of all drawings and measurements.If the tenderer finds discrepancies in the drawings or between the drawings and the bills of quantities, they shall immediately refer the same to the concerned consultants who shall decide which shall be followed.

iv) The Contractor is to take the necessary particulars for ordering his materials from the drawings and the work in progress on the building and not use the Bills of Quantities for that purpose.

Clause 8 Contract Bills and Contract Price.
Sub clause 8.1,amend the words,'the employer' to 'the architect'.

The Contract Bills have been prepared in accordance with The Standard Method of Measurement of Building Works, Third Edition (Metric) June 2008, published by the Architectural Association of Kenya, Chapter of Quantity Surveyors, which is available for inspection at the offices of the Quantity Surveyor by appointment.

Exception to the Standard method of measurements include:

* Composite descriptions:the contractor shall include for all works necessary to complete the works

* All works in this contract that are subject to adjustment have been been defined as 'Provisional'.

Clause 9 Contractor's Site Agent and Other Staff.

ADD Sub clause 9.1a "The Contractor shall provide detailed qualifications and experience profile for the site agent for approval by the Employer and Architect before commencement of the works on site."

ADD "The Contractor's site agent shall remain on site after practical completion to attend to all the snags to the satisfaction of the Architect and Employer."

Clause 10 Clerk-of-Works.

Clause 11 Liability against Injury to Persons and Property.

In addition to the requirements contained in clause 11,the contractor's All Risk Policy shall cover the full value of the following and allow for all costs thereof:

* The works and temporary works erected in performance of this contract

* The materials on site ,plants and tools

* The cost and expense of removing debris of the property insured,destroyed and damaged by any peril insured.

* Professional fees ,allowed as 9% of the Contract Sum.

Clause 12 Insurance against Injury to Persons and Property.

The Contractor shall effect and maintain the following insurances as required by Clause 12.1.1 and 12.1.2 and shall allow for all costs thereof:

(i) Employers' Liability (Workmen's Compensation).

(ii) Third Party (Public Liability) for an Indemnity of not less than Shs. 15,000,000.00 for any one accident or series of accidents arising from the same event (unlimited in aggregate).

Should the Contractor already hold annual Insurance covering the whole of their activities, and the Indemnity required under this Contract exceeds the Indemnity under the existing policy/is, then further insurance shall be effected and maintained to cover such excess.

The Contractor shall ensure that all Sub-Contractors effect and maintain such insurances as are necessary to cover their liabilities in respect of injury to persons and property and Workmen's Compensation.

Clause 13 Insurance of the Works (Contractor's Liability).

Clause 14 Insurance of the Works (Employer's Liability).
This clause is NOT applicable.Shall be deleted.

Clause 15 Insurance of Works (Works of Alteration etc).
This clause is NOT applicable.Shall be deleted.

Clause 16 Performance Bond.
Section 16.2 of clause 16 is not applicable.Shalll be deleted.

* The Bond shall cover the due performance of the contract until the satisfactory expiry of the Defects Liability Period.

Clause 17 Compliance with Regulations, Notices etc.

Clause 18 Programme of Works.

Clause 19 Access to the Works.

Clause 20 Possession of Site and Commencement of Works.
Sub clause 20.2 shall be amended by the addition of the words 'or such other date as arises by virtue of extension of time granted under Clause 36 of the Conditions of Contract'.

Clause 21 Levelling and Setting Out.
Sub clause 21.1 amend the words 'The Employer' to 'The Architect'.

Clause 22 Architect's Instructions.

Clause 23 Specification of Goods, Materials and Workmanship.
Sub Clause 23.7 shall not be aplicable .Shall be deleted.

Clause 24 Samples and Tests.

Clause 25 Royalties and Patent Rights.

Clause 26 Assignment.
Clause 26 shall be deleted

Clause 27 Subletting.
Sub-Clause 27.1 ammend "He may sub-let part of the Works upon giving notice to the Architect" to read "He may sub-let part of the works upon giving notice and getting approval from the Architect and Employer."

Clause 28 Suspension of the Works by the Architect.

Clause 29 Suspension of the Works by the Contractor.

Clause 30 Variations.

Sub clause 30.2 the part reading "provided that no such instructions shall substantially change the scope or object of the contract without the consent of the Employer and the Contractor" shall be deleted

Section 30.3 of clause 30 shall not be applicable.Shall be deleted

ADD Sub clause 30.6.5 ""Where a Prime Cost rate is inserted in the Bills of Quantities for the supply of any materials or items, adjustment to the prime cost rate shall be undertaken by the Quantity Surveyor in accordance with the contract.

Clause 30.6.3.2 Shall be amended to read "when no such rates have been inserted, at rates to be agreed between the quantity surveyor, the employer and the contractor; failing which the quantity surveyor will issue a fair valuation. The quantity surveyor's fair valuation thereof shall be final and binding between parties".

Carried To Collection **Kshs**

Add to sub clause 30.9 "The conditions of this sub clause do not apply to works undertaken by another contractor under Architects Instructions issued in accordance with clause 22.2 of the Conditions of Contract".

Add Sub clause 30.15 "The Quantity surveyor will assess the variations and advise the Architect and the Employer within three calendar weeks from the date of occurrence of the variations. The Architect in consultation with Employer will issue a variation order within one calendar week of receipt of the said evaluation from Quantity surveyor / services engineer"

Daywork Rates: Any Daywork ordered under Sub-Clause (4)(c) of last Clause shall be executed at the following rates:-

Labour:	The Prime Cost to which *	100
Materials:	The Prime Cost (delivered to Site) to which *_____	20
Plant:	The Nett Hire Charge to which *_____	15

These percentage additions shall cover all insurances, use of small tools and non-mechanical plant, sharpening tools, water, supervision, watching, lighting, establishment and overhead charges and profit.

Dayworks will be allowed only where specifically ordered by the Architect in writing.

All Daywork Sheets must be signed by the Architect and the Contractor or their authorised representatives.

Clause 31 Nominated Sub-Contractors.

The main contractor shall be responsible for giving all necessary directions to Nomibated Sub-contractors, ascertaining their requirements,co-ordination of their works and arranging for them to be on site at the proper time for the orderly progress of the worksand for agreeing accurate dimensions in regard to settling out and all builder's work.The main contractor shall place all orders with the nominated sub-contractor clearly on his behalf and shall not pledge the credit of the employer ,either directly or indirectly.They shall arrange for the delivery of all materials or goods at the proper time for the ordered progress of works.

The Contractor will be required to ensure that all Nominated Sub-Contractors enter into the Sub-Contract Agreement issued under the authority of the Kenya Association of Building and Civil Engineering Contractors and as amplified or varied hereinafter and they must deposit with the Quantity Surveyor a signed extract of the relevant details thereof.

ADD Both Nominated and Domestic sub-contractors may be paid directly by the Employer, if mutually agreed between the Employer and the Contractor.

Sub-Clause 31.15 "If a nominated sub-contractor terminates the sub-contract or the Contractor terminates the sub-contract on the advice of the Architect," shall be amended to read "If a nominated sub-contractor terminates the sub-contract or the Contractor terminates the sub-contract on the advice of the Architect and Employer,"

Clause 32 Nominated Suppliers.

The main contractor shall place all orders with the nominated suppliers clearly on his behalf and shall not pledge the credit of the employer,either directly or indirectly.They shall arrange for delivery of all materials or goods at the proper time for the ordered progress of the works.

Carried To Collection Kshs

The Contractor will not receive any cash, trade or other discounts on Prime Cost and Provisional Sums. Any profit in lieu of these discounts which the Contractor desires must be priced by them against the appropriate item provided in the Bills of Quantities.

When tendering for works covered by Prime Cost and Provisional Sums the Contractor will be treated as any other Nominated Supplier or Sub-Contractor.

The Employer reserves the right to pay direct on the Certificates of the Architect some or all accounts in respect of works and materials covered by Prime Cost and Provisional Sums due to Nominated Sub-Contractors or Nominated Suppliers and to deduct any amounts so paid from any sums otherwise payable to the Contractor. Should this reservation be adopted due to default on the part of the Contractor, any profits which the Contractor may have allowed on Prime Cost and Provisional Sums will be omitted from the Contract. Direct payment will not be deemed to construe omission of the work from the Contract and the Contractor will continue to be responsible for the work or goods in accordance with the terms of the Contract.

Clause 33 Works by Other Persons engaged by The Employer.

Works to be executed by others and not forming part of this contract are described in the Preliminaries Section of the Contract Bills under the heading of Description of Works and Scope of Contract. The employer reserves the right to engage any other contractors to carry out works on any part of the site and the contractor will at all times grant access to such contractors duly appointed by the employer.

Sub clause 33.2 shall be amplified as follows;' The Employer reserves the right to engage any other contractors to carry out works on any part of the site and the main contractor will at all times grant access to such contractors duly appointed by the employer.The contractor shall allow in their rates for any inconveniences,interference or co-ordination with such other persons as no profit and attendance shall be paid on this account.

Clause 34 Payments

At the intervals stated, Certificates shall be issued provided the amounts of such Certificates are considered reasonable by the Quantity Surveyor, in accordance with the value of the Contract. When applying for a Certificate, the Contractor shall furnish the Quantity Surveyor with a detailed approximate statement of the value of the work executed and all materials on Site in order to expedite the issue of the Certificate.

Subsequent Certificates will not be issued to the Contractor by the Architect until satisfactory proof has been given by the Contractor that Nominated Sub-Contractors and Nominated Suppliers have been paid the amounts included for them in previous Certificates issued to the Contractor.

The employer reserves the right to make direct payments to nominated sub-contractors and nominated suppliers.

All documents necessary for the purposes of the compilation of the Final Account including all documents relating to the accounts of nominated sub-contractors and nominated suppliers shal be passed to the Quantity Surveyor as and when availabe during the progress of the works and ot later than one month after the Date of Prcatical Completion.

Add sub-clause 34.2a "The Quantity Surveyor, Employer's Representative and Contractor shall be represented on site during verification of work done and materials on site to be included in the interim valuation."

Clause 34.15 shall be deleted

Clause 34.20 "The final account shall be agreed between the Quantity Surveyor, the Contractor, the Architect and the Employer."

Clause 35 Fluctuations.

Clauses 35.0 The Contract shall be a FIXED PRICE Contract

Sub-Clauses 35.3 to 35.8 (inclusive) will be deleted.

Clause 36 Extension of Time.

Delete sub-clause 36.1.10 and insert, 'By the contractor's inability for reasons beyond and which he could not reasonably have foreseen at the date of this contract to obtain delivery upon the works of such imported goods or materials importedfrom outside the country in which the contract is being executed as are essential to the proper carrying out of the works'.

Sub clause 36.1.15 shall not be applicable.Shall be deleted.

The Contractor shall order all materials to be obtained from overseas immediately upon signing the contract and shall order materials to be obtained locally as early as necessary to ensure that such materials are on site when required for the works.

However,before placing any order,the contractor must get confirmation in writing from the architect that the materials specified are required for the works and have notbeen varied in any way in the light of altered requirements or planning.

A claim for extension of time under clause 36.1.10 shall not be considered unless substantial proof is submitted that every endeavor has been made by the contractor to avoid such delays.

As soon as any delay becomes apparent the architect must be notified in writing

Clause 36.8 shall be amended to read…, "All applications for extension of time and all decisions on the same shall be copied and discussed and agreed with the Employer at the time of application or decision, as the case may be."

Clause 37 Loss and Expense caused by Disturbance of Regular Progress of The Works.
When evaluating the actual loss incurred under this clause, the only items to be considered are the priced preliminaries. The figures to be used shall be the agreed reccurrent costs and NOT the entire priced rate

Clause 38 Termination of the Contract by the Employer.

Clause 39 Termination of the Contract by the Contractor.

Clause 40 Termination of the Contract by either Party.

Clause 41 Practical Completion and Defects Liability.
Sub-Clause 41.8 shall be deleted and replaced with the following…."Notwithstanding the provisions of sub-clause 30.10 and sub-clause 41.6 herein, where defects shrinkages or other faults shall occur during the period of rectification of defects which are not due to materials or workmanship not being in accordance with the contract, the Architect may instruct their rectification at the Contractors own cost, unless such faults are due to design errors. Such instruction shall only be treated as a variation and valued in accordance with sub-clause 30.6 of these conditions if the faults are of design nature."

Clause 42 Sectional Completion.

Clause 43 Damages for Delay in Completion.

Clause 44 Antiquities and Other Objects of Value.

Clause 45 Settlements of Disputes.

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A. APPENDIX TO THE CONDITIONS OF CONTRACT

The Appendix to the Conditions of Contract will be filled in as follows:

Clause 13.0	Percentage to cover Professional Fees	
Clause 16.1	Amount of Contractor's Surety	10% of the Contract Sum.
Clause 16.2	Amount of Employer's Surety	This clause shall be deleted.
Clause 18.1	Period for Submission of Programme	2 weeks from the date of possession.
Clause 20.1	Period for Possession of Site	Within 14 days of receipt of notice accepting tender.
Clause 20.2	Contract Period	To be stated in the Form of Tender.
Clause 20.2	Date for Commencement of Works	Within 14 days of receipt of notice accepting tender.
Clause 20.2	Date for Practical Completion	To be agreed
Clause 31.14 32.4.5 34.6	Name of the bank for purposes of interest calculation	To be stated in the Form of Tender.
Clause 34.1	Intervals for application of Payment Certificates	4 weeks
Clause 34.4	Minimum amount of Payment Certificates	As per valuation
Clause 34.12	Percentage of Certified Value Retaine	10% of the project cost
Clause 34.12	Limit of Retention Fund	5% of the project cost
Clause 34.12	Periods for Release of Interest on Retention Money to Contractor	N/A
Clause 34.17	Period of Final Measurement and Valuation	Six (6) Months
Clause 41.6	Defects Liability Period	Six (6) Months
Clause 43.1	Liquidated and Ascertained Damages	Shs. 50,000.00- per calendar week or part thereof for late completion.

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GENERAL MATTERS

A. SUFFICIENCY OF TENDER

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

B. STAMP CHARGES

The Contractor shall allow for the payment of all Stamp Charges in connection with the Surety Bond and Contract Agreement.

C. DEFINITIONS AND ABBREVIATIONS

Terms used in these Bills of Quantities shall be interpreted as follows:

Approved	shall mean approved by the Architect.
"as directed"	shall mean as directed by the Architect.
"B.S."	Shall mean the current British Standard Specification published by the British Standards Institution, 2 Park Street, London W.1., England.
"C.M."	shall mean Cubic Metres.
"S.M."	shall mean Square Metres.
"L.M."	shall mean Linear Metres.
"mm"	shall mean Millimetres.
"Kg."	shall mean Kilogrammes.
"No."	shall mean Number.
"Set"	Shall mean a group of complementing parts formimg a complete and functioning whole
"Ditto"	Shall mean the whole of the preceeding description axcept as qualified in the section in which it occurs
"m.s"	Shall mean Measured Separately
"VAT"	Shall mean Value Added Tax
"Take delivery."	shall mean collecting the client supply items from a store located within Nairobi, loading and trasporting the same to the site at no cost to the employer.
"Omitted works"	shall mean works completely removed from the scope and not to be done at all within the contract. This shall not apply to works removed from the main/builders works and instead executed by a specialist subcontractor within the current contract. Where a specialist sub-contractor is involved, the main contractor shall be paid for profit and attendance in the prime cost section of the bills of quantities. No claim for loss of profit and or expense shall arise.

A. PROGRESS SCHEDULE

The Contractor shall, upon receiving instructions to proceed with the work, draw up a Time and Progress Schedule setting out the order in which the Works are to be carried out with the appropriate dates thereof. This Time and Progress Schedule is to be agreed with the Architect and no deviation from the order set out in this Schedule will be permitted without the written consent of the Architect. The Main Contractor will be responsible for arranging the above programme with all Sub-Contractors including the Nominated Sub-Contractors and Nominated Suppliers.

B. FIGURED DIMENSIONS

Figured dimensions are to be followed in preference to dimensions scaled from the Drawings; but whenever possible dimensions are to be taken on the Site or from the Buildings. Before any work is commenced by Sub-Contractors or Specialist Firms, dimensions must be checked on the Site and/or buildings and agreed with the Contractor, irrespective of the comparable dimensions shown on the Drawings. The Contractor shall be responsible for the accuracy of such dimensions.

C. PROVISIONAL WORK

All "provisional" and other work liable to adjustment under this Contract shall be left uncovered for a reasonable time to allow all measurements needed for such adjustment to be taken by the Quantity Surveyor. Immediately the work is ready for measurement, the Contractor shall give notice to the Quantity Surveyor.

If the Contractor makes default in these respects he shall, if the Architect so directs, uncover the work at his own expense to enable the measurements to be taken.

SITE LEVELS

Before commencing the works the contractor must arrange for and agree with the architect,engineer and quantity surveyor on the existing levels and similarly establish and agree a bench mark.

D. SETTING OUT

The contractor shall set out the works according to drawings and shall be responsible for its correctness and shall be required to amend any errors arising from inaccurate settting out at his own cost and expense.Any discrepancies on the dimensions or levels marked on the drawingsshould be reported to the architect for their immediate attention and the contractor shall only proceed after the architect's instructions to adjust the same.No claim for extra time,expense or relief fom provisions of clause 21.0 of the conditions of the contract may be made there after

Before any works are commenced by sub-contractors or specialist,dimesnions must be checked by and agreed with the contractor.The contractor shall be responsible for the accuracy of such dimensions.

E. EXISTING SERVICES

Prior to commencement of any work the Contractor is to ascertain from the relevant Authorities the exact position, depth and level of all existing electric cables, water pipes or other services in the area and they shall make whatever provisions may be required by the Authorities concerned for the support and protection of such services. Any damage or disturbance caused to any services shall be reported immediately to the Architect and the relevant Authority and shall be made good to their satisfaction at the Contractor's expense.

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A. TRANSPORT TO AND FROM THE SITE

The Contractor shall include in their prices for the transport of materials, workmen, etc., to and from the Site of the proposed Works, at such hours and by such routes as are permitted by the Authorities.

All current rules and regulations issued by the Transport Licencing Board (TLB) of the Republic of Kenya shall be adhered to.

B. PROGRAMME OF WORKS

The contractor shall ,upon receiving instructions to proceed with the work,submit programme of works in accordance with clause 18.0 of the conditions of contract.The programme shall be computerized critical path programme schedule which the contractor shall develop and maintain during the course of the project. The schedule shall include construction and procurement activities as well as other time related factors.The contractor shall prepare the time schedule showing the time and order in which they propose to carry out the woks within the total construction time.The schedule shall also show in detail the construction time and order in which each section of the work is to be caried and be sub-divided into elements,trades and tasks.
The schedule shall shall show when information is required from consultants especially in relation to the ordering of imported materials.

The time schedule is to be agreed with the Architect

At the end of each month,the contractor shall incorporate actual start and finish dates into the time schedule and produce an update on the programme.The update is to show actual start and finish dates,identify out sequence of activities,critical acivities and any constraints which may have or may affect the progress of the works.

During construction ,the contractor will incorporate any changes to the time schedule only if aproved in writing by the rchitect and produce a revised schedue.

The ocntractor shall provide to the Architect,a soft copy of the time schedule including monthly updates and nalysis together with four printed copies of the relevant data.

C. OVERTIME

The Contractor shall allow in their tender for any extra costs for overtime working they consider will be necessary in order to complete the works by the contract Date of Completion.

If during the course of the Contract overtime is worked for a specific purpose in accordance with a written instruction issued by the Architect, the Contractor will be reimbursed in respect of such overtime to the extent only of the additional net cost of unproductive time payable over and above the basic hourly rates as laid down by the Regulations of Wages and Conditions of Employment Act, Building and Construction Industry Wages council and excluding any bonuses, profits and overheads.

D. SITE PHOTOS

The contractor shall allow for taking digital site phographs on a weekly basis to the satisfaction of the consultants.Copies of each shall be provided to the employer and consultants as required and a weekly record shall be placed on a board in the site office.

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A. FAIR WAGES

The contractor shall pay rates of wages and observe hours and conditions of labour not less favourable than the minimum rates of remuneration and minimum conditions of employment applicable in the area where work is carried out.The contractor is to comply with the Regulation of Wages and Conditions of Employment Act, Building and Construction industry Wages Council and is to be responsible for the compliance by the Sub-contractors employed in the execution of the contract.Should a claim be made to the architect alleging the contractor's default in payment of Fair Wages,and if thereof,the architect may,failing to pay the contractor, pay the claim out of monies due to the contractor under this contract.The contractor will furnish the architect if called upon ,such particulars,of the rates of wages,hours and conditions of labour referred above as the architect may direct.

B. PUBLIC AND PRIVATE ROADS, PAVEMENTS, ETC.

The Contractor will be required to make good, at their own expense, any damage they may cause to the present road surfaces and pavements within or beyond the boundary of the Site, during the period of the Works. In particular, all existing trees, shrubs, plants, etc., which may be destroyed or damaged during the progress of the Works are to be made good by the Contractor to the approval of the Architect.

C. SUPERVISION

The said works shall be executed under the direction and to the entire satisfaction of the architect and engineer who shall be acting under the delegated authority of the architect,and who shall at all times have access to the works and the yards and workshops where work is being prepared for the building works.

D. POLICE REGULATIONS

The Contractor is to allow for complying with all instructions and regulations of the Police Authorities.

E. LOCAL REGULATIONS AND BY-LAWS

The contractor is to comply with all local regulations and by-laws of the local authority including serving notices and paying of fees.

F. ACCOMODATION ON SITE

No accomodation on site will be permitted for the contractor's staff or work people including those of sub-contractors

G. CONTRACTORS' SUPERINTENDENCE

The Contractor shall constantly keep on the Works a literate English-speaking Agent or Representative, competent and experienced in the kind of work involved, who shall give his whole time to the superintendence of the Works. Such Agent or Representative shall receive on behalf of the Contractor, directions and instructions from the Architect and such directions and instructions shall be deemed given to the Contractor in accordance with the Conditions of Contract. The Agent shall not be replaced without the specific approval of the Architect.

It is to be a specific condition of this Contract that the successful Tenderer shall provide on site throughout the period from the completion of the substructure to the Date for Practical Completion a suitably qualified, experienced and competent person to ensure that the works are carried out to the standard required by the specification and detailed on the Drawings; and shall ensure that upon any termination of employment a suitable replacement is found.

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Before the Tenderer's offer is accepted the Architect will personally interview the Contractor's proposed Representative. A curriculum vitae of past experience and qualifications must be provided for the Architect's scrutiny.

The Architect's decision will be final regarding the suitability of the proposed Representative.

A. WATER

The contractor shall make arrangement with the local authorities for the installation of a separate meter for all water used by him and sub contractors through out the contract and pay all costs and fees in connection therewith.

All water shall be fresh, clean and pure, free from earthy vegetable or organic matter, acid or alkaline substance in solution or suspension.

The Contractor shall provide at their own risk and cost all water for use in connection with the Works (including the work of Sub-Contractors). The Contractor shall provide at their own expense all temporary distribution pipes, storage tanks, meters, etc., and they shall clear away same upon completion of the Works.

B. LIGHTING AND POWER

The Contractor shall provide at their own risk and cost all artificial lighting and power for use on the Works, including all Sub-Contractors' and Specialists' requirements and including all temporary connections, wiring, fittings, etc., and clearing away on completion. The Contractor shall pay all fees and obtain all permits in connection therewith.

All such temporary works shall be cleared away on completion of the construction.

C. SAFETY

The Contractor shall comply at all times with the requirements of the Factory Act (Cap 514), Building Construction Rules, Supplement 18, Legal Notice No. 40 dated 5th April, 1984 ensure that the safety of their workpeople and authorised visitors to the Site is protected at all times. In particular there shall be proper provision of planked footways and guard-rails to scaffolding, etc.; protection against falling materials and tools and the Site shall be kept tidy and clear of dangerous rubbish.

The Contractor shall appoint a Safety Officer as required by the Factory Act and notify the Factory Inspector of his name. The Safety Officer shall be qualified in compliance with the Factory Act and shall have experience in First Aid. The Safety Officer shall be on site at all times and all directions given by the Architect to the Safety Officer shall be deemed to be Architect's Instructions, and shall be complied with promptly without additional cost to the contract.

The Architect shall be empowered to suspend work on the Site should he consider these conditions are not being observed, and no claim arising from such a suspension will be allowed.

D. PROTECTIVE CLOTHING

The Contractor shall provide all protective or any other special clothing or equipment for their employees that may be necessary.

These shall include, inter-alia, safety helmets, gloves, goggles, earmuffs, gumboots, steel toed boots,. overalls, etc according to the type of work. The Contractor shall ensure that all safety and protective gear are worn by all staff on site at all times

Carried To Collection **Kshs**

MATERIALS AND WORKMANSHIP

A. GENERALLY

All materials shall be new unless otherwise directed or permitted by the Architect and in all cases where the quality of goods or materials is not described or otherwise specified, is to be the best quality obtainable in the ordinary meaning of the word "best" and not merely a trade signification of that word.

All materials and workmanship shall, unless otherwise specified or described, conform to the appropriate Kenya Bureau of Standards or British Standards Institution Specification current at the date of tender.

The Contractor shall order all materials to be obtained from overseas immediately after the Contract is signed and shall also order materials to be obtained from local sources as early as necessary to ensure that such materials are on Site when required for use in the Works.

The Contractor shall be responsible for and shall replace or make good at their own expense any materials lost or damaged.

The Works throughout shall be executed by skilled workmen well versed in their respective trades.

It's the contractor's responsibility to erect an approved storage facility for the materials on site.

B. REJECTED WORKMANSHIP OR MATERIALS

Any workmanship or materials not complying with the specific requirements or approved samples or which have been damaged, contaminated or have deteriorated, must immediately be removed from the Site and replaced at the Contractor's expense, as required.

C. PROPRIETARY MATERIALS

Where proprietary materials are specified herein-after the Contractor may propose the use of materials of other manufacture but equal quality for approval by the Architect.

All materials and goods, where specified to be obtained from a particular manufacturer or supplier are to be used or fixed strictly in accordance with their instructions.

D. SAMPLES

The Contractor shall furnish at the earliest possible opportunity before work commences and at his own cost, any samples of materials or workman-ship that may be called for by the Architect for his approval or rejection, and any further samples in the case of rejection until such samples are approved by the Architect and such samples, when approved, shall be the minimum standard for the work to which they apply.

E. SHOP DRAWINGS

The contractor shall prepare for scrutiny and issue to the architect,copies of detailed shop drawings of all specialists works.The contractor shall immediately amend after the architect has checked the drawings and when approved shall issue to the architect four copies for general use.The scrutiny of these drawing shall be for general conformity including conformity with the works of others and to co-ordinate the contract work in pace. Such appovals shall not imply any further indication or correctness.

A. CONCRETE TESTS

Concrete test cubes I.e. per set of three as later described, including testing fees, labour and materials, making moulds, transport and handling e.t.c. and ensuing copies of tests are promptly dispatched to the Architect's and Quantity Surveyor's offices.
Tenderer to allow for undertaking successful tests throughout the project period as and when required.

TEMPORARY WORKS

B. ACCESS TO SITE AND TEMPORARY ROADS

Means of access to site shall be agreed with the architect prior to the commencement of the work and the contractor must allow for building ant temporary access roads for the transport of materials,plant and workmen as may be required for the complete execution of the works including the provision of temporary culverts, crossings,bridges or any other means of gaining access.

All such temporary works shall be cleared away on completion of the construction and make good and reinstate all works and services disturbed to the satisfaction of the architect.

C. SITE OFFICE

The Contractor shall provide where directed within the site, site offices and clean toilet facilities for the sole use of the Architect and their representatives to the satisfaction of the Local Authorities.
The offices shall be provided with adequate furniture and the contractor shall provide the services of a sweeper, pay all charges and keep the facilities in a clean and sanitary condition during the whole period of the Works. In particular, the Contractor is to note that the neighbourhood will continue with operations during the period of the works and the contractor shall ensure that construction activities do not interfere with such operations by way of noise, obstruction, dust, vibrations or trespass. The contractor shall allow for all cost necessary to comply with the above to the satisfaction of the Architect.

The site office is to be fully supplied with power,with notice boards and drawers for storage.

The contractor to allow for provision of snacks and soft drinks to participants during site inspections and meetings.

The entire site is a non-smoking area.

The contractor shall keep on site and maintain in good condition on dumpy quickset level,metric levelling staff, one 30 metre steel tape for use by the architect,quantity surveyor and engineer.

All such temporary works shall be cleared away on completion of the construction.

D. COMPUTER AND INTERNET CONNECTION

The Contractor shall provide and maintain the Consultant's site office with, A3 printer, a high performance desk top top computer and a laptop connected with unlimited high speed wifi internet connection. The Contractor is to pay all connection charges and shall allow for any other fees that may become payable during the contract period. The computer specifications shall meet the Architect's requirement and shall be for sole use of the Architect and/or Architect's representative.

E. TELEPHONE

The Contractor shall provide a telephone connection to the town exchange for the period of the Works, and shall pay all fees and rental for the same. The telephone connection shall remain on site until completion of the works

F. SANITATION

The Contractor shall make arrangements for the necessary toilet facilities for their staff and workmen to the requirements and satisfaction of the Health authorities and maintain the same in a thoroughly clean and sanitary condition and pay all conservancy fees during the period of the Works and remove when no longer required.

Carried To Collection **Kshs**

A. PLANT, TOOLS AND SCAFFOLDING

The Contractor shall provide all necessary hoists, tackle, plant, vehicles, tools and appliances of every description for the due and satisfactory completion of the Works and shall remove same on completion.

All materials and workmanship used in the execution of the works shall be of the best quality and description for the due and satisfatory completion of the works and shall remove the same on completion.

The Contractor shall provide, erect and maintain all temporary scaffolding, sufficiently strong and efficient for the due performance of the Works, including Sub-contract Works, provide special brackets and platforms for the lift subcontractor, special scaffolding as and when required during the Works and remove on completion and make good.

Such scaffolding shall be constructed of tubular steel or timber of sufficient scantlings and be provided with planked footways and guard-rails to approval.No timber used for scaffolding ,formwork or similar temporary works shall be used afterwards in the permanent work.

All such plant, tools and scaffolding shall comply with all regulations whether general or local, in force throughout the period of the Contract and shall be altered or adapted during the Contract as may be necessary to comply with any amendments in or additions to such regulations.

Scaffolding is not measured hereinafter, and the Contractor must allow here or in his rates for the above.

B. EXISTING AND ADJACENT PROPERTY

The Contractor must take all steps necessary to safeguard existing and adjacent property, make good at their own expense any damage to persons or property caused thereon, and hold the Employer indemnified against any such claim arising.

The Contractor will be held fully responsible for the safety of the existing and adjacent buildings and for any damage caused in consequence of these Works. They must reinstate all damages at his own expense and indemnify the Employer against any loss.

The Contractor must take such steps and exercise such care and diligence as to minimise nuisance from dust, noise or any other cause to the occupiers of the existing and adjacent property.

C. HOARDING

The Contractor shall enclose the site, with a hoarding 2.40 metres high, with openings and gates as required, constructed of substantial timbers to approval and covered with reasonably new corrugated galvanised iron sheeting painted to approval.

The contractor's attention is drawn to the fact that some areas of the site are already built up and shall be in use durig the currency of this project.As such the contractor must allow for keeping his/her employees from interfeering with such other users and preventing and minimising any nuisance arising from dust ,noise or by way of trespass.

The contractor shall allow the employer to erect and face the hoarding with advertising should they so require.

The contractor is to allow for all such costs including any statutory and facilitation levies.

D (SECURITY) WATCHING AND LIGHTING

The Contractor shall provide at their risk and cost all watching and lighting as necessary to safeguard the Works, plant and materials against damage and theft.The contractor shall be entirely responsible for the security both for his own and sub-contractors.

Carried To Collection **Kshs**

A. SIGNBOARD

The signboard shall give a brief title of the project and image

The Signboard and lettering on same for the display of the General and Sub-Contractors' names shall be of an approved size with the Employer's name painted thereon. The Architect's, Quantity Surveyor's and other Consultants' names shall be printed in 50 mm letters all to the Architect's approved design.

No other signboard or advertising will be permitted without prior permission from the Architect.

The Contractor shall allow for all the statutory payments to the relevant authorities associated with signboard erection and renewal during the entire project period.

NOMINATED SUB-CONTRACTORS AND SUPPLIERS

(See also under FORM OF CONTRACT Clauses 31 and 32)

B. NOMINATED SUB-CONTRACTORS

The Contractor shall be responsible for Nominated Sub- Contractors in every respect and in particular it shall be the Contractor's responsibility to ensure that each Sub- Contractor commences and completes the work in such manner and is ready on the Site with their materials, labour and special plant at such times so as to conform with the Progress Schedule, as specified previously, and to ensure satisfactory progress.

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

Allowing the use of standing scaffolding, maintenance and alteration of all scaffolding, retention of all scaffolding until such time as all relevant Sub-Contractors' works are complete and removal of all scaffolding on completion. Providing space for office accommodation, and for storage of plant and materials; allowing use of sanitary accommodation; the supply of all necessary water, and lighting; and clearing away all rubbish.

The items for "General Attendance" given herein-after following P.C. Sums in respect of Sub-Contractors' work shall be deemed to include all the above.

The Contractor shall also accept liability for and bear the cost of Special Attendance on Nominated Sub-Contractors which shall include for one or more of the following:

Unloading, storing, hoisting, placing in position, providing power, provision of special scaffolding.

The items of "Special Attendance" given herein-after following P.C. Sums shall include any one or more of the above items as set out in the particular reference.

Cutting away for and making good after the work of Sub- Contractors as may be required will be priced and allowed for separately under Builder's work to the Specialist trade.

A. NOMINATED SUPPLIERS

The Cost of "Fix Only" materials to be obtained from Nominated Suppliers which are covered by Prime Cost or Provisional Sums shall include for taking delivery where directed, checking with invoices or indents, reporting and claiming damages for shortages and damaged goods, defraying demurrage, signing for as having been received in good order, transporting, unloading, storing, covering and protecting until the time of fixing, unpacking, replacing anything lost or damaged, sorting, assembling, hoisting to required levels and fixing as described.

Before placing any orders with Nominated Sub-Contractors or Nominated Suppliers the Contractor must ascertain that the terms and conditions of the quotations and the dates of delivery of materials or execution of works comply with the terms of Contract and the Progress Schedule.

B. PRIME COST RATES

Where description of items include a P.C. rate per unit this rate is to cover the nett supply cost of the unit only. The Contractor's price must include for the cost of the unit at the rate stated, plus waste, taking delivery, storage, fixing in position, profit and overheads.

The actual nett cost per unit will be adjusted within the Final Account against the P.C. rate stated.

PROTECTION AND CLEANING

C. PROTECTION

The Contractor shall cover up and protect from damage, including damage from inclement weather, all finished work and unfixed materials, including that of Sub-Contractors, etc., to the satisfaction of the Architect until the completion of the Contract.

D. CLEANING

The Contractor shall, upon completion of the Works, at their own expense, remove and clear away all surplus excavated materials, plant, rubbish and unused materials and shall leave the whole of the Site and Works in a clean and tidy state to the satisfaction of the Architect, including clearing away and making good all traces of temporary access roads, offices, sheds, camps, etc. Particular care shall be taken to leave clean all floors and windows and to remove all paint and cement stains. They shall also, at the discretion of the Architect, remove all rubbish and dirt as it accumulates. The Contractor is to find their own dump and shall pay all charges in connection therewith.

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A. CONTINGENCIES

Provide the Provisional Sum of Shillings ... for contingencies to be omitted or expended in whole or in part at the discretion of the Architect

B. TRAINING LEVY

The Contractor's attention is drawn to Legal Notice No. 237 of October 1971, which requires payment by the Contractor of Training Levy on all Contracts of more than Shs.50,000/- in value and his Tender must include for all costs arising or resulting therefrom.

C. VALUE ADDED TAX

The Contractor's attention is drawn to the Finance Act 1993 which requires payment by the contractor of Value Added Tax on construction services rendered. The contractor shall allow for the requirements of this tax in their rates.

D. WITHHOLDING TAX

The contractor's attention is drawn to the Finance Act 2002.The contractor shall ensure that they have the full knowledge odf the workings of withholding tax.Withholding tax shall be deducted from all payments as applicable.

E. OCCUPATION CERTIFICATE

The Architect will provide to the Contractor a duly completed application together with the requisite "As Built" drawings. The contractor will be required to submit the application and obtain the Occupation Certificate from the Local Authority no later than the end of the Defects Lability Period.
The Contractor will deliver the original certificate to the owner with a copy to the Architect.

F. STANDARDS LEVY

The Contractor's attention is drawn to Legal Notice No. 267 of 22nd June 1990, which requires payment by the Contractor of Standards Levy. his Tender must include for all costs arising or resulting therefrom.

G. NEMA REQUIREMENT

The Contractor shall be responsible for complying with Nema requirements and shall allow for all costs arising or resulting therefrom. No claim of extension of time shall be allowed as a result of complains to NEMA requirements. Copy of NEMA license may be inspected in the QS office by prior notice.

H. TENANTS REQUIREMENTS

The contractor shall allow for providing hoardings,screens,power,water,rubbish removal for tenants during their fitout all to the architect's approval.

J. OTHER STATUTORY OBLIGATIONS, NOTICES, FEES AND CHARGES

Not withstanding any other statutory obligations, notices, fees and charges not listed above, the contractor shall allow in his tender for all such costs incurred in complying with all statutory requirements and payment of all leviers currently in force and affecting the construction industry.

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SECTION NO. 1	**PRELIMINARIES**	**TOTAL CARRIED TO GRAND SUMMARY**	**Kshs**	

ITEM NO.	DESCRIPTION	UNIT	QTY.	RATE	KSHS.	CTS.
	KISUMU COUNTY ASSEMBLY OFFICE FIT OUT					
	BILLS OF QUANTITIES					
	SECTION NO. 2					
	ELEMENT NO. 1					
	INTERNAL WALLS					
	Supply assemble and fix the following purpose made aluminium windows comprising heavy duty (1.6mm thick minimum) approved white sand blasted aluminium frame sections, glazed with and including 6mm thick obscure glass , including all accessories such as beadings, 150mm wide flashing to seal, glazing rubber & all ironmongery: fixing to jambs and head: all as per Architects drawings					
A	Internal Partition walls	m2	227			
	TOTAL FOR INTERNAL WALLS CARRIED TO SUMMARY			**KSHS.**		

ITEM NO.	DESCRIPTION	UNIT	QTY	RATE	KSHS.	CTS.
	KISUMU COUNTY ASSEMBLY OFFICE FIT OUT					
	BILLS OF QUANTITIES					
	SECTION NO. 2					
	ELEMENT NO. 2					
	DOORS					
	Aluminium galzed Doors Supply, assemble and fix the following purpose made powder coated Aluminium doors and 75 x 75 x 2mm and 50 x 50 x 2mm thick sections by Booth Manufacturing or equal and approved incorporating complete with fixing lugs on,- permanent including all necessary cutting, 8mm thick obscure sheet glass and ironmongery					
A	Size 900x2400 mm	No.	7			
B	Size 1600x2400mm	No.	4			
	Carried to Collection Page 1/1					

ITEM NO.	DESCRIPTION	UNIT	QTY	RATE	KSHS.	CTS.
	KISUMU COUNTY ASSEMBLY OFFICE FIT OUT					
	BILLS OF QUANTITIES					
	SECTION NO. 2					
	ELEMENT NO.3					
	INTERNAL FINISHES					
	Floor Finishes					
	Cement Sand (1:4) screed as described					
A	20 mm Thick finished to receiv**e** tiles	m2	390			
	Broadloom Carpets					
B	10 mm Thick carpet to architect's detail	m2	48			
	Granito Floor tiles Supply and fix only 600x600x10mm Granito tiles to floor on prepared screed (m.s) with proprietary adhesive; jointed and pointed in matching coloured proprietary grouting: including pvc spacers and expansion joint as necessary: all to Architect's approval.					
C	600 x 600X10 mm Granito tiles in patterns as directed	m2	342			
D	100 mm Skirting tile **cut out of tiles above**	m	106			
	Carried to Collection			Kshs.		

ITEM NO.	DESCRIPTION	UNIT	QTY	RATE	KSHS.	CTS.
	INTERNAL FINISHES (CONT'D)					
	Painting and Decorating					
	Prepare and apply two coats internal quality matt emulsion paint to:-					
A	Plastered wall surfaces	m2	158			
	Ceiling Finishes					
	Gysum Ceiling					
B	Suspended gypsum ceiling : taped and filled joints : on and including proprietary pressed metal brandering system : measured over light fittings : including all cutting and trimming to light fittings : columns and curved surfaces; finish to horizontal ceilings, sloping ceilings and bulkheads; with rounded, sanded edges; edge trims and shadow gaps as necessary : quality as described	m2	390			
	Prepare and apply two coats internal quality matt emulsion paint to:-					
C	To Gysum ceiling	m2	390			
	Carried to Collection					
	COLLECTION					
	Page No. 1/3					
	Page No. 2/3					
	TOTAL FOR INTERNAL FINISHES CARRIED TO SUMMARY			**KSHS.**		

ITEM NO.	DESCRIPTION		SHS.	CTS.
	KISUMU COUNTY ASSEMBLY OFFICE FIT OUT			
	BILLS OF QUANTITIES			
	SECTION NO. 2			
	SUMMARY	PAGE NO.		
1	INTERNAL PARTITIONS	1/1		
2	DOORS	2/2		
3	INTERNAL FINISHES	2/3		
	TOTAL FOR BUILDER'S WORK CARRIED TO MAIN SUMMARY	**KSHS.**		

ITEM NO.	DESCRIPTION	UNIT	QTY.	KSHS.	CTS.
	KISUMU COUNTY ASSEMBLY OFFICE FIT OUT				
	BILLS OF QUANTITIES				
	SECTION NO. 3				
	PRIME COST AND PROVISIONAL SUMS				
	PRIME COST SUMS				
A	Allow a Prime Cost Sum of Kenya Shillings Two Hundred and Fifty Thousand for Electrical Works		Sum	250,000	0
B	Allow a Prime Cost Sum of Kenya Shillings Two Hundred Thousand for CCTV Cameras and Alarm Systems Installtion		Sum	200,000	0
C	Allow a Prime Cost Sum of Kenya Shillings Two Hundred and Fifty for Air Conditioning		Sum	250,000	0
D	Allow a Provisional Sum of Kenya Shillings Two Hundred Thousand for Contigencies		Sum	200,000	0
E	Allow a Provisional Sum of Kenya Shillings One Hundred Thousand for Project Management		Sum	100,000	0
	TOTAL FOR PRIME COST AND PROVISIONAL SUMS CARRIED TO SUMMARY		**KSHS.**	**1,000,000**	**00**

ITEM NO.	DESCRIPTION		SHS.	CTS.
	KISUMU COUNTY ASSEMBLY OFFICE FIT OUT			
	MAIN SUMMARY			
1.	PRELIMINARIES			
3	BUILDER'S WORKS			
4	PRIME COST AND PROVISIONAL SUMS			
	TOTAL CARRIED TO FORM OF TENDER INCLUSIVE 16% VAT	**KSHS.**		

EMPLOYER:

NAME: ……...……

……..…….

ADDRESS: …….…….

……..

SIGNATURE: …….

DATE: …….

CONTRACTOR

NAME: ……...……

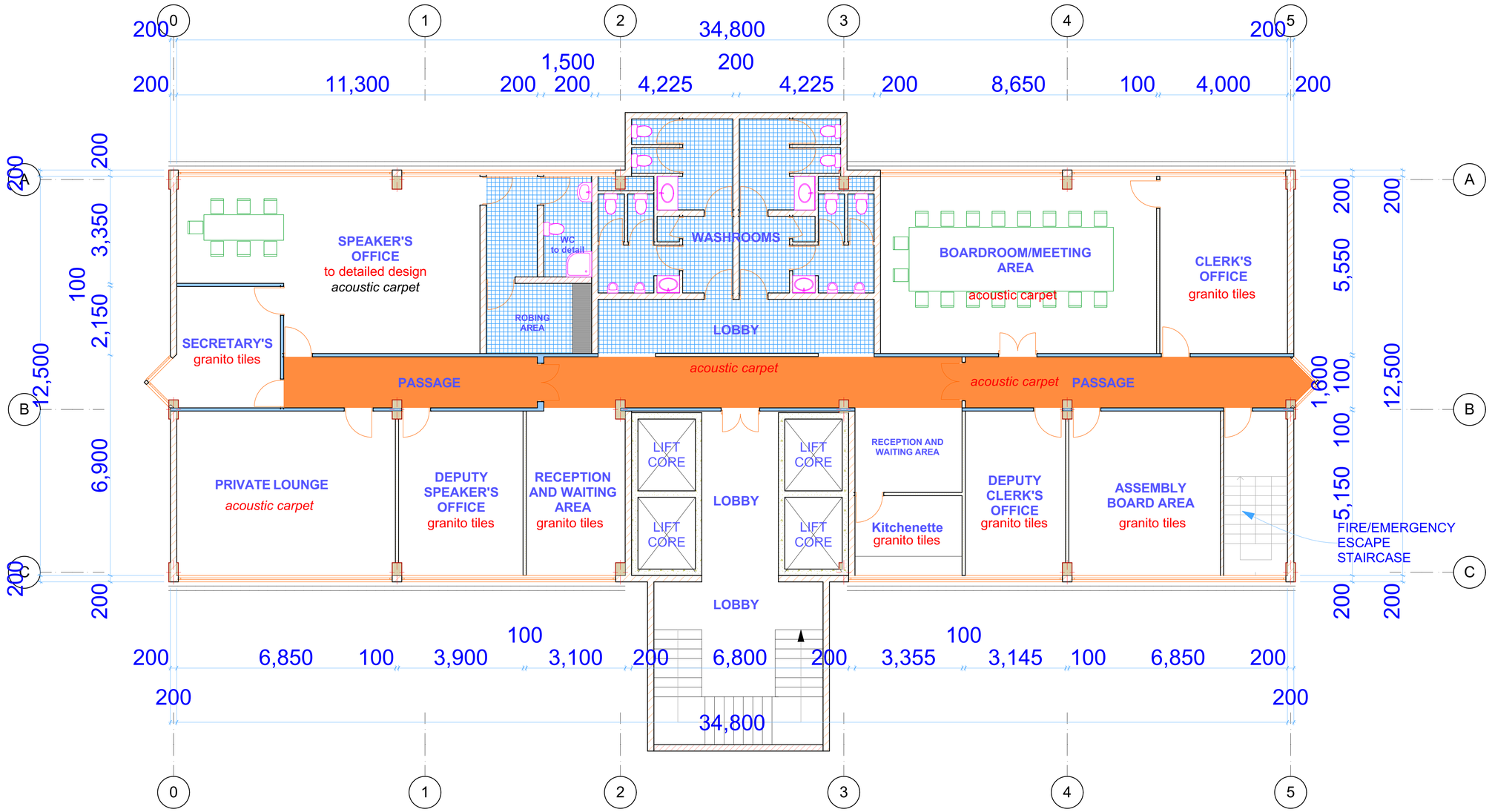
……..…….

ADDRESS: …….……

…….

SIGNATURE: ……

DATE: ……



GENERAL NOTES:

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2. All dimensions are in milimetres unless otherwise specified.
3. P.V denotes permanent vent.
4. Metal gutters & down pipe to suite.
5. All windows & doors to schedule.
6. All internal fittings to approval.

CIVIL WORKS:

STRUCTURAL WORKS:

MECHANICAL WORKS:

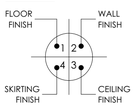
1. FLOOR FINISHES

2. WALL FINISHES

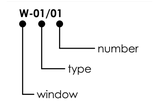
3. CEILING FINISHES

4. SKIRTING FINISHES

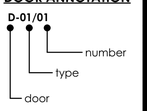
LEGEND



WINDOW ANNOTATION



DOOR ANNOTATION



PROJECT TITLE: PROPOSED OFFICES

CLIENT: COUNTY ASSEMBLY OF KISUMU

DRAWING TITLE: FLOOR PLAN AND LAYOUT

DRAWING SCALE: AS SHOWN

STATUS: OUTLINE PROPOSAL DRAWINGS

REVISIONS

N^0	DESCRIPTION	DATE	COMMENT

ARCHITECT

COUNTY GOVERNMENT OF KISUMU

DEPARTMENT OF ROADS, TRANSPORT AND PUBLIC WORKS

P.O BOX 821-40100

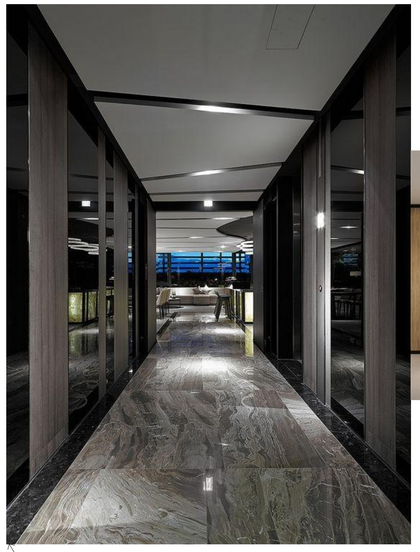
KISUMU.

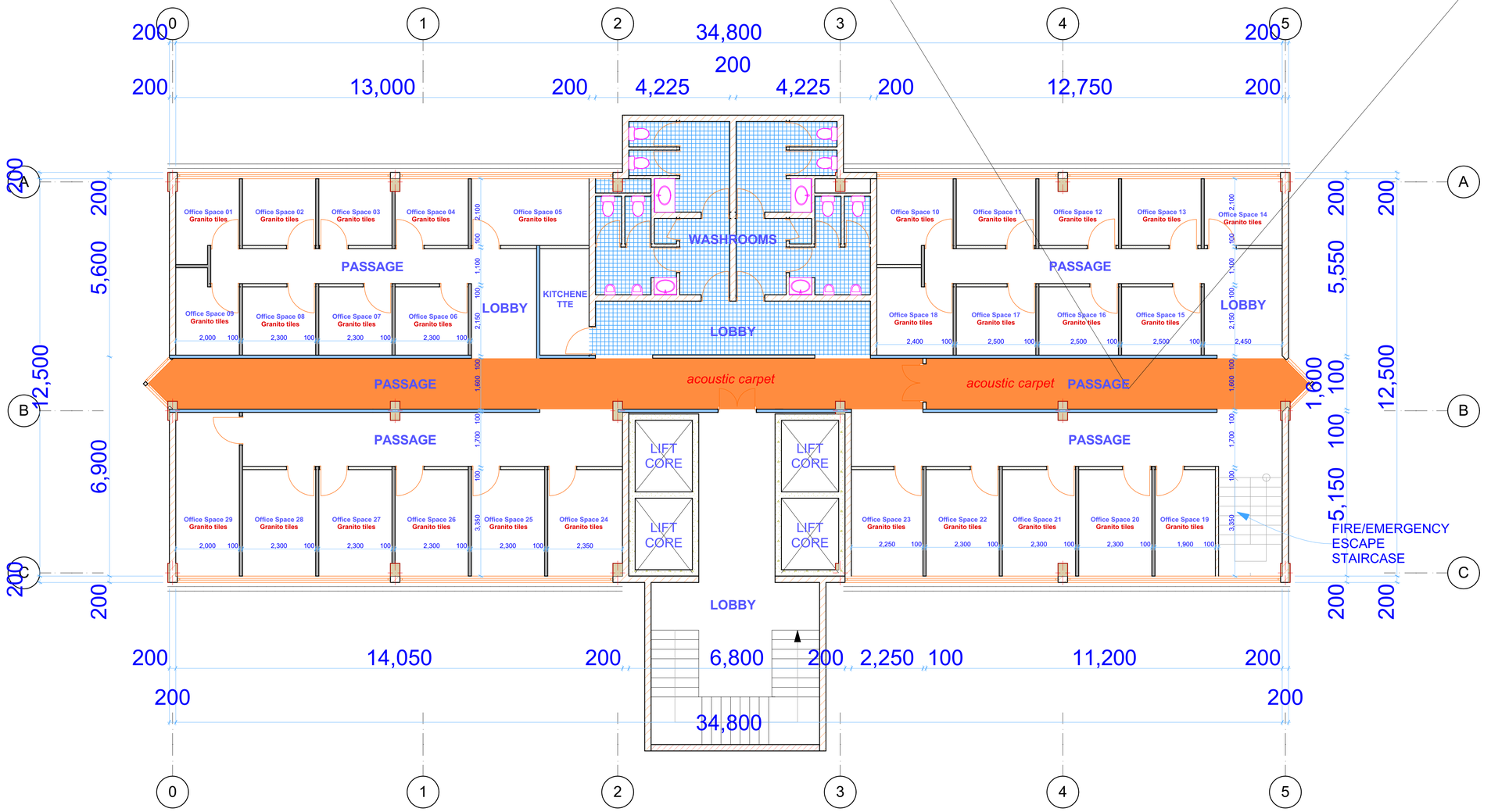
PLOT LR. NUMBER:

DESIGNED BY:	DRAWN BY:	CHECKED BY:	SHEET NUMBER
Jack O. Abong'	Betty OKENO	Benard OJWANG'	01
DATE: MARCH 2018			

CORRIDORS/PASSAGES

A space used for MOVEMENT and CIRCULATION. Materials used: GLASS WALLS for visual connection, acoustic carpets for noise reduction and patterned gypsum ceiling with LED downlighters.





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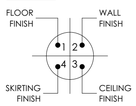
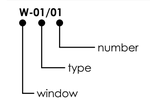
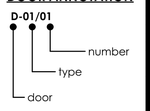


WINDOW ANNOTATION



DOOR ANNOTATION



PROJECT TITLE: PROPOSED OFFICES

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REVISIONS

Nº	DESCRIPTION	DATE	COMMENT

ARCHITECT

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MECHANICAL WORKS:

1. FLOOR FINISHES

2. WALL FINISHES

3. CEILING FINISHES

4. SKIRTING FINISHES

LEGEND

FLOOR FINISH · WALL FINISH · SKIRTING FINISH · CEILING FINISH · 1 2 3 4

WINDOW ANNOTATION

W-01/01 — number, type, window

DOOR ANNOTATION

D-01/01 — number, type, door

PROJECT TITLE: PROPOSED OFFICES

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N⁰	DESCRIPTION	DATE	COMMENT

ARCHITECT

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