REPUBLIC OF KENYA

STATE DEPARTMENT FOR HIGHER EDUCATION

TENDER NAME:

PROPOSED ALTERATIONS AND REFURBISHMENT WORKS TO MARINE AND CIVIL ENGINEERING BLOCK AT TOM MBOYA UNIVERSITY HOMABAY

TENDER NO:

SDHE/809/0035/2026-27

Procurement Method:

Open Tender

PE Complete Address

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PART 1 - TENDERING PROCEDURES

SECTION I: INSTRUCTIONS TO TENDERERS

A. GENERAL PROVISIONS

1. SCOPE OF TENDER

1.1 THE PROCURING ENTITY AS DEFINED IN THE **TENDER DATA SHEET (TDS)** INVITES TENDERS FOR WORKS CONTRACT AS DESCRIBED IN THE TENDER DOCUMENTS. THE NAME, IDENTIFICATION, PROJECT LOCATION, AND NUMBER OF LOTS (CONTRACTS) OF THIS TENDER DOCUMENT ARE SPECIFIED IN THE **TDS**

1.2 USE OF ELECTRONIC SYSTEM WHERE APPLICABLE, THE PROCURING ENTITY SHALL USE AN ELECTRONIC PROCUREMENT SYSTEM TO MANAGE THE TENDERING PROCESS AS SPECIFIED IN THE **TDS**

2. FRAUD AND CORRUPTION

2.1THE PROCURING ENTITY REQUIRES COMPLIANCE WITH OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015 CAP 412C, SECTION 62 “DECLARATION NOT TO ENGAGE IN CORRUPTION”. THE TENDER SUBMITTED BY A PERSON SHALL INCLUDE A DECLARATION THAT THE PERSON SHALL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE AND A DECLARATION THAT THE PERSON OR HIS OR HER SUB-CONTRACTORS ARE NOT DEBARRED FROM PARTICIPATING IN PUBLIC PROCUREMENT PROCEEDINGS.

2.2 THE PROCURING ENTITY REQUIRES COMPLIANCE WITH THE PROVISIONS OF THE COMPETITION ACT 2010, REGARDING COLLUSIVE PRACTICES IN CONTRACTING. ANY TENDERER FOUND TO HAVE ENGAGED IN COLLUSIVE CONDUCT SHALL BE DISQUALIFIED AND CRIMINAL AND /OR CIVIL SANCTIONS MAY BE IMPOSED. TO THIS EFFECT, TENDERS SHALL BE REQUIRED TO COMPLETE AND SIGN THE “CERTIFICATE OF INDEPENDENT TENDER DETERMINATION” ANNEXED TO THE FORM OF TENDER.

2.3 UNFAIR COMPETITIVE ADVANTAGE - FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS TENDER. TO THAT END, THE PROCURING ENTITY SHALL INDICATE IN THE DATA SHEET AND MAKE AVAILABLE TO ALL THE FIRMS TOGETHER WITH THIS TENDER DOCUMENT ALL INFORMATION THAT WOULD IN THAT RESPECT GIVE SUCH FIRM ANY UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING FIRMS.

2.4 UNFAIR COMPETITIVE ADVANTAGE -FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS TENDER BEING TENDERED FOR. THE PROCURING ENTITY SHALL INDICATE IN THE **TDS** FIRMS (IF ANY) THAT PROVIDED CONSULTING SERVICES FOR THE CONTRACT BEING TENDERED FOR. THE PROCURING ENTITY SHALL CHECK WHETHER THE OWNERS OR CONTROLLERS OF THE TENDERER ARE SAME AS THOSE THAT PROVIDED CONSULTING SERVICES. THE PROCURING ENTITY SHALL, UPON REQUEST, MAKE AVAILABLE TO ANY TENDERER INFORMATION THAT WOULD GIVE SUCH FIRM UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING FIRMS.

3. ELIGIBLE TENDERERS

3.1 A TENDERER MAY BE A FIRM THAT IS A PRIVATE ENTITY, A STATE-OWNED ENTERPRISE OR INSTITUTION SUBJECT TO ITT 3.7 OR ANY COMBINATION OF SUCH ENTITIES IN THE FORM OF A JOINT VENTURE (JV) UNDER AN EXISTING AGREEMENT OR WITH THE INTENT TO ENTER INTO SUCH AN AGREEMENT SUPPORTED BY A LETTER OF INTENT. PUBLIC EMPLOYEES AND THEIR CLOSE RELATIVES (SPOUSES, CHILDREN, BROTHERS, SISTERS AND UNCLES AND AUNTS) ARE NOT ELIGIBLE TO PARTICIPATE IN THE TENDER. IN THE CASE OF A JOINT VENTURE, ALL MEMBERS SHALL BE JOINTLY AND SEVERALLY LIABLE FOR THE EXECUTION OF THE ENTIRE CONTRACT IN ACCORDANCE WITH THE CONTRACT TERMS. THE JV SHALL NOMINATE A REPRESENTATIVE WHO SHALL HAVE THE AUTHORITY TO CONDUCT ALL BUSINESS FOR AND ON BEHALF OF ANY AND ALL THE MEMBERS OF THE JV DURING THE TENDERING PROCESS AND, IN THE EVENT THE JV IS AWARDED THE CONTRACT, DURING CONTRACT EXECUTION. THE MAXIMUM NUMBER OF JV MEMBERS SHALL BE SPECIFIED IN THE **TDS**.

3.2 PUBLIC OFFICERS OF THE PROCURING ENTITY, THEIR SPOUSES, CHILD, PARENT, BROTHERS OR SISTER. CHILD, PARENT, BROTHER OR SISTER OF A SPOUSE, THEIR BUSINESS ASSOCIATES OR AGENTS AND FIRMS/ORGANIZATIONS IN WHICH THEY HAVE A SUBSTANTIAL OR CONTROLLING INTEREST SHALL NOT BE ELIGIBLE TO TENDER OR BE AWARDED A CONTRACT.

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3.3 A TENDERER SHALL NOT HAVE A CONFLICT OF INTEREST. ANY TENDERER FOUND TO HAVE A CONFLICT OF INTEREST SHALL BE DISQUALIFIED. A TENDERER MAY BE CONSIDERED TO HAVE A CONFLICT OF INTEREST FOR THE PURPOSE OF THIS TENDERING PROCESS, IF THE TENDERER:
A) DIRECTLY OR INDIRECTLY CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER TENDERER; OR
B) RECEIVES OR HAS RECEIVED ANY DIRECT OR INDIRECT SUBSIDY FROM ANOTHER TENDERER; OR
C) HAS THE SAME LEGAL REPRESENTATIVE AS ANOTHER TENDERER; OR
D) HAS A RELATIONSHIP WITH ANOTHER TENDERER, DIRECTLY OR THROUGH COMMON THIRD PARTIES, THAT PUTS IT IN A POSITION TO INFLUENCE THE TENDER OF ANOTHER TENDERER, OR INFLUENCE THE DECISIONS OF THE PROCURING ENTITY REGARDING THIS TENDERING PROCESS; OR
E) ANY OF ITS AFFILIATES PARTICIPATED AS A CONSULTANT IN THE PREPARATION OF THE DESIGN OR TECHNICAL SPECIFICATIONS OF THE WORKS THAT ARE THE SUBJECT OF THE TENDER; OR
F) ANY OF ITS AFFILIATES HAS BEEN HIRED (OR IS PROPOSED TO BE HIRED) BY THE PROCURING ENTITY AS ENGINEER FOR THE CONTRACT IMPLEMENTATION; OR
G) WOULD BE PROVIDING GOODS, WORKS, OR NON-CONSULTING SERVICES RESULTING FROM OR DIRECTLY RELATED TO CONSULTING SERVICES FOR THE PREPARATION OR IMPLEMENTATION OF THE CONTRACT SPECIFIED IN THIS TENDER DOCUMENT OR
H)HAS A CLOSE BUSINESS OR FAMILY RELATIONSHIP WITH A PROFESSIONAL STAFF OF THE PROCURING ENTITY WHO:

I) ARE DIRECTLY OR INDIRECTLY INVOLVED IN THE PREPARATION OF THE TENDER DOCUMENT OR SPECIFICATIONS OF THE CONTRACT, AND/OR THE TENDER EVALUATION PROCESS OF SUCH CONTRACT; OR

II) WOULD BE INVOLVED IN THE IMPLEMENTATION OR SUPERVISION OF SUCH CONTRACT UNLESS THE CONFLICT STEMMING FROM SUCH RELATIONSHIP HAS BEEN RESOLVED IN A MANNER ACCEPTABLE TO THE PROCURING ENTITY THROUGHOUT THE TENDERING PROCESS AND EXECUTION OF THE CONTRACT.

3.4 A TENDERER SHALL NOT BE INVOLVED IN CORRUPT, COERCIVE, OBSTRUCTIVE, COLLUSIVE OR FRAUDULENT PRACTICE. A TENDERER THAT IS PROVEN TO HAVE BEEN INVOLVED ANY OF THESE PRACTICES SHALL BE AUTOMATICALLY DISQUALIFIED.

3.5 A TENDERER (EITHER INDIVIDUALLY OR AS A JV MEMBER) SHALL NOT PARTICIPATE IN MORE THAN ONE TENDER, EXCEPT FOR PERMITTED ALTERNATIVE TENDERS. THIS INCLUDES PARTICIPATION AS A SUBCONTRACTOR IN OTHER TENDERS. SUCH PARTICIPATION SHALL RESULT IN THE DISQUALIFICATION OF ALL TENDERS IN WHICH THE FIRM IS INVOLVED. A FIRM THAT IS NOT A TENDERER OR A JV MEMBER MAY PARTICIPATE AS A SUBCONTRACTOR IN MORE THAN ONE TENDER. MEMBERS OF A JOINT VENTURE MAY NOT ALSO MAKE AN INDIVIDUAL TENDER, BE A SUBCONTRACTOR IN A SEPARATE TENDER OR BE PART OF ANOTHER JOINT VENTURE FOR THE PURPOSES OF THE SAME TENDER.

3.6 A TENDERER SHALL BE DEEMED TO HAVE THE NATIONALITY OF A COUNTRY IF THE TENDERER IS CONSTITUTED, INCORPORATED OR REGISTERED IN AND OPERATES IN CONFORMITY WITH THE PROVISIONS OF THE LAWS OF THAT COUNTRY, AS EVIDENCED BY ITS ARTICLES OF INCORPORATION (OR EQUIVALENT DOCUMENTS OF CONSTITUTION OR ASSOCIATION) AND ITS REGISTRATION DOCUMENTS, AS THE CASE MAY BE. THIS CRITERION ALSO SHALL APPLY TO THE DETERMINATION OF THE NATIONALITY OF PROPOSED SUBCONTRACTORS OR SUB-CONSULTANTS FOR ANY PART OF THE CONTRACT INCLUDING RELATED SERVICES.

3.7 TENDERER THAT HAS BEEN DEBARRED FROM PARTICIPATING IN PUBLIC PROCUREMENT SHALL BE INELIGIBLE TO TENDER OR BE AWARDED A CONTRACT. THE LIST OF DEBARRED FIRMS AND INDIVIDUALS IS AVAILABLE FROM THE WEBSITE OF PPRA HTTPS://PPRA.GO.KE/

3.8 TENDERERS THAT ARE STATE-OWNED ENTERPRISES OR INSTITUTIONS MAY BE ELIGIBLE TO COMPETE AND BE AWARDED A CONTRACT(S) ONLY IF THEY ARE ACCREDITED BY PPRA TO BE (I) A LEGAL PUBLIC ENTITY OF THE STATE GOVERNMENT AND/OR PUBLIC ADMINISTRATION, (II) FINANCIALLY AUTONOMOUS AND NOT RECEIVING ANY SIGNIFICANT SUBSIDIES OR BUDGET SUPPORT FROM ANY PUBLIC ENTITY OR GOVERNMENT, AND (III) OPERATING UNDER COMMERCIAL LAW AND VESTED WITH LEGAL RIGHTS AND LIABILITIES SIMILAR TO ANY COMMERCIAL ENTERPRISE TO ENABLE IT COMPETE WITH FIRMS IN THE PRIVATE SECTOR ON AN EQUAL BASIS.

3.9 A FIRMS AND INDIVIDUALS MAY BE INELIGIBLE IF THEIR COUNTRIES OF ORIGIN (A) AS A MATTER OF LAW OR OFFICIAL REGULATIONS, KENYA PROHIBITS COMMERCIAL RELATIONS WITH THAT COUNTRY, OR (B) BY AN ACT OF COMPLIANCE WITH A DECISION OF THE UNITED NATIONS SECURITY COUNCIL TAKEN UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS, KENYA PROHIBITS ANY IMPORT OF GOODS OR CONTRACTING OF WORKS OR SERVICES FROM THAT COUNTRY, OR ANY PAYMENTS TO ANY COUNTRY, PERSON, OR ENTITY IN THAT COUNTRY. A TENDERER SHALL PROVIDE SUCH DOCUMENTARY EVIDENCE OF ELIGIBILITY SATISFACTORY TO THE PROCURING ENTITY, AS THE PROCURING ENTITY SHALL REASONABLY REQUEST.

3.10 THE TENDERERS ARE REQUIRED TO SOURCE AT LEAST FORTY (40%) PERCENT OF THEIR CONTRACT INPUTS (IN SUPPLIES, SUBCONTRACTS AND LABOR) FROM NATIONAL SUPPLIERS AND CONTRACTORS.

3.11PURSUANT TO THE ELIGIBILITY REQUIREMENTS OF ITT 4.1, A TENDER IS CONSIDERED A FOREIGN TENDERER, IF THE TENDERER IS NOT REGISTERED IN KENYA OR IF THE TENDERER IS REGISTERED IN KENYA AND HAS LESS THAN 51 PERCENT OWNERSHIP BY KENYAN CITIZENS. JVS ARE CONSIDERED AS FOREIGN TENDERERS IF THE INDIVIDUAL MEMBER FIRMS ARE NOT REGISTERED IN KENYA OR IF ARE REGISTERED IN KENYA A ND HAVE LESS THAN 51 PERCENT OWNERSHIP BY KENYAN CITIZENS. THE JV SHALL NOT SUBCONTRACT TO FOREIGN FIRMS MORE THAN 10 PERCENT OF THE CONTRACT PRICE, EXCLUDING PROVISIONAL SUMS.

3.12 THE NATIONAL CONSTRUCTION AUTHORITY ACT OF KENYA REQUIRES THAT ALL LOCAL AND FOREIGN CONTRACTORS BE REGISTERED WITH THE NATIONAL CONSTRUCTION AUTHORITY AND BE ISSUED WITH A REGISTRATION CERTIFICATE BEFORE THEY CAN UNDERTAKE ANY CONSTRUCTION WORKS IN KENYA. REGISTRATION SHALL NOT BE A CONDITION FOR TENDER, BUT IT SHALL BE A CONDITION OF CONTRACT AWARD AND SIGNATURE. A SELECTED TENDERER SHALL BE GIVEN OPPORTUNITY TO REGISTER BEFORE SUCH AWARD AND SIGNATURE OF CONTRACT. APPLICATION FOR REGISTRATION WITH NATIONAL CONSTRUCTION AUTHORITY MAY BE ACCESSED FROM THE WEBSITE WWW.NCA.GO.KE.

3.13 THE COMPETITION ACT OF KENYA REQUIRES THAT FIRMS WISHING TO TENDER AS JOINT VENTURE UNDERTAKINGS WHICH MAY PREVENT, DISTORT OR LESSEN COMPETITION IN PROVISION OF SERVICES ARE PROHIBITED UNLESS THEY ARE EXEMPT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 25 OF THE COMPETITION ACT, 2010. JVS WILL BE REQUIRED TO SEEK FOR EXEMPTION FROM THE COMPETITION AUTHORITY. EXEMPTION SHALL NOT BE A CONDITION FOR TENDER, BUT IT SHALL BE A CONDITION OF CONTRACT AWARD AND SIGNATURE. A JV TENDERER SHALL BE GIVEN OPPORTUNITY TO SEEK SUCH EXEMPTION AS A CONDITION OF AWARD AND SIGNATURE OF CONTRACT. APPLICATION FOR EXEMPTION FROM THE COMPETITION AUTHORITY OF KENYA MAY BE ACCESSED FROM THE WEBSITE WWW.CAK.GO.KE

3.14 A KENYAN TENDERER SHALL PROVIDE EVIDENCE OF HAVING FULFILLED HIS/HER TAX OBLIGATIONS BY PRODUCING A VALID TAX CLEARANCE CERTIFICATE OR TAX EXEMPTION CERTIFICATE ISSUED BY THE KENYA REVENUE AUTHORITY.

4. ELIGIBLE GOODS, EQUIPMENT, AND SERVICES

4.1 GOODS, EQUIPMENT AND SERVICES TO BE SUPPLIED UNDER THE CONTRACT MAY HAVE THEIR ORIGIN IN ANY COUNTRY THAT IS NOT ELIGIBLE UNDER ITT 3.9. AT THE PROCURING ENTITY'S REQUEST, TENDERERS MAY BE REQUIRED TO PROVIDE EVIDENCE OF THE ORIGIN OF GOODS, EQUIPMENT AND SERVICES.

4.2 ANY GOODS, WORKS AND PRODUCTION PROCESSES WITH CHARACTERISTICS THAT HAVE BEEN DECLARED BY THE RELEVANT NATIONAL ENVIRONMENTAL PROTECTION AGENCY OR BY OTHER COMPETENT AUTHORITY AS HARMFUL TO HUMAN BEINGS AND TO THE ENVIRONMENT SHALL NOT BE ELIGIBLE FOR PROCUREMENT.

5. TENDERER'S RESPONSIBILITIES

5.1THE TENDERER SHALL BEAR ALL COSTS ASSOCIATED WITH THE PREPARATION AND SUBMISSION OF HIS/HER TENDER, AND THE PROCURING ENTITY WILL IN NO CASE BE RESPONSIBLE OR LIABLE FOR THOSE COSTS.

5.2 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.

5.3 THE TENDERER AND ANY OF ITS PERSONNEL OR AGENTS WILL BE GRANTED PERMISSION BY THE PROCURING ENTITY TO ENTER UPON ITS PREMISES AND LANDS FOR THE PURPOSE OF SUCH VISIT. THE TENDERER SHALL INDEMNIFY THE PROCURING ENTITY AGAINST ALL LIABILITY ARISING FROM DEATH OR PERSONAL INJURY, LOSS OF OR DAMAGE TO PROPERTY, AND ANY OTHER LOSSES AND EXPENSES INCURRED AS A RESULT OF THE INSPECTION.

5.4 THE TENDERER SHALL PROVIDE IN THE FORM OF TENDER AND QUALIFICATION INFORMATION, A PRELIMINARY DESCRIPTION OF THE PROPOSED WORK METHOD AND SCHEDULE, INCLUDING CHARTS, AS NECESSARY OR REQUIRED.

B. CONTENTS OF TENDER DOCUMENTS

6. SECTIONS OF TENDER DOCUMENT

6.1 THE TENDER DOCUMENT CONSISTS OF PARTS 1, 2, AND 3, WHICH INCLUDES ALL THE SECTIONS SPECIFIED BELOW, AND WHICH SHOULD BE READ IN CONJUNCTION WITH ANY ADDENDA ISSUED IN ACCORDANCE WITH ITT 8.

PART 1 TENDERING PROCEDURES

I) SECTION I - INSTRUCTIONS TO TENDERERS (ITT)

II) SECTION II - TENDER DATA SHEET (TDS)

III) SECTION III - EVALUATION AND QUALIFICATION CRITERIA

IV) SECTION IV - TENDERING FORMS

PART 2 WORKS REQUIREMENTS

I) SECTION V - DRAWINGS

II) SECTION VI - SPECIFICATIONS

III) SECTION VII - BILLS OF QUANTITIES

PART 3 CONDITIONS OF CONTRACT AND CONTRACT FORMS

I) SECTION VIII - GENERAL CONDITIONS OF CONTRACT (GCC)

II) SECTION IX - SPECIAL CONDITIONS OF CONTRACT (SC)

III) SECTION X - CONTRACT FORMS

6.2 THE INVITATION TO TENDER DOCUMENT (ITT) ISSUED BY THE PROCURING ENTITY IS NOT PART OF THE CONTRACT DOCUMENTS.

6.3 UNLESS OBTAINED DIRECTLY FROM THE PROCURING ENTITY, THE PROCURING ENTITY IS NOT RESPONSIBLE FOR THE COMPLETENESS OF THE TENDER DOCUMENT, RESPONSES TO REQUESTS FOR CLARIFICATION, THE MINUTES OF THE PRE-TENDER MEETING (IF ANY), OR ADDENDA TO THE TENDER DOCUMENT IN ACCORDANCE WITH ITT 8. IN CASE OF ANY CONTRADICTION, DOCUMENTS OBTAINED DIRECTLY FROM THE PROCURING ENTITY SHALL PREVAIL.

THE TENDERER IS EXPECTED TO EXAMINE ALL INSTRUCTIONS, FORMS, TERMS, AND SPECIFICATIONS IN THE TENDER DOCUMENT AND TO FURNISH WITH ITS TENDER ALL INFORMATION AND DOCUMENTATION AS IS REQUIRED BY THE TENDER DOCUMENT.

7. SITE VISIT

7.1 THE TENDERER, AT THE TENDERER'S OWN RESPONSIBILITY AND RISK, IS ENCOURAGED TO VISIT AND EXAMINE AND INSPECT THE SITE OF THE REQUIRED SERVICES AND ITS SURROUNDINGS AND OBTAIN ALL INFORMATION THAT MAY BE NECESSARY FOR PREPARING THE TENDER AND ENTERING INTO A CONTRACT FOR THE SERVICES. THE COSTS OF VISITING THE SITE SHALL BE AT THE TENDERER'S OWN EXPENSE.

8. PRE-TENDER MEETING

8.1 THE PROCURING ENTITY SHALL SPECIFY IN THE TDS IF A PRE-TENDER MEETING WILL BE HELD, WHEN AND WHERE. THE PROCURING ENTITY SHALL ALSO SPECIFY IN THE **TDS** IF A PRE-ARRANGED PRETENDER SITE VISIT WILL BE HELD AND WHEN. THE TENDERER'S DESIGNATED REPRESENTATIVE IS INVITED TO ATTEND A PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE WORKS. THE PURPOSE OF THE MEETING WILL BE TO CLARIFY ISSUES AND TO ANSWER QUESTIONS ON ANY MATTER THAT MAY BE RAISED AT THAT STAGE.

8.2 THE TENDERER IS REQUESTED TO SUBMIT ANY QUESTIONS IN WRITING, TO REACH THE PROCURING ENTITY NOT LATER THAN THE PERIOD SPECIFIED IN THE **TDS** BEFORE THE MEETING.

8.3 MINUTES OF THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER SITE VISIT OF THE SITE OF THE WORKS, IF APPLICABLE, INCLUDING THE TEXT OF THE QUESTIONS ASKED BY TENDERERS AND THE RESPONSES GIVEN, TOGETHER WITH ANY RESPONSES PREPARED AFTER THE MEETING, WILL BE TRANSMITTED PROMPTLY TO ALL TENDERERS WHO HAVE ACQUIRED THE TENDER DOCUMENTS IN ACCORDANCE WITH ITT 6.3. MINUTES SHALL NOT IDENTIFY THE SOURCE OF THE QUESTIONS ASKED.

8.4 THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ANONYMIZED *(NO NAMES)* MINUTES OF THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE WORKS AT THE WEB PAGE IDENTIFIED IN THE TDS. ANY MODIFICATION TO THE TENDER DOCUMENTS THAT MAY BECOME NECESSARY AS A RESULT OF THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER SITE VISIT, SHALL BE MADE BY THE PROCURING ENTITY EXCLUSIVELY THROUGH THE ISSUE OF AN ADDENDUM PURSUANT TO ITT 8 AND NOT THROUGH THE MINUTES OF THE PRE-TENDER MEETING. NON-ATTENDANCE AT THE PRE-TENDER MEETING WILL NOT BE A CAUSE FOR DISQUALIFICATION OF A TENDERER.

9. CLARIFICATION AND AMENDMENTS OF TENDER DOCUMENTS

9.1 A TENDERER REQUIRING ANY CLARIFICATION OF THE TENDER DOCUMENT SHALL CONTACT THE PROCURING ENTITY IN WRITING AT THE PROCURING ENTITY'S ADDRESS SPECIFIED IN THE **TDS** OR RAISE ITS ENQUIRIES DURING THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE WORKS IF PROVIDED FOR IN ACCORDANCE WITH ITT 8.4. THE PROCURING ENTITY WILL RESPOND IN WRITING TO ANY REQUEST FOR CLARIFICATION, PROVIDED THAT SUCH REQUEST IS RECEIVED NOT LATER THAN THE PERIOD SPECIFIED IN THE **TDS** PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS. THE PROCURING ENTITY SHALL FORWARD COPIES OF ITS RESPONSE TO ALL TENDERERS WHO HAVE ACQUIRED THE TENDER DOCUMENTS IN ACCORDANCE WITH ITT 6.3, INCLUDING A DESCRIPTION OF THE INQUIRY BUT WITHOUT IDENTIFYING ITS SOURCE. IF SPECIFIED IN THE **TDS**, THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ITS RESPONSE AT THE WEB PAGE IDENTIFIED IN THE **TDS**. SHOULD THE CLARIFICATION RESULT IN CHANGES TO THE ESSENTIAL ELEMENTS OF THE TENDER DOCUMENTS, THE PROCURING ENTITY SHALL AMEND THE TENDER DOCUMENTS APPROPRIATELY FOLLOWING THE PROCEDURE UNDER ITT 8.4.

10. AMENDMENT OF TENDERING DOCUMENT

10.1 AT ANY TIME PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS, THE PROCURING ENTITY MAY AMEND THE TENDERING DOCUMENT BY ISSUING ADDENDA.

10.2 ANY ADDENDUM ISSUED SHALL BE PART OF THE TENDERING DOCUMENT AND SHALL BE COMMUNICATED IN WRITING TO ALL WHO HAVE OBTAINED THE TENDERING DOCUMENT FROM THE PROCURING ENTITY IN ACCORDANCE WITH ITT 6.3. THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH THE ADDENDUM ON THE PROCURING ENTITY'S WEB PAGE IN ACCORDANCE WITH ITT 8.4.

10.3 TO GIVE PROSPECTIVE TENDERERS REASONABLE TIME IN WHICH TO TAKE AN ADDENDUM INTO ACCOUNT IN PREPARING THEIR TENDERS, THE PROCURING ENTITY SHALL EXTEND, AS NECESSARY, THE DEADLINE FOR SUBMISSION OF TENDERS, IN ACCORDANCE WITH ITT 24.2 BELOW.

C. PREPARATION OF TENDERS

11. COST OF TENDERING

11.1 THE TENDERER SHALL BEAR ALL COSTS ASSOCIATED WITH THE PREPARATION AND SUBMISSION OF ITS TENDER, AND THE PROCURING ENTITY SHALL NOT BE RESPONSIBLE OR LIABLE FOR THOSE COSTS, REGARDLESS OF THE CONDUCT OR OUTCOME OF THE TENDERING PROCESS.

12. LANGUAGE OF TENDER

12.1 THE TENDER, AS WELL AS ALL CORRESPONDENCE AND DOCUMENTS RELATING TO THE TENDER EXCHANGED BY THE TENDERER AND THE PROCURING ENTITY, SHALL BE WRITTEN IN THE ENGLISH LANGUAGE. SUPPORTING DOCUMENTS AND PRINTED LITERATURE THAT ARE PART OF THE TENDER MAY BE IN ANOTHER LANGUAGE PROVIDED THEY ARE ACCOMPANIED BY AN ACCURATE AND NOTARIZED TRANSLATION OF THE RELEVANT PASSAGES INTO THE ENGLISH LANGUAGE, IN WHICH CASE, FOR PURPOSES OF INTERPRETATION OF THE TENDER, SUCH TRANSLATION SHALL GOVERN.

13. DOCUMENTS COMPRISING THE TENDER

13.1 THE TENDER SHALL COMPRISE THE FOLLOWING:

A) FORM OF TENDER PREPARED IN ACCORDANCE WITH ITT 14;

B) SCHEDULES INCLUDING PRICED BILL OF QUANTITIES, COMPLETED IN ACCORDANCE WITH ITT 14 AND ITT 16;

C) TENDER SECURITY OR TENDER-SECURING DECLARATION, IN ACCORDANCE WITH ITT 21.1;

D) ALTERNATIVE TENDER, IF PERMISSIBLE, IN ACCORDANCE WITH ITT 15;

E) AUTHORIZATION: WRITTEN CONFIRMATION AUTHORIZING THE SIGNATORY OF THE TENDER TO COMMIT THE TENDERER, IN ACCORDANCE WITH ITT 22.3;

F) QUALIFICATIONS: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 19 ESTABLISHING THE TENDERER'S QUALIFICATIONS TO PERFORM THE CONTRACT IF ITS TENDER IS ACCEPTED;

G) CONFORMITY: A TECHNICAL PROPOSAL IN ACCORDANCE WITH ITT 18;

1. H) ANY OTHER DOCUMENT REQUIRED IN THE TDS.

13.2 IN ADDITION TO THE REQUIREMENTS UNDER ITT 13.1, TENDERS SUBMITTED BY A JV SHALL INCLUDE A COPY OF THE JOINT VENTURE AGREEMENT ENTERED INTO BY ALL MEMBERS. ALTERNATIVELY, A LETTER OF INTENT TO EXECUTE A JOINT VENTURE AGREEMENT IN THE EVENT OF A SUCCESSFUL TENDER SHALL BE SIGNED BY ALL MEMBERS AND SUBMITTED WITH THE TENDER,

TOGETHER WITH A COPY OF THE PROPOSED AGREEMENT. THE TENDERER SHALL CHRONOLOGICALLY SERIALIZE PAGES OF ALL TENDER DOCUMENTS SUBMITTED.

13.3 THE TENDERER SHALL FURNISH IN THE FORM OF TENDER INFORMATION ON COMMISSIONS AND GRATUITIES, IF ANY, PAID OR TO BE PAID TO AGENTS OR ANY OTHER PARTY RELATING TO THIS TENDER.

14. FORM OF TENDER AND PRICE SCHEDULES

14.1 THE FORM OF TENDER AND SCHEDULES, INCLUDING THE BILL OF QUANTITIES, SHALL BE PREPARED USING THE RELEVANT FORMS FURNISHED IN SECTION IV, TENDERING FORMS. THE FORMS MUST BE COMPLETED WITHOUT ANY ALTERATIONS TO THE TEXT, AND NO SUBSTITUTES SHALL BE ACCEPTED EXCEPT AS PROVIDED UNDER ITT 20.3. ALL BLANK SPACES SHALL BE FILLED IN WITH THE INFORMATION REQUESTED.

15. ALTERNATIVE TENDERS

15.1 UNLESS OTHERWISE SPECIFIED IN THE **TDS**, ALTERNATIVE TENDERS SHALL NOT BE CONSIDERED.

15.2 WHEN ALTERNATIVE TIMES FOR COMPLETION ARE EXPLICITLY INVITED, A STATEMENT TO THAT EFFECT WILL BE INCLUDED IN THE **TDS**, AND THE METHOD OF EVALUATING DIFFERENT ALTERNATIVE TIMES FOR COMPLETION WILL BE DESCRIBED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

15.3 EXCEPT AS PROVIDED UNDER ITT 13.4 BELOW, TENDERERS WISHING TO OFFER TECHNICAL ALTERNATIVES TO THE REQUIREMENTS OF THE TENDER DOCUMENTS MUST FIRST PRICE THE PROCURING ENTITY'S DESIGN AS DESCRIBED IN THE TENDER DOCUMENTS AND SHALL FURTHER PROVIDE ALL INFORMATION NECESSARY FOR A COMPLETE EVALUATION OF THE ALTERNATIVE BY THE PROCURING ENTITY, INCLUDING DRAWINGS, DESIGN CALCULATIONS, TECHNICAL SPECIFICATIONS, BREAKDOWN OF PRICES, AND PROPOSED CONSTRUCTION METHODOLOGY AND OTHER RELEVANT DETAILS. ONLY THE TECHNICAL ALTERNATIVES, IF ANY, OF THE TENDERER WITH THE WINNING TENDER CONFORMING TO THE BASIC TECHNICAL REQUIREMENTS SHALL BE CONSIDERED BY THE PROCURING ENTITY. WHEN SPECIFIED IN THE **TDS,** TENDERERS ARE PERMITTED TO SUBMIT ALTERNATIVE TECHNICAL SOLUTIONS FOR SPECIFIED PARTS OF THE WORKS, AND SUCH PARTS WILL BE IDENTIFIED IN THE **TDS**, AS WILL THE METHOD FOR THEIR EVALUATING, AND DESCRIBED IN SECTION VII, WORKS' REQUIREMENTS.

16. TENDER PRICES AND DISCOUNTS

16.1 THE PRICES AND DISCOUNTS (INCLUDING ANY PRICE REDUCTION) QUOTED BY THE TENDERER IN THE FORM OF TENDER AND IN THE BILL OF QUANTITIES SHALL CONFORM TO THE REQUIREMENTS SPECIFIED BELOW.

16.2 THE TENDERER SHALL FILL IN RATES AND PRICES FOR ALL ITEMS OF THE WORKS DESCRIBED IN THE BILL OF QUANTITIES. ITEMS AGAINST WHICH NO RATE OR PRICE IS ENTERED BY THE TENDERER SHALL BE DEEMED COVERED BY THE RATES FOR OTHER ITEMS IN THE BILL OF QUANTITIES AND WILL NOT BE PAID FOR SEPARATELY BY THE PROCURING ENTITY. AN ITEM NOT LISTED IN THE PRICED BILL OF QUANTITIES SHALL BE ASSUMED TO BE NOT INCLUDED IN THE TENDER, AND PROVIDED THAT THE TENDER IS DETERMINED SUBSTANTIALLY RESPONSIVE NOTWITHSTANDING THIS OMISSION, THE AVERAGE PRICE OF THE ITEM QUOTED BY SUBSTANTIALLY RESPONSIVE TENDERERS WILL BE ADDED TO THE TENDER PRICE AND THE EQUIVALENT TOTAL COST OF THE TENDER SO DETERMINED WILL BE USED FOR PRICE COMPARISON.

16.3 THE PRICE TO BE QUOTED IN THE FORM OF TENDER, IN ACCORDANCE WITH ITT 14.1, SHALL BE THE TOTAL PRICE OF THE TENDER, INCLUDING ANY DISCOUNTS OFFERED.

16.4 THE TENDERER SHALL QUOTE ANY DISCOUNTS AND THE METHODOLOGY FOR THEIR APPLICATION IN THE FORM OF TENDER, IN ACCORDANCE WITH ITT 14.1.

16.5 IT WILL BE SPECIFIED IN THE **TDS** IF THE RATES AND PRICES QUOTED BY THE TENDERER ARE OR ARE NOT SUBJECT TO ADJUSTMENT DURING THE PERFORMANCE OF THE CONTRACT IN ACCORDANCE WITH THE PROVISIONS OF THE CONDITIONS OF CONTRACT, EXCEPT IN CASES WHERE THE CONTRACT IS SUBJECT TO FLUCTUATIONS AND ADJUSTMENTS, NOT FIXED PRICE. IN SUCH A CASE, THE TENDERER SHALL FURNISH THE INDICES AND WEIGHTINGS FOR THE PRICE ADJUSTMENT FORMULAE IN THE SCHEDULE OF ADJUSTMENT DATA AND THE PROCURING ENTITY MAY REQUIRE THE TENDERER TO JUSTIFY ITS PROPOSED INDICES AND WEIGHTINGS.

16.6 WHERE TENDERS ARE BEING INVITED FOR INDIVIDUAL LOTS (CONTRACTS) OR FOR ANY COMBINATION OF LOTS (PACKAGES), TENDERERS WISHING TO OFFER DISCOUNTS FOR THE AWARD OF MORE THAN ONE CONTRACT SHALL SPECIFY IN THEIR TENDER THE PRICE REDUCTIONS APPLICABLE TO EACH PACKAGE, OR ALTERNATIVELY, TO INDIVIDUAL CONTRACTS WITHIN THE PACKAGE. DISCOUNTS SHALL BE SUBMITTED IN ACCORDANCE WITH ITT 16.4, PROVIDED THE TENDERS FOR ALL LOTS (CONTRACTS) ARE OPENED AT THE SAME TIME.

16.7 ALL DUTIES, TAXES, AND OTHER LEVIES PAYABLE BY THE CONTRACTOR UNDER THE CONTRACT, OR FOR ANY OTHER CAUSE, AS OF THE DATE 30 DAYS PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS, SHALL BE INCLUDED IN THE RATES AND PRICES AND THE TOTAL TENDER PRICE SUBMITTED BY THE TENDERER.

16.8 THE TENDER PRICE SHALL BE INCLUSIVE OF A CAPACITY BUILDING LEVY OF ZERO POINT ZERO THREE PERCENTUM (0.03%) OF THE TENDER SUM EXCLUSIVE OF ALL APPLICABLE TAXES.

17. CURRENCIES OF TENDER AND PAYMENT

17.1 TENDERERS SHALL QUOTE ENTIRELY IN KENYA SHILLINGS. THE UNIT RATES AND THE PRICES SHALL BE QUOTED BY THE TENDERER IN THE BILL OF QUANTITIES, ENTIRELY IN KENYA SHILLINGS. A TENDERER EXPECTING TO INCUR EXPENDITURES IN OTHER CURRENCIES FOR INPUTS TO THE WORKS SUPPLIED FROM OUTSIDE KENYA SHALL DEVICE OWN WAYS OF GETTING FOREIGN CURRENCY TO MEET THOSE EXPENDITURES.

18. DOCUMENTS COMPRISING THE TECHNICAL PROPOSAL

18.1 THE TENDERER SHALL FURNISH A TECHNICAL PROPOSAL INCLUDING A STATEMENT OF WORK METHODS, EQUIPMENT, PERSONNEL, SCHEDULE AND ANY OTHER INFORMATION AS STIPULATED IN SECTION IV, TENDER FORMS, IN SUFFICIENT DETAIL TO DEMONSTRATE THE ADEQUACY OF THE TENDERER'S PROPOSAL TO MEET THE WORK'S REQUIREMENTS AND THE COMPLETION TIME.

19. DOCUMENTS ESTABLISHING THE ELIGIBILITY AND QUALIFICATIONS OF THE TENDERER

19.1 TENDERERS SHALL COMPLETE THE FORM OF TENDER, INCLUDED IN SECTION IV, TENDER FORMS, TO ESTABLISH TENDERER'S ELIGIBILITY IN ACCORDANCE WITH ITT 4.

19.2 IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA, TO ESTABLISH ITS QUALIFICATIONS TO PERFORM THE CONTRACT THE TENDERER SHALL PROVIDE THE INFORMATION REQUESTED IN THE CORRESPONDING INFORMATION SHEETS INCLUDED IN SECTION IV, TENDER FORMS.

19.3 A MARGIN OF PREFERENCE WILL NOT BE ALLOWED. PREFERENCE AND RESERVATIONS WILL BE ALLOWED, INDIVIDUALLY OR IN JOINT VENTURES. APPLYING FOR ELIGIBILITY FOR PREFERENCE AND RESERVATIONS SHALL SUPPLY ALL INFORMATION REQUIRED TO SATISFY THE CRITERIA FOR ELIGIBILITY SPECIFIED IN ACCORDANCE WITH ITT 35.1.

19.4 TENDERERS SHALL BE ASKED TO PROVIDE, AS PART OF THE DATA FOR QUALIFICATION, SUCH INFORMATION, INCLUDING DETAILS OF OWNERSHIP, AS SHALL BE REQUIRED BY THE PROCURING ENTITY. FURTHER THE INFORMATION WILL ENABLE THE PROCURING ENTITY IDENTIFY ANY ACTUAL OR POTENTIAL CONFLICT OF INTEREST IN RELATION TO THE PROCUREMENT AND/OR CONTRACT MANAGEMENT PROCESSES, OR A POSSIBILITY OF COLLUSION BETWEEN TENDERERS, AND THEREBY HELP TO PREVENT ANY CORRUPT INFLUENCE IN RELATION TO THE PROCUREMENT PROCESS OR CONTRACT MANAGEMENT.

19.5 THE PURPOSE OF THE INFORMATION DESCRIBED IN ITT 19.4 ABOVE OVERRIDES ANY CLAIMS TO CONFIDENTIALITY WHICH A TENDERER MAY HAVE. THERE CAN BE NO CIRCUMSTANCES IN WHICH IT WOULD BE JUSTIFIED FOR A TENDERER TO KEEP INFORMATION RELATING TO ITS OWNERSHIP AND CONTROL CONFIDENTIAL WHERE IT IS TENDERING TO UNDERTAKE PUBLIC SECTOR WORK AND RECEIVE PUBLIC SECTOR FUNDS. THUS, CONFIDENTIALITY WILL NOT BE ACCEPTED BY THE PROCURING ENTITY AS A JUSTIFICATION FOR A TENDERER'S FAILURE TO DISCLOSE, OR FAILURE TO PROVIDE REQUIRED INFORMATION ON ITS OWNERSHIP AND CONTROL.

19.6 THE TENDERER SHALL PROVIDE FURTHER DOCUMENTARY PROOF, INFORMATION OR AUTHORIZATIONS THAT THE PROCURING ENTITY MAY REQUEST IN RELATION TO OWNERSHIP AND CONTROL WHICH INFORMATION ON ANY CHANGES TO THE INFORMATION WHICH WAS PROVIDED BY THE TENDERER UNDER ITT 6.3. THE OBLIGATIONS TO REQUIRE THIS INFORMATION SHALL CONTINUE FOR THE DURATION OF THE PROCUREMENT PROCESS AND CONTRACT PERFORMANCE AND AFTER COMPLETION OF THE CONTRACT, IF ANY CHANGE TO THE INFORMATION PREVIOUSLY PROVIDED MAY REVEAL A CONFLICT OF INTEREST IN RELATION TO THE AWARD OR MANAGEMENT OF THE CONTRACT.

19.7 ALL INFORMATION PROVIDED BY THE TENDERER PURSUANT TO THESE REQUIREMENTS MUST BE COMPLETE, CURRENT AND ACCURATE AS AT THE DATE OF PROVISION TO THE PROCURING ENTITY. IN SUBMITTING THE INFORMATION REQUIRED PURSUANT TO THESE REQUIREMENTS, THE TENDERER SHALL WARRANT THAT THE INFORMATION SUBMITTED IS COMPLETE, CURRENT AND ACCURATE AS AT THE DATE OF SUBMISSION TO THE PROCURING ENTITY.

19.8 IF A TENDERER FAILS TO SUBMIT THE INFORMATION REQUIRED BY THESE REQUIREMENTS, ITS TENDER WILL BE REJECTED. SIMILARLY, IF THE PROCURING ENTITY IS UNABLE, AFTER TAKING REASONABLE STEPS, TO VERIFY TO A REASONABLE DEGREE THE INFORMATION SUBMITTED BY A TENDERER PURSUANT TO THESE REQUIREMENTS, THEN THE TENDER WILL BE REJECTED.

19.9 IF INFORMATION SUBMITTED BY A TENDERER PURSUANT TO THESE REQUIREMENTS, OR OBTAINED BY THE PROCURING ENTITY (WHETHER THROUGH ITS OWN ENQUIRIES, THROUGH NOTIFICATION BY THE PUBLIC OR OTHERWISE), SHOWS ANY CONFLICT OF INTEREST WHICH COULD MATERIALLY AND IMPROPERLY BENEFIT THE TENDERER IN RELATION TO THE PROCUREMENT OR CONTRACT MANAGEMENT PROCESS, THEN:

I) IF THE PROCUREMENT PROCESS IS STILL ONGOING, THE TENDERER WILL BE DISQUALIFIED FROM THE PROCUREMENT PROCESS,

II) IF THE CONTRACT HAS BEEN AWARDED TO THAT TENDERER, THE CONTRACT AWARD WILL BE SET ASIDE,

III) THE TENDERER WILL BE REFERRED TO THE RELEVANT LAW ENFORCEMENT AUTHORITIES FOR INVESTIGATION OF WHETHER THE TENDERER OR ANY OTHER PERSONS HAVE COMMITTED ANY CRIMINAL OFFENCE.

19.10 IF A TENDERER SUBMITS INFORMATION PURSUANT TO THESE REQUIREMENTS THAT IS INCOMPLETE, INACCURATE OR OUT-OF-DATE, OR ATTEMPTS TO OBSTRUCT THE VERIFICATION PROCESS, THEN THE CONSEQUENCES ITT 19.8WILL ENSUE UNLESS THE TENDERER CAN SHOW TO THE REASONABLE SATISFACTION OF THE PROCURING ENTITY THAT ANY SUCH ACT WAS NOT MATERIAL, OR WAS DUE TO GENUINE ERROR WHICH WAS NOT ATTRIBUTABLE TO THE INTENTIONAL ACT, NEGLIGENCE OR RECKLESSNESS OF THE TENDERER.

20. PERIOD OF VALIDITY OF TENDERS

20.1 TENDERS SHALL REMAIN VALID FOR THE TENDER VALIDITY PERIOD SPECIFIED IN THE **TDS.** THE TENDER VALIDITY PERIOD STARTS FROM THE DATE FIXED FOR THE TENDER SUBMISSION DEADLINE (AS PRESCRIBED BY THE PROCURING ENTITY IN ACCORDANCE WITH ITT 24). A TENDER VALID FOR A SHORTER PERIOD SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE.

20.2 IN EXCEPTIONAL CIRCUMSTANCES, PRIOR TO THE EXPIRATION OF THE TENDER VALIDITY PERIOD, THE PROCURING ENTITY MAY REQUEST TENDERERS TO EXTEND THE PERIOD OF VALIDITY OF THEIR TENDERS. THE REQUEST AND THE RESPONSES SHALL BE MADE IN WRITING. IF A TENDER SECURITY IS REQUESTED IN ACCORDANCE WITH ITT 21.1, IT SHALL ALSO BE EXTENDED FOR THIRTY (30) DAYS BEYOND THE DEADLINE OF THE EXTENDED VALIDITY PERIOD. A TENDERER MAY REFUSE THE REQUEST WITHOUT FORFEITING ITS TENDER SECURITY. A TENDERER GRANTING THE REQUEST SHALL NOT BE REQUIRED OR PERMITTED TO MODIFY ITS TENDER, EXCEPT AS PROVIDED IN ITT 20.3.

20.3 IF THE AWARD IS DELAYED BY A PERIOD EXCEEDING THE NUMBER OF DAYS TO BE SPECIFIED IN THE **TDS** DAYS BEYOND THE EXPIRY OF THE INITIAL TENDER VALIDITY PERIOD, THE CONTRACT PRICE SHALL BE DETERMINED AS FOLLOWS:

A) IN THE CASE OF FIXED PRICE CONTRACTS, THE CONTRACT PRICE SHALL BE THE TENDER PRICE ADJUSTED BY THE FACTOR SPECIFIED IN THE **TDS;**

B) IN THE CASE OF ADJUSTABLE PRICE CONTRACTS, NO ADJUSTMENT SHALL BE MADE; OR IN ANY CASE, TENDER EVALUATION SHALL BE BASED ON THE TENDER PRICE WITHOUT TAKING INTO CONSIDERATION THE APPLICABLE CORRECTION FROM THOSE INDICATED ABOVE.

21. TENDER SECURITY

21.1 THE TENDERER SHALL FURNISH AS PART OF ITS TENDER, EITHER A TENDER-SECURING DECLARATION OR A TENDER SECURITY AS SPECIFIED IN THE **TDS,** IN ORIGINAL FORM AND, IN THE CASE OF A TENDER SECURITY, IN THE AMOUNT AND CURRENCY SPECIFIED IN THE **TDS.** A TENDER-SECURING DECLARATION SHALL USE THE FORM INCLUDED IN SECTION IV, TENDER FORMS.

21.2 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 19.1, THE TENDER SECURITY SHALL BE A DEMAND GUARANTEE IN ANY OF THE FOLLOWING FORMS AT THE TENDERER'S OPTION:

A) AN UNCONDITIONAL BANK GUARANTEE ISSUED BY REPUTABLE COMMERCIAL BANK); OR

B) AN IRREVOCABLE LETTER OF CREDIT;

C) A BANKER'S CHEQUE ISSUED BY A REPUTABLE COMMERCIAL BANK; OR

D) ANOTHER SECURITY SPECIFIED IN THE **TDS**,

21.3 IF AN UNCONDITIONAL BANK GUARANTEE IS ISSUED BY A BANK LOCATED OUTSIDE KENYA, THE ISSUING BANK SHALL HAVE A CORRESPONDENT BANK LOCATED IN KENYA TO MAKE IT ENFORCEABLE. THE TENDER SECURITY SHALL BE VALID FOR THIRTY (30) DAYS BEYOND THE ORIGINAL VALIDITY PERIOD OF THE TENDER, OR BEYOND ANY PERIOD OF EXTENSION IF REQUESTED UNDER ITT 20.2.

21.4 IF A TENDER SECURITY OR TENDER-SECURING DECLARATION IS SPECIFIED PURSUANT TO ITT 19.1, ANY TENDER NOT ACCOMPANIED BY A SUBSTANTIALLY RESPONSIVE TENDER SECURITY OR TENDER-SECURING DECLARATION SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE.

21.5 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 21.1, THE TENDER SECURITY OF UNSUCCESSFUL TENDERERS SHALL BE RETURNED AS PROMPTLY AS POSSIBLE UPON THE SUCCESSFUL TENDERER'S SIGNING THE CONTRACT AND FURNISHING THE PERFORMANCE SECURITY AND ANY OTHER DOCUMENTS REQUIRED IN THE **TDS.** THE PROCURING ENTITY SHALL ALSO PROMPTLY RETURN THE TENDER SECURITY TO THE TENDERERS WHERE THE PROCUREMENT PROCEEDINGS ARE TERMINATED, ALL TENDERS WERE DETERMINED NONRESPONSIVE OR A BIDDER DECLINES TO EXTEND TENDER VALIDITY PERIOD.

21.6 THE TENDER SECURITY OF THE SUCCESSFUL TENDERER SHALL BE RETURNED AS PROMPTLY AS POSSIBLE ONCE THE SUCCESSFUL TENDERER HAS SIGNED THE CONTRACT AND FURNISHED THE REQUIRED PERFORMANCE SECURITY, AND ANY OTHER DOCUMENTS REQUIRED AS SPECIFIED UNDER ITT 21.5

21.7 THE TENDER SECURITY MAY BE FORFEITED OR THE TENDER-SECURING DECLARATION EXECUTED:
A) IF A TENDERER WITHDRAWS ITS TENDER DURING THE PERIOD OF TENDER VALIDITY SPECIFIED BY THE TENDERER ON THE FORM OF TENDER, OR ANY EXTENSION THERETO PROVIDED BY THE TENDERER; OR

B) IF THE SUCCESSFUL TENDERER FAILS TO:
I) SIGN THE CONTRACT IN ACCORDANCE WITH ITT 50; OR
II) FURNISH A PERFORMANCE SECURITY AND ANY OTHER DOCUMENTS REQUIRED AS SPECIFIED UNDER ITT 21.5.

21.8 WHERE TENDER SECURING DECLARATION IS EXECUTED, THE PROCURING ENTITY MAY DECLARE THE TENDERER INELIGIBLE TO BE AWARDED THE CONTRACT BY THE PROCURING ENTITY FOR A PERIOD NOT EXCEEDING SIX (6) MONTHS AND REPORT THE MATTER TO THE AUTHORITY WITHIN 14 DAYS OF THE SUSPENSION.

21.9 THE TENDER SECURITY OR THE TENDER-SECURING DECLARATION OF A JV SHALL BE IN THE NAME OF THE JV THAT SUBMITS THE TENDER. IF THE JV HAS NOT BEEN LEGALLY CONSTITUTED INTO A LEGALLY ENFORCEABLE JV AT THE TIME OF TENDERING, THE TENDER SECURITY OR THE TENDER-SECURING DECLARATION SHALL BE IN THE NAMES OF ALL FUTURE MEMBERS AS NAMED IN THE LETTER OF INTENT REFERRED TO IN ITT 3.1.

21.10 A TENDERER SHALL NOT ISSUE A TENDER SECURITY TO GUARANTEE ITSELF.

II) FURNISH A PERFORMANCE SECURITY AND IF REQUIRED IN THE TDS, AND ANY OTHER DOCUMENTS REQUIRED IN THE **TDS.**

21.8 WHERE TENDER SECURING DECLARATION IS EXECUTED, THE PROCURING ENTITY MAY DECLARE THE TENDERER INELIGIBLE TO BE AWARDED THE CONTRACT BY THE PROCURING ENTITY FOR A PERIOD NOT EXCEEDING SIX (6) MONTHS AND REPORT THE MATTER TO THE AUTHORITY WITHIN 14 DAYS OF THE SUSPENSION.

21.9 THE TENDER SECURITY OR THE TENDER-SECURING DECLARATION OF A JV SHALL BE IN THE NAME OF THE JV THAT SUBMITS THE TENDER. IF THE JV HAS NOT BEEN LEGALLY CONSTITUTED INTO A LEGALLY ENFORCEABLE JV AT THE TIME OF TENDERING, THE TENDER SECURITY OR THE TENDER-SECURING DECLARATION SHALL BE IN THE NAMES OF ALL FUTURE MEMBERS AS NAMED IN THE LETTER OF INTENT REFERRED TO IN ITT 3.1.

21.10 A TENDERER SHALL NOT ISSUE A TENDER SECURITY TO GUARANTEE ITSELF.

22. FORMAT AND SIGNING OF TENDER

22.1 THE TENDERER SHALL PREPARE ONE ORIGINAL OF THE DOCUMENTS COMPRISING THE TENDER AS DESCRIBED IN ITT 13 AND CLEARLY MARK IT "ORIGINAL." ALTERNATIVE TENDERS, IF PERMITTED IN ACCORDANCE WITH ITT 15, SHALL BE CLEARLY MARKED "ALTERNATIVE." IN ADDITION, THE TENDERER SHALL SUBMIT COPIES OF THE TENDER, IN THE NUMBER SPECIFIED IN THE **TDS** AND CLEARLY MARK THEM "COPY." IN THE EVENT OF ANY DISCREPANCY BETWEEN THE ORIGINAL AND THE COPIES, THE ORIGINAL SHALL PREVAIL.

22.2 TENDERERS SHALL MARK AS "CONFIDENTIAL" ALL INFORMATION IN THEIR TENDERS WHICH IS CONFIDENTIAL TO THEIR BUSINESS. THIS MAY INCLUDE PROPRIETARY INFORMATION, TRADE SECRETS, OR COMMERCIAL OR FINANCIALLY SENSITIVE INFORMATION.

22.2 TENDERERS SHALL MARK AS "CONFIDENTIAL" ALL INFORMATION IN THEIR TENDERS WHICH IS CONFIDENTIAL TO THEIR BUSINESS. THIS MAY INCLUDE PROPRIETARY INFORMATION, TRADE SECRETS, OR COMMERCIAL OR FINANCIALLY SENSITIVE INFORMATION.

22.3 THE ORIGINAL AND ALL COPIES OF THE TENDER SHALL BE TYPED OR WRITTEN IN INDELIBLE INK AND SHALL BE SIGNED BY A PERSON DULY AUTHORIZED TO SIGN ON BEHALF OF THE TENDERER. THIS AUTHORIZATION SHALL CONSIST OF A WRITTEN CONFIRMATION AS SPECIFIED IN THE **TDS** AND SHALL BE ATTACHED TO THE TENDER. THE NAME AND POSITION HELD BY EACH PERSON SIGNING THE AUTHORIZATION MUST BE TYPED OR PRINTED BELOW THE SIGNATURE. ALL PAGES OF THE TENDER WHERE ENTRIES OR AMENDMENTS HAVE BEEN MADE SHALL BE SIGNED OR INITIALED BY THE PERSON SIGNING THE TENDER.

22.4 IN CASE THE TENDERER IS A JV, THE TENDER SHALL BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE JV ON BEHALF OF THE JV, AND TO BE LEGALLY BINDING ON ALL THE MEMBERS AS EVIDENCED BY A POWER OF ATTORNEY SIGNED BY THEIR LEGALLY AUTHORIZED REPRESENTATIVES.

22.5 ANY INTER-LINEATION, ERASURES, OR OVERWRITING SHALL BE VALID ONLY IF THEY ARE SIGNED OR INITIALED BY THE PERSON SIGNING THE TENDER.

D. SUBMISSION AND OPENING OF TENDERS

23. SEALING AND MARKING OF TENDERS

23.1 DEPENDING ON THE SIZES OR QUANTITIES OR WEIGHT OF THE TENDER DOCUMENTS, A TENDERER MAY USE AN ENVELOPE, PACKAGE OR CONTAINER. THE TENDERER SHALL DELIVER THE TENDER IN A SINGLE SEALED ENVELOPE, OR IN A SINGLE SEALED PACKAGE, OR IN A SINGLE SEALED CONTAINER BEARING THE NAME AND REFERENCE NUMBER OF THE TENDER, ADDRESSED TO THE PROCURING ENTITY AND A WARNING NOT TO OPEN BEFORE THE TIME AND DATE FOR TENDER OPENING DATE. WITHIN THE SINGLE ENVELOPE, PACKAGE OR CONTAINER, THE TENDERER SHALL PLACE THE FOLLOWING SEPARATE, SEALED ENVELOPES:

A) IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED “ORIGINAL”, ALL DOCUMENTS COMPRISING THE TENDER, AS DESCRIBED IN ITT 11.1; AND
B) IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED “COPIES”, ALL REQUIRED COPIES OF THE TENDER; AND
C) IF ALTERNATIVE TENDERS ARE PERMITTED IN ACCORDANCE WITH ITT 15.1, AND IF RELEVANT:
I) IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED “ORIGINAL –ALTERNATIVE TENDER”, THE ALTERNATIVE TENDER; AND
II) IN THE ENVELOPE OR PACKAGE OR CONTAINER MARKED “COPIES- ALTERNATIVE TENDER”, ALL REQUIRED COPIES OF THE ALTERNATIVE TENDER.
THE INNER ENVELOPES OR PACKAGES OR CONTAINERS SHALL:
A) BEAR THE NAME AND ADDRESS OF THE PROCURING ENTITY;
B) BEAR THE NAME AND ADDRESS OF THE TENDERER; AND
C) BEAR THE NAME AND REFERENCE NUMBER OF THE TENDER.

23.2 IF AN ENVELOPE OR PACKAGE OR CONTAINER IS NOT SEALED AND MARKED AS REQUIRED, THE PROCURING ENTITY WILL ASSUME NO RESPONSIBILITY FOR THE MISPLACEMENT OR PREMATURE OPENING OF THE TENDER.

24. DEADLINE FOR SUBMISSION OF TENDERS

24.1 TENDERS MUST BE RECEIVED BY THE PROCURING ENTITY AT THE ADDRESS SPECIFIED IN THE **TDS** AND NO LATER THAN THE DATE AND TIME ALSO SPECIFIED IN THE **TDS**. WHEN SO SPECIFIED IN THE **TDS,** TENDERERS SHALL HAVE THE OPTION OF SUBMITTING THEIR TENDERS ELECTRONICALLY. TENDERERS SUBMITTING TENDERS ELECTRONICALLY SHALL FOLLOW THE ELECTRONIC TENDER SUBMISSION PROCEDURES SPECIFIED IN THE **TDS.**

24.2 THE PROCURING ENTITY MAY, AT ITS DISCRETION, EXTEND THE DEADLINE FOR THE SUBMISSION OF TENDERS BY AMENDING THE TENDER DOCUMENTS IN ACCORDANCE WITH ITT 10.3, IN WHICH CASE ALL RIGHTS AND OBLIGATIONS OF THE PROCURING ENTITY AND TENDERERS PREVIOUSLY SUBJECT TO THE DEADLINE SHALL THEREAFTER BE SUBJECT TO THE DEADLINE AS EXTENDED.

25. LATE TENDERS

25.1 THE PROCURING ENTITY SHALL NOT CONSIDER ANY TENDER THAT ARRIVES AFTER THE DEADLINE FOR SUBMISSION OF TENDERS, IN ACCORDANCE WITH ITT 24. ANY TENDER RECEIVED BY THE PROCURING ENTITY AFTER THE DEADLINE FOR SUBMISSION OF TENDERS SHALL BE DECLARED LATE, REJECTED, AND RETURNED UNOPENED TO THE TENDERER

26. WITHDRAWAL, SUBSTITUTION, AND MODIFICATION OF TENDERS

26.1 A TENDERER MAY WITHDRAW, SUBSTITUTE, OR MODIFY ITS TENDER AFTER IT HAS BEEN SUBMITTED BY SENDING A WRITTEN NOTICE, DULY SIGNED BY AN AUTHORIZED REPRESENTATIVE, AND SHALL INCLUDE A COPY OF THE AUTHORIZATION IN ACCORDANCE WITH ITT 22.3, (EXCEPT THAT WITHDRAWAL NOTICES DO NOT REQUIRE COPIES). THE CORRESPONDING SUBSTITUTION OR MODIFICATION OF THE TENDER MUST ACCOMPANY THE RESPECTIVE WRITTEN NOTICE. ALL NOTICES MUST BE:

A) PREPARED AND SUBMITTED IN ACCORDANCE WITH ITT 22 AND ITT 23 (EXCEPT THAT WITHDRAWALS NOTICES DO NOT REQUIRE COPIES), AND IN ADDITION, THE RESPECTIVE ENVELOPES SHALL BE CLEARLY MARKED “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” AND

B) RECEIVED BY THE PROCURING ENTITY PRIOR TO THE DEADLINE PRESCRIBED FOR SUBMISSION OF TENDERS, IN ACCORDANCE WITH ITT 24.

26.2 TENDERS REQUESTED TO BE WITHDRAWN IN ACCORDANCE WITH ITT 26.1 SHALL BE RETURNED UNOPENED TO THE TENDERERS.

26.3 NO TENDER MAY BE WITHDRAWN, SUBSTITUTED, OR MODIFIED IN THE INTERVAL BETWEEN THE DEADLINE FOR SUBMISSION OF TENDERS AND THE EXPIRATION OF THE PERIOD OF TENDER VALIDITY SPECIFIED BY THE TENDERER ON THE FORM OF TENDER OR ANY EXTENSION THEREOF.

26.4 TENDERERS SHALL BE ALLOWED TO SUBMIT MODIFICATIONS TO BIDS OR PROPOSALS OR WITH DRAW PREVIOUSLY SUBMITTED BIDS OR PROPOSALS ELECTRONICALLY UP TO, BUT NOT AFTER, THE BID SUBMISSION DEADLINE.

27. TENDER OPENING

27.1 EXCEPT IN THE CASES SPECIFIED IN ITT 23 AND ITT 26.2, THE PROCURING ENTITY SHALL PUBLICLY OPEN AND READ OUT ALL TENDERS RECEIVED BY THE DEADLINE, AT THE DATE, TIME AND PLACE SPECIFIED IN THE **TDS,** IN THE PRESENCE OF TENDERERS' DESIGNATED REPRESENTATIVES WHO CHOOSES TO ATTEND. ANY SPECIFIC ELECTRONIC TENDER OPENING PROCEDURES REQUIRED IF ELECTRONIC TENDERING IS PERMITTED IN ACCORDANCE WITH ITT 24.1, SHALL BE AS SPECIFIED IN THE **TDS**.

27.2 FIRST, ENVELOPES MARKED “WITHDRAWAL” SHALL BE OPENED AND READ OUT AND THE ENVELOPES WITH THE CORRESPONDING TENDER SHALL NOT BE OPENED, BUT RETURNED TO THE TENDERER. NO TENDER WITHDRAWAL SHALL BE PERMITTED UNLESS THE CORRESPONDING WITHDRAWAL NOTICE CONTAINS A VALID AUTHORIZATION TO REQUEST THE WITHDRAWAL AND IS READ OUT AT TENDER OPENING.

27.3 NEXT, ENVELOPES MARKED “SUBSTITUTION” SHALL BE OPENED AND READ OUT AND EXCHANGED WITH THE CORRESPONDING TENDER BEING SUBSTITUTED, AND THE SUBSTITUTED TENDER SHALL NOT BE OPENED, BUT RETURNED TO THE TENDERER. NO TENDER SUBSTITUTION SHALL BE PERMITTED UNLESS THE CORRESPONDING SUBSTITUTION NOTICE CONTAINS A VALID AUTHORIZATION TO REQUEST THE SUBSTITUTION AND IS READ OUT AT TENDER OPENING.

27.4 NEXT, ENVELOPES MARKED “MODIFICATION” SHALL BE OPENED AND READ OUT WITH THE CORRESPONDING TENDER. NO TENDER MODIFICATION SHALL BE PERMITTED UNLESS THE CORRESPONDING MODIFICATION NOTICE CONTAINS A VALID AUTHORIZATION TO REQUEST THE MODIFICATION AND IS READ OUT AT TENDER OPENING.

27.5 NEXT, ALL REMAINING ENVELOPES SHALL BE OPENED ONE AT A TIME, READING OUT: THE NAME OF THE TENDERER AND WHETHER THERE IS A MODIFICATION; THE TOTAL TENDER PRICE, PER LOT (CONTRACT) IF APPLICABLE, INCLUDING ANY DISCOUNTS AND ALTERNATIVE TENDERS; THE PRESENCE OR ABSENCE OF A TENDER SECURITY OR TENDER-SECURING DECLARATION, IF REQUIRED; AND ANY OTHER DETAILS AS THE PROCURING ENTITY MAY CONSIDER APPROPRIATE.

27.6 ONLY TENDERS, ALTERNATIVE TENDERS AND DISCOUNTS THAT ARE OPENED AND READ OUT AT TENDER OPENING SHALL BE CONSIDERED FURTHER FOR EVALUATION. THE FORM OF TENDER AND PAGES OF THE BILLS OF QUANTITIES ARE TO BE INITIALED BY THE MEMBERS OF THE TENDER OPENING COMMITTEE ATTENDING THE OPENING.

27.7 AT THE TENDER OPENING, THE PROCURING ENTITY SHALL NEITHER DISCUSS THE MERITS OF ANY TENDER NOR REJECT ANY TENDER (EXCEPT FOR LATE TENDERS, IN ACCORDANCE WITH ITT 25.1).

27.8 THE PROCURING ENTITY SHALL PREPARE MINUTES OF THE TENDER OPENING THAT SHALL INCLUDE, AS A MINIMUM:

A) THE NAME OF THE TENDERER AND WHETHER THERE IS A WITHDRAWAL, SUBSTITUTION, OR MODIFICATION;

B) THE TENDER PRICE, PER LOT (CONTRACT) IF APPLICABLE, INCLUDING ANY DISCOUNTS;

C) ANY ALTERNATIVE TENDERS;

D) THE PRESENCE OR ABSENCE OF A TENDER SECURITY, IF ONE WAS REQUIRED.

E) NUMBER OF PAGES OF EACH TENDER DOCUMENT SUBMITTED.

27.9 THE TENDERERS' REPRESENTATIVES WHO ARE PRESENT SHALL BE REQUESTED TO SIGN THE MINUTES. THE OMISSION OF A TENDERER'S SIGNATURE ON THE MINUTES SHALL NOT INVALIDATE THE CONTENTS AND EFFECT OF THE MINUTES. A COPY OF THE TENDER OPENING REGISTER SHALL BE DISTRIBUTED TO ALL TENDERERS UPON REQUEST.

E. EVALUATION AND COMPARISON OF TENDERS

28. CONFIDENTIALITY

28.1 INFORMATION RELATING TO THE EVALUATION OF TENDERS AND RECOMMENDATION OF CONTRACT AWARD SHALL NOT BE DISCLOSED TO TENDERERS OR ANY OTHER PERSONS NOT OFFICIALLY CONCERNED WITH THE TENDER PROCESS UNTIL INFORMATION ON INTENTION TO AWARD THE CONTRACT IS TRANSMITTED TO ALL TENDERERS IN ACCORDANCE WITH ITT 46.

28.2 ANY EFFORT BY A TENDERER TO INFLUENCE THE PROCURING ENTITY IN THE EVALUATION OF THE TENDERS OR CONTRACT AWARD DECISIONS MAY RESULT IN THE REJECTION OF ITS TENDER.

28.3 NOTWITHSTANDING ITT 28.2, FROM THE TIME OF TENDER OPENING TO THE TIME OF CONTRACT AWARD, IF A TENDERER WISHES TO CONTACT THE PROCURING ENTITY ON ANY MATTER RELATED TO THE TENDERING PROCESS, IT SHALL DO SO IN WRITING.

29. CLARIFICATION OF TENDERS

29.1 TO ASSIST IN THE EXAMINATION, EVALUATION, AND COMPARISON OF THE TENDERS, AND QUALIFICATION OF THE TENDERERS, THE PROCURING ENTITY MAY, AT ITS DISCRETION, ASK ANY TENDERER FOR A CLARIFICATION OF ITS TENDER, GIVEN A REASONABLE TIME FOR A RESPONSE. ANY CLARIFICATION SUBMITTED BY A TENDERER THAT IS NOT IN RESPONSE TO A REQUEST BY THE PROCURING ENTITY SHALL NOT BE CONSIDERED. THE PROCURING ENTITY'S REQUEST FOR CLARIFICATION AND THE RESPONSE SHALL BE IN WRITING. NO CHANGE, INCLUDING ANY VOLUNTARY INCREASE OR DECREASE, IN THE PRICES OR SUBSTANCE OF THE TENDER SHALL BE SOUGHT, OFFERED, OR PERMITTED, EXCEPT TO CONFIRM THE CORRECTION OF ARITHMETIC ERRORS DISCOVERED BY THE PROCURING ENTITY IN THE EVALUATION OF THE TENDERS, IN ACCORDANCE WITH ITT 33.

29.2 IF A TENDERER DOES NOT PROVIDE CLARIFICATIONS OF ITS TENDER BY THE DATE AND TIME SET IN THE PROCURING ENTITY'S REQUEST FOR CLARIFICATION, ITS TENDER MAY BE REJECTED.

30. DEVIATIONS, RESERVATIONS, AND OMISSIONS

30.1 DURING THE EVALUATION OF TENDERS, THE FOLLOWING DEFINITIONS APPLY:
A) “DEVIATION” IS A DEPARTURE FROM THE REQUIREMENTS SPECIFIED IN THE TENDER DOCUMENT;
B) “RESERVATION” IS THE SETTING OF LIMITING CONDITIONS OR WITHHOLDING FROM COMPLETE ACCEPTANCE OF THE REQUIREMENTS SPECIFIED IN THE TENDER DOCUMENT; AND
C) “OMISSION” IS THE FAILURE TO SUBMIT PART OR ALL OF THE INFORMATION OR DOCUMENTATION REQUIRED IN THE TENDER DOCUMENT.

31. DETERMINATION OF RESPONSIVENESS

31.1 THE PROCURING ENTITY'S DETERMINATION OF A TENDER'S RESPONSIVENESS IS TO BE BASED ON THE CONTENTS OF THE TENDER ITSELF, AS DEFINED IN ITT 13.

31.2 A SUBSTANTIALLY RESPONSIVE TENDER IS ONE THAT MEETS THE REQUIREMENTS OF THE TENDER DOCUMENT WITHOUT MATERIAL DEVIATION, RESERVATION, OR OMISSION. A MATERIAL DEVIATION, RESERVATION, OR OMISSION IS ONE THAT, IF ACCEPTED, WOULD:

A) AFFECT IN ANY SUBSTANTIAL WAY THE SCOPE, QUALITY, OR PERFORMANCE OF THE WORKS SPECIFIED IN THE CONTRACT; OR

B) LIMIT IN ANY SUBSTANTIAL WAY, INCONSISTENT WITH THE TENDER DOCUMENT, THE PROCURING ENTITY'S RIGHTS OR THE TENDERER'S OBLIGATIONS UNDER THE PROPOSED CONTRACT; OR

C) IF RECTIFIED, WOULD UNFAIRLY AFFECT THE COMPETITIVE POSITION OF OTHER TENDERERS PRESENTING SUBSTANTIALLY RESPONSIVE TENDERS.

31.3 THE PROCURING ENTITY SHALL EXAMINE THE TECHNICAL ASPECTS OF THE TENDER SUBMITTED IN ACCORDANCE WITH ITT 18, TO CONFIRM THAT ALL REQUIREMENTS OF SECTION VII, WORKS' REQUIREMENTS HAVE BEEN MET WITHOUT ANY MATERIAL DEVIATION, RESERVATION OR OMISSION.

31.4 IF A TENDER IS NOT SUBSTANTIALLY RESPONSIVE TO THE REQUIREMENTS OF THE TENDER DOCUMENT, IT SHALL BE REJECTED BY THE PROCURING ENTITY AND SHALL NOT SUBSEQUENTLY BE MADE RESPONSIVE BY CORRECTION OF THE MATERIAL DEVIATION, RESERVATION, OR OMISSION.

32. NON-MATERIAL NON-CONFORMITIES

32.1 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY MAY WAIVE ANY NON-CONFORMITIES IN THE TENDER.

32.2 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY MAY REQUEST THAT THE TENDERER SUBMIT THE NECESSARY INFORMATION OR DOCUMENTATION, WITHIN A REASONABLE PERIOD, TO RECTIFY NONMATERIAL NON-CONFORMITIES IN THE TENDER RELATED TO DOCUMENTATION REQUIREMENTS. REQUESTING INFORMATION OR DOCUMENTATION ON SUCH NON- CONFORMITIES SHALL NOT BE RELATED TO ANY ASPECT OF THE PRICE OF THE TENDER. FAILURE OF THE TENDERER TO COMPLY WITH THE REQUEST MAY RESULT IN THE REJECTION OF ITS TENDER.

32.3 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY SHALL RECTIFY QUANTIFIABLE IMMATERIAL NON-CONFORMITIES RELATED TO THE TENDER PRICE.

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33. ARITHMETICAL ERRORS

33.1 THE TENDER SUM AS SUBMITTED AND READ OUT DURING THE TENDER OPENING SHALL BE ABSOLUTE AND FINAL AND SHALL NOT BE THE SUBJECT OF CORRECTION, ADJUSTMENT OR AMENDMENT IN ANY WAY BY ANY PERSON OR ENTITY.

33.2 PROVIDED THAT THE TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY SHALL HANDLE ERRORS ON THE FOLLOWING BASIS:

A) ANY ERROR DETECTED IF CONSIDERED A MAJOR DEVIATION THAT AFFECTS THE SUBSTANCE OF THE TENDER, SHALL LEAD TO DISQUALIFICATION OF THE TENDER AS NON-RESPONSIVE.

B) ANY ERRORS IN THE SUBMITTED TENDER ARISING FROM A MISCALCULATION OF UNIT PRICE, QUANTITY, AND SUBTOTAL AND TOTAL BID PRICE SHALL BE CONSIDERED AS A MAJOR DEVIATION THAT AFFECTS THE SUBSTANCE OF THE TENDER AND SHALL LEAD TO DISQUALIFICATION OF THE TENDER AS NON-RESPONSIVE. AND

C) IF THERE IS A DISCREPANCY BETWEEN WORDS AND FIGURES, THE AMOUNT IN WORDS SHALL PREVAIL

33.3 TENDERERS SHALL BE NOTIFIED OF ANY ERROR DETECTED IN THEIR BID DURING THE NOTIFICATION OF INTENTION TO AWARD.

34. CURRENCY PROVISIONS

34.1 TENDERS WILL PRICED BE IN KENYA SHILLINGS ONLY. TENDERERS QUOTING IN CURRENCIES OTHER THAN IN KENYA SHILLINGS WILL BE DETERMINED NON-RESPONSIVE AND REJECTED.

35. MARGIN OF PREFERENCE AND RESERVATIONS

35.1 NO MARGIN OF PREFERENCE SHALL BE ALLOWED ON CONTRACTS FOR SMALL WORKS.

35.2 WHERE IT IS INTENDED TO RESERVE THE CONTRACT TO SPECIFIC GROUPS UNDER SMALL AND MEDIUM ENTERPRISES, OR ENTERPRISE OF WOMEN, YOUTH AND/OR PERSONS LIVING WITH DISABILITY, WHO ARE APPROPRIATELY REGISTERED AS SUCH BY THE AUTHORITY TO BE SPECIFIED IN THE **TDS,** A PROCURING ENTITY SHALL ENSURE THAT THE INVITATION TO TENDER SPECIFICALLY INDICATES THAT ONLY BUSINESSES/FIRMS BELONGING TO THOSE SPECIFIED GROUPS ARE THE ONLY ONES ELIGIBLE TO TENDER. OTHERWISE IF NO SO STATED, THE INVITATION WILL BE OPEN TO ALL TENDERERS.

36. NOMINATED SUB-CONTRACTORS

36.1 UNLESS OTHERWISE STATED IN THE **TDS**, THE PROCURING ENTITY DOES NOT INTEND TO EXECUTE ANY SPECIFIC ELEMENTS OF THE WORKS BY SUBCONTRACTORS SELECTED IN ADVANCE BY THE PROCURING ENTITY.

36.2 TENDERERS MAY PROPOSE SUBCONTRACTING UP TO THE PERCENTAGE OF TOTAL VALUE OF CONTRACTS OR THE VOLUME OF WORKS AS SPECIFIED IN THE **TDS**. SUBCONTRACTORS PROPOSED BY THE TENDERER SHALL BE FULLY QUALIFIED FOR THEIR PARTS OF THE WORKS.

36.3 THE SUBCONTRACTOR'S QUALIFICATIONS SHALL NOT BE USED BY THE TENDERER TO QUALIFY FOR THE WORKS UNLESS THEIR SPECIALIZED PARTS OF THE WORKS WERE PREVIOUSLY DESIGNATED BY THE PROCURING ENTITY IN THE **TDS** AS CAN BE MET BY SUBCONTRACTORS REFERRED TO HEREAFTER AS 'SPECIALIZED SUBCONTRACTORS', IN WHICH CASE, THE QUALIFICATIONS OF THE SPECIALIZED SUBCONTRACTORS PROPOSED BY THE TENDERER MAY BE ADDED TO THE QUALIFICATIONS OF THE TENDERER.

37. EVALUATION OF TENDERS

37.1 THE PROCURING ENTITY SHALL USE THE CRITERIA AND METHODOLOGIES LISTED IN THIS ITT AND SECTION III, EVALUATION AND QUALIFICATION CRITERIA. NO OTHER EVALUATION CRITERIA OR METHODOLOGIES SHALL BE PERMITTED. BY APPLYING THE CRITERIA AND METHODOLOGIES THE PROCURING ENTITY SHALL DETERMINE THE BEST EVALUATED TENDER IN ACCORDANCE WITH ITT 40.

37.2 TO EVALUATE A TENDER, THE PROCURING ENTITY SHALL CONSIDER THE FOLLOWING:
A) PRICE ADJUSTMENT DUE TO DISCOUNTS OFFERED IN ACCORDANCE WITH ITT 16;
B) CONVERTING THE AMOUNT RESULTING FROM APPLYING (A) IF RELEVANT, TO A SINGLE CURRENCY IN ACCORDANCE WITH ITT 39;
C) PRICE ADJUSTMENT DUE TO QUANTIFIABLE NONMATERIAL NON-CONFORMITIES IN ACCORDANCE WITH ITT 30.1; AND

D) ANY ADDITIONAL EVALUATION FACTORS SPECIFIED IN THE **TDS** AND SECTION III, EVALUATION AND QUALIFICATION CRITERIA

37.3 THE ESTIMATED EFFECT OF THE PRICE ADJUSTMENT PROVISIONS OF THE CONDITIONS OF CONTRACT, APPLIED OVER THE PERIOD OF EXECUTION OF THE CONTRACT, SHALL NOT BE CONSIDERED IN TENDER EVALUATION.

37.4 IN THE CASE OF MULTIPLE CONTRACTS OR LOTS, TENDERERS SHALL BE ALLOWED TO TENDER FOR ONE OR MORE LOTS AND THE METHODOLOGY TO DETERMINE THE LOWEST EVALUATED COST OF THE LOT (CONTRACT) COMBINATIONS, INCLUDING ANY DISCOUNTS OFFERED IN THE FORM OF TENDER, IS SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

38. COMPARISON OF TENDERS

38.1 THE PROCURING ENTITY SHALL COMPARE THE EVALUATED COSTS OF ALL SUBSTANTIALLY RESPONSIVE TENDERS ESTABLISHED IN ACCORDANCE WITH ITT 31.2 TO DETERMINE THE TENDER THAT HAS THE LOWEST EVALUATED COST.

39. ABNORMALLY LOW TENDERS

39.1 AN ABNORMALLY LOW TENDER IS ONE WHERE THE TENDER PRICE, IN COMBINATION WITH OTHER ELEMENTS OF THE TENDER, APPEARS SO LOW THAT IT RAISES MATERIAL CONCERNS AS TO THE CAPABILITY OF THE TENDERER IN REGARDS TO THE TENDERER'S ABILITY TO PERFORM THE CONTRACT FOR THE OFFERED TENDER PRICE OR THAT GENUINE COMPETITION BETWEEN TENDERERS IS COMPROMISED.

39.2 IN THE EVENT OF IDENTIFICATION OF A POTENTIALLY ABNORMALLY LOW TENDER, THE PROCURING ENTITY SHALL SEEK WRITTEN CLARIFICATIONS FROM THE TENDERER, INCLUDING DETAILED PRICE ANALYSES OF ITS TENDER PRICE IN RELATION TO THE SUBJECT MATTER OF THE CONTRACT, SCOPE, PROPOSED METHODOLOGY, SCHEDULE, ALLOCATION OF RISKS AND RESPONSIBILITIES AND ANY OTHER REQUIREMENTS OF THE TENDER DOCUMENT.

39.3 AFTER EVALUATION OF THE PRICE ANALYSES, IN THE EVENT THAT THE PROCURING ENTITY DETERMINES THAT THE TENDERER HAS FAILED TO DEMONSTRATE ITS CAPABILITY TO PERFORM THE CONTRACT FOR THE OFFERED TENDER PRICE, THE PROCURING ENTITY SHALL REJECT THE TENDER.

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40. ABNORMALLY HIGH TENDERS

40.1 AN ABNORMALLY HIGH PRICE IS ONE WHERE THE TENDER PRICE, IN COMBINATION WITH OTHER CONSTITUENT ELEMENTS OF THE TENDER, APPEARS UNREASONABLY TOO HIGH TO THE EXTENT THAT THE PROCURING ENTITY IS CONCERNED THAT IT (THE PROCURING ENTITY) MAY NOT BE GETTING VALUE FOR MONEY OR IT MAY BE PAYING TOO HIGH A PRICE FOR THE CONTRACT COMPARED WITH MARKET PRICES OR THAT GENUINE COMPETITION BETWEEN TENDERERS IS COMPROMISED.

40.2 IN CASE OF AN ABNORMALLY HIGH TENDER PRICE, THE PROCURING ENTITY SHALL MAKE A SURVEY OF THE MARKET PRICES, CHECK IF THE ESTIMATED COST OF THE CONTRACT IS CORRECT AND REVIEW THE TENDER DOCUMENTS TO CHECK IF THE SPECIFICATIONS, SCOPE OF WORK AND CONDITIONS OF CONTRACT ARE CONTRIBUTORY TO THE ABNORMALLY HIGH TENDERS. THE PROCURING ENTITY MAY ALSO SEEK WRITTEN CLARIFICATION FROM THE TENDERER ON THE REASON FOR THE HIGH TENDER PRICE. THE PROCURING ENTITY SHALL PROCEED AS FOLLOWS:

I) IF THE TENDER PRICE IS ABNORMALLY HIGH BASED ON WRONG ESTIMATED COST OF THE CONTRACT, THE PROCURING ENTITY MAY ACCEPT OR NOT ACCEPT THE TENDER DEPENDING ON THE PROCURING ENTITY'S BUDGET CONSIDERATIONS.

II) IF SPECIFICATIONS, SCOPE OF WORK AND/OR CONDITIONS OF CONTRACT ARE CONTRIBUTORY TO THE ABNORMALLY HIGH TENDER PRICES, THE PROCURING ENTITY SHALL REJECT ALL TENDERS AND MAY RETENDER FOR THE CONTRACT BASED ON REVISED ESTIMATES, SPECIFICATIONS, SCOPE OF WORK AND CONDITIONS OF CONTRACT, AS THE CASE MAY BE.

40.3 IF THE PROCURING ENTITY DETERMINES THAT THE TENDER PRICE IS ABNORMALLY TOO HIGH BECAUSE GENUINE COMPETITION BETWEEN TENDERERS IS COMPROMISED *(OFTEN DUE TO COLLUSION, CORRUPTION OR OTHER MANIPULATIONS),* THE PROCURING ENTITY SHALL REJECT ALL TENDERS AND SHALL INSTITUTE OR CAUSE COMPETENT GOVERNMENT AGENCIES TO INSTITUTE AN INVESTIGATION ON THE CAUSE OF THE COMPROMISE, BEFORE RETENDERING.

41. UNBALANCED AND/OR FRONT-LOADED TENDERS

41.1 IF IN THE PROCURING ENTITY'S OPINION, THE TENDER THAT IS EVALUATED AS THE LOWEST EVALUATED PRICE IS UNBALANCED AND/OR FRONT LOADED, THE PROCURING ENTITY MAY REQUIRE THE TENDERER TO PROVIDE WRITTEN CLARIFICATIONS. CLARIFICATIONS MAY INCLUDE DETAILED PRICE ANALYSES TO DEMONSTRATE THE CONSISTENCY OF THE TENDER PRICES WITH THE SCOPE OF WORKS, PROPOSED METHODOLOGY, SCHEDULE AND ANY OTHER REQUIREMENTS OF THE TENDER DOCUMENT.

41.2 AFTER THE EVALUATION OF THE INFORMATION AND DETAILED PRICE ANALYSES PRESENTED BY THE TENDERER, THE PROCURING ENTITY MAY AS APPROPRIATE:

A) ACCEPT THE TENDER; OR

B) REQUIRE THAT THE TOTAL AMOUNT OF THE PERFORMANCE SECURITY BE INCREASED AT THE EXPENSE OF THE TENDERER TO A LEVEL NOT EXCEEDING A 30% OF THE CONTRACT PRICE; OR

C) AGREE ON A PAYMENT MODE THAT ELIMINATES THE INHERENT RISK OF THE PROCURING ENTITY PAYING TOO MUCH FOR UNDELIVERED WORKS; OR

D) REJECT THE TENDER.

42. QUALIFICATIONS OF THE TENDERER

42.1 THE PROCURING ENTITY SHALL DETERMINE TO ITS SATISFACTION WHETHER THE ELIGIBLE TENDERER THAT IS SELECTED AS HAVING SUBMITTED THE LOWEST EVALUATED COST AND SUBSTANTIALLY RESPONSIVE TENDER, MEETS THE QUALIFYING CRITERIA SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

42.2 THE DETERMINATION SHALL BE BASED ON VERIFICATION OF THE DOCUMENTARY EVIDENCE OF THE TENDERER'S QUALIFICATIONS SUBMITTED , PURSUANT TO ITT 19. THE DETERMINATION SHALL NOT TAKE INTO CONSIDERATION THE QUALIFICATIONS OF OTHER FIRMS SUCH AS THE TENDERER'S SUBSIDIARIES, PARENT ENTITIES, AFFILIATES, SUBCONTRACTORS (OTHER THAN SPECIALIZED SUBCONTRACTORS IF PERMITTED IN THE TENDER DOCUMENT), OR ANY OTHER FIRM(S) DIFFERENT FROM THE TENDERER.

42.3 AN AFFIRMATIVE DETERMINATION SHALL BE A PREREQUISITE FOR AWARD OF THE CONTRACT TO THE TENDERER. A NEGATIVE DETERMINATION SHALL RESULT IN DISQUALIFICATION OF THE TENDER, IN WHICH EVENT THE PROCURING ENTITY SHALL PROCEED TO THE TENDERER WHO OFFERS A SUBSTANTIALLY RESPONSIVE TENDER WITH THE NEXT LOWEST EVALUATED PRICE TO MAKE A SIMILAR DETERMINATION OF THAT TENDERER'S QUALIFICATIONS TO PERFORM SATISFACTORILY.

42.4 AN ABNORMALLY LOW TENDER IS ONE WHERE THE TENDER PRICE, IN COMBINATION WITH OTHER ELEMENTS OF THE TENDER, APPEARS SO LOW THAT IT RAISES MATERIAL CONCERNS AS TO THE CAPABILITY OF THE TENDERER IN REGARDS TO THE TENDERER'S ABILITY TO PERFORM THE CONTRACT FOR THE OFFERED TENDER PRICE.

42.5 IN THE EVENT OF IDENTIFICATION OF A POTENTIALLY ABNORMALLY LOW TENDER, THE PROCURING ENTITY SHALL SEEK WRITTEN CLARIFICATIONS FROM THE TENDERER, INCLUDING DETAILED PRICE ANALYSES OF ITS TENDER PRICE IN RELATION TO THE SUBJECT MATTER OF THE CONTRACT, SCOPE, PROPOSED METHODOLOGY, SCHEDULE, ALLOCATION OF RISKS AND RESPONSIBILITIES AND ANY OTHER REQUIREMENTS OF THE TENDER DOCUMENT.

42.6 AFTER EVALUATION OF THE PRICE ANALYSIS, IF THE PROCURING ENTITY DETERMINES THAT THE TENDERER HAS FAILED TO DEMONSTRATE ITS CAPABILITY TO PERFORM THE CONTRACT FOR THE OFFERED TENDER PRICE, THE PROCURING ENTITY SHALL REJECT THE TENDER.

43. LOWEST EVALUATED TENDER

43.1 HAVING COMPARED THE EVALUATED PRICES OF TENDERS, THE PROCURING ENTITY SHALL DETERMINE THE BEST EVALUATED TENDER. THE LOWEST EVALUATED TENDER IS THE TENDER OF THE TENDERER THAT MEETS THE QUALIFICATION CRITERIA AND HAS BEEN DETERMINED TO BE:

A) MOST RESPONSIVE TO THE TENDER DOCUMENT; AND
B) THE LOWEST EVALUATED PRICE; OR
C) THE TENDER WITH THE LOWEST EVALUATED TOTAL COST OF OWNERSHIP

44. PROCURING ENTITY'S RIGHT TO ACCEPT ANY TENDER, AND TO REJECT ANY OR ALL TENDERS.

44.1 THE PROCURING ENTITY RESERVES THE RIGHT TO ACCEPT OR REJECT ANY TENDER AND TO ANNUL THE TENDER PROCESS AND REJECT ALL TENDERS AT ANY TIME PRIOR TO CONTRACT AWARD, WITHOUT THEREBY INCURRING ANY LIABILITY TO TENDERERS. IN CASE OF TERMINATION, ALL TENDERERS SHALL BE NOTIFIED WITH REASONS AND ALL TENDER SECURITIES, SHALL BE RETURNED TO THE TENDERERS WITHIN FOURTEEN DAYS FROM THE DATE OF TERMINATION.

F. AWARD OF CONTRACT

45. AWARD CRITERIA

45.1 THE PROCURING ENTITY SHALL AWARD THE CONTRACT TO THE SUCCESSFUL TENDERER WHOSE TENDER HAS BEEN DETERMINED TO BE THE LOWEST EVALUATED TENDER.

46. NOTICE OF INTENTION TO ENTER INTO A CONTRACT

46.1 UPON AWARD OF THE CONTRACT AND PRIOR TO THE EXPIRY OF THE TENDER VALIDITY PERIOD THE PROCURING ENTITY SHALL ISSUE A NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT / NOTIFICATION OF AWARD TO ALL TENDERERS WHICH SHALL CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION:

A) THE NAME AND ADDRESS OF THE TENDERER SUBMITTING THE SUCCESSFUL TENDER;

B) THE CONTRACT PRICE OF THE SUCCESSFUL TENDER;

C) A STATEMENT OF ALL THE REASON(S) THE TENDER OF THE UNSUCCESSFUL TENDERER TO WHOM THE LETTER IS ADDRESSED WAS UNSUCCESSFUL,

D) THE EXPIRY DATE OF THE STANDSTILL PERIOD; AND

E) INSTRUCTIONS ON HOW TO REQUEST A DEBRIEFING DURING THE STANDSTILL PERIOD;

47. STANDSTILL PERIOD

47.1 THE CONTRACT SHALL NOT BE SIGNED EARLIER THAN THE EXPIRY OF A STANDSTILL PERIOD OF 14 DAYS TO ALLOW ANY DISSATISFIED TENDER TO LAUNCH A COMPLAINT. WHERE ONLY ONE TENDER IS SUBMITTED, THE STANDSTILL PERIOD SHALL NOT APPLY.

47.2 THE STANDSTILL PERIOD SHALL COMMENCE WHEN THE PROCURING ENTITY HAS TRANSMITTED TO EACH TENDERER THE NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT WITH THE SUCCESSFUL TENDERER.

48. DEBRIEFING BY THE PROCURING ENTITY

48.1 ON RECEIPT OF THE PROCURING ENTITY'S NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT REFERRED TO IN ITT 46, AN UNSUCCESSFUL TENDERER MAY MAKE A WRITTEN REQUEST TO THE PROCURING ENTITY FOR A DEBRIEFING ON SPECIFIC ISSUES OR CONCERNS REGARDING THEIR TENDER. THE PROCURING ENTITY SHALL PROVIDE THE DEBRIEFING WITHIN FIVE DAYS OF RECEIPT OF THE REQUEST.

48.2 DEBRIEFINGS OF UNSUCCESSFUL TENDERERS MAY BE DONE IN WRITING OR VERBALLY. THE TENDERER SHALL BEAR ITS OWN COSTS OF ATTENDING SUCH A DEBRIEFING MEETING.

49. LETTER OF AWARD

49.1 PRIOR TO THE EXPIRY OF THE TENDER VALIDITY PERIOD AND UPON EXPIRY OF THE STANDSTILL PERIOD SPECIFIED IN ITT 42.1, THE PROCURING ENTITY SHALL TRANSMIT THE LETTER OF AWARD TO THE SUCCESSFUL TENDERER. THE LETTER OF AWARD SHALL REQUEST THE SUCCESSFUL TENDERER TO FURNISH THE PROCURING ENTITY WITH LETTER OF ACCEPTANCE OF THE OFFER, DULY FILLED BENEFICIAL OWNERSHIP INFORMATION (BOI) FORM AND PERFORMANCE SECURITY WHERE APPLICABLE WITHIN 2114 DAYS OF THE DATE OF THE LETTER.

50. SIGNING OF CONTRACT

50.1 UPON THE EXPIRY OF THE FOURTEEN DAYS OF THE NOTIFICATION OF INTENTION TO ENTER INTO CONTRACT AND UPON THE PARTIES MEETING THEIR RESPECTIVE STATUTORY REQUIREMENTS, THE PROCURING ENTITY SHALL SEND THE SUCCESSFUL TENDERER THE CONTRACT AGREEMENT.

50.2 WITHIN FOURTEEN (14) DAYS OF RECEIPT OF THE CONTRACT AGREEMENT, THE SUCCESSFUL TENDERER SHALL SIGN, DATE, AND RETURN IT TO THE PROCURING ENTITY.

50.3 THE WRITTEN CONTRACT SHALL BE ENTERED INTO WITHIN THE PERIOD SPECIFIED IN THE NOTIFICATION OF AWARD AND BEFORE EXPIRY OF THE TENDER VALIDITY PERIOD.

51. APPOINTMENT OF ADJUDICATOR

51.1 THE APPOINTMENT OF ADJUDICATOR UNDER THE CONTRACT WILL BE PURSUANT TO CLAUSE 23 OF THE GENERAL CONDITIONS OF CONTRACT (GCC).), TO APPOINT THE ADJUDICATOR.

52. PERFORMANCE SECURITY

52.1 WITHIN TWENTY-ONE (21) DAYS OF THE RECEIPT OF THE LETTER OF AWARD FROM THE PROCURING ENTITY, THE SUCCESSFUL TENDERER SHALL FURNISH THE PERFORMANCE SECURITY AND, ANY OTHER DOCUMENTS REQUIRED IN THE **TDS**, IN ACCORDANCE WITH THE GENERAL CONDITIONS OF CONTRACT, SUBJECT TO ITT 43.1, USING THE PERFORMANCE SECURITY AND OTHER FORMS INCLUDED IN SECTION X, CONTRACT FORMS, OR ANOTHER FORM ACCEPTABLE TO THE PROCURING ENTITY. A FOREIGN INSTITUTION PROVIDING A BANK GUARANTEE SHALL HAVE A CORRESPONDENT FINANCIAL INSTITUTION LOCATED IN KENYA, UNLESS THE PROCURING ENTITY HAS AGREED IN WRITING THAT A CORRESPONDENT BANK IS NOT REQUIRED.

52.2 FAILURE OF THE SUCCESSFUL TENDERER TO SUBMIT THE ABOVE MENTIONED PERFORMANCE SECURITY AND OTHER DOCUMENTS REQUIRED IN THE **TDS** OR SIGN THE CONTRACT SHALL CONSTITUTE SUFFICIENT GROUNDS FOR THE ANNULMENT OF THE AWARD AND FOR FORFEITURE OF THE TENDER SECURITY. IN THAT EVENT THE PROCURING ENTITY MAY AWARD THE CONTRACT TO THE TENDERER OFFERING THE NEXT BEST EVALUATED TENDER

52.3 PERFORMANCE SECURITY SHALL BE REQUIRED FOR CONTRACTS, UNLESS OTHERWISE SPECIFIED IN THE **TDS**

53. PUBLICATION OF PROCUREMENT CONTRACT

53.1 WITHIN FOURTEEN DAYS AFTER SIGNING THE CONTRACT, THE PROCURING ENTITY SHALL PUBLISH THE AWARDED CONTRACT ON THE STATE TENDER PORTAL,ENTITY WEBSITE AND ITS NOTICE BOARDS . AT THE MINIMUM, THE NOTICE SHALL CONTAIN THE FOLLOWING INFORMATION:

A) NAME AND ADDRESS OF THE PROCURING ENTITY;
B) NAME AND REFERENCE NUMBER OF THE CONTRACT BEING AWARDED, A SUMMARY OF ITS SCOPE AND THE SELECTION METHOD USED;
C) THE NAME OF THE SUCCESSFUL TENDERER, THE FINAL TOTAL CONTRACT PRICE, THE CONTRACT DURATION.
D) DATES OF SIGNATURE, COMMENCEMENT AND COMPLETION OF CONTRACT;
E) NAMES OF ALL TENDERERS THAT SUBMITTED TENDERS, AND THEIR TENDER PRICES AS READ OUT AT TENDER OPENING.

54. PROCUREMENT RELATED COMPLAINTS AND ADMINISTRATIVE REVIEW

54.1 THE PROCEDURES FOR MAKING A PROCUREMENT-RELATED COMPLAINT ARE AVAILABLE ON THE PPRA WEBSITE WWW.PPRA.GO.KE.

54.2 A REQUEST FOR ADMINISTRATIVE REVIEW SHALL BE MADE IN THE FORM PROVIDED UNDER CONTRACT FORMS.

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SECTION II-TENDER DATA SHEET(TDS)

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Tender Data Sheet (TDS)

	ITT Reference & TDS Detail	Filled By	Value to be Auto Populated in Tender Document
ITT Reference	**1. SCOPE OF TENDER** 1.1 THE PROCURING ENTITY AS DEFINED IN THE **TENDER DATA SHEET (TDS)** INVITES TENDERS FOR WORKS CONTRACT AS DESCRIBED IN THE TENDER DOCUMENTS. THE NAME, IDENTIFICATION, PROJECT LOCATION, AND NUMBER OF LOTS (CONTRACTS) OF THIS TENDER DOCUMENT ARE SPECIFIED IN THE **TDS**	-	-
TDS Detail	THE NAME OF THE PROCURING ENTITY IS	Auto Populate	STATE DEPARTMENT FOR HIGHER EDUCATION
TDS Detail	THE REFERENCE NUMBER OF THE CONTRACT IS	Manual Input	SDHE/809/0035 /2026-27

TDS Detail	THE NUMBER AND IDENTIFICATION OF LOTS (CONTRACTS) COMPRISING THIS TENDER ARE [*INSERT NUMBER AND IDENTIFICATION OF LOTS (CONTRACTS*)] LOT 1- NAME _____ LOT 2- NAME _____ LOT... NAME _____ ETC THE GLOBAL POSITIONING SYSTEM (GPS) COORDINATES FOR THE PROJECT LOCATION IS .....(PROVIDE THE REAL TIME GPS (PIN LOCATION) COORDINATES FOR THE PROJECT)	Auto Populate	Not Applicable
ITT Reference	1.2 USE OF ELECTRONIC SYSTEM WHERE APPLICABLE, THE PROCURING ENTITY SHALL USE AN ELECTRONIC PROCUREMENT SYSTEM TO MANAGE THE TENDERING PROCESS AS SPECIFIED IN THE **TDS**	-	-
TDS Detail	THE FOLLOWING ELECTRONIC SYSTEM SHALL BE USED TO MANAGE THE TENDERING PROCESS	Auto Populate	https://egpkenya.go.ke/login

ITT Reference	**2. FRAUD AND CORRUPTION** 2.3 UNFAIR COMPETITIVE ADVANTAGE - FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS TENDER. TO THAT END, THE PROCURING ENTITY SHALL INDICATE IN THE DATA SHEET AND MAKE AVAILABLE TO ALL THE FIRMS TOGETHER WITH THIS TENDER DOCUMENT ALL INFORMATION THAT WOULD IN THAT RESPECT GIVE SUCH FIRM ANY UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING FIRMS.	-	-
TDS Detail	THE INFORMATION MADE AVAILABLE ON COMPETING FIRMS IS AS FOLLOWS	Manual Input	1. INSTRUCTIONS TO TENDERERS 2. BILLS OF QUANTITIES 3. CONDITIONS OF CONTRACT 4. DRAWINGS

ITT Reference	2.4 UNFAIR COMPETITIVE ADVANTAGE - FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS TENDER BEING TENDERED FOR. THE PROCURING ENTITY SHALL INDICATE IN THE **TDS** FIRMS (IF ANY) THAT PROVIDED CONSULTING SERVICES FOR THE CONTRACT BEING TENDERED FOR. THE PROCURING ENTITY SHALL CHECK WHETHER THE OWNERS OR CONTROLLERS OF THE TENDERER ARE SAME AS THOSE THAT PROVIDED CONSULTING SERVICES. THE PROCURING ENTITY SHALL, UPON REQUEST, MAKE AVAILABLE TO ANY TENDERER INFORMATION THAT WOULD GIVE SUCH FIRM UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING FIRMS.	-	-
TDS Detail	THE FIRMS THAT PROVIDED CONSULTING SERVICES FOR THE CONTRACT BEING TENDERED FOR ARE	Manual Input	STATE DEPARTMENT FOR PUBLIC WORKS

ITT Reference	**3. ELIGIBLE TENDERERS** 3.1 A TENDERER MAY BE A FIRM THAT IS A PRIVATE ENTITY, A STATE-OWNED ENTERPRISE OR INSTITUTION SUBJECT TO ITT 3.7 OR ANY COMBINATION OF SUCH ENTITIES IN THE FORM OF A JOINT VENTURE (JV) UNDER AN EXISTING AGREEMENT OR WITH THE INTENT TO ENTER INTO SUCH AN AGREEMENT SUPPORTED BY A LETTER OF INTENT. PUBLIC EMPLOYEES AND THEIR CLOSE RELATIVES (SPOUSES, CHILDREN, BROTHERS, SISTERS AND UNCLES AND AUNTS) ARE NOT ELIGIBLE TO PARTICIPATE IN THE TENDER. IN THE CASE OF A JOINT VENTURE, ALL MEMBERS SHALL BE JOINTLY AND SEVERALLY LIABLE FOR THE EXECUTION OF THE ENTIRE CONTRACT IN ACCORDANCE WITH THE CONTRACT TERMS. THE JV SHALL NOMINATE A REPRESENTATIVE WHO SHALL HAVE THE AUTHORITY TO CONDUCT ALL BUSINESS FOR AND ON BEHALF OF ANY AND ALL THE MEMBERS OF THE JV DURING THE TENDERING PROCESS AND, IN THE EVENT THE JV IS AWARDED THE CONTRACT, DURING CONTRACT EXECUTION. THE MAXIMUM NUMBER OF JV MEMBERS SHALL BE SPECIFIED IN THE **TDS**.	-	-
TDS Detail	MAXIMUM NUMBER OF MEMBERS IN THE JOINT VENTURE (JV) SHALL BE: [*INSERT A NUMBER*].	Manual Input	NOT APPLICABLE

ITT Reference	**8. PRE-TENDER MEETING** 8.1 THE PROCURING ENTITY SHALL SPECIFY IN THE TDS IF A PRE-TENDER MEETING WILL BE HELD, WHEN AND WHERE. THE PROCURING ENTITY SHALL ALSO SPECIFY IN THE **TDS** IF A PRE-ARRANGED PRETENDER SITE VISIT WILL BE HELD AND WHEN. THE TENDERER'S DESIGNATED REPRESENTATIVE IS INVITED TO ATTEND A PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE WORKS. THE PURPOSE OF THE MEETING WILL BE TO CLARIFY ISSUES AND TO ANSWER QUESTIONS ON ANY MATTER THAT MAY BE RAISED AT THAT STAGE.	-	-
TDS Detail	(A) PRE-TENDER CONFERENCE [INSERT "SHALL" OR "SHALL NOT"] TAKE PLACE AT THE FOLLOWING DATE, TIME AND PLACE: DATE: _____ TIME: _____	Manual Input	SHALL NOT
TDS Detail	PLACE: _____	Auto Populate	Not Applicable
ITT Reference	8.2 THE TENDERER IS REQUESTED TO SUBMIT ANY QUESTIONS IN WRITING, TO REACH THE PROCURING ENTITY NOT LATER THAN THE PERIOD SPECIFIED IN THE **TDS** BEFORE THE MEETING.	-	-
TDS Detail	THE TENDERER WILL SUBMIT ANY QUESTIONS IN WRITING, TO REACH THE PROCURING ENTITY NOT LATER THAN	Manual Input	5 DAYS PRIOR TO THE SUBMISSION DEADLINE

ITT Reference	8.4 THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ANONYMIZED *(NO NAMES)* MINUTES OF THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE WORKS AT THE WEB PAGE IDENTIFIED IN THE TDS. ANY MODIFICATION TO THE TENDER DOCUMENTS THAT MAY BECOME NECESSARY AS A RESULT OF THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER SITE VISIT, SHALL BE MADE BY THE PROCURING ENTITY EXCLUSIVELY THROUGH THE ISSUE OF AN ADDENDUM PURSUANT TO ITT 8 AND NOT THROUGH THE MINUTES OF THE PRE-TENDER MEETING. NON-ATTENDANCE AT THE PRE-TENDER MEETING WILL NOT BE A CAUSE FOR DISQUALIFICATION OF A TENDERER.	-	-
TDS Detail	THE PROCURING ENTITY'S WEBSITE WHERE MINUTES OF THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER SITE VISIT WILL BE PUBLISHED IS	Manual Input	WWW. EDUCATION.GO. KE

ITT Reference	**9. CLARIFICATION AND AMENDMENTS OF TENDER DOCUMENTS** 9.1 A TENDERER REQUIRING ANY CLARIFICATION OF THE TENDER DOCUMENT SHALL CONTACT THE PROCURING ENTITY IN WRITING AT THE PROCURING ENTITY'S ADDRESS SPECIFIED IN THE **TDS** OR RAISE ITS ENQUIRIES DURING THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE WORKS IF PROVIDED FOR IN ACCORDANCE WITH ITT 8.4. THE PROCURING ENTITY WILL RESPOND IN WRITING TO ANY REQUEST FOR CLARIFICATION, PROVIDED THAT SUCH REQUEST IS RECEIVED NOT LATER THAN THE PERIOD SPECIFIED IN THE **TDS** PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS. THE PROCURING ENTITY SHALL FORWARD COPIES OF ITS RESPONSE TO ALL TENDERERS WHO HAVE ACQUIRED THE TENDER DOCUMENTS IN ACCORDANCE WITH ITT 6.3, INCLUDING A DESCRIPTION OF THE INQUIRY BUT WITHOUT IDENTIFYING ITS SOURCE. IF SPECIFIED IN THE **TDS**, THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ITS RESPONSE AT THE WEB PAGE IDENTIFIED IN THE **TDS**. SHOULD THE CLARIFICATION RESULT IN CHANGES TO THE ESSENTIAL ELEMENTS OF THE TENDER DOCUMENTS, THE PROCURING ENTITY SHALL AMEND THE TENDER DOCUMENTS APPROPRIATELY FOLLOWING THE PROCEDURE UNDER ITT 8.4.	-	-

TDS Detail	FOR CLARIFICATION OF TENDER PURPOSES, FOR OBTAINING FURTHER INFORMATION AND FOR PURCHASING TENDER DOCUMENTS, THE PROCURING ENTITY'S ADDRESS IS: (1) NAME OF PROCURING ENTITY ----------	Auto Populate	JOGOO HOUSE "B" HARAMBEE AVENUE
TDS Detail	PHYSICAL ADDRESS FOR HAND COURIER DELIVERY TO AN OFFICE OR TENDER BOX *(CITY, STREET, BUILDING, FLOOR NUMBER AND ROOM)* ----------	Auto Populate	JOGOO HOUSE "B" HARAMBEE AVENUE
TDS Detail	(3) POSTAL ADDRESS ----------	Auto Populate	00100
TDS Detail	(4) INSERT NAME, TELEPHONE NUMBER AND E-MAIL ADDRESS OF THE OFFICER TO BE CONTACTED. ----------	Manual Input	FOR CLARIFICATION OF TENDER PURPOSES ONLY: SDUERPROCUREMENT@GMAIL.COM
ITT Reference	**13. DOCUMENTS COMPRISING THE TENDER** 1. H) ANY OTHER DOCUMENT REQUIRED IN THE TDS.	-	-

TDS Detail	THE TENDERER SHALL SUBMIT THE FOLLOWING ADDITIONAL DOCUMENTS IN ITS TENDER: *[LIST ANY ADDITIONAL DOCUMENT NOT ALREADY LISTED IN ITT 131 THAT MUST BE SUBMITTED WITH THE TENDER. THE LIST OF ADDITIONAL DOCUMENTS SHOULD INCLUDE THE FOLLOWING:*]	Manual Input	NOT APPLICABLE
ITT Reference	**15. ALTERNATIVE TENDERS** 15.1 UNLESS OTHERWISE SPECIFIED IN THE **TDS**, ALTERNATIVE TENDERS SHALL NOT BE CONSIDERED.	-	-
TDS Detail	ALTERNATIVE TENDERS [INSERT "**SHALL BE**" OR "**SHALL NOT BE**"] _____ CONSIDERED. [*IF ALTERNATIVES SHALL BE CONSIDERED, THE METHODOLOGY SHALL BE DEFINED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.*]	Manual Input	SHALL NOT BE
ITT Reference	15.2 WHEN ALTERNATIVE TIMES FOR COMPLETION ARE EXPLICITLY INVITED, A STATEMENT TO THAT EFFECT WILL BE INCLUDED IN THE **TDS**, AND THE METHOD OF EVALUATING DIFFERENT ALTERNATIVE TIMES FOR COMPLETION WILL BE DESCRIBED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.	-	-

TDS Detail	ALTERNATIVE TIMES FOR COMPLETION [INSERT "*SHALL BE" OR "SHALL NOT BE"*] _____PERMITTED. [*IF ALTERNATIVE TIMES FOR COMPLETION ARE PERMITTED, THE EVALUATION METHOD WILL BE AS SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.]*	Manual Input	SHALL NOT BE
ITT Reference	15.3 EXCEPT AS PROVIDED UNDER ITT 13.4 BELOW, TENDERERS WISHING TO OFFER TECHNICAL ALTERNATIVES TO THE REQUIREMENTS OF THE TENDER DOCUMENTS MUST FIRST PRICE THE PROCURING ENTITY'S DESIGN AS DESCRIBED IN THE TENDER DOCUMENTS AND SHALL FURTHER PROVIDE ALL INFORMATION NECESSARY FOR A COMPLETE EVALUATION OF THE ALTERNATIVE BY THE PROCURING ENTITY, INCLUDING DRAWINGS, DESIGN CALCULATIONS, TECHNICAL SPECIFICATIONS, BREAKDOWN OF PRICES, AND PROPOSED CONSTRUCTION METHODOLOGY AND OTHER RELEVANT DETAILS. ONLY THE TECHNICAL ALTERNATIVES, IF ANY, OF THE TENDERER WITH THE WINNING TENDER CONFORMING TO THE BASIC TECHNICAL REQUIREMENTS SHALL BE CONSIDERED BY THE PROCURING ENTITY. WHEN SPECIFIED IN THE **TDS,** TENDERERS ARE PERMITTED TO SUBMIT ALTERNATIVE TECHNICAL SOLUTIONS FOR SPECIFIED PARTS OF THE WORKS, AND SUCH PARTS WILL BE IDENTIFIED IN THE **TDS**, AS WILL THE METHOD FOR THEIR EVALUATING, AND DESCRIBED IN SECTION VII, WORKS' REQUIREMENTS.	-	-

TDS Detail	ALTERNATIVE TECHNICAL SOLUTIONS SHALL BE PERMITTED FOR THE FOLLOWING PARTS OF THE WORKS: _____ [*INSERT PARTS OF THE WORKS*]: [*IF ALTERNATIVE TECHNICAL SOLUTIONS ARE PERMITTED, THE EVALUATION METHOD WILL BE AS SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA*.]	Manual Input	NOT APPLICABLE
ITT Reference	**16. TENDER PRICES AND DISCOUNTS** 16.5 IT WILL BE SPECIFIED IN THE **TDS** IF THE RATES AND PRICES QUOTED BY THE TENDERER ARE OR ARE NOT SUBJECT TO ADJUSTMENT DURING THE PERFORMANCE OF THE CONTRACT IN ACCORDANCE WITH THE PROVISIONS OF THE CONDITIONS OF CONTRACT, EXCEPT IN CASES WHERE THE CONTRACT IS SUBJECT TO FLUCTUATIONS AND ADJUSTMENTS, NOT FIXED PRICE. IN SUCH A CASE, THE TENDERER SHALL FURNISH THE INDICES AND WEIGHTINGS FOR THE PRICE ADJUSTMENT FORMULAE IN THE SCHEDULE OF ADJUSTMENT DATA AND THE PROCURING ENTITY MAY REQUIRE THE TENDERER TO JUSTIFY ITS PROPOSED INDICES AND WEIGHTINGS.	-	-
TDS Detail	THE PRICES QUOTED BY THE TENDERER SHALL BE: _____ [*INSERT "SUBJECT TO ADJUSTMENT" OR "FIXED*"]	Manual Input	FIXED

ITT Reference	**20. PERIOD OF VALIDITY OF TENDERS** 20.1 TENDERS SHALL REMAIN VALID FOR THE TENDER VALIDITY PERIOD SPECIFIED IN THE **TDS.** THE TENDER VALIDITY PERIOD STARTS FROM THE DATE FIXED FOR THE TENDER SUBMISSION DEADLINE (AS PRESCRIBED BY THE PROCURING ENTITY IN ACCORDANCE WITH ITT 24). A TENDER VALID FOR A SHORTER PERIOD SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE.	-	-
TDS Detail	THE TENDER VALIDITY PERIOD SHALL BE _____ [I*NSERT NUMBER OF DAYS THAT IS A MULTIPLE OF SEVEN COUNTING AS OF THE DEADLINE FOR TENDER SUBMISSION*] DAYS.	Manual Input	150
ITT Reference	20.3 IF THE AWARD IS DELAYED BY A PERIOD EXCEEDING THE NUMBER OF DAYS TO BE SPECIFIED IN THE **TDS** DAYS BEYOND THE EXPIRY OF THE INITIAL TENDER VALIDITY PERIOD, THE CONTRACT PRICE SHALL BE DETERMINED AS FOLLOWS:	-	-
TDS Detail	THE DELAYED TO EXCEEDING _____NUMBER OF DAYS.	Manual Input	30 DAYS
ITT Reference	A) IN THE CASE OF FIXED PRICE CONTRACTS, THE CONTRACT PRICE SHALL BE THE TENDER PRICE ADJUSTED BY THE FACTOR SPECIFIED IN THE **TDS;**	-	-

TDS Detail	(A) THE TENDER PRICE SHALL BE ADJUSTED BY THE FOLLOWING PERCENTAGES OF THE TENDER PRICE: (I) BY _____% OF THE LOCAL CURRENCY PORTION OF THE CONTRACT PRICE ADJUSTED TO REFLECT LOCAL INFLATION DURING THE PERIOD OF EXTENSION, AND (II) BY_____% THE FOREIGN CURRENCY PORTION OF THE CONTRACT PRICE ADJUSTED TO REFLECT THE INTERNATIONAL INFLATION DURING THE PERIOD OF EXTENSION.	Manual Input	NOT APPLICABLE
ITT Reference	**21. TENDER SECURITY** 21.1 THE TENDERER SHALL FURNISH AS PART OF ITS TENDER, EITHER A TENDER-SECURING DECLARATION OR A TENDER SECURITY AS SPECIFIED IN THE **TDS,** IN ORIGINAL FORM AND, IN THE CASE OF A TENDER SECURITY, IN THE AMOUNT AND CURRENCY SPECIFIED IN THE **TDS.** A TENDER-SECURING DECLARATION SHALL USE THE FORM INCLUDED IN SECTION IV, TENDER FORMS.	-	-

TDS Detail	[*IF A TENDER SECURITY SHALL BE REQUIRED, A TENDER-SECURING DECLARATION SHALL NOT BE REQUIRED, AND VICE VERSA*.] A TENDER SECURITY _____ [*INSERT "SHALL BE" OR "SHALL NOT BE*"] REQUIRED. A TENDER-SECURING DECLARATION _____ [INSERT "*SHALL BE" OR "SHALL NOT BE"*] REQUIRED. IF A TENDER SECURITY SHALL BE REQUIRED, THE AMOUNT AND CURRENCY OF THE TENDER SECURITY SHALL BE [IF A TENDER SECURITY IS REQUIRED, INSERT AMOUNT AND CURRENCY OF THE TENDER SECURITY. OTHERWISE INSERT "NOT APPLICABLE".] [IN CASE OF LOTS, PLEASE INSERT AMOUNT AND CURRENCY OF THE TENDER SECURITY FOR EACH LOT] *NOTE: TENDER SECURITY IS REQUIRED FOR EACH LOT AS PER AMOUNTS INDICATED AGAINST EACH LOT. TENDERERS HAVE THE OPTION OF SUBMITTING ONE TENDER SECURITY FOR ALL LOTS (FOR THE COMBINED TOTAL AMOUNT OF ALL LOTS) FOR WHICH TENDERS HAVE BEEN SUBMITTED, HOWEVER IF THE AMOUNT OF TENDER SECURITY IS LESS THAN THE TOTAL REQUIRED AMOUNT, THE PROCURING ENTITY WILL DETERMINE FOR WHICH LOT OR LOTS THE TENDER SECURITY AMOUNT SHALL BE APPLIED*.]	Manual Input	A TENDER SECURITY SHALL BE REQUIRED. THE AMOUNT SHALL BE KENYA SHILLINGS ONE MILLION AND TWO HUNDRED THOUSAND (KSHS 1,200,000)
ITT Reference	D) ANOTHER SECURITY SPECIFIED IN THE **TDS**,	-	-

TDS Detail	THE OTHER TENDER SECURITY SHALL BE	Manual Input	NOT APPLICABLE
ITT Reference	21.5 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 21.1, THE TENDER SECURITY OF UNSUCCESSFUL TENDERERS SHALL BE RETURNED AS PROMPTLY AS POSSIBLE UPON THE SUCCESSFUL TENDERER'S SIGNING THE CONTRACT AND FURNISHING THE PERFORMANCE SECURITY AND ANY OTHER DOCUMENTS REQUIRED IN THE **TDS.** THE PROCURING ENTITY SHALL ALSO PROMPTLY RETURN THE TENDER SECURITY TO THE TENDERERS WHERE THE PROCUREMENT PROCEEDINGS ARE TERMINATED, ALL TENDERS WERE DETERMINED NONRESPONSIVE OR A BIDDER DECLINES TO EXTEND TENDER VALIDITY PERIOD.	-	-
TDS Detail	ON THE PERFORMANCE SECURITY, OTHER DOCUMENTS REQUIRED SHALL BE	Manual Input	1. PROGRAM OF WORKS / PROGRESS CHART 2. INSURANCE CERTIFICATES
ITT Reference	II) FURNISH A PERFORMANCE SECURITY AND IF REQUIRED IN THE TDS, AND ANY OTHER DOCUMENTS REQUIRED IN THE **TDS.**	-	-

TDS Detail	.	Manual Input	1. PERFORMANCE SECURITY EQUIVALENT TO 10% OF THE CONTRACT 2. BENEFICIAL OWNERSHIP INFORMATION 3. INSURANCE POLICIES
ITT Reference	**22. FORMAT AND SIGNING OF TENDER** 22.3 THE ORIGINAL AND ALL COPIES OF THE TENDER SHALL BE TYPED OR WRITTEN IN INDELIBLE INK AND SHALL BE SIGNED BY A PERSON DULY AUTHORIZED TO SIGN ON BEHALF OF THE TENDERER. THIS AUTHORIZATION SHALL CONSIST OF A WRITTEN CONFIRMATION AS SPECIFIED IN THE **TDS** AND SHALL BE ATTACHED TO THE TENDER. THE NAME AND POSITION HELD BY EACH PERSON SIGNING THE AUTHORIZATION MUST BE TYPED OR PRINTED BELOW THE SIGNATURE. ALL PAGES OF THE TENDER WHERE ENTRIES OR AMENDMENTS HAVE BEEN MADE SHALL BE SIGNED OR INITIALED BY THE PERSON SIGNING THE TENDER.	-	-

TDS Detail	THE WRITTEN CONFIRMATION OF AUTHORIZATION TO SIGN ON BEHALF OF THE TENDERER SHALL CONSIST OF: *[INSERT THE NAME AND DESCRIPTION OF THE DOCUMENTATION REQUIRED TO DEMONSTRATE THE AUTHORITY OF THE SIGNATORY TO SIGN THE TENDER]*	Manual Input	THE POWER OF ATTORNEY
ITT Reference	**24. DEADLINE FOR SUBMISSION OF TENDERS** 24.1 TENDERS MUST BE RECEIVED BY THE PROCURING ENTITY AT THE ADDRESS SPECIFIED IN THE **TDS** AND NO LATER THAN THE DATE AND TIME ALSO SPECIFIED IN THE **TDS**. WHEN SO SPECIFIED IN THE **TDS,** TENDERERS SHALL HAVE THE OPTION OF SUBMITTING THEIR TENDERS ELECTRONICALLY. TENDERERS SUBMITTING TENDERS ELECTRONICALLY SHALL FOLLOW THE ELECTRONIC TENDER SUBMISSION PROCEDURES SPECIFIED IN THE **TDS.**	-	-
TDS Detail	(A) FOR TENDER SUBMISSION PURPOSES ONLY, THE PROCURING ENTITY'S ADDRESS IS: (1) NAME OF PROCURING ENTITY	Auto Populate	STATE DEPARTMENT FOR HIGHER EDUCATION

TDS Detail	(2) POSTAL ADDRESS *(INCLUDE NAME OF OFFICER TO BE ATTENTIONAL)*	Manual Input	TENDER SUBMISSION IS THROUGH E-GP SYSTEM ONLY. PLEASE NOTE (3) BELOW IS NOT APPLICABLE.
TDS Detail	(3) PHYSICAL ADDRESS FOR HAND COURIER DELIVERY TO AN OFFICE OR TENDER BOX *(CITY, STREET, BUILDING, FLOOR NUMBER AND ROOM)*	Auto Populate	JOGOO HOUSE "B" HARAMBEE AVENUE
TDS Detail	(4) DATE AND TIME FOR SUBMISSION OF TENDERS.....	Auto Populate	04/12/2026 10:00:00
TDS Detail	(5) TENDERS **SHALL SUBMIT/SHALL NOT SUBMIT** TENDERS ELECTRONICALLY	Manual Input	SHALL SUBMIT ELECTRONICALLY

ITT Reference	**27. TENDER OPENING** 27.1 EXCEPT IN THE CASES SPECIFIED IN ITT 23 AND ITT 26.2, THE PROCURING ENTITY SHALL PUBLICLY OPEN AND READ OUT ALL TENDERS RECEIVED BY THE DEADLINE, AT THE DATE, TIME AND PLACE SPECIFIED IN THE **TDS,** IN THE PRESENCE OF TENDERERS' DESIGNATED REPRESENTATIVES WHO CHOOSES TO ATTEND. ANY SPECIFIC ELECTRONIC TENDER OPENING PROCEDURES REQUIRED IF ELECTRONIC TENDERING IS PERMITTED IN ACCORDANCE WITH ITT 24.1, SHALL BE AS SPECIFIED IN THE **TDS**.	-	-

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TDS Detail	THE TENDER OPENING SHALL TAKE PLACE AT THE TIME AND THE ADDRESS FOR OPENING OF TENDERS PROVIDED BELOW: (1) NAME OF PROCURING ENTITY	Manual Input	TENDERS WILL BE OPENED VIA E-GP SYSTEM PORTAL. PLEASE NOTE THAT THE DATE AND TIME INDICATED IN THE TDS DETAIL (3) BELOW ARE SYSTEM-GENERATED AND REPRESENT THE DATE AND TIME WHEN THE TENDER BECOMES VISIBLE TO TENDERERS ON THE E-GP SYSTEM (**TENDER SUBMISSION START DATE & TIME).** **DATE AND TIME OF TENDER OPENING IS 4/12 /2026 @ 10:00 AM AND THIS SUPERSEDES SYSTEM GENERATED DATE**

TDS Detail	(2) PHYSICAL ADDRESS FOR THE LOCATION *(CITY, STREET, BUILDING, FLOOR NUMBER AND ROOM)*	Auto Populate	JOGOO HOUSE "B" HARAMBEE AVENUE
TDS Detail	(3) STATE DATE AND TIME OF TENDER OPENING.	Auto Populate	19/11/2026 10:00:00
ITT Reference	**35. MARGIN OF PREFERENCE AND RESERVATIONS** 35.2 WHERE IT IS INTENDED TO RESERVE THE CONTRACT TO SPECIFIC GROUPS UNDER SMALL AND MEDIUM ENTERPRISES, OR ENTERPRISE OF WOMEN, YOUTH AND/OR PERSONS LIVING WITH DISABILITY, WHO ARE APPROPRIATELY REGISTERED AS SUCH BY THE AUTHORITY TO BE SPECIFIED IN THE **TDS,** A PROCURING ENTITY SHALL ENSURE THAT THE INVITATION TO TENDER SPECIFICALLY INDICATES THAT ONLY BUSINESSES/FIRMS BELONGING TO THOSE SPECIFIED GROUPS ARE THE ONLY ONES ELIGIBLE TO TENDER. OTHERWISE IF NO SO STATED, THE INVITATION WILL BE OPEN TO ALL TENDERERS.	-	-
TDS Detail	IF TENDERERS ARE ALLOWED TO SUBMIT TENDERS ELECTRONICALLY, THEY SHALL FOLLOW THE ELECTRONIC TENDER SUBMISSION PROCEDURES SPECIFIED BELOW *[INSERT A DESCRIPTION OF THE ELECTRONIC TENDER OPENING PROCEDURES]:*	Auto Populate	https://egpkenya.go.ke/login

ITT Reference	**36. NOMINATED SUB-CONTRACTORS** 36.1 UNLESS OTHERWISE STATED IN THE **TDS** , THE PROCURING ENTITY DOES NOT INTEND TO EXECUTE ANY SPECIFIC ELEMENTS OF THE WORKS BY SUBCONTRACTORS SELECTED IN ADVANCE BY THE PROCURING ENTITY.	-	-
TDS Detail	THE NUMBER OF REPRESENTATIVES OF THE PROCURING ENTITY TO SIGN IS THE NUMBER OF REPRESENTATIVES OF THE PROCURING ENTITY TO SIGN IS	Manual Input	NOT APPLICABLE
ITT Reference	36.2 TENDERERS MAY PROPOSE SUBCONTRACTING UP TO THE PERCENTAGE OF TOTAL VALUE OF CONTRACTS OR THE VOLUME OF WORKS AS SPECIFIED IN THE **TDS**. SUBCONTRACTORS PROPOSED BY THE TENDERER SHALL BE FULLY QUALIFIED FOR THEIR PARTS OF THE WORKS.	-	-
TDS Detail	AT THIS TIME, THE PROCURING ENTITY _____ *[INSERT "INTENDS" OR "DOES NOT INTEND"]* TO EXECUTE CERTAIN SPECIFIC PARTS OF THE WORKS BY SUBCONTRACTORS SELECTED IN ADVANCE.	Manual Input	DOES NOT INTEND

ITT Reference	36.3 THE SUBCONTRACTOR'S QUALIFICATIONS SHALL NOT BE USED BY THE TENDERER TO QUALIFY FOR THE WORKS UNLESS THEIR SPECIALIZED PARTS OF THE WORKS WERE PREVIOUSLY DESIGNATED BY THE PROCURING ENTITY IN THE **TDS** AS CAN BE MET BY SUBCONTRACTORS REFERRED TO HEREAFTER AS 'SPECIALIZED SUBCONTRACTORS', IN WHICH CASE, THE QUALIFICATIONS OF THE SPECIALIZED SUBCONTRACTORS PROPOSED BY THE TENDERER MAY BE ADDED TO THE QUALIFICATIONS OF THE TENDERER.	-	-
TDS Detail	***[INDICATE N/A IF NOT APPLICABLE]*** THE PARTS OF THE WORKS FOR WHICH THE PROCURING ENTITY PERMITS TENDERERS TO PROPOSE SPECIALIZED SUBCONTRACTORS ARE DESIGNATED AS FOLLOWS: _____ _____ _____ FOR THE ABOVE-DESIGNATED PARTS OF THE WORKS THAT MAY REQUIRE SPECIALIZED SUBCONTRACTORS, THE RELEVANT QUALIFICATIONS OF THE PROPOSED SPECIALIZED SUBCONTRACTORS WILL BE ADDED TO THE QUALIFICATIONS OF THE TENDERER FOR THE PURPOSE OF EVALUATION.	Manual Input	NOT APPLICABLE
ITT Reference	**37. EVALUATION OF TENDERS** D) ANY ADDITIONAL EVALUATION FACTORS SPECIFIED IN THE **TDS** AND SECTION III, EVALUATION AND QUALIFICATION CRITERIA	-	-

TDS Detail	ADDITIONAL REQUIREMENTS APPLY. THESE ARE DETAILED IN THE EVALUATION CRITERIA IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.	Manual Input	NOT APPLICABLE
ITT Reference	**51. APPOINTMENT OF ADJUDICATOR** 51.1 THE APPOINTMENT OF ADJUDICATOR UNDER THE CONTRACT WILL BE PURSUANT TO CLAUSE 23 OF THE GENERAL CONDITIONS OF CONTRACT (GCC).), TO APPOINT THE ADJUDICATOR.	-	-
TDS Detail	THE PERSON NAMED TO BE APPOINTED AS ADJUDICATOR IS _____ OF _____(PRIDE TEL. NO. FULL POSTAL AND EMAIL ADDRESSES) AT AN HOURLY FEE OF SHS._____ PER DAY.	Manual Input	NOT APPLICABLE

ITT Reference	**52. PERFORMANCE SECURITY** 52.1 WITHIN TWENTY-ONE (21) DAYS OF THE RECEIPT OF THE LETTER OF AWARD FROM THE PROCURING ENTITY, THE SUCCESSFUL TENDERER SHALL FURNISH THE PERFORMANCE SECURITY AND, ANY OTHER DOCUMENTS REQUIRED IN THE **TDS**, IN ACCORDANCE WITH THE GENERAL CONDITIONS OF CONTRACT, SUBJECT TO ITT 43.1, USING THE PERFORMANCE SECURITY AND OTHER FORMS INCLUDED IN SECTION X, CONTRACT FORMS, OR ANOTHER FORM ACCEPTABLE TO THE PROCURING ENTITY. A FOREIGN INSTITUTION PROVIDING A BANK GUARANTEE SHALL HAVE A CORRESPONDENT FINANCIAL INSTITUTION LOCATED IN KENYA, UNLESS THE PROCURING ENTITY HAS AGREED IN WRITING THAT A CORRESPONDENT BANK IS NOT REQUIRED.	-	-
TDS Detail	..	Manual Input	1. BENEFICIAL OWNERSHIP INFORMATION 2. INSURANCE POLICIES

ITT Reference	52.2 FAILURE OF THE SUCCESSFUL TENDERER TO SUBMIT THE ABOVE MENTIONED PERFORMANCE SECURITY AND OTHER DOCUMENTS REQUIRED IN THE **TDS** OR SIGN THE CONTRACT SHALL CONSTITUTE SUFFICIENT GROUNDS FOR THE ANNULMENT OF THE AWARD AND FOR FORFEITURE OF THE TENDER SECURITY. IN THAT EVENT THE PROCURING ENTITY MAY AWARD THE CONTRACT TO THE TENDERER OFFERING THE NEXT BEST EVALUATED TENDER 52.3 PERFORMANCE SECURITY SHALL BE REQUIRED FOR CONTRACTS, UNLESS OTHERWISE SPECIFIED IN THE **TDS**	-	-
TDS Detail	WHERE REQUIRED THE PERFORMANCE SECURITY SHALL BE _____% OF THE CONTRACT AMOUNT	Manual Input	10

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SECTION III - EVALUATION AND QUALIFY ON CRITERIA

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Evaluation and Qualification Criteria

Detail

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

Evaluation Type :Mandatory Evaluation Requirement

NOTE:
1. ALL ITALICIZED TEXT IS FOR USE IN PREPARING THE EVALUATION CRITERIA AND SHALL BE DELETED FROM THE FINAL TENDER DOCUMENT TO BE ISSUED TO TENDERERS.
2. EVALUATION FACTORS NOT APPLICABLE IN THE EVALUATION OF THE SPECIFIC TENDER SHALL ALSO BE DELETED IN THE FINAL TENDER DOCUMENT TO BE ISSUED TO TENDERERS

Evaluation Type : Technical Form

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1. GENERAL PROVISIONS

Evaluation Type :-

WHEREVER A TENDERER IS REQUIRED TO STATE A MONETARY AMOUNT, TENDERERS SHOULD INDICATE THE KENYA SHILLING EQUIVALENT USING THE RATE OF EXCHANGE DETERMINED AS FOLLOWS:
A) FOR CONSTRUCTION TURNOVER OR FINANCIAL DATA REQUIRED FOR EACH YEAR - EXCHANGE RATE PREVAILING ON THE LAST DAY OF THE RESPECTIVE CALENDAR YEAR (IN WHICH THE AMOUNTS FOR THAT YEAR IS TO BE CONVERTED) WAS ORIGINALLY ESTABLISHED.

B) VALUE OF SINGLE CONTRACT - EXCHANGE RATE PREVAILING ON THE DATE OF THE CONTRACT SIGNATURE.

C) EXCHANGE RATES SHALL BE TAKEN FROM THE PUBLICLY AVAILABLE SOURCE IDENTIFIED IN THE ITT 37.2. ANY ERROR IN DETERMINING THE EXCHANGE RATES IN THE TENDER MAY BE CORRECTED BY THE PROCURING ENTITY.

THIS SECTION CONTAINS THE CRITERIA THAT THE PROCURING ENTITY SHALL USE TO EVALUATE TENDER AND QUALIFY TENDERERS. NO OTHER FACTORS, METHODS OR CRITERIA SHALL BE USED OTHER THAN SPECIFIED IN THIS TENDER DOCUMENT. THE TENDERER SHALL PROVIDE ALL THE INFORMATION REQUESTED IN THE FORMS INCLUDED IN SECTION IV, TENDERING FORMS. THE PROCURING ENTITY SHOULD USE THE STANDARD TENDER EVALUATION DOCUMENT FOR GOODS AND WORKS FOR EVALUATING TENDERS.

EVALUATION AND CONTRACT AWARD CRITERIA

THE PROCURING ENTITY SHALL USE THE CRITERIA AND METHODOLOGIES LISTED IN THIS SECTION TO EVALUATE TENDERS AND ARRIVE AT THE LOWEST EVALUATED TENDER PRICE. THE TENDER THAT (I) MEETS THE QUALIFICATION CRITERIA, (II) HAS BEEN DETERMINED TO BE SUBSTANTIALLY RESPONSIVE TO THE TENDER DOCUMENTS, AND (III) IS DETERMINED TO HAVE THE LOWEST EVALUATED TENDER PRICE SHALL BE SELECTED FOR AWARD OF CONTRACT.

FOR AVOIDANCE OF DOUBT, A TENDERER SHALL NOT BE DISQUALIFIED FOR FAILURE TO ATTEND A SITE VISIT

Evaluation Type : -

2. PRELIMINARY EXAMINATION FOR DETERMINATION OF RESPONSIVENESS

Evaluation Type :-

THE PROCURING ENTITY WILL START BY EXAMINING ALL TENDERS TO ENSURE THEY MEET IN ALL RESPECTS THE ELIGIBILITY CRITERIA AND OTHER REQUIREMENTS IN THE ITT, AND THAT THE TENDER IS COMPLETE IN ALL ASPECTS IN MEETING THE REQUIREMENTS OF "PART 2 – PROCURING ENTITY'S WORKS REQUIREMENTS", INCLUDING CHECKING FOR TENDERS WITH UNACCEPTABLE ERRORS, ABNORMALLY LOW TENDERS, ABNORMALLY HIGH TENDERS AND TENDERS THAT ARE FRONT LOADED. THE STANDARD TENDER EVALUATION REPORT DOCUMENT FOR GOODS AND WORKS FOR EVALUATING TENDERS PROVIDES VERY CLEAR GUIDE ON HOW TO DEAL WITH REVIEW OF THESE REQUIREMENTS. TENDERS THAT DO NOT PASS THE PRELIMINARY EXAMINATION WILL BE CONSIDERED NON-RESPONSIVE AND WILL NOT BE CONSIDERED FURTHER

MANDATORY REQUIREMENTS:

1. VALID COPY OF CERTIFICATE OF INCORPORATION/REGISTRATION
2. VALID CURRENT TAX COMPLIANCE CERTIFICATE ISSUED BY KRA
3. DULY FILLED, SIGNED AND STAMPED FORM OF TENDER – (SD1 & SD2 MUST BE COMMISSIONED BY A COMMISSIONER FOR OATHS)
4. VALID COPY OF CURRENT SINGLE BUSINESS PERMIT/TRADE LICENSE
5. SUBMISSION OF VALID CR12 FORM SHOWING THE LIST OF DIRECTORS/SHAREHOLDING (ISSUED WITHIN THE LAST 6 MONTHS) OR NATIONAL IDENTITY CARDS FOR THE SOLE PROPRIETORSHIP/PARTNERSHIP
6. CONTRACTORS MUST BE REGISTERED (VALID) IN CATEGORY 'NCA 5' AND ABOVE FOR GENERAL BUILDING WORKS WITH NATIONAL CONSTRUCTION AUTHORITY (NCA)
7. CURRENT ANNUAL CONTRACTOR'S PRACTICING LICENSE FROM NCA FOR GENERAL BUILDING WORKS.
8. LETTER OF AUTHORITY TO SEEK REFERENCES FROM THE TENDERER'S BANKERS
9. PROVIDE PROOF OF POWER OF ATTORNEY (OF TENDER SIGNATORY IF NOT DIRECTOR OF THE COMPANY/ PARTNER, SIGNED AND STAMPED BY COMMISSIONER OF OATHS)
10. DULY FILLED AND SIGNED AND STAMPED DECLARATION AND COMMITMENT TO THE CODE OF ETHICS FORM
11. DULLY FILLED, SIGNED AND STAMPED ADDENDUM(S) AND CLARIFICATION(S) ISSUED MUST BE ATTACHED (WHERE APPLICABLE)

TECHNICAL EVALUATION CRITERIA:

NO	TECHNICAL CRITERIA	MINIMUM REQUIREMENTS	MAX. SCORE
1	**PROGRAMME OF WORKS AND CONSTRUCTION METHODOLOGY**	PROVIDE PROGRAM OF WORKS, INDICATIVE OF TIMELINES TO COMPLETE THE PROJECT IN ACCORDANCE WITH PROJECT DURATION PROVIDED IN THIS TENDER. THIS SHOULD INDICATE KEY REQUIREMENTS OF UNDERTAKING THE WORKS HEREIN THIS TENDER. THE METHODOLOGY SHALL BE SPECIFIC AND RELATED TO THE WORKS PROPOSED FOR EXECUTION UNDER THIS TENDER DOCUMENT. ABSTRACT AND GENERIC METHOD STATEMENTS SHALL BE REJECTED. THIS REQUIREMENT MUST BE MET.	**15**
2	**KEY PERSONNEL (ATTACH EVIDENCE)**		**30**
		1. **FIRM DIRECTOR** AT LEAST 1 NO. DIRECTOR WITH A DEGREE/DIPLOMA HOLDER TECHNICAL RELATED FIELD: • WITH OVER 10 YEARS' RELEVANT EXPERIENCE.....10 • WITH OVER 5 YEARS' RELEVANT EXPERIENCE ..... 5 • WITH UNDER 5 YEARS RELEVANT EXPERIENCE 2	10
		1. **CONTRACT/PROJECT MANAGER** (DEGREE HOLDER) AT LEAST 1 NO. DEGREE HOLDER IN RELEVANT TECHNICAL FIELD • WITH OVER 10 YEARS' RELEVANT EXPERIENCE.....10 • WITH OVER 5 YEARS' RELEVANT EXPERIENCE ..... 5 • WITH UNDER 5 YEARS RELEVANT EXPERIENCE 2	10
		1. **SITE AGENT/FOREMAN** (DEGREE/DIPLOMA HOLDER) AT LEAST 1 NO. DEGREE/DIPLOMA HOLDER IN RELEVANT TECHNICAL FIELD • WITH OVER 10 YEARS' RELEVANT EXPERIENCE.....7 • WITH OVER 5 YEARS' RELEVANT EXPERIENCE ..... 4 • WITH UNDER 5 YEARS RELEVANT EXPERIENCE 2	7

		1. **SITE ARTISANS** (DIPLOMA/CERTIFICATE/GRADE TEST HOLDERS) AT LEAST 3 NO. ARTISAN (DIPLOMA/CERTIFICATE/GRADE TEST) IN RELEVANT ENGINEERING FIELD • THREE ARTISANS WITH RELEVANT EXPERIENCE ..... 3 • TWO ARTISANS WITH RELEVANT EXPERIENCE.....2 • ONE ARTISAN WITH RELEVANT EXPERIENCE 1	3
3	**CONTRACTS ONGOING /COMPLETED IN THE LAST 5 YEARS (MAX. OF 3 NO. PROJECTS)**	• PROJECTS OF SIMILAR NATURE, COMPLEXITY AND MAGNITUDE AND VALUE 100M AND ABOVE... ..... 5 PER PROJECT. • PROJECTS OF VALUE 70M-99M ..... 2 PER PROJECT • PROJECTS OF VALUE 50M-69M ..... 1 PER PROJECT	**15**
4	**SCHEDULE OF CONTRACTORS EQUIPMENT OWNED /LEASED RELEVANT FOR THE PROJECT (PROOF OR EVIDENCE OF OWNERSHIP REQUIRED)**	• CONSTRUCTION PLANT AND HEAVY MACHINERY (MIN OF 4) .....8 • SITE VEHICLES: LORRY(S), TRUCK(S), TIPPER(S), PICKUP(S), ETC. (MIN 3) ....7 • OTHER SITE EQUIPMENT: CONCRETE MIXER, VIBRATOR, ETC. (MIN 6) 5	**20**
5	**FINANCIAL CAPABILITY**		**20**
		AUDITED FINANCIAL REPORT (LAST THREE (3) YEARS) (2023,2024,2025) • TURN OVER GREATER OR EQUAL TO KSH. 100,000,000 .... 10 • TURN OVER GREATER OR EQUAL TO KSH. 70,000,000 ..... 5 • TURN OVER EQUAL KSH. 50,000,000 .....3 • TURN OVER BELOW THE COST OF THE PROJECT 0	10
		EVIDENCE OF FINANCIAL RESOURCES (CASH IN HAND/BANK, LINES OF CREDIT, OVERDRAFT FACILITY, ETC.) • HAS FINANCIAL RESOURCES EQUAL OR ABOVE 100MILLION ..... 10 • HAS FINANCIAL RESOURCES EQUAL TO HALF OF 100MILLION ..... 5 • HAS FINANCIAL RESOURCES LESS THAN HALF OF 100MILLION 2	10

N.B. PASS MARK SCORE IS 70

Evaluation Type : Technical Form

3. TENDER EVALUATION (ITT 37) PRICE EVALUATION

Evaluation Type :-

IN ADDITION TO THE CRITERIA LISTED IN ITT 37.2 (A) – (C) THE FOLLOWING CRITERIA SHALL APPLY:

I) ALTERNATIVE COMPLETION TIMES, IF PERMITTED UNDER ITT 15.2, WILL BE EVALUATED AS FOLLOWS:.....

Evaluation Type : -

II) ALTERNATIVE TECHNICAL SOLUTIONS FOR SPECIFIED PARTS OF THE WORKS, IF PERMITTED UNDER ITT 15.3, WILL BE EVALUATED AS FOLLOWS: .....

Evaluation Type : -

III) OTHER CRITERIA; IF PERMITTED UNDER ITT37.2(D):.....

Evaluation Type : -

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4. MULTIPLE CONTRACTS

Evaluation Type :-

MULTIPLE CONTRACTS WILL BE PERMITTED IN ACCORDANCE WITH ITT 37.4. TENDERERS ARE EVALUATED ON BASIS OF LOTS AND THE LOWEST EVALUATED TENDERER IDENTIFIED FOR EACH LOT. THE PROCURING ENTITY WILL SELECT ONE OPTION OF THE TWO OPTIONS LISTED BELOW FOR AWARD OF CONTRACTS.

OPTION 1
I) IF A TENDERER WINS ONLY ONE LOT, THE TENDERER WILL BE AWARDED A CONTRACT FOR THAT LOT, PROVIDED THE TENDERER MEETS THE ELIGIBILITY AND QUALIFICATION CRITERIA FOR THAT LOT.
II) IF A TENDERER WINS MORE THAN ONE LOT, THE TENDER WILL BE AWARDED CONTRACTS FOR ALL WON LOTS, PROVIDED THE TENDERER MEETS THE AGGREGATE ELIGIBILITY AND QUALIFICATION CRITERIA FOR ALL THE LOTS. THE TENDERER WILL BE AWARDED THE COMBINATION OF LOTS FOR WHICH THE TENDERER QUALIFIES AND THE OTHERS WILL BE CONSIDERED FOR AWARD TO SECOND LOWEST THE TENDERERS.

OPTION 2
THE PROCURING ENTITY WILL CONSIDER ALL POSSIBLE COMBINATIONS OF WON LOTS [CONTRACT(S)] AND DETERMINE THE COMBINATIONS WITH THE LOWEST EVALUATED PRICE. TENDERS WILL THEN BE AWARDED TO THE TENDERER OR TENDERERS IN THE COMBINATIONS PROVIDED THE TENDERER MEETS THE AGGREGATE ELIGIBILITY AND QUALIFICATION CRITERIA FOR ALL THE WON LOTS.

Evaluation Type : -

5. ALTERNATIVE TENDERS (ITT 15)

Evaluation Type :-

THE PROCURING ENTITY SHALL CONSIDER TENDERS OFFERED FOR ALTERNATIVES AS SPECIFIED IN PART 2- WORKS REQUIREMENTS. ONLY THE TECHNICAL ALTERNATIVES, IF ANY, OF THE TENDERER WITH THE BEST EVALUATED TENDER CONFORMING TO THE BASIC TECHNICAL REQUIREMENTS SHALL BE CONSIDERED BY THE PROCURING ENTITY.

Evaluation Type : -

6. MARGIN OF PREFERENCE IS NOT APPLICABLE

Evaluation Type :-

7. POST QUALIFICATION AND CONTRACT WARD (ITT 42), MORE SPECIFICALLY

Evaluation Type :-

A) IN CASE THE TENDER WAS SUBJECT TO POST-QUALIFICATION, THE CONTRACT SHALL BE AWARDED TO THE LOWEST EVALUATED TENDERER, SUBJECT TO CONFIRMATION OF PRE-QUALIFICATION DATA, IF SO REQUIRED.

B) FINANCIAL POSITION AND PROSPECTIVE LONG-TERM PROFITABILITY OF THE SINGLE TENDERER, AND IN THE CASE THE TENDERER IS A JV, OF EACH MEMBER OF THE JV, SHALL REMAIN SOUND ACCORDING TO CRITERIA ESTABLISHED WITH RESPECT TO FINANCIAL CAPABILITY UNDER PARAGRAPH (I) ABOVE IF ALL PENDING LITIGATION WILL BE RESOLVED AGAINST THE TENDERER. TENDERER SHALL PROVIDE INFORMATION ON PENDING LITIGATIONS IN THE APPROPRIATE FORM.

Evaluation Type : -

IN CASE THE TENDER WAS NOT SUBJECT TO POST-QUALIFICATION, THE TENDER THAT HAS BEEN DETERMINED TO BE THE LOWEST EVALUATED TENDERER SHALL BE CONSIDERED FOR CONTRACT AWARD, SUBJECT TO MEETING EACH OF THE FOLLOWING CONDITIONS.

I) THE TENDERER SHALL DEMONSTRATE THAT IT HAS ACCESS TO, OR HAS AVAILABLE, LIQUID ASSETS, UNENCUMBERED REAL ASSETS, LINES OF CREDIT, AND OTHER FINANCIAL MEANS (INDEPENDENT OF ANY CONTRACTUAL ADVANCE P A YM E N T) SUFFICIENT TO MEET T H E CONSTRUCTION CASH FLOW OF KENYA SHILLINGS.....

Evaluation Type : -

II) MINIMUM AVERAGE ANNUAL CONSTRUCTION TURNOVER OF KENYA SHILLINGS_____ [INSERT AMOUNT], EQUIVALENT CALCULATED AS TOTAL CERTIFIED PAYMENTS RECEIVED FOR CONTRACTS IN PROGRESS AND/OR COMPLETED WITHIN THE LAST.....[INSERT OF YEAR] YEARS.

Evaluation Type : -

III) AT LEAST ..... (INSERT NUMBER) OF CONTRACT(S) OF A SIMILAR NATURE EXECUTED WITHIN KENYA, OR THE EAST AFRICAN COMMUNITY OR ABROAD, THAT HAVE BEEN SATISFACTORILY AND SUBSTANTIALLY COMPLETED AS A PRIME CONTRACTOR, OR JOINT VENTURE MEMBER OR SUB-CONTRACTOR EACH OF MINIMUM VALUE KENYA SHILLINGS EQUIVALENT.

Evaluation Type : -

V) CONTRACTOR'S REPRESENTATIVE AND KEY PERSONNEL, WHICH ARE SPECIFIED AS
V) CONTRACTORS KEY EQUIPMENT LISTED ON THE TABLE “CONTRACTOR'S EQUIPMENT” BELOW AND MORE SPECIFICALLY LISTED AS

Evaluation Type : -

VI) OTHER CONDITIONS DEPENDING ON THEIR SERIOUSNESS.

A) HISTORY OF NON-PERFORMING CONTRACTS:

TENDERER AND EACH MEMBER OF JV IN CASE THE TENDERER IS A JV, SHALL DEMONSTRATE THAT NON- PERFORMANCE OF A CONTRACT DID NOT OCCUR BECAUSE OF THE DEFAULT OF THE TENDERER, OR THE MEMBER OF A JV IN THE LAST..... (SPECIFY YEARS). THE REQUIRED INFORMATION SHALL BE FURNISHED IN THE APPROPRIATE FORM.

Evaluation Type : -

B) PENDING LITIGATION

FINANCIAL POSITION AND PROSPECTIVE LONG-TERM PROFITABILITY OF THE SINGLE TENDERER, AND IN THE CASE THE TENDERER IS A JV, OF EACH MEMBER OF THE JV, SHALL REMAIN SOUND ACCORDING TO CRITERIA ESTABLISHED WITH RESPECT TO FINANCIAL CAPABILITY UNDER PARAGRAPH (I) ABOVE IF ALL PENDING LITIGATION WILL BE RESOLVED AGAINST THE TENDERER. TENDERER SHALL PROVIDE INFORMATION ON PENDING LITIGATIONS IN THE APPROPRIATE FORM.

Evaluation Type : -

C) LITIGATION HISTORY

THERE SHALL BE NO CONSISTENT HISTORY OF COURT/ARBITRAL AWARD DECISIONS AGAINST THE TENDERER, IN THE LAST..... (SPECIFY YEARS). ALL PARTIES TO THE CONTRACT SHALL FURNISH THE INFORMATION IN THE APPROPRIATE FORM ABOUT ANY LITIGATION OR ARBITRATION RESULTING FROM CONTRACTS COMPLETED OR ONGOING UNDER ITS EXECUTION OVER THE YEARS SPECIFIED. A CONSISTENT HISTORY OF AWARDS AGAINST THE TENDERER OR ANY MEMBER OF A JV MAY RESULT IN REJECTION OF THE TENDER.

Evaluation Type : -

8. QUALIFICATION FORM (SUMMARY)

Evaluation Type :-

1	2	3	*4*	*5*
ITEM NO.	**QUALIFICATION SUBJECT**	**QUALIFICATION REQUIREMENT**	***DOCUMENT TO BE COMPLETED BY TENDERER***	***FOR PROCURING ENTITY'S USE (QUALIFICATION MET OR NOT MET)***
1	NATIONALITY	NATIONALITY IN ACCORDANCE WITH ITT 3.6	TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM , WITH ATTACHMENTS	

2	TAX OBLIGATIONS FOR KENYAN TENDERERS	HAS PRODUCED A CURRENT TAX CLEARANCE CERTIFICATE OR TAX EXEMPTION CERTIFICATE ISSUED BY THE KENYA REVENUE AUTHORITY IN ACCORDANCE WITH ITT 3.14.	FORM OF TENDER	
3	CONFLICT OF INTEREST	NO CONFLICTS OF INTEREST IN ACCORDANCE WITH ITT 3.3	FORM OF TENDER	
4	PPRA ELIGIBILITY	NOT HAVING BEEN DEBARRED BY THE PPRA AS DESCRIBED IN ITT 3.7	FORM SD1	
5	STATE- OWNED ENTERPRISE	MEETS CONDITIONS OF ITT 3.8	TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM , WITH ATTACHMENTS	
6	GOODS, EQUIPMENT AND SERVICES TO BE SUPPLIED UNDER THE CONTRACT	TO HAVE THEIR ORIGIN IN ANY COUNTRY THAT IS NOT DETERMINED INELIGIBLE UNDER ITT 4.1	TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM, WITH ATTACHMENTS	
7	HISTORY OF NON-PERFORMING CONTRACTS	NON-PERFORMANCE OF A CONTRACT DID NOT OCCUR AS A RESULT OF CONTRACTOR DEFAULT SINCE 1ST JANUARY [.....*]*.	FORM CON-2	
8	SUSPENSION BASED ON EXECUTION OF TENDER /PROPOSAL SECURING DECLARATION BY THE PROCURING ENTITY	NOT UNDER SUSPENSION BASED ON-EXECUTION OF A TENDER/PROPOSAL SECURING DECLARATION PURSUANT TO ITT 19.9	FORM OF TENDER	
9	PENDING LITIGATION	TENDER'S FINANCIAL POSITION AND PROSPECTIVE LONG-TERM PROFITABILITY STILL SOUND ACCORDING TO CRITERIA ESTABLISHED AND ASSUMING THAT ALL PENDING LITIGATION WILL NOT BE RESOLVED AGAINST THE TENDERER.	FORM CON – 2	
10	LITIGATION HISTORY	NO CONSISTENT HISTORY OF COURT/ARBITRAL AWARD DECISIONS AGAINST THE TENDERER SINCE 1ST JANUARY *[INSERT YEAR]*	FORM CON – 2	

11	FINANCIAL CAPABILITIES	(I) THE TENDERER SHALL DEMONSTRATE THAT IT HAS ACCESS TO, OR HAS AVAILABLE, LIQUID ASSETS, UNENCUMBERED REAL ASSETS, LINES OF CREDIT, AND OTHER FINANCIAL MEANS (INDEPENDENT OF ANY CONTRACTUAL ADVANCE PAYMENT) SUFFICIENT TO MEET THE CONSTRUCTION CASH FLOW REQUIREMENTS ESTIMATED AS KENYA SHILLINGS *[INSERT AMOUNT]* EQUIVALENT FOR THE SUBJECT CONTRACT(S) NET OF THE TENDERER'S OTHER COMMITMENTS. (II) THE TENDERERS SHALL ALSO DEMONSTRATE, TO THE SATISFACTION OF THE PROCURING ENTITY, THAT IT HAS ADEQUATE SOURCES OF FINANCE TO MEET THE CASH FLOW REQUIREMENTS ON WORKS CURRENTLY IN PROGRESS AND FOR FUTURE CONTRACT COMMITMENTS. (III) THE AUDITED BALANCE SHEETS OR, IF NOT REQUIRED BY THE LAWS OF THE TENDERER'S COUNTRY, OTHER FINANCIAL STATEMENTS ACCEPTABLE TO THE PROCURING ENTITY, FOR THE LAST *[INSERT NUMBER OF YEARS]* YEARS SHALL BE SUBMITTED AND MUST DEMONSTRATE THE CURRENT SOUNDNESS OF THE TENDERER'S FINANCIAL POSITION AND INDICATE ITS PROSPECTIVE LONG-TERM PROFITABILITY.	FORM FIN – 3.1, WITH ATTACHMENTS	
12	AVERAGE ANNUAL CONSTRUCTION TURNOVER	MINIMUM AVERAGE ANNUAL CONSTRUCTION TURNOVER OF KENYA SHILLINGS *[INSERT AMOUNT]*, EQUIVALENT CALCULATED AS TOTAL CERTIFIED PAYMENTS RECEIVED FOR CONTRACTS IN PROGRESS AND/OR COMPLETED WITHIN THE LAST *[INSERT OF YEAR]* YEARS, DIVIDED BY *[INSERT NUMBER OF YEARS]* YEARS	FORM FIN – 3.2	
13	GENERAL CONSTRUCTION EXPERIENCE	EXPERIENCE UNDER CONSTRUCTION CONTRACTS IN THE ROLE OF PRIME CONTRACTOR, JV MEMBER, SUB-CONTRACTOR, OR MANAGEMENT CONTRACTOR FOR AT LEAST THE LAST *[INSERT NUMBER OF YEARS]* YEARS, STARTING 1ST JANUARY *[INSERT YEAR]*.	**4.** FORM EXP – 4.1 **EXPERIENCE**	

14	SPECIFIC CONSTRUCTION & CONTRACT MANAGEMENT EXPERIENCE	A MINIMUM NUMBER OF *[STATE THE NUMBER]* SIMILAR CONTRACTS SPECIFIED BELOW THAT HAVE BEEN SATISFACTORILY AND SUBSTANTIALLY COMPLETED AS A PRIME CONTRACTOR, JOINT VENTURE MEMBER, MANAGEMENT CONTRACTOR OR SUB-CONTRACTOR BETWEEN 1ST JANUARY [*INSERT YEAR*] AND TENDER SUBMISSION DEADLINE I.E. …. (NUMBER) CONTRACTS, EACH OF MINIMUM VALUE KENYA SHILLINGS…….. EQUIVALENT. [*IN CASE THE WORKS ARE TO BE TENDER AS INDIVIDUAL CONTRACTS UNDER MULTIPLE CONTRACT PROCEDURE, THE MINIMUM NUMBER OF CONTRACTS REQUIRED FOR PURPOSES OF EVALUATING QUALIFICATION SHALL BE SELECTEDFROM THE OPTIONS MENTIONED IN ITT 37.4]] THE SIMILARITY OF THE CONTRACTS SHALL BE BASED ON THE FOLLOWING: [*BASED ON SECTION VII, SCOPE OF WORKS, SPECIFY THE MINIMUM KEY REQUIREMENTS IN TERMS OF PHYSICAL SIZE, COMPLEXITY, CONSTRUCTION METHOD, TECHNOLOGY AND/OR OTHER CHARACTERISTICS INCLUDING PART OF THE REQUIREMENTS THAT MAY BE MET BY SPECIALIZED SUBCONTRACTORS, IF PERMITTED IN ACCORDANCE WITH ITT 36.3]*	FORM EXP 4.2 (A)	

Evaluation Type : -

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MANDATORY AND EVALUATION REQUIREMENTS

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Mandatory Evaluation Requirement

Evaluation Requirement	Is Document Required from Supplier ?
SELF-DECLARATION FORMS FORM SD1 & SD2	Yes
VALID COPY OF CERTIFICATE OF INCORPORATION/REGISTRATION	Yes
VALID CURRENT TAX COMPLIANCE CERTIFICATE ISSUED BY KRA	Yes
VALID COPY OF CURRENT SINGLE BUSINESS PERMIT/TRADE LICENSE	Yes
VALID CR12 FORM SHOWING THE LIST OF DIRECTORS/SHAREHOLDING (ISSUED WITHIN THE LAST 6 MONTHS) OR NATIONAL IDENTITY CARDS FOR THE SOLE PROPRIETORSHIP /PARTNERSHIP	Yes
CONTRACTORS MUST BE REGISTERED (VALID) IN CATEGORY 'NCA 5' AND ABOVE FOR GENERAL BUILDING WORKS WITH NATIONAL CONSTRUCTION AUTHORITY (NCA)	Yes
CURRENT ANNUAL CONTRACTOR'S PRACTICING LICENSE FROM NCA FOR GENERAL BUILDING WORKS	Yes
LETTER OF AUTHORITY TO SEEK REFERENCES FROM THE TENDERER'S BANKERS	Yes
PROVIDE PROOF OF POWER OF ATTORNEY (OF TENDER SIGNATORY IF NOT DIRECTOR OF THE COMPANY/ PARTNER, SIGNED AND STAMPED BY COMMISSIONER OF OATHS)	Yes

DULY FILLED AND SIGNED AND STAMPED DECLARATION AND COMMITMENT TO THE CODE OF ETHICS FORM	Yes
DULLY FILLED, SIGNED AND STAMPED ADDENDUM(S) AND CLARIFICATION(S) ISSUED MUST BE ATTACHED (WHERE APPLICABLE)	Yes

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SECTION IV – TENDERING FORMS

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TENDERER DECLARATIONS : FORM OF TENDER

Technical Evaluation Process : No

Table Header : -

TENDERER DECLARATION	Supplier response
A) NO RESERVATIONS: WE HAVE EXAMINED AND HAVE NO RESERVATIONS TO THE TENDERING DOCUMENT, INCLUDING ADDENDA ISSUED IN ACCORDANCE WITH INSTRUCTIONS TO TENDERERS (ITT 10);	
b) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;	
c) Tender/Proposal-Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration. Or Proposal-Securing Declaration in Kenya in accordance with ITT 19.8;	
d) Conformity: We offer to supply in conformity with the Tendering document and in accordance with the Delivery Schedules specified in the Schedule of Requirements.	
e) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;	

f) Performance Security: If our Tender is accepted, we commit to obtain a performance security in accordance with the Tender document;	
g) One Tender per tenderer: We are not submitting any other Tender(s) as an individual tenderer, and we are not participating in any other Tender(s) as a Joint Venture member, or as a subcontractor, and meet the requirements of ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;	
h) Suspension and Debarment: We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension by the procuring entity or a debarment imposed by the Public Procurement Regulatory Authority. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of International organizations to which Kenya is a member;	
i) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Award, shall not constitute a binding contract between us, until a formal contract is prepared and executed;	

j) Procuring Entity Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive;	
k) Fraud and Corruption: We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption. Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in “Appendix 1- Fraud and Corruption” .	
l) Code of Ethical Conduct: We have read and understood the contents of the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code and we commit to abide by the provisions of the Code of Ethics copy available from www.ppra.go.ke during the procurement process and the execution of any resulting contract;	

m) Anti-competitive and Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. We have arrived at the Tender independently without consultation, communication, agreement or arrangement with, any competitor on but not limited to prices; methods, factors or formulas used to calculate prices; the intention or decision to submit, or not to submit, a tender; or the submission of a tender which does not meet the specifications of the request for Tenders except as disclosed in the Tenderer's Eligibility - Confidential Business Questionnaire. Further, we confirm that the terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed above.;	
n) Beneficial Ownership Information: We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding;	
o) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:	

i) Tenderer's Eligibility & Confidential Business Questionnaire	
ii) Self-Declaration of the Tenderer (FORM SD 1 & SD 2)	
p) We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Particular Conditions of Contract.	
Q) TENDER PRICE: 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 AND COMPLETE THE WORKS AND REMEDY ANY DEFECTS THEREIN.	
Table Footer : -	

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OPTION 1: TOTAL PRICE(ONE LOT) : FORM OF TENDER

Technical Evaluation Process : No

Table Header :		
TOTAL PRICE IN FIGURES	**TOTAL PRICE IN WORDS**	**CURRENCY**
Table Footer : -		

Sr no.	Formula
1	TOTAL PRICE IN WORDS=TOTAL PRICE IN FIGURES

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OPTION 2 TENDER PRICE (MULTIPLE LOTS): : FORM OF TENDER

Technical Evaluation Process : No

Table Header :			
LOT NO/DESCRIPTION	**CURRENCY**	**TOTAL PRICE IN FIGURES**	**TOTAL PRICE IN WORDS**
Table Footer : -			

Sr no.	Formula
1	TOTAL PRICE IN WORDS=TOTAL PRICE IN FIGURES

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COMMISSIONS, GRATUITIES, FEES: : FORM OF TENDER

Technical Evaluation Process : No

Table Header : K) WE HAVE PAID, OR WILL PAY THE FOLLOWING COMMISSIONS, GRATUITIES, OR FEES WITH RESPECT TO THE TENDERING PROCESS OR IMPLEMENTATION OF THE CONTRACT:			
NAME OF RECIPIENT	**ADDRESS**	**REASON**	**AMOUNT**
Table Footer :			

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STATE OWNED ENTERPRISES OR INSTITUTIONS : FORM OF TENDER

Technical Evaluation Process : No

Table Header : -	
STATEMENT	**TENDERER'S RESPONSE**
WE ARE NOT STATE OWNED ENTERPRISE OR INSTITUTION	
WE ARE STATE-OWNED ENTERPRISE OR INSTITUTION BUT MEET THE REQUIREMENTS OF ITT 3.8	
Table Footer : -	

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SIGN OFF : FORM OF TENDER

Technical Evaluation Process : No

Table Header : -

STATEMENT	TENDERER'S RESPONSE	NAME	TITLE OR DESIGNATION	DATE
WE CONFIRM THAT THE INFORMATION GIVEN ABOVE IS CORRECT AND WE UNDERSTAND THAT GIVING FALSE INFORMATION WILL LEAD TO DI SQUALIFICATION				

Table Footer : PERSON SIGNING THE TENDER SHALL HAVE THE POWER OF ATTORNEY GIVEN BY THE TENDERER. THE POWER OF ATTORNEY SHALL BE ATTACHED WITH THE TENDER SCHEDULES.

TENDERER'S DETAILS: : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header : -			
TENDERER'S NAME	**TENDERER'S ACTUAL OR INTENDED COUNTRY OF REGISTRATION**	**TENDERER'S YEAR OF REGISTRATION**	**TENDERER'S LEGAL ADDRESS IN COUNTRY OF REGISTRATION**
Table Footer : -			

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JOINT VENTURE DETAILS : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header : -

JV'S NAME	JV'S ACTUAL OR INTENDED COUNTRY OF REGISTRATION	JV'S YEAR OF REGISTRATION	JV'S LEGAL ADDRESS IN COUNTRY OF REGISTRATION

Table Footer : -

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TENDERER'S/JV MEMBER'S AUTHORIZED REPRESENTATIVE INFORMATION : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header : -			
NAME	**ADDRESS**	**TELEPHONE NO.**	**EMAIL**
Table Footer : -			

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A) SOLE PROPRIATORSHIP : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header : -

NAME IN FULL	AGE	NATIONALITY	COUNTRY OF ORIGIN	CITIZENSHIP

Table Footer : -

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B) PARTNERSHIP : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header : -

NAMES OF PARTNERS	NATIONALITY	CITIZENSHIP	PERCENTAGE OF SHARES OWNED

Table Footer : -

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C) REGISTERED COMPANY - (I) COMPANY DETAILS : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header : GENERAL AND SPECIFIC DETAILS		
PRIVATE OR PUBLIC COMPANY (SELECT ONE) - COMBO	**NOMINAL KENYA SHILLINGS**	**ISSUED KENYA SHILLINGS**
Table Footer : -		

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DIRECTORS DETAILS : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header : -			
NAMES OF DIRECTOR (S)	**NATIONALITY**	**CITIZENSHIP**	**PERCENTAGE OF SHARES OWNED**
Table Footer :			

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DISCLOSURE OF INTEREST-INTEREST OF THE FIRM IN THE PROCURING ENTITY : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header :	
STATEMENT	**SUPPLIER RESPONSE (SELECT ONE) - COMBO**
IS THERE ANY PERSON(S) IN THIS PROCURING ENTITY WHO HAS ANY INTEREST OR RELATIONSHIP IN YOUR FIRM. YES/NO (SELECT ONE)	
Table Footer : IF YES, PROVIDE DETAILS AS FOLLOWS:	

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RELATIONS WITH THE TENDERER IN THE PROCURING ENTITY : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header : -

NAMES OF PERSON	DESIGNATION IN THE PROCURING ENTITY	INTEREST OR RELATIONSHIP WITH TENDERER

Table Footer : -

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CONFLICT OF INTEREST DISCLOSURE : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header : -

TYPE OF CONFLICT	DISCLOSURE (YES OR NO) - COMBO	IF YES PROVIDE DETAILS OF THE RELATIONSHIP WITH TENDERER
1. TENDERER IS DIRECTLY OR INDIRECTLY CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER TENDERER.		
2. TENDERER RECEIVES OR HAS RECEIVED ANY DIRECT OR INDIRECT SUBSIDY FROM ANOTHER TENDERER.		
3. TENDERER HAS THE SAME LEGAL REPRESENTATIVE AS ANOTHER TENDERER		
4. TENDERER HAS A RELATIONSHIP WITH ANOTHER TENDERER, DIRECTLY OR THROUGH COMMON THIRD PARTIES, THAT PUTS IT IN A POSITION TO INFLUENCE THE TENDER OF ANOTHER TENDERER, OR INFLUENCE THE DECISIONS OF THE PROCURING ENTITY REGARDING THIS TENDER		

5. ANY OF THE TENDERER'S AFFILIATES PARTICIPATED AS A CONSULTANT IN THE PREPARATION OF THE DESIGN OR TECHNICAL SPECIFICATIONS OF THE WORKS THAT ARE THE SUBJECT OF THE TENDER.		
6. TENDERER HAS A CLOSE BUSINESS OR FAMILY RELATIONSHIP WITH A STAFF OF THE PROCURING ENTITY		
7. HAS THE CONFLICT STEMMING FROM SUCH RELATIONSHIP STATED IN ITEM 6 ABOVE BEEN RESOLVED IN A MANNER ACCEPTABLE TO THE PROCURING ENTITY THROUGHOUT THE TENDERING PROCESS AND EXECUTION OF THE CONTRACT.		

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8. THE TENDERER HAS ENTERED INTO CONSULTATIONS, COMMUNICATIONS, AGREEMENTS OR ARRANGEMENTS WITH ONE OR MORE COMPETITORS REGARDING THIS REQUEST FOR TENDERS AND THE TENDERER DISCLOSES, COMPLETE DETAILS THEREOF, INCLUDING THE NAMES OF THE COMPETITORS AND THE NATURE OF, AND REASONS FOR, SUCH CONSULTATIONS, COMMUNICATIONS, AGREEMENTS OR ARRANGEMENTS		
Table Footer :		

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CONFIRMATION AND CERTIFICATION : TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Technical Evaluation Process : No

Table Header : -

STATEMENT	TENDERER'S RESPONSE	NAME	TITLE OR DESIGNATION	DATE
WE CONFIRM THAT IFORMATION PROVIDED ABOVE IS CORRECT AND WE UNDERSTAND THAT FALSE INFORMATION WILL LEAD TO DI SQUALIFICATION OF OUR TENDER				

Table Footer :

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ITEM OF EQUIPMENT : 1 FORM EQU- EQUIPMENT

Technical Evaluation Process : No

Table Header : THE TENDERER SHALL PROVIDE ADEQUATE INFORMATION TO DEMONSTRATE CLEARLY THAT IT HAS THE CAPABILITY TO MEET THE REQUIREMENTS FOR THE KEY EQUIPMENT LISTED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA. A SEPARATE FORM SHALL BE PREPARED FOR EACH ITEM OF EQUIPMENT LISTED, OR FOR ALTERNATIVE EQUIPMENT PROPOSED BY THE TENDERER.

NAME OF MANUFACTURER	MODEL AND POWER RATING	CAPACITY	YEAR OF MANUFACTURE	CURRENT LOCATION	DETAILS OF CURRENT COMMITMENTS	SOURCE OF THE EQUIPMENT

Table Footer :

NAME OF OWNER : 1 FORM EQU- EQUIPMENT

Technical Evaluation Process : No

Table Header : OMIT THE FOLLOWING INFORMATION FOR EQUIPMENT OWNED BY THE TENDERER.			
ADDRESS OF OWNER	**TELEPHONE**	**CONTACT NAME AND TITLE**	**DETAILS OF RENTAL / LEASE / MANUFACTURE AGREEMENTS SPECIFIC TO THE PROJECT**
Table Footer : -			

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CONTRACTOR'S REPRESENTATIVE AND KEY PERSONNEL SCHEDULE : 2 FORM PER - 1- CONTRACTOR'S REPRESENTATIVE AND KEY PERSONNEL SCHEDULE

Technical Evaluation Process : No

Table Header : TENDERERS SHOULD PROVIDE THE NAMES AND DETAILS OF THE SUITABLY QUALIFIED CONTRACTOR'S REPRESENTATIVE AND KEY PERSONNEL TO PERFORM THE CONTRACT. THE DATA ON THEIR EXPERIENCE SHOULD BE SUPPLIED USING THE FORM PER-2 PROVIDED UNDER OTHER TENDERING FORMS FOR EACH KEY PERSONNEL/CONTRACTOR'S REPRESENTATIVE.

NAME OF CANDIDATE:	DURATION OF APPOINTMENT:	TIME COMMITMENT: FOR THIS POSITION:	EXPECTED TIME SCHEDULE FOR THIS POSITION:

Table Footer : -

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NON-PERFORMED CONTRACTS IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FOEM CON 2- HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header :		
CONTRACT NON PERFORMANCE	**YEAR**	**TENDERER'S RESPONSE (YES OR NO)**
CONTRACT NON-PERFORMANCE OCCURRED DURING THE PERIOD SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA, SUB-FACTOR 7 (VI) (A) IF YES, GIVE DETAILS IN THE TABLE BELOW:	2023-2025	
Table Footer : IF YES, GIVE DETAILS IN THE TABLE BELOW:		

DETAILS OF NON-PERFORMED CONTRACTS : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FOEM CON 2- HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header :

JV NAME	YEAR	NON- PERFORMED PORTION OF CONTRACT	CONTRACT IDENTIFICATION	NAME OF PROCURING ENTITY	ADDRESS OF PROCURING ENTITY	REASON(S) FOR NONPERFORMANCE	TOTAL CONTRACT AMOUNT (CURRENT VALUE, CURRENCY, EXCHANGE RATE AND KENYA SHILLING EQUIVALENT)	PERCENTAGE OF PORTION NOT PERFORMED

Table Footer : -

PENDING LITIGATION, IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FOEM CON 2- HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header :		
STATEMENT	**YEAR**	**TENDERER'S RESPONSE**
THERE IS PENDING LITIGATION IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA.	2023-2025	
Table Footer : IF YES GIVE DETAILS IN THE TABLE BELOW		

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DETAILS OF LITIGATION : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FOEM CON 2- HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header :

TENDERER'S/JV NAME	YEAR OF LITIGATION AWARD	CONTRACT NAME	CONTRACT NUMBER	NAME OF PROCURING ENTITY	MATTER IN DISPUTE	PARTY WHO INITIATED THE DISPUTE	REASONS FOR LITIGATION AND AWARD DECISION	AMOUNT	CURRENCY	KENYA SHILLING EQUIVALENT (EXCHANGE RATE)

Table Footer :

LITIGATION HISTORY IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FOEM CON 2- HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -	
STATEMENT	**TENDERER'S RESPONSE**
Table Footer : IF YES, GIVE DETAILS:	

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DETAILS OF LITIGATION HISTORY : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FOEM CON 2- HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -

DETAILS OF LITIGATION HISTORY	YEAR OF LITIGATION AWARD	OUTCOME AS PERCENTAGE OF NET WORTH	CONTRACT CONTRACT NAME	CONTRACT NUMBER	NAME OF THE PROCURING ENTITY	MATTER IN DISPUTE	PARTY WHO INITIATED THE DISPUTE	REASONS FOR LITIGATION AND AWARD DECISION	AMOUNT

Table Footer : -

4.4.1 FINANCIAL DATA : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION-FORM FIN – 3 1- FINANCIAL SITUATION AND PERFORMANCE

Technical Evaluation Process : No

Table Header : STATEMENT OF FINANCIAL POSITION (INFORMATION FROM BALANCE SHEET)

YEAR	TOTAL ASSETS (TA)	TOTAL LIABILITIES (TL)	TOTAL EQUITY/NET WORTH (NW)	CURRENT ASSETS (CA)	CURRENT LIABILITIES (CL)	WORKING CAPITAL (WC)	CURRENCY

Table Footer :

INFORMATION FROM INCOME STATEMENT : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION-FORM FIN – 3 1- FINANCIAL SITUATION AND PERFORMANCE

Technical Evaluation Process : No

Table Header : -			
YEAR	**TOTAL REVENUE (TR)**	**PROFITS BEFORE TAXES (PBT)**	**CURRENCY**
Table Footer : -			

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CASH FLOW INFORMATION : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION-FORM FIN – 3 1- FINANCIAL SITUATION AND PERFORMANCE

Technical Evaluation Process : No

Table Header : -

YEAR	CASH FLOW FROM OPERATING ACTIVITIES	CURRENCY

Table Footer : -

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4.4.2 SOURCES OF FINANCE : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION-FORM FIN – 3 1- FINANCIAL SITUATION AND PERFORMANCE

Technical Evaluation Process : No

Table Header : SPECIFY SOURCES OF FINANCE TO MEET THE CASH FLOW REQUIREMENTS ON WORKS CURRENTLY IN PROGRESS AND FOR FUTURE CONTRACT COMMITMENTS.

SOURCE OF FINANCE	AMOUNT

Table Footer : -

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4.4.3 FINANCIAL DOCUMENTS : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION-FORM FIN – 3 1- FINANCIAL SITUATION AND PERFORMANCE

Technical Evaluation Process : No

Table Header : ATTACH COPIES OF FINANCIAL STATEMENTS FOR THE YEARS REQUIRED ABOVE; AND COMPLYING WITH THE REQUIREMENTS

STATEMENT	SUPPPLIER
THE TENDERER AND ITS PARTIES SHALL PROVIDE COPIES OF FINANCIAL STATEMENTS PURSUANT SECTION III, EVALUATION AND QUALIFICATIONS CRITERIA. THE FINANCIAL STATEMENTS SHALL:	
(A) REFLECT THE FINANCIAL SITUATION OF THE TENDERER OR IN CASE OF JV MEMBER, AND NOT AN AFFILIATED ENTITY (SUCH AS PARENT COMPANY OR GROUP MEMBER).	
(B) BE INDEPENDENTLY AUDITED OR CERTIFIED IN ACCORDANCE WITH LOCAL LEGISLATION.	
(C) BE COMPLETE, INCLUDING ALL NOTES TO THE FINANCIAL STATEMENTS.	
(D) CORRESPOND TO ACCOUNTING PERIODS ALREADY COMPLETED AND AUDITED.	

Table Footer :

ANNUAL CONSTRUCTION TURNOVER (CONSTRUCTION ONLY) : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FORM FIN - 3 2- AVERAGE ANNUAL CONSTRUCTION TURNOVER

Technical Evaluation Process : No

Table Header :

YEAR	ANNUAL TURNOVER AMOUNT	CURRENCY	EXCHANGE RATE	KENYA SHILLING EQUIVALENT

Table Footer :

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AVERAGE ANNUAL CONSTRUCTION TURNOVER * : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FORM FIN - 3 2- AVERAGE ANNUAL CONSTRUCTION TURNOVER

Technical Evaluation Process : No

Table Header : -	
AVERAGE ANNUAL CONSTRUCTION TURNOVER *	**TENDERER RESPONSE**
AVERAGE ANNUAL CONSTRUCTION TURNOVER *	
Table Footer : * SEE SECTION III, EVALUATION AND QUALIFICATION CRITERIA	

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FINANCIAL RESOURCES : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FORM FIN - 3 3- FINANCIAL RESOURCES

Technical Evaluation Process : No

Table Header : SPECIFY PROPOSED SOURCES OF FINANCING, SUCH AS LIQUID ASSETS, UNENCUMBERED REAL ASSETS, LINES OF CREDIT, AND OTHER FINANCIAL MEANS, NET OF CURRENT COMMITMENTS, AVAILABLE TO MEET THE TOTAL CONSTRUCTION CASH FLOW DEMANDS OF THE SUBJECT CONTRACT OR CONTRACTS AS SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA

SOURCE OF FINANCING	AMOUNT

Table Footer : -

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CURRENT CONTRACT COMMITMENTS : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FORM FIN – 3 4- CURRENT CONTRACT COMMITMENTS - WORKS IN PROGRESS

Technical Evaluation Process : No

Table Header : TENDERERS AND EACH MEMBER TO A JV SHOULD PROVIDE INFORMATION ON THEIR CURRENT COMMITMENTS ON ALL CONTRACTS THAT HAVE BEEN AWARDED, OR FOR WHICH A LETTER OF INTENT OR ACCEPTANCE HAS BEEN RECEIVED, OR FOR CONTRACTS APPROACHING COMPLETION, BUT FOR WHICH AN UNQUALIFIED, FULL COMPLETION CERTIFICATE HAS YET TO BE ISSUED.

NAME OF CONTRACT	PROCURING ENTITY'S CONTACT ADDRESS	PROCURING ENTITY'S CONTACT TELEPHONE	VALUE OF OUTSTANDING WORK	ESTIMATED COMPLETION DATE	AVERAGE MONTHLY INVOICING OVER LAST SIX MONTHS

Table Footer : -

GENERAL CONSTRUCTION EXPERIENCE : TENDERER'S QUALIFICATION WITHOUT PREQUALIFICATION- FORM EXP - 4 1- GENERAL CONSTRUCTION EXPERIENCE

Table Header : -

STARTING YEAR	ENDING YEAR	CONTRACT NAME	BRIEF DESCRIPTION OF THE WORKS PERFORMED BY THE TENDERER	AMOUNT OF CONTRACT	NAME OF PROCURING ENTITY	ADDRESS	ROLE OF TENDERER

Table Footer : -

SIMILAR CONTRACT INFORMATION : TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION- FORM EXP - 4 2(A)- SPECIFIC CONSTRUCTION AND CONTRACT MANAGEMENT EXPERIENCE

Technical Evaluation Process : No

Table Header : -

CONTRACT IDENTIFICATION	AWARD DATE	COMPLETION DATE	ROLE IN CONTRACT	TOTAL CONTRACT AMOUNT (KENYA SHILLING)

Table Footer : -

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MEMBER IN A JV OR SUB-CONTRACTOR : TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION- FORM EXP - 4 2(A)- SPECIFIC CONSTRUCTION AND CONTRACT MANAGEMENT EXPERIENCE

Technical Evaluation Process : No

Table Header : IF MEMBER IN A JV OR SUB-CONTRACTOR, SPECIFY PARTICIPATION IN TOTAL CONTRACT AMOUNT

CONTRACT IDENTIFICATION	JV OR SUB-CONTRACTOR	PARTICIPATION IN TOTAL CONTRACT AMOUNT	PROCURING ENTITY'S NAME	ADDRESS	TELEPHONE/FAX NUMBER	E-MAIL

Table Footer : -

SIMILAR CONTRACT INFORMATION (CONT) : TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION- FORM EXP - 4 2(A)- SPECIFIC CONSTRUCTION AND CONTRACT MANAGEMENT EXPERIENCE

Technical Evaluation Process : No

Table Header : DESCRIPTION OF THE SIMILARITY IN ACCORDANCE WITH SECTION III; EVALUATION AND QUALIFICATION CRITERIA:

SIMILAR CONTRACT NO.	AMOUNT	PHYSICAL SIZE OF REQUIRED WORKS ITEMS	COMPLEXITY	METHODS/TECHNOLOGY	CONSTRUCTION RATE FOR KEY ACTIVITIES	OTHER CHARACTERISTICS

Table Footer : -

KEY ACTIVITIES : TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION- FORM EXP - 4 2(B)- CONSTRUCTION EXPERIENCE IN KEY ACTIVITIES

Technical Evaluation Process : No

Table Header : ALL SUB-CONTRACTORS FOR KEY ACTIVITIES MUST COMPLETE THE INFORMATION IN THIS FORM AS PER ITT 36 AND SECTION III, EVALUATION AND QUALIFICATION CRITERIA

KEY ACTIVITY NO	CONTRACT IDENTIFICATION	AWARD DATE	COMPLETION DATE	ROLE IN CONTRACT	TOTAL CONTRACT AMOUNT

Table Footer : -

QUANTITY PERFORMED UNDER THE CONTRACT PER YEAR OR PART OF THE YEAR : TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION- FORM EXP - 4 2(B)- CONSTRUCTION EXPERIENCE IN KEY ACTIVITIES

Technical Evaluation Process : No

Table Header : ALL SUB-CONTRACTORS FOR KEY ACTIVITIES MUST COMPLETE THE INFORMATION IN THIS FORM AS PER ITT 36 AND SECTION III, EVALUATION AND QUALIFICATION CRITERIA

YEAR	TOTAL QUANTITY IN THE CONTRACT (I)	PERCENTAGE PARTICIPATION (II)	ACTUAL QUANTITY PERFORMED (I) X (II)	PROCURING ENTITY'S NAME	ADDRESS	TELEPHONE/FAX NUMBER	E-MAIL

Table Footer : -

TECHNICAL EVALUATION : TECHNICAL EVALUATION

Technical Evaluation Process : Yes

Table Header : -

S/NO	TECHNICAL CRITERIA	MINIMUM REQUIREMENTS	SUPPLIER RESPONSE	MARKS
1	PROGRAMME OF WORKS AND CONSTRUCTION METHODOLOGY	PROVIDE PROGRAM OF WORKS, INDICATIVE OF TIMELINES TO COMPLETE THE PROJECT IN ACCORDANCE WITH PROJECT DURATION PROVIDED IN THIS TENDER. THIS SHOULD INDICATE KEY REQUIREMENTS OF UNDERTAKING THE WORKS HEREIN THIS TENDER. THE METHODOLOGY SHALL BE SPECIFIC AND RELATED TO THE WORKS PROPOSED FOR EXECUTION UNDER THIS TENDER		15

		DOCUMENT. ABSTRACT AND GENERIC METHOD STATEMENTS SHALL BE REJECTED. THIS REQUIREMENT MUST BE MET.		
2	KEY PERSONNEL (ATTACH EVIDENCE)	A) FIRM DIRECTOR AT LEAST 1 NO. DIRECTOR WITH A DEGREE /DIPLOMA HOLDER TECHNICAL RELATED FIELD: • WITH OVER 10 YEARS' RELEVANT EXPER IENCE.....10 • WITH OVER 5 YEARS' RELEVANT EXPERIENCE ..... 5 • WITH UNDER 5 YEARS RELEVANT EXPERIENCE .... 2 B) CONTRACT /PROJECT MANAGER (DEGREE HOLDER) AT LEAST 1 NO.		30

		DEGREE HOLDER IN RELEVANT TECHNICAL FIELD • WITH OVER 10 YEARS' RELEVANT EXPER IENCE..... 10 • WITH OVER 5 YEARS' RELEVANT EXPERIENCE ..... 5 • WITH UNDER 5 YEARS RELEVANT EXPERIENCE .... 2 C) SITE AGENT /FOREMAN (DEGREE /DIPLOMA HOLDER) AT LEAST 1 NO. DEGREE /DIPLOMA HOLDER IN RELEVANT TECHNICAL FIELD • WITH OVER 10 YEARS' RELEVANT EXPER IENCE.....7 • WITH OVER 5 YEARS' RELEVANT EXPERIENCE ..... 4 • WITH UNDER 5 YEARS		

		RELEVANT EXPERIENCE ....2 D) SITE ARTISANS (DIPLOMA /CERTIFICATE /GRADE TEST HOLDERS) AT LEAST 3 NO. ARTISAN (DIPLOMA /CERTIFICATE /GRADE TEST) IN RELEVANT ENGINEERING FIELD • THREE ARTISANS WITH RELEVANT EXPERIENCE ..... 3 • TWO ARTISANS WITH RELEVANT EXPER IENCE..... ..2 • ONE ARTISAN WITH RELEVANT EXPERIENCE 1		

3	CONTRACTS ONGOING /COMPLETED IN THE LAST 5 YEARS (MAX. OF 3 NO. PROJECTS)	• PROJECTS OF SIMILAR NATURE, COMPLEXITY AND MAGNITUDE AND VALUE 100M AND ABOVE... ..... 5 PER PROJECT. • PROJECTS OF VALUE 70M-99M ..... 2 PER PROJECT • PROJECTS OF VALUE 50M-69M ..... 1 PER PROJECT		15
4	SCHEDULE OF CONTRACTORS EQUIPMENT OWNED/LEASED RELEVANT FOR THE PROJECT (PROOF OR EVIDENCE OF OWNERSHIP REQUIRED	• CONSTRUCTION PLANT AND HEAVY MACHINERY (MIN OF 4) .....8 • SITE VEHICLES: LORRY (S), TRUCK(S), TIPPER(S), PICKUP(S), ETC. (MIN 3) ....7 • OTHER SITE EQUIPMENT: CONCRETE MIXER, VIBRATOR, ETC. (MIN 6) 5		20

5	FINANCIAL CAPABILITY	1. AUDITED FINANCIAL REPORT (LAST THREE (3) YEARS) (2023,2024,2025) • TURN OVER GREATER OR EQUAL TO KSH. 100,000,000 .... 10 • TURN OVER GREATER OR EQUAL TO KSH. 70,000,000 ..... 5 • TURN OVER EQUAL KSH. 50,000,000 .....3 • TURN OVER BELOW THE COST OF THE PROJECT ..... 0 2). EVIDENCE OF FINANCIAL RESOURCES (CASH IN HAND /BANK, LINES OF CREDIT, OVERDRAFT FACILITY, ETC.) • HAS FINANCIAL RESOURCES EQUAL OR ABOVE 100MILLION ..... 10 • HAS FINANCIAL RESOURCES		20

		EQUAL TO HALF OF 100MILLION ..... 5 • HAS FINANCIAL RESOURCES LESS THAN HALF OF 100 MILLION 2		
Table Footer : -				

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PRICE SCHEDULE : PRICE SCHEDULE

Table Header : -

S/NO	UNSPSC DESCRIPTION	BILL DESCRIPTION	UNIT OF ISSUE	QTY	UNIT PRICE	TOTAL PRICE (EXCLUSIVE OF TAXES)
1	CONSTRUCTION /ALTERATION WORKS AT TOM MBOYA UNIVERSITY	PRELIMINARIES	EACH	1		
2	CONSTRUCTION /ALTERATION WORKS AT TOM MBOYA UNIVERSITY	GENERAL PRELIMINARIES	EACH	1		
3	CONSTRUCTION /ALTERATION WORKS AT TOM MBOYA UNIVERSITY	BUILDERS'S WORKS	EACH	1		
4	CONSTRUCTION /ALTERATION WORKS AT TOM MBOYA UNIVERSITY	ELECTRICAL WORKS	EACH	1		
5	CONSTRUCTION /ALTERATION WORKS AT TOM MBOYA UNIVERSITY	MECHANICAL WORKS	EACH	1		

Table Footer : -

Sr no.	Formula
1	TOTAL PRICE (EXCLUSIVE OF TAXES)=QTY *UNIT PRICE
2	TOTAL PRICE (EXCLUSIVE OF TAXES)=TOTAL(TOTAL PRICE (EXCLUSIVE OF TAXES))

GRAND SUMMARY : PRICE SCHEDULE

Table Header : -

TOTAL COST (BROUGHT FORWARD FROM PRICE SCHEDULE)	CAPACITY BUILDING LEVY	TAXES AND LEVIES	PROVISIONAL SUMS	TOTAL TENDER SUM
			5000000	

Table Footer : -

Sr no.	Formula
1	TOTAL TENDER SUM=TOTAL COST(BROUGHT FORWARD FROM PRICE SCHEDULE)+CAPACITY BUILDING LEVY*1000+TAXES AND LEVIES
2	TOTAL TENDER SUM=TOTAL(TOTAL TENDER SUM)

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SECTION VII - BILLS OF QUANTITIES AND FORMAT OF THE TENDER PRICE SUMMARY

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Schedule of Requirements Contents

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SECTION VIII - GENERAL CONDITIONS OF CONTRACT

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Detail

SECTION VIII - GENERAL CONDITIONS OF CONTRACT

THESE GENERAL CONDITIONS OF CONTRACT (GCC), READ IN CONJUNCTION WITH THE SPECIAL CONDITIONS OF CONTRACT (SCC) AND OTHER DOCUMENTS LISTED THEREIN, SHOULD BE A COMPLETE DOCUMENT EXPRESSING FAIRLY THE RIGHTS AND OBLIGATIONS OF BOTH PARTIES.
THESE GENERAL CONDITIONS OF CONTRACT HAVE BEEN DEVELOPED ON THE BASIS OF CONSIDERABLE INTERNATIONAL EXPERIENCE IN THE DRAFTING AND MANAGEMENT OF CONTRACTS, BEARING IN MIND A TREND IN THE CONSTRUCTION INDUSTRY TOWARDS SIMPLER, MORE STRAIGHTFORWARD LANGUAGE.
THE GCC CAN BE USED FOR BOTH SMALLER MEASUREMENT CONTRACTS AND LUMP SUM CONTRACTS

GENERAL CONDITIONS OF CONTRACT

A. GENERAL

1. DEFINITIONS

A) THE ACCEPTED CONTRACT AMOUNT MEANS THE AMOUNT ACCEPTED IN THE LETTER OF ACCEPTANCE FOR THE EXECUTION AND COMPLETION OF THE WORKS AND THE REMEDYING OF ANY DEFECTS.

B) THE ACTIVITY SCHEDULE IS A SCHEDULE OF THE ACTIVITIES COMPRISING THE CONSTRUCTION, INSTALLATION, TESTING, AND COMMISSIONING OF THE WORKS IN A LUMP SUM CONTRACT. IT INCLUDES A LUMP SUM PRICE FOR EACH ACTIVITY, WHICH IS USED FOR VALUATIONS AND FOR ASSESSING THE EFFECTS OF VARIATIONS AND COMPENSATION EVENTS.

C) THE ADJUDICATOR IS THE PERSON APPOINTED JOINTLY BY THE PROCURING ENTITY AND THE CONTRACTOR TO RESOLVE DISPUTES IN THE FIRST INSTANCE, AS PROVIDED FOR IN GCC 23.

D) BILL OF QUANTITIES MEANS THE PRICED AND COMPLETED BILL OF QUANTITIES FORMING PART OF THE BID.

E) COMPENSATION EVENTS ARE THOSE DEFINED IN GCC CLAUSE 42 HEREUNDER.

F) THE COMPLETION DATE IS THE DATE OF COMPLETION OF THE WORKS AS CERTIFIED BY THE PROJECT MANAGER, IN ACCORDANCE WITH GCC SUB-CLAUSE 53.1.

G) THE CONTRACT IS THE CONTRACT BETWEEN THE PROCURING ENTITY AND THE CONTRACTOR TO EXECUTE, COMPLETE, AND MAINTAIN THE WORKS. IT CONSISTS OF THE DOCUMENTS LISTED IN GCC SUB-CLAUSE 2.3 BELOW.

H) THE CONTRACTOR IS THE PARTY WHOSE BID TO CARRY OUT THE WORKS HAS BEEN ACCEPTED BY THE PROCURING ENTITY.

I) THE CONTRACTOR'S BID IS THE COMPLETED BIDDING DOCUMENT SUBMITTED BY THE CONTRACTOR TO THE PROCURING ENTITY.

J) THE CONTRACT PRICE IS THE ACCEPTED CONTRACT AMOUNT STATED IN THE LETTER OF ACCEPTANCE AND THEREAFTER AS ADJUSTED IN ACCORDANCE WITH THE CONTRACT.

K) DAYS ARE CALENDAR DAYS; MONTHS ARE CALENDAR MONTHS.

L) DAY WORKS ARE VARIED WORK INPUTS SUBJECT TO PAYMENT ON A TIME BASIS FOR THE CONTRACTOR'S EMPLOYEES AND EQUIPMENT, IN ADDITION TO PAYMENTS FOR ASSOCIATED MATERIALS AND PLANT.

M) A DEFECT IS ANY PART OF THE WORKS NOT COMPLETED IN ACCORDANCE WITH THE CONTRACT.

N) THE DEFECTS LIABILITY CERTIFICATE IS THE CERTIFICATE ISSUED BY PROJECT MANAGER UPON CORRECTION OF DEFECTS BY THE CONTRACTOR.

O) THE DEFECTS LIABILITY PERIOD IS THE PERIOD NAMED IN THE SCC PURSUANT TO SUB-CLAUSE 34.1 AND CALCULATED FROM THE COMPLETION DATE.

P) DRAWINGS MEANS THE DRAWINGS OF THE WORKS, AS INCLUDED IN THE CONTRACT, AND ANY ADDITIONAL AND MODIFIED DRAWINGS ISSUED BY (OR ON BEHALF OF) THE PROCURING ENTITY IN ACCORDANCE WITH THE CONTRACT, INCLUDE CALCULATIONS AND OTHER INFORMATION PROVIDED OR APPROVED BY THE PROJECT MANAGER FOR THE EXECUTION OF THE CONTRACT.

Q) THE PROCURING ENTITY IS THE PARTY WHO EMPLOYS THE CONTRACTOR TO CARRY OUT THE WORKS, AS SPECIFIED IN THE **SCC**, WHO IS ALSO THE PROCURING ENTITY.

R) EQUIPMENT IS THE CONTRACTOR'S MACHINERY AND VEHICLES BROUGHT TEMPORARILY TO THE SITE TO CONSTRUCT THE WORKS.

S) "IN WRITING" OR "WRITTEN" MEANS HAND-WRITTEN, TYPE-WRITTEN, PRINTED OR ELECTRONICALLY MADE, AND RESULTING IN A PERMANENT RECORD;
T) THE INITIAL CONTRACT PRICE IS THE CONTRACT PRICE LISTED IN THE PROCURING ENTITY'S LETTER OF ACCEPTANCE

U) THE INTENDED COMPLETION DATE IS THE DATE ON WHICH IT IS INTENDED THAT THE CONTRACTOR SHALL COMPLETE THE WORKS. THE INTENDED COMPLETION DATE IS SPECIFIED IN THE **SCC**. THE INTENDED COMPLETION DATE MAY BE REVISED ONLY BY THE PROJECT MANAGER BY ISSUING AN EXTENSION OF TIME OR AN ACCELERATION ORDER.

V) MATERIALS ARE ALL SUPPLIES, INCLUDING CONSUMABLES, USED BY THE CONTRACTOR FOR INCORPORATION IN THE WORKS.
W) PLANT IS ANY INTEGRAL PART OF THE WORKS THAT SHALL HAVE A MECHANICAL, ELECTRICAL, CHEMICAL, OR BIOLOGICAL FUNCTION.

X) THE PROJECT MANAGER IS THE PERSON NAMED IN THE **SCC** (OR ANY OTHER COMPETENT PERSON APPOINTED BY THE PROCURING ENTITY AND NOTIFIED TO THE CONTRACTOR, TO ACT IN REPLACEMENT OF THE PROJECT MANAGER) WHO IS RESPONSIBLE FOR SUPERVISING THE EXECUTION OF THE WORKS AND ADMINISTERING THE CONTRACT.

Y) **SCC** MEANS SPECIAL CONDITIONS OF CONTRACT

Z) THE SITE IS THE AREA OF THE WORKS AS DEFINED AS SUCH IN THE **SCC.**

AA) SITE INVESTIGATION REPORTS ARE THOSE THAT WERE INCLUDED IN THE BIDDING DOCUMENT AND ARE FACTUAL AND INTERPRETATIVE REPORTS ABOUT THE SURFACE AND SUBSURFACE CONDITIONS AT THE SITE.
BB) SPECIFICATION MEANS THE SPECIFICATION OF THE WORKS INCLUDED IN THE CONTRACT AND ANY MODIFICATION OR ADDITION MADE OR APPROVED BY THE PROJECT MANAGER.

CC) THE START DATE IS GIVEN IN THE **SCC.** IT IS THE LATEST DATE WHEN THE CONTRACTOR SHALL COMMENCE EXECUTION OF THE WORKS. IT DOES NOT NECESSARILY COINCIDE WITH ANY OF THE SITE POSSESSION DATES.

DD) 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.
EE) TEMPORARY WORKS ARE WORKS DESIGNED, CONSTRUCTED, INSTALLED, AND REMOVED BY THE CONTRACTOR THAT ARE NEEDED FOR CONSTRUCTION OR INSTALLATION OF THE WORKS.
FF) A VARIATION IS AN INSTRUCTION GIVEN BY THE PROJECT MANAGER WHICH VARIES THE WORKS.

GG) THE WORKS ARE WHAT THE CONTRACT REQUIRES THE CONTRACTOR TO CONSTRUCT, INSTALL, AND TURN OVER TO THE PROCURING ENTITY, AS DEFINED IN THE **SCC.**

eGP Kenya
UNUNUZI WA UWAZI

2. INTERPRETATION

2.1 IN INTERPRETING THESE GCC, WORDS INDICATING ONE GENDER INCLUDE ALL GENDERS. WORDS INDICATING THE SINGULAR ALSO INCLUDE THE PLURAL AND WORDS INDICATING THE PLURAL ALSO INCLUDE THE SINGULAR. HEADINGS HAVE NO SIGNIFICANCE. WORDS HAVE THEIR NORMAL MEANING UNDER THE LANGUAGE OF THE CONTRACT UNLESS SPECIFICALLY DEFINED. THE PROJECT MANAGER SHALL PROVIDE INSTRUCTIONS CLARIFYING QUERIES ABOUT THESE GCC.

2.2 IF SECTIONAL COMPLETION IS SPECIFIED IN THE **SCC,** REFERENCES IN THE GCC TO THE WORKS, THE COMPLETION DATE, AND THE INTENDED COMPLETION DATE APPLY TO ANY SECTION OF THE WORKS (OTHER THAN REFERENCES TO THE COMPLETION DATE AND INTENDED COMPLETION DATE FOR THE WHOLE OF THE WORKS).

2.3 THE DOCUMENTS FORMING THE CONTRACT SHALL BE INTERPRETED IN THE FOLLOWING ORDER OF PRIORITY:

A) DULY EXECUTED CONTRACT AGREEMENT,
B) FORM OF TENDER
C) LETTER OF AWARD
D) LETTER OF ACCEPTANCE,
E) CONTRACTOR'S BID,
F) SPECIAL CONDITIONS OF CONTRACT,
G) GENERAL CONDITIONS OF CONTRACT, INCLUDING APPENDICES,
H) SPECIFICATIONS,
I) DRAWINGS AND DESIGNS,
J) BILL OF QUANTITIES, AND

K) ANY OTHER DOCUMENT LISTED IN THE **SCC** AS FORMING PART OF THE CONTRACT.

IN LUMP SUM CONTRACTS, DELETE "BILL OF QUANTITIES" AND REPLACE WITH "ACTIVITY SCHEDULE."

3. LANGUAGE AND LAW

3.1 THE LANGUAGE OF THE CONTRACT IS ENGLISH LANGUAGE AND THE LAW GOVERNING THE CONTRACT ARE THE LAWS OF KENYA.

3.2THROUGHOUT THE EXECUTION OF THE CONTRACT, THE CONTRACTOR SHALL COMPLY WITH THE IMPORT OF GOODS AND SERVICES PROHIBITIONS IN THE PROCURING ENTITY'S COUNTRY WHEN

A) AS A MATTER OF LAW OR OFFICIAL REGULATIONS, KENYA PROHIBITS COMMERCIAL RELATIONS WITH THAT COUNTRY; OR

B) BY AN ACT OF COMPLIANCE WITH A DECISION OF THE UNITED NATIONS SECURITY COUNCIL TAKEN UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS, KENYA PROHIBITS ANY IMPORT OF GOODS FROM THAT COUNTRY OR ANY PAYMENTS TO ANY COUNTRY, PERSON, OR ENTITY IN THAT COUNTRY.

4. PROJECT MANAGER'S DECISIONS

4.1 EXCEPT WHERE OTHERWISE SPECIFICALLY STATED, THE PROJECT MANAGER SHALL DECIDE CONTRACTUAL MATTERS BETWEEN THE PROCURING ENTITY AND THE CONTRACTOR IN THE ROLE REPRESENTING THE PROCURING ENTITY.

5. DELEGATION

5.1 OTHERWISE SPECIFIED IN THE **SCC**, THE PROJECT MANAGER MAY DELEGATE ANY OF HIS DUTIES AND RESPONSIBILITIES TO OTHER PEOPLE, EXCEPT TO THE ADJUDICATOR, AFTER NOTIFYING THE CONTRACTOR, AND MAY REVOKE ANY DELEGATION AFTER NOTIFYING THE CONTRACTOR.

6. COMMUNICATIONS

6.1 COMMUNICATIONS BETWEEN PARTIES THAT ARE REFERRED TO IN THE CONDITIONS SHALL BE EFFECTIVE ONLY WHEN IN WRITING. A NOTICE SHALL BE EFFECTIVE ONLY WHEN IT IS DELIVERED.

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 PROCURING ENTITY 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, AND THE PROCURING ENTITY BETWEEN THE DATES GIVEN IN THE SCHEDULE OF OTHER CONTRACTORS, AS REFERRED TO IN THE **SCC**. THE CONTRACTOR SHALL ALSO PROVIDE FACILITIES AND SERVICES FOR THEM AS DESCRIBED IN THE SCHEDULE. THE PROCURING ENTITY MAY MODIFY THE SCHEDULE OF OTHER CONTRACTORS, AND SHALL NOTIFY THE CONTRACTOR OF ANY SUCH MODIFICATION.

9. PERSONNEL AND EQUIPMENT

9.1 THE CONTRACTOR SHALL EMPLOY THE KEY PERSONNEL AND USE THE EQUIPMENT IDENTIFIED IN ITS BID, TO CARRY OUT THE WORKS OR OTHER PERSONNEL AND EQUIPMENT APPROVED BY THE PROJECT MANAGER. THE PROJECT MANAGER SHALL APPROVE ANY PROPOSED REPLACEMENT OF KEY PERSONNEL AND EQUIPMENT ONLY IF THEIR RELEVANT QUALIFICATIONS OR CHARACTERISTICS ARE SUBSTANTIALLY EQUAL TO OR BETTER THAN THOSE PROPOSED IN THE BID.

9.2 IF THE PROJECT MANAGER ASKS THE CONTRACTOR TO REMOVE A PERSON WHO IS A MEMBER OF THE CONTRACTOR'S STAFF OR WORK FORCE, STATING THE REASONS, THE CONTRACTOR SHALL ENSURE THAT THE PERSON LEAVES THE SITE WITHIN SEVEN DAYS AND HAS NO FURTHER CONNECTION WITH THE WORK IN THE CONTRACT.

9.3 IF THE PROCURING ENTITY, PROJECT MANAGER OR CONTRACTOR DETERMINES, THAT ANY EMPLOYEE OF THE CONTRACTOR BE DETERMINED TO HAVE ENGAGED IN FRAUD AND CORRUPTION DURING THE EXECUTION OF THE WORKS, THEN THAT EMPLOYEE SHALL BE REMOVED IN ACCORDANCE WITH CLAUSE 9.2 ABOVE.

10. PROCURING ENTITY'S AND CONTRACTOR'S RISKS

10.1 THE PROCURING ENTITY CARRIES THE RISKS WHICH THIS CONTRACT STATES ARE PROCURING ENTITY'S RISKS, AND THE CONTRACTOR CARRIES THE RISKS WHICH THIS CONTRACT STATES ARE CONTRACTOR'S RISKS.

11. PROCURING ENTITY'S RISKS

11.1 FROM THE START DATE UNTIL THE DEFECTS LIABILITY CERTIFICATE HAS BEEN ISSUED, THE FOLLOWING ARE PROCURING ENTITY'S RISKS:

A) THE RISK OF PERSONAL INJURY, DEATH, OR LOSS OF OR DAMAGE TO PROPERTY (EXCLUDING THE WORKS, PLANT, MATERIALS, AND EQUIPMENT), WHICH ARE DUE TO

I) USE OR OCCUPATION OF THE SITE BY THE WORKS OR FOR THE PURPOSE OF THE WORKS, WHICH IS THE UNAVOIDABLE RESULT OF THE WORKS OR

II) NEGLIGENCE, BREACH OF STATUTORY DUTY, OR INTERFERENCE WITH ANY LEGAL RIGHT BY THE PROCURING ENTITY OR BY ANY PERSON EMPLOYED BY OR CONTRACTED TO HIM EXCEPT THE CONTRACTOR.

B) THE RISK OF DAMAGE TO THE WORKS, PLANT, MATERIALS, AND EQUIPMENT TO THE EXTENT THAT IT IS DUE TO A FAULT OF THE PROCURING ENTITY OR IN THE PROCURING ENTITY'S DESIGN, OR DUE TO WAR OR RADIOACTIVE CONTAMINATION DIRECTLY AFFECTING THE COUNTRY WHERE THE WORKS ARE TO BE EXECUTED.

11.2 FROM THE COMPLETION DATE UNTIL THE DEFECTS LIABILITY CERTIFICATE HAS BEEN ISSUED, THE RISK OF LOSS OF OR DAMAGE TO THE WORKS, PLANT, AND MATERIALS IS A PROCURING ENTITY'S RISK EXCEPT LOSS OR DAMAGE DUE TO

A) DEFECT WHICH EXISTED ON THE COMPLETION DATE,

B) AN EVENT OCCURRING BEFORE THE COMPLETION DATE, WHICH WAS NOT ITSELF A PROCURING ENTITY'S RISK, OR

C) THE ACTIVITIES OF THE CONTRACTOR ON THE SITE AFTER THE COMPLETION DATE.

12. CONTRACTOR'S RISKS

12.1 FROM THE STARTING DATE UNTIL THE DEFECTS LIABILITY CERTIFICATE HAS BEEN ISSUED, THE RISKS OF PERSONAL INJURY, DEATH, AND LOSS OF OR DAMAGE TO PROPERTY (INCLUDING, WITHOUT LIMITATION, THE WORKS, PLANT, MATERIALS, AND EQUIPMENT) WHICH ARE NOT PROCURING ENTITY'S RISKS ARE CONTRACTOR'S RISKS.

13. INSURANCE

13.1 THE CONTRACTOR SHALL PROVIDE, IN THE JOINT NAMES OF THE PROCURING ENTITY AND THE CONTRACTOR, INSURANCE COVER FROM THE START DATE TO THE END OF THE DEFECTS LIABILITY PERIOD, IN THE AMOUNTS AND DEDUCTIBLES STATED IN THE SCC FOR THE FOLLOWING EVENTS WHICH ARE DUE TO THE CONTRACTOR'S RISKS:

A) LOSS OF OR DAMAGE TO THE WORKS, PLANT, AND MATERIALS;

B) LOSS OF OR DAMAGE TO EQUIPMENT;

C) LOSS OF OR DAMAGE TO PROPERTY (EXCEPT THE WORKS, PLANT, MATERIALS, AND EQUIPMENT) IN CONNECTION WITH THE CONTRACT; AND

D) PERSONAL INJURY OR DEATH.

13.2 POLICIES AND CERTIFICATES FOR INSURANCE SHALL BE DELIVERED BY THE CONTRACTOR TO THE PROJECT MANAGER FOR THE PROJECT MANAGER'S APPROVAL BEFORE THE START DATE. ALL SUCH INSURANCE SHALL PROVIDE FOR COMPENSATION TO BE PAYABLE IN THE TYPES AND PROPORTIONS OF CURRENCIES REQUIRED TO RECTIFY THE LOSS OR DAMAGE INCURRED.

13.3 IF THE CONTRACTOR DOES NOT PROVIDE ANY OF THE POLICIES AND CERTIFICATES REQUIRED, THE PROCURING ENTITY MAY EFFECT THE INSURANCE WHICH THE CONTRACTOR SHOULD HAVE PROVIDED AND RECOVER THE PREMIUMS THE PROCURING ENTITY HAS PAID FROM PAYMENTS OTHERWISE DUE TO THE CONTRACTOR OR, IF NO PAYMENT IS DUE, THE PAYMENT OF THE PREMIUMS SHALL BE A DEBT DUE.

13.4 ALTERATIONS TO THE TERMS OF AN INSURANCE SHALL NOT BE MADE WITHOUT THE APPROVAL OF THE PROJECT MANAGER.

13.5 BOTH PARTIES SHALL COMPLY WITH ANY CONDITIONS OF THE INSURANCE POLICIES.

14. SITE DATA

14.1 THE CONTRACTOR SHALL BE DEEMED TO HAVE EXAMINED ANY SITE DATA REFERRED TO IN THE **SCC**, SUPPLEMENTED BY ANY INFORMATION AVAILABLE TO THE CONTRACTOR.

15. CONTRACTOR TO CONSTRUCT THE WORKS

15.1 THE CONTRACTOR SHALL CONSTRUCT AND INSTALL THE WORKS IN ACCORDANCE WITH THE SPECIFICATIONS AND DRAWINGS.

16. THE WORKS TO BE COMPLETED BY THE INTENDED COMPLETION DATE

16.1 THE CONTRACTOR MAY COMMENCE EXECUTION OF THE WORKS ON THE START DATE AND SHALL CARRY OUT THE WORKS 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.

17. APPROVAL BY THE PROJECT MANAGER

17.1 THE CONTRACTOR SHALL SUBMIT SPECIFICATIONS AND DRAWINGS SHOWING THE PROPOSED TEMPORARY WORKS TO THE PROJECT MANAGER, FOR HIS APPROVAL.
17.2 THE CONTRACTOR SHALL BE RESPONSIBLE FOR DESIGN OF TEMPORARY WORKS.
17.3 THE PROJECT MANAGER'S APPROVAL SHALL NOT ALTER THE CONTRACTOR'S RESPONSIBILITY FOR DESIGN OF THE TEMPORARY WORKS.
17.4 THE CONTRACTOR SHALL OBTAIN APPROVAL OF THIRD PARTIES TO THE DESIGN OF THE TEMPORARY WORKS, WHERE REQUIRED.
17.5 ALL DRAWINGS PREPARED BY THE CONTRACTOR FOR THE EXECUTION OF THE TEMPORARY OR PERMANENT WORKS, ARE SUBJECT TO PRIOR APPROVAL BY THE PROJECT MANAGER BEFORE THIS USE.

18. SAFETY

18.1 THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY OF ALL ACTIVITIES ON THE SITE.

19. DISCOVERIES

19.1 ANYTHING OF HISTORICAL OR OTHER INTEREST OR OF SIGNIFICANT VALUE UNEXPECTEDLY DISCOVERED ON THE SITE SHALL BE THE PROPERTY OF THE PROCURING ENTITY. THE CONTRACTOR SHALL NOTIFY THE PROJECT MANAGER OF SUCH DISCOVERIES AND CARRY OUT THE PROJECT MANAGER'S INSTRUCTIONS FOR DEALING WITH THEM.

20. POSSESSION OF THE SITE

20.1 THE PROCURING ENTITY SHALL GIVE POSSESSION OF ALL PARTS OF THE SITE TO THE CONTRACTOR. IF POSSESSION OF A PART IS NOT GIVEN BY THE DATE STATED IN THE **SCC,** THE PROCURING ENTITY SHALL BE DEEMED TO HAVE DELAYED THE START OF THE RELEVANT ACTIVITIES, AND THIS SHALL BE A COMPENSATION EVENT.

21. ACCESS TO THE SITE

21.1 THE CONTRACTOR SHALL ALLOW THE PROJECT MANAGER AND ANY PERSON AUTHORIZED BY THE PROJECT MANAGER ACCESS TO THE SITE AND TO ANY PLACE WHERE WORK IN CONNECTION WITH THE CONTRACT IS BEING CARRIED OUT OR IS INTENDED TO BE CARRIED OUT.

22. INSTRUCTIONS, INSPECTIONS AND AUDITS

22.1 THE CONTRACTOR SHALL CARRY OUT ALL INSTRUCTIONS OF THE PROJECT MANAGER WHICH COMPLY WITH THE APPLICABLE LAWS WHERE THE SITE IS LOCATED.

22.2 THE CONTRACTOR SHALL KEEP, AND SHALL MAKE ALL REASONABLE EFFORTS TO CAUSE ITS SUBCONTRACTORS AND SUB-CONSULTANTS TO KEEP, ACCURATE AND SYSTEMATIC ACCOUNTS AND RECORDS IN RESPECT OF THE WORKS IN SUCH FORM AND DETAILS AS WILL CLEARLY IDENTIFY RELEVANT TIME CHANGES AND COSTS.

22.3 THE CONTRACTOR SHALL PERMIT AND SHALL CAUSE ITS SUBCONTRACTORS AND SUB-CONSULTANTS TO PERMIT, THE PROCURING ENTITY AND/OR PERSONS APPOINTED BY THE PUBLIC PROCUREMENT REGULATORY AUTHORITY TO INSPECT THE SITE AND/OR THE ACCOUNTS AND RECORDS RELATING TO THE PROCUREMENT PROCESS, SELECTION AND/OR CONTRACT EXECUTION, AND TO HAVE SUCH ACCOUNTS AND RECORDS AUDITED BY AUDITORS APPOINTED BY THE PUBLIC PROCUREMENT REGULATORY AUTHORITY. THE CONTRACTOR'S AND ITS SUBCONTRACTORS' AND SUB-CONSULTANTS' ATTENTION IS DRAWN TO SUB-CLAUSE 25.1 (FRAUD AND CORRUPTION) WHICH PROVIDES, INTER ALIA, THAT ACTS INTENDED TO MATERIALLY IMPEDE THE EXERCISE OF THE PUBLIC PROCUREMENT REGULATORY AUTHORITY'S INSPECTION AND AUDIT RIGHTS CONSTITUTE A PROHIBITED PRACTICE SUBJECT TO CONTRACT TERMINATION (AS WELL AS TO A DETERMINATION OF INELIGIBILITY PURSUANT TO THE PUBLIC PROCUREMENT REGULATORY AUTHORITY'S PREVAILING SANCTIONS PROCEDURES).

23. APPOINTMENT OF THE ADJUDICATOR

23.1 THE PROCURING ENTITY WILL PROPOSES THE PERSON NAMED IN THE **SCC** TO BE APPOINTED AS ADJUDICATOR UNDER THE CONTRACT, AT THE HOURLY FEE SPECIFIED IN THE TDS, PLUS REIMBURSABLE EXPENSES. IF THE TENDERER DISAGREES WITH THIS PROPOSAL, THE TENDERER SHOULD SO STATE SO IN HIS TENDER. IF THE TENDERER DOES NOT AGREE ON THE APPOINTMENT OF THE ADJUDICATOR, UPON WHICH THE PROCURING ENTITY WILL REQUEST THE APPOINTING AUTHORITY DESIGNATED IN THE SCC, TO APPOINT THE ADJUDICATOR WITHIN 14 DAYS OF RECEIPT OF SUCH REQUEST.

23.2 SHOULD THE ADJUDICATOR RESIGN OR DIE, OR SHOULD THE PROCURING ENTITY AND THE CONTRACTOR AGREE THAT THE ADJUDICATOR IS NOT FUNCTIONING IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT, A NEW ADJUDICATOR SHALL BE JOINTLY APPOINTED BY THE PROCURING ENTITY AND THE CONTRACTOR. IN CASE OF DISAGREEMENT BETWEEN THE PROCURING ENTITY AND THE CONTRACTOR, WITHIN 30 DAYS, THE ADJUDICATOR SHALL BE DESIGNATED BY THE APPOINTING AUTHORITY DESIGNATED IN THE **SCC** AT THE REQUEST OF EITHER PARTY, WITHIN 14 DAYS OF RECEIPT OF SUCH REQUEST.

23.3 THE ADJUDICATOR SHALL BE PAID BY THE HOUR AT THE RATE SPECIFIED IN THE SCC, TOGETHER WITH REIMBURSABLE EXPENSES OF THE TYPE'S SPECIFIED IN THE **SCC**, AND THE COST SHALL BE DIVIDED EQUALLY BETWEEN THE PROCURING ENTITY AND THE SERVICE PROVIDER, WHATEVER DECISION IS REACHED BY THE ADJUDICATOR. EITHER PARTY MAY REFER A DECISION OF THE ADJUDICATOR TO AN ARBITRATOR WITHIN 28 DAYS OF THE ADJUDICATOR'S WRITTEN DECISION. IF NEITHER PARTY REFERS THE DISPUTE TO ARBITRATION WITHIN THE ABOVE 28 DAYS, THE ADJUDICATOR'S DECISION WILL BE FINAL AND BINDING.

24. SETTLEMENT OF CLAIMS AND DISPUTES

24.1 CONTRACTOR'S CLAIMS

24.1.1 IF THE CONTRACTOR CONSIDERS ITSELF TO BE ENTITLED TO ANY EXTENSION OF THE TIME FOR COMPLETION AND/OR ANY ADDITIONAL PAYMENT, UNDER ANY CLAUSE OF THESE CONDITIONS OR OTHERWISE IN CONNECTION WITH THE CONTRACT, THE CONTRACTOR SHALL GIVE NOTICE TO THE PROJECT MANAGER, DESCRIBING THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM. THE NOTICE SHALL BE GIVEN AS SOON AS PRACTICABLE, AND NOT LATER THAN 30 DAYS AFTER THE CONTRACTOR BECAME AWARE, OR SHOULD HAVE BECOME AWARE, OF THE EVENT OR CIRCUMSTANCE.

24.1.2 IF THE CONTRACTOR FAILS TO GIVE NOTICE OF A CLAIM WITHIN SUCH PERIOD OF 30 DAYS, THE TIME FOR COMPLETION SHALL NOT BE EXTENDED, THE CONTRACTOR SHALL NOT BE ENTITLED TO ADDITIONAL PAYMENT, AND THE PROCURING ENTITY SHALL BE DISCHARGED FROM ALL LIABILITY IN CONNECTION WITH THE CLAIM. OTHERWISE, THE FOLLOWING PROVISIONS OF THIS SUB- CLAUSE SHALL APPLY.

24.1.3 THE CONTRACTOR SHALL ALSO SUBMIT ANY OTHER NOTICES WHICH ARE REQUIRED BY THE CONTRACT, AND SUPPORTING PARTICULARS FOR THE CLAIM, ALL AS RELEVANT TO SUCH EVENT OR CIRCUMSTANCE.

24.1.4 THE CONTRACTOR SHALL KEEP SUCH CONTEMPORARY RECORDS AS MAY BE NECESSARY TO SUBSTANTIATE ANY CLAIM, EITHER ON THE SITE OR AT ANOTHER LOCATION ACCEPTABLE TO THE PROJECT MANAGER. WITHOUT ADMITTING THE PROCURING ENTITY'S LIABILITY, THE PROJECT MANAGER MAY, AFTER RECEIVING ANY NOTICE UNDER THIS SUB-CLAUSE, MONITOR THE RECORD- KEEPING AND/OR INSTRUCT THE CONTRACTOR TO KEEP FURTHER CONTEMPORARY RECORDS. THE CONTRACTOR SHALL PERMIT THE PROJECT MANAGER TO INSPECT ALL THESE RECORDS, AND SHALL (IF INSTRUCTED) SUBMIT COPIES TO THE PROJECT MANAGER.

24.1.5 WITHIN 42 DAYS AFTER THE CONTRACTOR BECAME AWARE (OR SHOULD HAVE BECOME AWARE) OF THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM, OR WITHIN SUCH OTHER PERIOD AS MAY BE PROPOSED BY THE CONTRACTOR AND APPROVED BY THE PROJECT MANAGER, THE CONTRACTOR SHALL SEND TO THE PROJECT MANAGER A FULLY DETAILED CLAIM WHICH INCLUDES FULL SUPPORTING PARTICULARS OF THE BASIS OF THE CLAIM AND OF THE EXTENSION OF TIME AND/OR ADDITIONAL PAYMENT CLAIMED. IF THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM HAS A CONTINUING EFFECT:

A) THIS FULLY DETAILED CLAIM SHALL BE CONSIDERED AS INTERIM;
B) THE CONTRACTOR SHALL SEND FURTHER INTERIM CLAIMS AT MONTHLY INTERVALS, GIVING THE ACCUMULATED DELAY AND/OR AMOUNT CLAIMED, AND SUCH FURTHER PARTICULARS AS THE PROJECT MANAGER MAY REASONABLY REQUIRE; AND
C) THE CONTRACTOR SHALL SEND A FINAL CLAIM WITHIN 30 DAYS AFTER THE END OF THE EFFECTS RESULTING FROM THE EVENT OR CIRCUMSTANCE, OR WITHIN SUCH OTHER PERIOD AS MAY BE PROPOSED BY THE CONTRACTOR AND APPROVED BY THE PROJECT MANAGER.

24.1.6 WITHIN 42 DAYS AFTER RECEIVING A NOTICE OF A CLAIM OR ANY FURTHER PARTICULARS SUPPORTING A PREVIOUS CLAIM, OR WITHIN SUCH OTHER PERIOD AS MAY BE PROPOSED BY THE PROJECT MANAGER AND APPROVED BY THE CONTRACTOR, THE PROJECT MANAGER SHALL RESPOND WITH APPROVAL, OR WITH DISAPPROVAL AND DETAILED COMMENTS. HE MAY ALSO REQUEST ANY NECESSARY FURTHER PARTICULARS, BUT SHALL NEVERTHELESS GIVE HIS RESPONSE ON THE PRINCIPLES OF THE CLAIM WITHIN THE ABOVE DEFINED TIME PERIOD.

24.1.7 WITHIN THE ABOVE DEFINED PERIOD OF 42 DAYS, THE PROJECT MANAGER SHALL PROCEED IN ACCORDANCE WITH SUB-CLAUSE

24.1.8 [DETERMINATIONS] TO AGREE OR DETERMINE (I) THE EXTENSION (IF ANY) OF THE TIME FOR COMPLETION (BEFORE OR AFTER ITS EXPIRY) IN ACCORDANCE WITH CLAUSE 27 [EXTENSION OF TIME FOR COMPLETION], AND/OR (II) THE ADDITIONAL PAYMENT (IF ANY) TO WHICH THE CONTRACTOR IS ENTITLED UNDER THE CONTRACT.

24.1.9 EACH PAYMENT CERTIFICATE SHALL INCLUDE SUCH ADDITIONAL PAYMENT FOR ANY CLAIM AS HAS BEEN REASONABLY SUBSTANTIATED AS DUE UNDER THE RELEVANT PROVISION OF THE CONTRACT. UNLESS AND UNTIL THE PARTICULARS SUPPLIED ARE SUFFICIENT TO SUBSTANTIATE THE WHOLE OF THE CLAIM, THE CONTRACTOR SHALL ONLY BE ENTITLED TO PAYMENT FOR SUCH PART OF THE CLAIM AS HE HAS BEEN ABLE TO SUBSTANTIATE.

24.1.10 IF THE PROJECT MANAGER DOES NOT RESPOND WITHIN THE TIMEFRAME DEFINED IN THIS CLAUSE, EITHER PARTY MAY CONSIDER THAT THE CLAIM IS REJECTED BY THE PROJECT MANAGER AND ANY OF THE PARTIES MAY REFER TO ARBITRATION IN ACCORDANCE WITH SUB-CLAUSE 24.4 [ARBITRATION].

24.1.11 THE REQUIREMENTS OF THIS SUB-CLAUSE ARE IN ADDITION TO THOSE OF ANY OTHER SUB-CLAUSE WHICH MAY APPLY TO A CLAIM. IF THE CONTRACTOR FAILS TO COMPLY WITH THIS OR ANOTHER SUB-CLAUSE IN RELATION TO ANY CLAIM, ANY EXTENSION OF TIME AND/OR ADDITIONAL PAYMENT SHALL TAKE ACCOUNT OF THE EXTENT (IF ANY) TO WHICH THE FAILURE HAS PREVENTED OR PREJUDICED PROPER INVESTIGATION OF THE CLAIM, UNLESS THE CLAIM IS EXCLUDED UNDER THE SECOND PARAGRAPH OF THIS SUB-CLAUSE 24.3.1.

24.2 AMICABLE SETTLEMENT

24.2.1 WHERE A NOTICE OF A CLAIM HAS BEEN GIVEN, BOTH PARTIES SHALL ATTEMPT TO SETTLE THE DISPUTE AMICABLY BEFORE THE COMMENCEMENT OF ARBITRATION. HOWEVER, UNLESS BOTH PARTIES AGREE OTHERWISE, THE PARTY GIVING A NOTICE OF A CLAIM IN ACCORDANCE WITH SUB-CLAUSE 24.1 ABOVE SHOULD MOVE TO COMMENCE ARBITRATION AFTER THE FIFTY-SIXTH DAY FROM THE DAY ON WHICH A NOTICE OF A CLAIM WAS GIVEN, EVEN IF NO ATTEMPT AT AN AMICABLE SETTLEMENT HAS BEEN MADE.

24.3 MATTERS THAT MAY BE REFERRED TO ARBITRATION

24.3.1 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:

A) THE APPOINTMENT OF A REPLACEMENT PROJECT MANAGER UPON THE SAID PERSON CEASING TO ACT.

B) WHETHER OR NOT THE ISSUE OF AN INSTRUCTION BY THE PROJECT MANAGER IS EMPOWERED BY THESE CONDITIONS.

C) WHETHER OR NOT A CERTIFICATE HAS BEEN IMPROPERLY WITHHELD OR IS NOT IN ACCORDANCE WITH THESE CONDITIONS.

E) ANY DISPUTE ARISING IN RESPECT OF WAR RISKS OR WAR DAMAGE.

F) 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 PROCURING ENTITY AND THE CONTRACTOR AGREE OTHERWISE IN WRITING.

24.4 ARBITRATION

24.4.1 ANY CLAIM OR DISPUTE BETWEEN THE PARTIES ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT NOT SETTLED AMICABLY IN ACCORDANCE WITH SUB-CLAUSE 24.3 SHALL BE FINALLY SETTLED BY ARBITRATION.

24.4.2 NO ARBITRATION PROCEEDINGS SHALL BE COMMENCED ON ANY CLAIM OR DISPUTE WHERE NOTICE OF A CLAIM OR DISPUTE 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.

24.4.3 NOTWITHSTANDING THE ISSUE OF A NOTICE AS STATED ABOVE, THE ARBITRATION OF SUCH A CLAIM OR DISPUTE SHALL NOT COMMENCE UNLESS AN ATTEMPT HAS IN THE FIRST INSTANCE BEEN MADE BY THE PARTIES TO SETTLE SUCH CLAIM OR DISPUTE AMICABLY WITH OR WITHOUT THE ASSISTANCE OF THIRD PARTIES. PROOF OF SUCH ATTEMPT SHALL BE REQUIRED.

24.4.4 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.

24.4.5 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.

24.4.6 THE ARBITRATORS SHALL HAVE FULL POWER TO OPEN UP, REVIEW AND REVISE ANY CERTIFICATE, DETERMINATION, INSTRUCTION, OPINION OR VALUATION OF THE PROJECT MANAGER, RELEVANT TO THE DISPUTE. NOTHING SHALL DISQUALIFY REPRESENTATIVES OF THE PARTIES AND THE PROJECT MANAGER FROM BEING CALLED AS A WITNESS AND GIVING EVIDENCE BEFORE THE ARBITRATORS ON ANY MATTER WHATSOEVER RELEVANT TO THE DISPUTE.

24.4.7 NEITHER PARTY SHALL BE LIMITED IN THE PROCEEDINGS BEFORE THE ARBITRATORS TO THE EVIDENCE, OR TO THE REASONS FOR DISSATISFACTION GIVEN IN ITS NOTICE OF DISSATISFACTION.

24.4.8 ARBITRATION MAY BE COMMENCED PRIOR TO OR AFTER COMPLETION OF THE WORKS. THE OBLIGATIONS OF THE PARTIES, AND THE PROJECT MANAGER SHALL NOT BE ALTERED BY REASON OF ANY ARBITRATION BEING CONDUCTED DURING THE PROGRESS OF THE WORKS.

24.4.9 THE TERMS OF THE REMUNERATION OF EACH OR ALL THE MEMBERS OF ARBITRATION SHALL BE MUTUALLY AGREED UPON BY THE PARTIES WHEN AGREEING THE TERMS OF APPOINTMENT. EACH PARTY SHALL BE RESPONSIBLE FOR PAYING ONE-HALF OF THIS REMUNERATION.

24.5 ARBITRATION WITH NATIONAL CONTRACTORS

24.5.1 IF THE CONTRACT IS WITH NATIONAL CONTRACTORS, ARBITRATION PROCEEDINGS WILL BE CONDUCTED IN ACCORDANCE WITH THE ARBITRATION LAWS OF KENYA. IN CASE OF ANY CLAIM OR DISPUTE, SUCH CLAIM OR 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, ON THE REQUEST OF THE APPLYING PARTY, 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

24.5.2 THE INSTITUTION WRITTEN TO FIRST BY THE AGGRIEVED PARTY SHALL TAKE PRECEDENCE OVER ALL OTHER INSTITUTIONS.

24.6 ALTERNATIVE ARBITRATION PROCEEDINGS

24.7 FAILURE TO COMPLY WITH ARBITRATOR'S DECISION

24.7.1 THE AWARD OF SUCH ARBITRATOR SHALL BE FINAL AND BINDING UPON THE PARTIES.

24.7.2 WHERE A PARTY IS AGGRIEVED BY THE DECISION OF THE ARBITOR, THE PARTY MAY REFER THE MATTER TO A COMPETENT COURT OF LAW.

24.7.3 IN THE EVENT THAT A PARTY FAILS TO COMPLY WITH A FINAL AND BINDING ARBITRATOR'S DECISION, THEN THE OTHER PARTY MAY, WITHOUT PREJUDICE TO ANY OTHER RIGHTS IT MAY HAVE, REFER THE MATTER TO A COMPETENT COURT OF LAW.

24.8 CONTRACT OPERATIONS CONTINUATION

24.8.1 NOTWITHSTANDING ANY REFERENCE TO ARBITRATION HEREIN,

A) THE PARTIES SHALL CONTINUE TO PERFORM THEIR RESPECTIVE OBLIGATIONS UNDER THE CONTRACT UNLESS THEY OTHERWISE AGREE; AND

B) THE PROCURING ENTITY SHALL PAY THE CONTRACTOR ANY MONIES DUE THE CONTRACTOR.

25. FRAUD AND CORRUPTION

25.1 THE GOVERNMENT REQUIRES COMPLIANCE WITH THE COUNTRY'S ANTI-CORRUPTION LAWS AND ITS PREVAILING SANCTIONS POLICIES AND PROCEDURES AS SET FORTH IN THE CONSTITUTION OF KENYA AND ITS STATUTES.

25.2 THE PROCURING ENTITY REQUIRES THE CONTRACTOR TO DISCLOSE ANY COMMISSIONS OR FEES THAT MAY HAVE BEEN PAID OR ARE TO BE PAID TO AGENTS OR ANY OTHER PARTY WITH RESPECT TO THE BIDDING PROCESS OR - IMPLEMETATION OF THE CONTRACT. THE INFORMATION DISCLOSED MUST INCLUDE AT LEAST THE NAME AND ADDRESS OF THE AGENT OR OTHER PARTY, THE AMOUNT AND CURRENCY, AND THE PURPOSE OF THE COMMISSION, GRATUITY OR FEE.

B. TIME CONTROL

eGP Kenya
UNUNUZI WA UWAZI

26. PROGRAM

26.1 WITHIN THE TIME STATED IN THE **SCC,** AFTER THE DATE OF THE LETTER OF ACCEPTANCE, 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. IN THE CASE OF A LUMP SUM CONTRACT, THE ACTIVITIES IN THE PROGRAM SHALL BE CONSISTENT WITH THOSE IN THE ACTIVITY SCHEDULE.

26.3 THE CONTRACTOR SHALL SUBMIT TO THE PROJECT MANAGER FOR APPROVAL AN UPDATED PROGRAM AT INTERVALS NO LONGER THAN THE PERIOD STATED IN THE **SCC.** IF THE CONTRACTOR DOES NOT SUBMIT AN UPDATED PROGRAM WITHIN THIS PERIOD, THE PROJECT MANAGER MAY WITHHOLD THE AMOUNT STATED IN THE **SCC** 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. IN THE CASE OF A LUMP SUM CONTRACT, THE CONTRACTOR SHALL PROVIDE AN UPDATED ACTIVITY SCHEDULE WITHIN 14 DAYS OF BEING INSTRUCTED TO BY THE PROJECT MANAGER.

26.4 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.

27. EXTENSION OF THE INTENDED COMPLETION DATE

27.1 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.

27.2 THE PROJECT MANAGER SHALL DECIDE WHETHER AND BY HOW MUCH TO EXTEND THE INTENDED COMPLETION DATE WITHIN 21 DAYS OF THE CONTRACTOR ASKING THE PROJECT MANAGER FOR A DECISION UPON THE EFFECT OF A COMPENSATION EVENT OR VARIATION AND SUBMITTING FULL SUPPORTING INFORMATION. IF THE CONTRACTOR HAS FAILED TO GIVE EARLY WARNING OF A DELAY OR HAS FAILED TO COOPERATE IN DEALING WITH A DELAY, THE DELAY BY THIS FAILURE SHALL NOT BE CONSIDERED IN ASSESSING THE NEW INTENDED COMPLETION DATE.

28. ACCELERATION

28.1 WHEN THE PROCURING ENTITY WANTS THE CONTRACTOR TO FINISH BEFORE THE INTENDED COMPLETION DATE, THE PROJECT MANAGER SHALL OBTAIN PRICED PROPOSALS FOR ACHIEVING THE NECESSARY ACCELERATION FROM THE CONTRACTOR. IF THE PROCURING ENTITY ACCEPTS THESE PROPOSALS, THE INTENDED COMPLETION DATE SHALL BE ADJUSTED ACCORDINGLY AND CONFIRMED BY BOTH THE PROCURING ENTITY AND THE CONTRACTOR.
28.2 IF THE CONTRACTOR'S PRICED PROPOSALS FOR AN ACCELERATION ARE ACCEPTED BY THE PROCURING ENTITY, THEY ARE INCORPORATED IN THE CONTRACT PRICE AND TREATED AS A VARIATION.

29. DELAYS ORDERED BY THE PROJECT MANAGER

29.1 THE PROJECT MANAGER MAY INSTRUCT THE CONTRACTOR TO DELAY THE START OR PROGRESS OF ANY ACTIVITY WITHIN THE WORKS.

30. MANAGEMENT MEETINGS

30.1 EITHER THE PROJECT MANAGER OR THE CONTRACTOR MAY REQUIRE THE OTHER TO ATTEND A MANAGEMENT MEETING. THE BUSINESS OF A MANAGEMENT MEETING SHALL BE TO REVIEW THE PLANS FOR REMAINING WORK AND TO DEAL WITH MATTERS RAISED IN ACCORDANCE WITH THE EARLY WARNING PROCEDURE.
30.2 THE PROJECT MANAGER SHALL RECORD THE BUSINESS OF MANAGEMENT MEETINGS AND PROVIDE COPIES OF THE RECORD TO THOSE ATTENDING THE MEETING AND TO THE PROCURING ENTITY. THE RESPONSIBILITY OF THE PARTIES FOR ACTIONS TO BE TAKEN SHALL BE DECIDED BY THE PROJECT MANAGER EITHER AT THE MANAGEMENT MEETING OR AFTER THE MANAGEMENT MEETING AND STATED IN WRITING TO ALL WHO ATTENDED THE MEETING.

31. EARLY WARNING

31.1 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.

31.2 THE CONTRACTOR SHALL COOPERATE WITH THE PROJECT MANAGER IN MAKING AND CONSIDERING PROPOSALS FOR HOW THE EFFECT OF SUCH AN EVENT OR CIRCUMSTANCE CAN BE AVOIDED OR REDUCED BY ANYONE INVOLVED IN THE WORK AND IN CARRYING OUT ANY RESULTING INSTRUCTION OF THE PROJECT MANAGER.

C. QUALITY CONTROL

32. IDENTIFYING DEFECTS

32.1 THE PROJECT MANAGER SHALL CHECK THE CONTRACTOR'S WORK AND NOTIFY THE CONTRACTOR OF ANY DEFECTS THAT ARE FOUND. SUCH CHECKING SHALL NOT AFFECT THE CONTRACTOR'S RESPONSIBILITIES. THE PROJECT MANAGER MAY INSTRUCT THE CONTRACTOR TO SEARCH FOR A DEFECT AND TO UNCOVER AND TEST ANY WORK THAT THE PROJECT MANAGER CONSIDERS MAY HAVE A DEFECT.

33. TESTS

33.1 IF THE PROJECT MANAGER INSTRUCTS THE CONTRACTOR TO CARRY OUT A TEST NOT SPECIFIED IN THE SPECIFICATION TO CHECK WHETHER ANY WORK HAS A DEFECT AND THE TEST SHOWS THAT IT DOES, THE CONTRACTOR SHALL PAY FOR THE TEST AND ANY SAMPLES. IF THERE IS NO DEFECT, THE TEST SHALL BE A COMPENSATION EVENT.

34. CORRECTION OF DEFECTS

34.1 THE PROJECT MANAGER SHALL GIVE NOTICE TO THE CONTRACTOR OF ANY DEFECTS BEFORE THE END OF THE DEFECTS LIABILITY PERIOD, WHICH BEGINS AT COMPLETION, AND IS DEFINED IN THE **SCC.** THE DEFECTS LIABILITY PERIOD SHALL BE EXTENDED FOR AS LONG AS DEFECTS REMAIN TO BE CORRECTED.

34.2 EVERY TIME NOTICE OF A DEFECT IS GIVEN, THE CONTRACTOR SHALL CORRECT THE NOTIFIED DEFECT WITHIN THE LENGTH OF TIME SPECIFIED BY THE PROJECT MANAGER'S NOTICE.

35. UNCORRECTED DEFECTS

35.1 IF THE CONTRACTOR HAS NOT CORRECTED A DEFECT WITHIN THE TIME SPECIFIED IN THE PROJECT MANAGER'S NOTICE, THE PROJECT MANAGER SHALL ASSESS THE COST OF HAVING THE DEFECT CORRECTED, AND THE CONTRACTOR SHALL PAY THIS AMOUNT.

D. COST CONTROL

36. CONTRACT PRICE

36.1 THE BILL OF QUANTITIES SHALL CONTAIN PRICED ITEMS FOR THE WORKS TO BE PERFORMED BY THE CONTRACTOR. THE BILL OF QUANTITIES IS USED TO CALCULATE THE CONTRACT PRICE. THE CONTRACTOR WILL BE PAID FOR THE QUANTITY OF THE WORK ACCOMPLISHED AT THE RATE IN THE BILL OF QUANTITIES FOR EACH ITEM.

36.2 THE CONTRACTOR SHALL PROVIDE UPDATED ACTIVITY SCHEDULES WITHIN 14 DAYS OF BEING INSTRUCTED TO BY THE PROJECT MANAGER. THE ACTIVITY SCHEDULE SHALL CONTAIN THE PRICED ACTIVITY FOR THE WORKS TO BE PERFORMED BY THE CONTRACTOR . THE ACTIVITY SCHEDULE IS USED TO MONITOR AND CONTROL THE PERFORMANCE OF ACTIVITIES ON WHICH BASIS THE CONTRACTOR WILL BE PAID. IF PAYMENT FOR MATERIALS ON SITE SHALL BE MADE SEPARATELY, THE CONTRACTOR SHALL SHOW DELIVERY OF MATERIALS TO THE SITE SEPARATELY ON THE ACTIVITY SCHEDULE.

37. CHANGES IN THE CONTRACT PRICE8

37.1 IF THE FINAL QUANTITY OF THE WORK DONE DIFFERS FROM THE QUANTITY IN THE BILL OF QUANTITIES FOR THE PARTICULAR ITEM BY MORE THAN 25 PERCENT, PROVIDED THE CHANGE EXCEEDS 1 PERCENT OF THE INITIAL CONTRACT PRICE, THE PROJECT MANAGER SHALL ADJUST THE RATE TO ALLOW FOR THE CHANGE. THE PROJECT MANAGER SHALL NOT ADJUST RATES FROM CHANGES IN QUANTITIES IF THEREBY THE INITIAL CONTRACT PRICE IS EXCEEDED BY MORE THAN 15 PERCENT, EXCEPT WITH THE PRIOR APPROVAL OF THE PROCURING ENTITY.

37.2 IF REQUESTED BY THE PROJECT MANAGER, THE CONTRACTOR SHALL PROVIDE THE PROJECT MANAGER WITH A DETAILED COST BREAKDOWN OF ANY RATE IN THE BILL OF QUANTITIES.

38. VARIATIONS

38.1 ALL VARIATIONS SHALL BE INCLUDED IN UPDATED PROGRAMS9 PRODUCED BY THE CONTRACTOR.

38.2 THE CONTRACTOR SHALL PROVIDE THE PROJECT MANAGER WITH A QUOTATION FOR CARRYING OUT THE VARIATION WHEN REQUESTED TO DO SO BY THE PROJECT MANAGER. THE PROJECT MANAGER SHALL ASSESS THE QUOTATION, WHICH SHALL BE GIVEN WITHIN SEVEN (7) DAYS OF THE REQUEST OR WITHIN ANY LONGER PERIOD STATED BY THE PROJECT MANAGER AND BEFORE THE VARIATION IS ORDERED.

38.3 IF THE CONTRACTOR'S QUOTATION IS UNREASONABLE, THE PROJECT MANAGER MAY ORDER THE VARIATION AND MAKE A CHANGE TO THE CONTRACT PRICE, WHICH SHALL BE BASED ON THE PROJECT MANAGER'S OWN FORECAST OF THE EFFECTS OF THE VARIATION ON THE CONTRACTOR'S COSTS.

38.4 IF THE PROJECT MANAGER DECIDES THAT THE URGENCY OF VARYING THE WORK WOULD PREVENT A QUOTATION BEING GIVEN AND CONSIDERED WITHOUT DELAYING THE WORK, NO QUOTATION SHALL BE GIVEN AND THE VARIATION SHALL BE TREATED AS A COMPENSATION EVENT.

38.5 THE CONTRACTOR SHALL NOT BE ENTITLED TO ADDITIONAL PAYMENT FOR COSTS THAT COULD HAVE BEEN AVOIDED BY GIVING EARLY WARNING.

38.6 IF THE WORK IN THE VARIATION CORRESPONDS TO AN ITEM DESCRIPTION IN THE BILL OF QUANTITIES AND IF, IN THE OPINION OF THE PROJECT MANAGER, THE QUANTITY OF WORK ABOVE THE LIMIT STATED IN SUB-CLAUSE 39.1 OR THE TIMING OF ITS EXECUTION DO NOT CAUSE THE COST PER UNIT OF QUANTITY TO CHANGE, THE RATE IN THE BILL OF QUANTITIES SHALL BE USED TO CALCULATE THE VALUE OF THE VARIATION. IF THE COST PER UNIT OF QUANTITY CHANGES, OR IF THE NATURE OR TIMING OF THE WORK IN THE VARIATION DOES NOT CORRESPOND WITH ITEMS IN THE BILL OF QUANTITIES, THE QUOTATION BY THE CONTRACTOR SHALL BE IN THE FORM OF NEW RATES FOR THE RELEVANT ITEMS OF WORK

38.7 VALUE ENGINEERING: THE CONTRACTOR MAY PREPARE, AT ITS OWN COST, A VALUE ENGINEERING PROPOSAL AT ANY TIME DURING THE PERFORMANCE OF THE CONTRACT. THE VALUE ENGINEERING PROPOSAL SHALL, AT A MINIMUM, INCLUDE THE FOLLOWING;
A) THE PROPOSED CHANGE(S), AND A DESCRIPTION OF THE DIFFERENCE TO THE EXISTING CONTRACT REQUIREMENTS;
B) A FULL COST/BENEFIT ANALYSIS OF THE PROPOSED CHANGE(S) INCLUDING A DESCRIPTION AND ESTIMATE OF COSTS (INCLUDING LIFE CYCLE COSTS) THE PROCURING ENTITY MAY INCUR IN IMPLEMENTING THE VALUE ENGINEERING PROPOSAL; AND
C) A DESCRIPTION OF ANY EFFECT(S) OF THE CHANGE ON PERFORMANCE/FUNCTIONALITY.

38.8 THE PROCURING ENTITY MAY ACCEPT THE VALUE ENGINEERING PROPOSAL IF THE PROPOSAL DEMONSTRATES BENEFITS THAT:
A) ACCELERATE THE CONTRACT COMPLETION PERIOD; OR
B) REDUCE THE CONTRACT PRICE OR THE LIFE CYCLE COSTS TO THE PROCURING ENTITY; OR
C) IMPROVE THE QUALITY, EFFICIENCY, SAFETY OR SUSTAINABILITY OF THE FACILITIES; OR
D) YIELD ANY OTHER BENEFITS TO THE PROCURING ENTITY, WITHOUT COMPROMISING THE FUNCTIONALITY OF THE WORKS.

38.9 IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY AND RESULTS IN:
A) A REDUCTION OF THE CONTRACT PRICE; THE AMOUNT TO BE PAID TO THE CONTRACTOR SHALL BE THE PERCENTAGE SPECIFIED IN THE **SCC** OF THE REDUCTION IN THE CONTRACT PRICE; OR

B) AN INCREASE IN THE CONTRACT PRICE; BUT RESULTS IN A REDUCTION IN LIFE CYCLE COSTS DUE TO ANY BENEFIT DESCRIBED IN
(A) TO (D) ABOVE, THE AMOUNT TO BE PAID TO THE CONTRACTOR SHALL BE THE FULL INCREASE IN THE CONTRACT PRICE.

39. CASH FLOW FORECASTS

39.1 WHEN THE PROGRAM11, IS UPDATED, THE CONTRACTOR SHALL PROVIDE THE PROJECT MANAGER WITH AN UPDATED CASH FLOW FORECAST. THE CASH FLOW FORECAST SHALL INCLUDE DIFFERENT CURRENCIES, AS DEFINED IN THE CONTRACT, CONVERTED AS NECESSARY USING THE CONTRACT EXCHANGE RATES.

40. PAYMENT CERTIFICATES

40.1 THE CONTRACTOR SHALL SUBMIT TO THE PROJECT MANAGER MONTHLY STATEMENTS OF THE ESTIMATED VALUE OF THE WORK EXECUTED LESS THE CUMULATIVE AMOUNT CERTIFIED PREVIOUSLY.
40.2 THE PROJECT MANAGER SHALL CHECK THE CONTRACTOR'S MONTHLY STATEMENT AND CERTIFY THE AMOUNT TO BE PAID TO THE CONTRACTOR.
40.3 THE VALUE OF WORK EXECUTED SHALL BE DETERMINED BY THE PROJECT MANAGER.
40.4 THE VALUE OF WORK EXECUTED SHALL COMPRISE THE VALUE OF THE QUANTITIES OF WORK IN THE BILL OF QUANTITIES THAT HAVE BEEN COMPLETED12.
40.5 THE VALUE OF WORK EXECUTED SHALL INCLUDE THE VALUATION OF VARIATIONS AND COMPENSATION EVENTS.
40.6 THE PROJECT MANAGER MAY EXCLUDE ANY ITEM CERTIFIED IN A PREVIOUS CERTIFICATE OR REDUCE THE PROPORTION OF ANY ITEM PREVIOUSLY CERTIFIED IN ANY CERTIFICATE IN THE LIGHT OF LATER INFORMATION.
40.7 WHERE THE CONTRACT PRICE IS DIFFERENT FROM THE CORRECTED TENDER PRICE, IN ORDER TO ENSURE THE CONTRACTOR IS NOT PAID LESS OR MORE RELATIVE TO THE CONTRACT PRICE (WHICH WOULD BE THE TENDER PRICE), PAYMENT VALUATION CERTIFICATES AND VARIATION ORDERS ON OMISSIONS AND ADDITIONS VALUED BASED ON RATES IN THE BILL OF QUANTITIES OR SCHEDULE OF RATES IN THE TENDER, WILL BE ADJUSTED BY A PLUS OR MINUS PERCENTAGE. THE PERCENTAGE ALREADY WORKED OUT DURING TENDER EVALUATION IS WORKED OUT AS FOLLOWS: *(CORRECTED TENDER PRICE – TENDER PRICE)/TENDER PRICE X 100*.

41. PAYMENTS

41.1 PAYMENTS SHALL BE ADJUSTED FOR DEDUCTIONS FOR ADVANCE PAYMENTS AND RETENTION. THE PROCURING ENTITY SHALL PAY THE CONTRACTOR THE AMOUNTS CERTIFIED BY THE PROJECT MANAGER WITHIN 30 DAYS OF THE DATE OF EACH CERTIFICATE. IF THE PROCURING ENTITY MAKES A LATE PAYMENT, THE CONTRACTOR SHALL BE PAID INTEREST ON THE LATE PAYMENT IN THE NEXT PAYMENT. INTEREST SHALL BE CALCULATED FROM THE DATE BY WHICH THE PAYMENT SHOULD HAVE BEEN MADE UP TO THE DATE WHEN THE LATE PAYMENT IS MADE AT THE PREVAILING RATE OF INTEREST FOR COMMERCIAL BORROWING FOR EACH OF THE CURRENCIES IN WHICH PAYMENTS ARE MADE.

41.2 IF AN AMOUNT CERTIFIED IS INCREASED IN A LATER CERTIFICATE OR AS A RESULT OF AN AWARD BY THE ADJUDICATOR OR AN ARBITRATOR, THE CONTRACTOR SHALL BE PAID INTEREST UPON THE DELAYED PAYMENT AS SET OUT IN THIS CLAUSE. INTEREST SHALL BE CALCULATED FROM THE DATE UPON WHICH THE INCREASED AMOUNT WOULD HAVE BEEN CERTIFIED IN THE ABSENCE OF DISPUTE.

41.3 UNLESS OTHERWISE STATED, ALL PAYMENTS AND DEDUCTIONS SHALL BE PAID OR CHARGED IN THE PROPORTIONS OF CURRENCIES COMPRISING THE CONTRACT PRICE.

41.4 ITEMS OF THE WORKS FOR WHICH NO RATE OR PRICE HAS BEEN ENTERED IN SHALL NOT BE PAID FOR BY THE PROCURING ENTITY AND SHALL BE DEEMED COVERED BY OTHER RATES AND PRICES IN THE CONTRACT.

42. COMPENSATION EVENTS

42.1 THE FOLLOWING SHALL BE COMPENSATION EVENTS:

A) THE PROCURING ENTITY DOES NOT GIVE ACCESS TO A PART OF THE SITE BY THE SITE POSSESSION DATE PURSUANT TO GCC SUB-CLAUSE 20.1.

B) THE PROCURING ENTITY MODIFIES THE SCHEDULE OF OTHER CONTRACTORS IN A WAY THAT AFFECTS THE WORK OF THE CONTRACTOR UNDER THE CONTRACT.

C) THE PROJECT MANAGER ORDERS A DELAY OR DOES NOT ISSUE DRAWINGS, SPECIFICATIONS, OR INSTRUCTIONS REQUIRED FOR EXECUTION OF THE WORKS ON TIME.

D) THE PROJECT MANAGER INSTRUCTS THE CONTRACTOR TO UNCOVER OR TO CARRY OUT ADDITIONAL TESTS UPON WORK, WHICH IS THEN FOUND TO HAVE NO DEFECTS.

E) THE PROJECT MANAGER UNREASONABLY DOES NOT APPROVE A SUBCONTRACT TO BE LET.

F) GROUND CONDITIONS ARE SUBSTANTIALLY MORE ADVERSE THAN COULD REASONABLY HAVE BEEN ASSUMED BEFORE ISSUANCE OF THE LETTER OF ACCEPTANCE FROM THE INFORMATION ISSUED TO BIDDERS (INCLUDING THE SITE INVESTIGATION REPORTS), FROM INFORMATION AVAILABLE PUBLICLY AND FROM A VISUAL INSPECTION OF THE SITE.

G) THE PROJECT MANAGER GIVES AN INSTRUCTION FOR DEALING WITH AN UNFORESEEN CONDITION, CAUSED BY THE PROCURING ENTITY, OR ADDITIONAL WORK REQUIRED FOR SAFETY OR OTHER REASONS.

H) OTHER CONTRACTORS, PUBLIC AUTHORITIES, UTILITIES, OR THE PROCURING ENTITY DOES NOT WORK WITHIN THE DATES AND OTHER CONSTRAINTS STATED IN THE CONTRACT, AND THEY CAUSE DELAY OR EXTRA COST TO THE CONTRACTOR.

I) THE ADVANCE PAYMENT IS DELAYED.

J) THE EFFECTS ON THE CONTRACTOR OF ANY OF THE PROCURING ENTITY'S RISKS.

K) THE PROJECT MANAGER UNREASONABLY DELAYS ISSUING A CERTIFICATE OF COMPLETION.

42.2 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.

42.3 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 SHALL ASSUME THAT THE CONTRACTOR SHALL REACT COMPETENTLY AND PROMPTLY TO THE EVENT.

11*IN LUMP SUM CONTRACTS, ADD "OR ACTIVITY SCHEDULE" AFTER "PROGRAM."*
12IN LUMP SUM CONTRACTS, REPLACE THIS PARAGRAPH WITH THE FOLLOWING: "THE VALUE OF WORK EXECUTED SHALL COMPRISE THE VALUE OF COMPLETED ACTIVITIES IN THE ACTIVITY SCHEDULE."

42.4 THE CONTRACTOR SHALL NOT BE ENTITLED TO COMPENSATION TO THE EXTENT THAT THE PROCURING ENTITY'S INTERESTS ARE ADVERSELY AFFECTED BY THE CONTRACTOR'S NOT HAVING GIVEN EARLY WARNING OR NOT HAVING COOPERATED WITH THE PROJECT MANAGER.

43. TAX

43.1 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 BIDS FOR THE CONTRACT AND THE DATE OF THE LAST COMPLETION CERTIFICATE. THE ADJUSTMENT SHALL BE THE CHANGE IN THE AMOUNT OF TAX PAYABLE BY THE CONTRACTOR, PROVIDED SUCH CHANGES ARE NOT ALREADY REFLECTED IN THE CONTRACT PRICE OR ARE A RESULT OF GCC CLAUSE 44.

44. CURRENCY OF PAYMENT

44.1 ALL PAYMENTS UNDER THE CONTRACT SHALL BE MADE IN KENYA SHILLINGS

45. PRICE ADJUSTMENT

45.1 PRICES SHALL BE ADJUSTED FOR FLUCTUATIONS IN THE COST OF INPUTS ONLY IF PROVIDED FOR IN THE **SCC**. IF SO PROVIDED, THE AMOUNTS CERTIFIED IN EACH PAYMENT CERTIFICATE, BEFORE DEDUCTING FOR ADVANCE PAYMENT, SHALL BE ADJUSTED BY APPLYING THE RESPECTIVE PRICE ADJUSTMENT FACTOR TO THE PAYMENT AMOUNTS DUE IN EACH CURRENCY. A SEPARATE FORMULA OF THE TYPE SPECIFIED BELOW APPLIES:
P EQUALS TO A + B IM/IO
WHERE:
P IS THE ADJUSTMENT FACTOR FOR THE PORTION OF THE CONTRACT PRICE PAYABLE.
A AND B ARE COEFFICIENTS13 SPECIFIED IN THE **SCC**, REPRESENTING THE NON-ADJUSTABLE AND ADJUSTABLE PORTIONS, RESPECTIVELY, OF THE CONTRACT PRICE PAYABLE AND IM IS THE INDEX PREVAILING AT THE END OF THE MONTH BEING INVOICED AND IOC IS THE INDEX PREVAILING 30 DAYS BEFORE BID OPENING FOR INPUTS PAYABLE.

45.2 IF THE VALUE OF THE INDEX IS CHANGED AFTER IT HAS BEEN USED IN A CALCULATION, THE CALCULATION SHALL BE CORRECTED AND AN ADJUSTMENT MADE IN THE NEXT PAYMENT CERTIFICATE. THE INDEX VALUE SHALL BE DEEMED TO TAKE ACCOUNT OF ALL CHANGES IN COST DUE TO FLUCTUATIONS IN COSTS.

46. RETENTION

46.1 THE PROCURING ENTITY SHALL RETAIN FROM EACH PAYMENT DUE TO THE CONTRACTOR THE PROPORTION STATED IN THE **SCC** UNTIL COMPLETION OF THE WHOLE OF THE WORKS.

46.2 UPON THE ISSUE OF A CERTIFICATE OF COMPLETION OF THE WORKS BY THE PROJECT MANAGER, IN ACCORDANCE WITH GCC 53.1, HALF THE TOTAL AMOUNT RETAINED SHALL BE REPAID TO THE CONTRACTOR AND HALF WHEN THE DEFECTS LIABILITY PERIOD HAS PASSED AND THE PROJECT MANAGER HAS CERTIFIED THAT ALL DEFECTS NOTIFIED BY THE PROJECT MANAGER TO THE CONTRACTOR BEFORE THE END OF THIS PERIOD HAVE BEEN CORRECTED. THE CONTRACTOR MAY SUBSTITUTE RETENTION MONEY WITH AN “ON DEMAND” BANK GUARANTEE.

47. LIQUIDATED DAMAGES

47.1 THE CONTRACTOR SHALL PAY LIQUIDATED DAMAGES TO THE PROCURING ENTITY AT THE RATE PER DAY STATED IN THE **SCC** FOR EACH DAY THAT THE COMPLETION DATE IS LATER THAN THE INTENDED COMPLETION DATE. THE TOTAL AMOUNT OF LIQUIDATED DAMAGES SHALL NOT EXCEED THE AMOUNT DEFINED IN THE SCC. THE PROCURING ENTITY MAY DEDUCT LIQUIDATED DAMAGES FROM PAYMENTS DUE TO THE CONTRACTOR. PAYMENT OF LIQUIDATED DAMAGES SHALL NOT AFFECT THE CONTRACTOR'S LIABILITIES.

47.2 IF THE INTENDED COMPLETION DATE IS EXTENDED AFTER LIQUIDATED DAMAGES HAVE BEEN PAID, THE PROJECT MANAGER SHALL CORRECT ANY OVERPAYMENT OF LIQUIDATED DAMAGES BY THE CONTRACTOR BY ADJUSTING THE NEXT PAYMENT CERTIFICATE. THE CONTRACTOR SHALL BE PAID INTEREST ON THE OVERPAYMENT, CALCULATED FROM THE DATE OF PAYMENT TO THE DATE OF REPAYMENT, AT THE RATES SPECIFIED IN GCC SUB-CLAUSE 41.1.

48. BONUS

48.1 THE CONTRACTOR SHALL BE PAID A BONUS CALCULATED AT THE RATE PER CALENDAR DAY STATED IN THE **SCC** FOR EACH DAY (LESS ANY DAYS FOR WHICH THE CONTRACTOR IS PAID FOR ACCELERATION) THAT THE COMPLETION IS EARLIER THAN THE INTENDED COMPLETION DATE. THE PROJECT MANAGER SHALL CERTIFY THAT THE WORKS ARE COMPLETE, ALTHOUGH THEY MAY NOT BE DUE TO BE COMPLETE.

49. ADVANCE PAYMENT

49.1 THE PROCURING ENTITY SHALL MAKE ADVANCE PAYMENT TO THE CONTRACTOR OF THE AMOUNTS STATED IN THE **SCC** BY THE DATE STATED IN THE SCC, AGAINST PROVISION BY THE CONTRACTOR OF AN UNCONDITIONAL BANK GUARANTEE IN A FORM AND BY A BANK ACCEPTABLE TO THE PROCURING ENTITY IN AMOUNTS AND CURRENCIES EQUAL TO THE ADVANCE PAYMENT. THE GUARANTEE SHALL REMAIN EFFECTIVE UNTIL THE ADVANCE PAYMENT HAS BEEN REPAID, BUT THE AMOUNT OF THE GUARANTEE SHALL BE PROGRESSIVELY REDUCED BY THE AMOUNTS REPAID BY THE CONTRACTOR. INTEREST SHALL NOT BE CHARGED ON THE ADVANCE PAYMENT.

49.2 THE CONTRACTOR IS TO USE THE ADVANCE PAYMENT ONLY TO PAY FOR EQUIPMENT, PLANT, MATERIALS, AND MOBILIZATION EXPENSES REQUIRED SPECIFICALLY FOR EXECUTION OF THE CONTRACT. THE CONTRACTOR SHALL DEMONSTRATE THAT ADVANCE PAYMENT HAS BEEN USED IN THIS WAY BY SUPPLYING COPIES OF INVOICES OR OTHER DOCUMENTS TO THE PROJECT MANAGER.

49.3 THE ADVANCE PAYMENT SHALL BE REPAID BY DEDUCTING PROPORTIONATE AMOUNTS FROM PAYMENTS OTHERWISE DUE TO THE CONTRACTOR, FOLLOWING THE SCHEDULE OF COMPLETED PERCENTAGES OF THE WORKS ON A PAYMENT BASIS. NO ACCOUNT SHALL BE TAKEN OF THE ADVANCE PAYMENT OR ITS REPAYMENT IN ASSESSING VALUATIONS OF WORK DONE, VARIATIONS, PRICE ADJUSTMENTS, COMPENSATION EVENTS, BONUSES, OR LIQUIDATED DAMAGES.

50. SECURITIES

50.1 THE PERFORMANCE SECURITY SHALL BE PROVIDED TO THE PROCURING ENTITY NO LATER THAN THE DATE SPECIFIED IN THE LETTER OF ACCEPTANCE AND SHALL BE ISSUED IN AN AMOUNT SPECIFIED IN THE **SCC,** BY A BANK OR SURETY ACCEPTABLE TO THE PROCURING ENTITY, AND DENOMINATED IN THE TYPES AND PROPORTIONS OF THE CURRENCIES IN WHICH THE CONTRACT PRICE IS PAYABLE. THE PERFORMANCE SECURITY SHALL BE VALID UNTIL A DATE 28 DAY FROM THE DATE OF ISSUE OF THE CERTIFICATE OF COMPLETION IN THE CASE OF A BANK GUARANTEE, AND UNTIL ONE YEAR FROM THE DATE OF ISSUE OF THE COMPLETION CERTIFICATE IN THE CASE OF A PERFORMANCE BOND.

51. DAY WORKS

51.1 IF APPLICABLE, THE DAY WORKS RATES IN THE CONTRACTOR'S BID SHALL BE USED ONLY WHEN THE PROJECT MANAGER HAS GIVEN WRITTEN INSTRUCTIONS IN ADVANCE FOR ADDITIONAL WORK TO BE PAID FOR IN THAT WAY.

51.2 ALL WORK TO BE PAID FOR AS DAY WORKS SHALL BE RECORDED BY THE CONTRACTOR ON FORMS APPROVED BY THE PROJECT MANAGER. EACH COMPLETED FORM SHALL BE VERIFIED AND SIGNED BY THE PROJECT MANAGER WITHIN TWO DAYS OF THE WORK BEING DONE.

51.3 THE CONTRACTOR SHALL BE PAID FOR DAY WORKS SUBJECT TO OBTAINING SIGNED DAY WORKS FORMS.

52. COST OF REPAIRS

52.1 LOSS OR DAMAGE TO THE WORKS OR MATERIALS TO BE INCORPORATED IN THE WORKS BETWEEN THE START DATE AND THE END OF THE DEFECTS CORRECTION PERIODS SHALL BE REMEDIED BY THE CONTRACTOR AT THE CONTRACTOR'S COST IF THE LOSS OR DAMAGE ARISES FROM THE CONTRACTOR'S ACTS OR OMISSIONS.

E. FINISHING THE CONTRACT

53. COMPLETION

53.1 THE CONTRACTOR SHALL REQUEST THE PROJECT MANAGER TO ISSUE A CERTIFICATE OF COMPLETION OF THE WORKS, AND THE PROJECT MANAGER SHALL DO SO UPON DECIDING THAT THE WHOLE OF THE WORKS IS COMPLETED.

54. TAKING OVER

54.1 THE PROCURING ENTITY SHALL TAKE OVER THE SITE AND THE WORKS WITHIN SEVEN DAYS OF THE PROJECT MANAGER'S ISSUING A CERTIFICATE OF COMPLETION.

55. FINAL ACCOUNT

55.1 THE CONTRACTOR SHALL SUPPLY THE PROJECT MANAGER WITH A DETAILED ACCOUNT OF THE TOTAL AMOUNT THAT THE CONTRACTOR CONSIDERS PAYABLE UNDER THE CONTRACT BEFORE THE END OF THE DEFECTS LIABILITY PERIOD. THE PROJECT MANAGER SHALL ISSUE A DEFECTS LIABILITY CERTIFICATE AND CERTIFY ANY FINAL PAYMENT THAT IS DUE TO THE CONTRACTOR WITHIN 56 DAYS OF RECEIVING THE CONTRACTOR'S ACCOUNT IF IT IS CORRECT AND COMPLETE. IF IT IS NOT, THE PROJECT MANAGER SHALL ISSUE WITHIN 56 DAYS A SCHEDULE THAT STATES THE SCOPE OF THE CORRECTIONS OR ADDITIONS THAT ARE NECESSARY. IF THE FINAL ACCOUNT IS STILL UNSATISFACTORY AFTER IT HAS BEEN RESUBMITTED, THE PROJECT MANAGER SHALL DECIDE ON THE AMOUNT PAYABLE TO THE CONTRACTOR AND ISSUE A PAYMENT CERTIFICATE.

56. OPERATING AND MAINTENANCE MANUALS

56.1 IF “AS BUILT” DRAWINGS AND/OR OPERATING AND MAINTENANCE MANUALS ARE REQUIRED, THE CONTRACTOR SHALL SUPPLY THEM BY THE DATES STATED IN THE **SCC**

56.2 IF THE CONTRACTOR DOES NOT SUPPLY THE DRAWINGS AND/OR MANUALS BY THE DATES STATED IN THE SCC PURSUANT TO GCC SUB-CLAUSE 56.1, OR THEY DO NOT RECEIVE THE PROJECT MANAGER'S APPROVAL, THE PROJECT MANAGER SHALL WITHHOLD THE AMOUNT STATED IN THE **SCC** FROM PAYMENTS DUE TO THE CONTRACTOR.

57. TERMINATION

57.1 THE PROCURING ENTITY OR THE CONTRACTOR MAY TERMINATE THE CONTRACT IF THE OTHER PARTY CAUSES A FUNDAMENTAL BREACH OF THE CONTRACT.

57.2 FUNDAMENTAL BREACHES OF CONTRACT SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING:

A) THE CONTRACTOR STOPS WORK FOR 30 DAYS WHEN NO STOPPAGE OF WORK IS SHOWN ON THE CURRENT PROGRAM AND THE STOPPAGE HAS NOT BEEN AUTHORIZED BY THE PROJECT MANAGER;

B) THE PROJECT MANAGER INSTRUCTS THE CONTRACTOR TO DELAY THE PROGRESS OF THE WORKS, AND THE INSTRUCTION IS NOT WITHDRAWN WITHIN 30 DAYS;

C) THE PROCURING ENTITY OR THE CONTRACTOR IS MADE BANKRUPT OR GOES INTO LIQUIDATION OTHER THAN FOR A RECONSTRUCTION OR AMALGAMATION;

D) A PAYMENT CERTIFIED BY THE PROJECT MANAGER IS NOT PAID BY THE PROCURING ENTITY TO THE CONTRACTOR WITHIN 84 DAYS OF THE DATE OF THE PROJECT MANAGER'S CERTIFICATE;

E) THE PROJECT MANAGER GIVES NOTICE THAT FAILURE TO CORRECT A PARTICULAR DEFECT IS A FUNDAMENTAL BREACH OF CONTRACT AND THE CONTRACTOR FAILS TO CORRECT IT WITHIN A REASONABLE PERIOD OF TIME DETERMINED BY THE PROJECT MANAGER;

F) THE CONTRACTOR DOES NOT MAINTAIN A SECURITY, WHICH IS REQUIRED;

G) THE CONTRACTOR HAS DELAYED THE COMPLETION OF THE WORKS BY THE NUMBER OF DAYS FOR WHICH THE MAXIMUM AMOUNT OF LIQUIDATED DAMAGES CAN BE PAID, AS DEFINED IN THE **SCC**; OR

H) IF THE CONTRACTOR, IN THE JUDGMENT OF THE PROCURING ENTITY HAS ENGAGED IN FRAUD AND CORRUPTION, AS DEFINED IN PARAGRAPH 2.2 A OF THE APPENDIX A TO THE GCC, IN COMPETING FOR OR IN EXECUTING THE CONTRACT, THEN THE PROCURING ENTITY MAY, AFTER GIVING FOURTEEN (14) DAYS WRITTEN NOTICE TO THE CONTRACTOR, TERMINATE THE CONTRACT AND EXPEL HIM FROM THE SITE.

57.3 NOTWITHSTANDING THE ABOVE, THE PROCURING ENTITY MAY TERMINATE THE CONTRACT FOR CONVENIENCE.

57.4 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.

57.5 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 GCC SUB-CLAUSE 56.2 ABOVE, THE PROJECT MANAGER SHALL DECIDE WHETHER THE BREACH IS FUNDAMENTAL OR NOT.

58. PAYMENT UPON TERMINATION

58.1 IF THE CONTRACT IS TERMINATED BECAUSE OF A FUNDAMENTAL BREACH OF CONTRACT BY THE CONTRACTOR, THE PROJECT MANAGER SHALL ISSUE A CERTIFICATE FOR THE VALUE OF THE WORK DONE AND MATERIALS ORDERED LESS ADVANCE PAYMENTS RECEIVED UP TO THE DATE OF THE ISSUE OF THE CERTIFICATE AND LESS THE PERCENTAGE TO APPLY TO THE VALUE OF THE WORK NOT COMPLETED, AS SPECIFIED IN THE **SCC**. ADDITIONAL LIQUIDATED DAMAGES SHALL NOT APPLY. IF THE TOTAL AMOUNT DUE TO THE PROCURING ENTITY EXCEEDS ANY PAYMENT DUE TO THE CONTRACTOR, THE DIFFERENCE SHALL BE A DEBT PAYABLE TO THE PROCURING ENTITY.

58.2 IF THE CONTRACT IS TERMINATED FOR THE PROCURING ENTITY'S CONVENIENCE OR BECAUSE OF A FUNDAMENTAL BREACH OF CONTRACT BY THE PROCURING ENTITY, THE PROJECT MANAGER SHALL ISSUE A CERTIFICATE FOR THE VALUE OF THE WORK DONE, MATERIALS ORDERED, THE REASONABLE COST OF REMOVAL OF EQUIPMENT, REPATRIATION OF THE CONTRACTOR'S PERSONNEL EMPLOYED SOLELY ON THE WORKS, AND THE CONTRACTOR'S COSTS OF PROTECTING AND SECURING THE WORKS, AND LESS ADVANCE PAYMENTS RECEIVED UP TO THE DATE OF THE CERTIFICATE.

59. PROPERTY

59.1 ALL MATERIALS ON THE SITE, PLANT, EQUIPMENT, TEMPORARY WORKS, AND WORKS SHALL BE DEEMED TO BE THE PROPERTY OF THE PROCURING ENTITY IF THE CONTRACT IS TERMINATED BECAUSE OF THE CONTRACTOR'S DEFAULT.

60. RELEASE FROM PERFORMANCE

60.1 IF THE CONTRACT IS FRUSTRATED BY THE OUTBREAK OF WAR OR BY ANY OTHER EVENT ENTIRELY OUTSIDE THE CONTROL OF EITHER THE PROCURING ENTITY OR THE CONTRACTOR, THE PROJECT MANAGER SHALL CERTIFY THAT THE CONTRACT HAS BEEN FRUSTRATED. THE CONTRACTOR SHALL MAKE THE SITE SAFE AND STOP WORK AS QUICKLY AS POSSIBLE AFTER RECEIVING THIS CERTIFICATE AND SHALL BE PAID FOR ALL WORK CARRIED OUT BEFORE RECEIVING IT AND FOR ANY WORK CARRIED OUT AFTERWARDS TO WHICH A COMMITMENT WAS MADE.

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SECTION IX - SPECIAL CONDITIONS OF CONTRACT

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Special Conditions of Contract (SCC)

	GCC Reference & SCC Detail	Filled By	Value to be Auto Populated in Tender Document
GCC Reference	**1. DEFINITIONS** Q) THE PROCURING ENTITY IS THE PARTY WHO EMPLOYS THE CONTRACTOR TO CARRY OUT THE WORKS, AS SPECIFIED IN THE **SCC**, WHO IS ALSO THE PROCURING ENTITY.	-	-
SCC Detail	THE PROCURING ENTITY IS..... [*INSERT NAME, ADDRESS, AND NAME OF AUTHORIZED REPRESENTATIVE*].	Auto Populate	STATE DEPARTMENT FOR HIGHER EDUCATION
GCC Reference	U) THE INTENDED COMPLETION DATE IS THE DATE ON WHICH IT IS INTENDED THAT THE CONTRACTOR SHALL COMPLETE THE WORKS. THE INTENDED COMPLETION DATE IS SPECIFIED IN THE **SCC**. THE INTENDED COMPLETION DATE MAY BE REVISED ONLY BY THE PROJECT MANAGER BY ISSUING AN EXTENSION OF TIME OR AN ACCELERATION ORDER.	-	-

SCC Detail	THE INTENDED COMPLETION DATE FOR THE WHOLE OF THE WORKS SHALL BE .....*[INSERT DATE]* *[IF DIFFERENT DATES ARE SPECIFIED FOR COMPLETION OF THE WORKS BY SECTION ("SECTIONAL COMPLETION" OR MILESTONES), THESE DATES SHOULD BE LISTED HERE*]	Manual Input	31ST MAY 2027
GCC Reference	X) THE PROJECT MANAGER IS THE PERSON NAMED IN THE **SCC** (OR ANY OTHER COMPETENT PERSON APPOINTED BY THE PROCURING ENTITY AND NOTIFIED TO THE CONTRACTOR, TO ACT IN REPLACEMENT OF THE PROJECT MANAGER) WHO IS RESPONSIBLE FOR SUPERVISING THE EXECUTION OF THE WORKS AND ADMINISTERING THE CONTRACT.	-	-
SCC Detail	THE PROJECT MANAGER IS..... [*INSERT NAME, ADDRESS, AND NAME OF AUTHORIZED REPRESENTATIVE*].	Manual Input	DR IRENE OKELLO
GCC Reference	Z) THE SITE IS THE AREA OF THE WORKS AS DEFINED AS SUCH IN THE **SCC.**	-	-
SCC Detail	THE SITE IS LOCATED AT .....*[INSERT ADDRESS OF SITE]*	Manual Input	TOM MBOYA UNIVERSITY HOMABAY

SCC Detail	AND IS DEFINED IN DRAWINGS NO..... *[INSERT NUMBERS]*	Manual Input	DRAWINGS ATTACHED IN THIS TENDER DOCUMENT
GCC Reference	CC) THE START DATE IS GIVEN IN THE **SCC.** IT IS THE LATEST DATE WHEN THE CONTRACTOR SHALL COMMENCE EXECUTION OF THE WORKS. IT DOES NOT NECESSARILY COINCIDE WITH ANY OF THE SITE POSSESSION DATES.	-	-
SCC Detail	THE START DATE SHALL BE..... [*INSERT DATE].*	Manual Input	11TH JANUARY, 2027
GCC Reference	GG) THE WORKS ARE WHAT THE CONTRACT REQUIRES THE CONTRACTOR TO CONSTRUCT, INSTALL, AND TURN OVER TO THE PROCURING ENTITY, AS DEFINED IN THE **SCC.**	-	-
SCC Detail	THE WORKS CONSIST OF..... *[INSERT BRIEF SUMMARY, INCLUDING RELATIONSHIP TO OTHER CONTRACTS UNDER THE PROJECT].*	Manual Input	BUILDERS WORKS, MECHANICAL AND ELECTRICAL
GCC Reference	**2. INTERPRETATION** 2.2 IF SECTIONAL COMPLETION IS SPECIFIED IN THE **SCC,** REFERENCES IN THE GCC TO THE WORKS, THE COMPLETION DATE, AND THE INTENDED COMPLETION DATE APPLY TO ANY SECTION OF THE WORKS (OTHER THAN REFERENCES TO THE COMPLETION DATE AND INTENDED COMPLETION DATE FOR THE WHOLE OF THE WORKS).	-	-

SCC Detail	SECTIONAL COMPLETIONS ARE: .....*[INSERT NATURE AND DATES, IF APPROPRIATE]*	Manual Input	NOT APPLICABLE
GCC Reference	**5. DELEGATION** 5.1 OTHERWISE SPECIFIED IN THE **SCC**, THE PROJECT MANAGER MAY DELEGATE ANY OF HIS DUTIES AND RESPONSIBILITIES TO OTHER PEOPLE, EXCEPT TO THE ADJUDICATOR, AFTER NOTIFYING THE CONTRACTOR, AND MAY REVOKE ANY DELEGATION AFTER NOTIFYING THE CONTRACTOR.	-	-
SCC Detail	THE PROJECT MANAGER [***MAY OR MAY NOT***] DELEGATE ANY OF HIS DUTIES AND RESPONSIBILITIES.	Manual Input	MAY
GCC Reference	**8. OTHER CONTRACTORS** 8.1 THE CONTRACTOR SHALL COOPERATE AND SHARE THE SITE WITH OTHER CONTRACTORS, PUBLIC AUTHORITIES, UTILITIES, AND THE PROCURING ENTITY BETWEEN THE DATES GIVEN IN THE SCHEDULE OF OTHER CONTRACTORS, AS REFERRED TO IN THE **SCC**. THE CONTRACTOR SHALL ALSO PROVIDE FACILITIES AND SERVICES FOR THEM AS DESCRIBED IN THE SCHEDULE. THE PROCURING ENTITY MAY MODIFY THE SCHEDULE OF OTHER CONTRACTORS, AND SHALL NOTIFY THE CONTRACTOR OF ANY SUCH MODIFICATION.	-	-

SCC Detail	SCHEDULE OF OTHER CONTRACTORS: .....[*INSERT SCHEDULE OF OTHER CONTRACTORS, IF APPROPRIATE*]	Manual Input	NOT APPLICABLE
GCC Reference	**13. INSURANCE** 13.1 THE CONTRACTOR SHALL PROVIDE, IN THE JOINT NAMES OF THE PROCURING ENTITY AND THE CONTRACTOR, INSURANCE COVER FROM THE START DATE TO THE END OF THE DEFECTS LIABILITY PERIOD, IN THE AMOUNTS AND DEDUCTIBLES STATED IN THE **SCC** FOR THE FOLLOWING EVENTS WHICH ARE DUE TO THE CONTRACTOR'S RISKS: A) LOSS OF OR DAMAGE TO THE WORKS, PLANT, AND MATERIALS; B) LOSS OF OR DAMAGE TO EQUIPMENT; C) LOSS OF OR DAMAGE TO PROPERTY (EXCEPT THE WORKS, PLANT, MATERIALS, AND EQUIPMENT) IN CONNECTION WITH THE CONTRACT; AND D) PERSONAL INJURY OR DEATH.	-	-
SCC Detail	THE MINIMUM INSURANCE AMOUNTS AND DEDUCTIBLES SHALL BE: (A) FOR LOSS OR DAMAGE TO THE WORKS, PLANT AND MATERIALS: *[INSERT AMOUNTS]*	Manual Input	WILL BE DETERMINED AT NEGOTIATIONS

SCC Detail	(B) FOR LOSS OR DAMAGE TO EQUIPMENT: [INSERT AMOUNTS].	Manual Input	N/A
SCC Detail	(C) FOR LOSS OR DAMAGE TO PROPERTY *(EXCEPT THE WORKS, PLANT, MATERIALS, AND EQUIPMENT)* IN CONNECTION WITH CONTRACT..... *[INSERT AMOUNTS]*.	Manual Input	N/A
SCC Detail	(D) FOR PERSONAL INJURY OR DEATH: OF THE CONTRACTOR'S EMPLOYEES:..... [AMOUNT].	Manual Input	N/A
SCC Detail	(E) FOR LOSS OR DAMAGE TO EQUIPMENT: .....[INSERT AMOUNTS].	Manual Input	N/A
GCC Reference	**14. SITE DATA** 14.1 THE CONTRACTOR SHALL BE DEEMED TO HAVE EXAMINED ANY SITE DATA REFERRED TO IN THE **SCC**, SUPPLEMENTED BY ANY INFORMATION AVAILABLE TO THE CONTRACTOR.	-	-
SCC Detail	SITE DATA ARE:..... *[LIST SITE DATA]*	Manual Input	WILL BE PROVIDED

GCC Reference	**20. POSSESSION OF THE SITE** 20.1 THE PROCURING ENTITY SHALL GIVE POSSESSION OF ALL PARTS OF THE SITE TO THE CONTRACTOR. IF POSSESSION OF A PART IS NOT GIVEN BY THE DATE STATED IN THE **SCC,** THE PROCURING ENTITY SHALL BE DEEMED TO HAVE DELAYED THE START OF THE RELEVANT ACTIVITIES, AND THIS SHALL BE A COMPENSATION EVENT.	-	-
SCC Detail	THE SITE POSSESSION DATE(S) SHALL BE: .....*[INSERT LOCATION(S) AND DATE (S)]*	Manual Input	14 DAYS AFTER CONTRACT SIGNING
GCC Reference	**23. APPOINTMENT OF THE ADJUDICATOR** 23.1 THE PROCURING ENTITY WILL PROPOSES THE PERSON NAMED IN THE **SCC** TO BE APPOINTED AS ADJUDICATOR UNDER THE CONTRACT, AT THE HOURLY FEE SPECIFIED IN THE TDS, PLUS REIMBURSABLE EXPENSES. IF THE TENDERER DISAGREES WITH THIS PROPOSAL, THE TENDERER SHOULD SO STATE SO IN HIS TENDER. IF THE TENDERER DOES NOT AGREE ON THE APPOINTMENT OF THE ADJUDICATOR, UPON WHICH THE PROCURING ENTITY WILL REQUEST THE APPOINTING AUTHORITY DESIGNATED IN THE SCC, TO APPOINT THE ADJUDICATOR WITHIN 14 DAYS OF RECEIPT OF SUCH REQUEST.	-	-

SCC Detail	PROPOSED ADJUDICATOR..... BIDDER AGREE OR DISAGREE THE PROPOSED ADJUDICATOR [*TICK ONE]*. APPOINTING AUTHORITY FOR THE ADJUDICATOR: [*INSERT NAME OF AUTHORITY].*	Manual Input	N/A
GCC Reference	23.3 THE ADJUDICATOR SHALL BE PAID BY THE HOUR AT THE RATE SPECIFIED IN THE SCC, TOGETHER WITH REIMBURSABLE EXPENSES OF THE TYPE'S SPECIFIED IN THE **SCC**, AND THE COST SHALL BE DIVIDED EQUALLY BETWEEN THE PROCURING ENTITY AND THE SERVICE PROVIDER, WHATEVER DECISION IS REACHED BY THE ADJUDICATOR. EITHER PARTY MAY REFER A DECISION OF THE ADJUDICATOR TO AN ARBITRATOR WITHIN 28 DAYS OF THE ADJUDICATOR'S WRITTEN DECISION. IF NEITHER PARTY REFERS THE DISPUTE TO ARBITRATION WITHIN THE ABOVE 28 DAYS, THE ADJUDICATOR'S DECISION WILL BE FINAL AND BINDING.	-	-
SCC Detail	HOURLY RATE AND TYPES OF REIMBURSABLE EXPENSES TO BE PAID TO THE ADJUDICATOR: [*INSERT HOURLY FEES AND REIMBURSABLE EXPENSES*].	Manual Input	N/A

GCC Reference	**26. PROGRAM** 26.1 WITHIN THE TIME STATED IN THE **SCC,** AFTER THE DATE OF THE LETTER OF ACCEPTANCE, 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. IN THE CASE OF A LUMP SUM CONTRACT, THE ACTIVITIES IN THE PROGRAM SHALL BE CONSISTENT WITH THOSE IN THE ACTIVITY SCHEDULE.	-	-
SCC Detail	THE CONTRACTOR SHALL SUBMIT FOR APPROVAL A PROGRAM FOR THE WORKS WITHIN .....*[NUMBER]* DAYS FROM THE DATE OF THE LETTER OF ACCEPTANCE.	Manual Input	14

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GCC Reference	26.3 THE CONTRACTOR SHALL SUBMIT TO THE PROJECT MANAGER FOR APPROVAL AN UPDATED PROGRAM AT INTERVALS NO LONGER THAN THE PERIOD STATED IN THE **SCC.** IF THE CONTRACTOR DOES NOT SUBMIT AN UPDATED PROGRAM WITHIN THIS PERIOD, THE PROJECT MANAGER MAY WITHHOLD THE AMOUNT STATED IN THE **SCC** 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. IN THE CASE OF A LUMP SUM CONTRACT, THE CONTRACTOR SHALL PROVIDE AN UPDATED ACTIVITY SCHEDULE WITHIN 14 DAYS OF BEING INSTRUCTED TO BY THE PROJECT MANAGER.	-	-
SCC Detail	THE PERIOD BETWEEN PROGRAM UPDATES IS..... *[INSERT NUMBER]* DAYS.	Manual Input	14
SCC Detail	THE AMOUNT TO BE WITHHELD FOR LATE SUBMISSION OF AN UPDATED PROGRAM IS .....*[INSERT AMOUNT].*	Manual Input	N/A

GCC Reference	**34. CORRECTION OF DEFECTS** 34.1 THE PROJECT MANAGER SHALL GIVE NOTICE TO THE CONTRACTOR OF ANY DEFECTS BEFORE THE END OF THE DEFECTS LIABILITY PERIOD, WHICH BEGINS AT COMPLETION, AND IS DEFINED IN THE **SCC.** THE DEFECTS LIABILITY PERIOD SHALL BE EXTENDED FOR AS LONG AS DEFECTS REMAIN TO BE CORRECTED.	-	-
SCC Detail	THE DEFECTS LIABILITY PERIOD IS: .....[*INSERT NUMBER] DAYS.* *[THE DEFECTS LIABILITY PERIOD IS USUALLY LIMITED TO 12 MONTHS, BUT COULD BE LESS IN VERY SIMPLE CASES]*	Manual Input	12 MONTHS
GCC Reference	**38. VARIATIONS** 38.9 IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY AND RESULTS IN: A) A REDUCTION OF THE CONTRACT PRICE; THE AMOUNT TO BE PAID TO THE CONTRACTOR SHALL BE THE PERCENTAGE SPECIFIED IN THE **SCC** OF THE REDUCTION IN THE CONTRACT PRICE; OR	-	-

SCC Detail	IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY THE AMOUNT TO BE PAID TO THE CONTRACTOR SHALL BE ___% *(INSERT APPROPRIATE PERCENTAGE. THE PERCENTAGE IS NORMALLY UP TO 50%)* OF THE REDUCTION IN THE CONTRACT PRICE.	Manual Input	N/A
GCC Reference	**45. PRICE ADJUSTMENT** 45.1 PRICES SHALL BE ADJUSTED FOR FLUCTUATIONS IN THE COST OF INPUTS ONLY IF PROVIDED FOR IN THE **SCC**. IF SO PROVIDED, THE AMOUNTS CERTIFIED IN EACH PAYMENT CERTIFICATE, BEFORE DEDUCTING FOR ADVANCE PAYMENT, SHALL BE ADJUSTED BY APPLYING THE RESPECTIVE PRICE ADJUSTMENT FACTOR TO THE PAYMENT AMOUNTS DUE IN EACH CURRENCY. A SEPARATE FORMULA OF THE TYPE SPECIFIED BELOW APPLIES: P EQUALS TO A + B IM/IO WHERE: P IS THE ADJUSTMENT FACTOR FOR THE PORTION OF THE CONTRACT PRICE PAYABLE. A AND B ARE COEFFICIENTS13 SPECIFIED IN THE **SCC**, REPRESENTING THE NON-ADJUSTABLE AND ADJUSTABLE PORTIONS, RESPECTIVELY, OF THE CONTRACT PRICE PAYABLE AND IM IS THE INDEX PREVAILING AT THE END OF THE MONTH BEING INVOICED AND IOC IS THE INDEX PREVAILING 30 DAYS BEFORE BID OPENING FOR INPUTS PAYABLE.	-	-

SCC Detail	THE CONTRACT [INSERT "IS" OR "IS NOT"] SUBJECT TO PRICE ADJUSTMENT IN ACCORDANCE WITH GCC CLAUSE 45, AND THE FOLLOWING INFORMATION REGARDING COEFFICIENTS **[SPECIFY "DOES" OR "DOES NOT"]** APPLY. *[PRICE ADJUSTMENT IS MANDATORY FOR CONTRACTS WHICH PROVIDE FOR TIME OF COMPLETION EXCEEDING 18 MONTHS]*	Manual Input	DOES NOT APPLY
SCC Detail	THE COEFFICIENTS FOR ADJUSTMENT OF PRICES ARE: (A) ..... *[INSERT PERCENTAGE]* PERCENT NONADJUSTABLE ELEMENT *(COEFFICIENT A).*	Manual Input	N/A
SCC Detail	(B) ..... [*INSERT PERCENTAGE]* PERCENT ADJUSTABLE ELEMENT *(COEFFICIENT B).*	Manual Input	N/A
SCC Detail	(C) THE INDEX I FOR SHALL BE..... *[INSERT INDEX].*	Manual Input	N/A
GCC Reference	**46. RETENTION** 46.1 THE PROCURING ENTITY SHALL RETAIN FROM EACH PAYMENT DUE TO THE CONTRACTOR THE PROPORTION STATED IN THE **SCC** UNTIL COMPLETION OF THE WHOLE OF THE WORKS.	-	-

SCC Detail	THE CURRENCY OF THE PROCURING ENTITY'S COUNTRY IS:..... *[INSERT NAME OF CURRENCY OF THE PROCURING ENTITY'S COUNTRY].*	Auto Populate	Kenyan Shilling (KSH)
GCC Reference	**47. LIQUIDATED DAMAGES** 47.1 THE CONTRACTOR SHALL PAY LIQUIDATED DAMAGES TO THE PROCURING ENTITY AT THE RATE PER DAY STATED IN THE **SCC** FOR EACH DAY THAT THE COMPLETION DATE IS LATER THAN THE INTENDED COMPLETION DATE. THE TOTAL AMOUNT OF LIQUIDATED DAMAGES SHALL NOT EXCEED THE AMOUNT DEFINED IN THE SCC. THE PROCURING ENTITY MAY DEDUCT LIQUIDATED DAMAGES FROM PAYMENTS DUE TO THE CONTRACTOR. PAYMENT OF LIQUIDATED DAMAGES SHALL NOT AFFECT THE CONTRACTOR'S LIABILITIES.	-	-

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SCC Detail	THE LIQUIDATED DAMAGES FOR THE WHOLE OF THE WORKS ARE [INSERT PERCENTAGE OF THE FINAL CONTRACT PRICE] PER DAY. THE MAXIMUM AMOUNT OF LIQUIDATED DAMAGES FOR THE WHOLE OF THE WORKS IS..... *[INSERT PERCENTAGE]* OF THE FINAL CONTRACT PRICE. *[USUALLY LIQUIDATED DAMAGES ARE SET BETWEEN 0.05 PERCENT AND 0.10 PERCENT PER DAY, AND THE TOTAL AMOUNT IS NOT TO EXCEED BETWEEN 5 PERCENT AND 10 PERCENT OF THE CONTRACT PRICE. IF SECTIONAL COMPLETION AND DAMAGES PER SECTION HAVE BEEN AGREED, THE LATTER SHOULD BE SPECIFIED HERE]*	Manual Input	N/A
GCC Reference	**48. BONUS** 48.1 THE CONTRACTOR SHALL BE PAID A BONUS CALCULATED AT THE RATE PER CALENDAR DAY STATED IN THE **SCC** FOR EACH DAY (LESS ANY DAYS FOR WHICH THE CONTRACTOR IS PAID FOR ACCELERATION) THAT THE COMPLETION IS EARLIER THAN THE INTENDED COMPLETION DATE. THE PROJECT MANAGER SHALL CERTIFY THAT THE WORKS ARE COMPLETE, ALTHOUGH THEY MAY NOT BE DUE TO BE COMPLETE.	-	-

SCC Detail	THE BONUS FOR THE WHOLE OF THE WORKS IS..... [INSERT PERCENTAGE OF FINAL CONTRACT PRICE] PER DAY. *[IF EARLY COMPLETION WOULD PROVIDE BENEFITS TO THE PROCURING ENTITY, THIS CLAUSE SHOULD REMAIN; OTHERWISE DELETE. THE BONUS IS USUALLY NUMERICALLY EQUAL TO THE LIQUIDATED DAMAGES.]*	Manual Input	N/A
SCC Detail	THE MAXIMUM AMOUNT OF BONUS FOR THE WHOLE OF THE WORKS IS..... [INSERT PERCENTAGE] OF THE FINAL CONTRACT PRICE.	Manual Input	N/A
GCC Reference	**49. ADVANCE PAYMENT** 49.1 THE PROCURING ENTITY SHALL MAKE ADVANCE PAYMENT TO THE CONTRACTOR OF THE AMOUNTS STATED IN THE **SCC** BY THE DATE STATED IN THE SCC, AGAINST PROVISION BY THE CONTRACTOR OF AN UNCONDITIONAL BANK GUARANTEE IN A FORM AND BY A BANK ACCEPTABLE TO THE PROCURING ENTITY IN AMOUNTS AND CURRENCIES EQUAL TO THE ADVANCE PAYMENT. THE GUARANTEE SHALL REMAIN EFFECTIVE UNTIL THE ADVANCE PAYMENT HAS BEEN REPAID, BUT THE AMOUNT OF THE GUARANTEE SHALL BE PROGRESSIVELY REDUCED BY THE AMOUNTS REPAID BY THE CONTRACTOR. INTEREST SHALL NOT BE CHARGED ON THE ADVANCE PAYMENT.	-	-

SCC Detail	THE ADVANCE PAYMENTS SHALL BE: .....*[INSERT AMOUNT(S)]*	Manual Input	TO BE DETERMINED DURING CONTRACT NEGOTIATION
SCC Detail	AND SHALL BE PAID TO THE CONTRACTOR NO LATER THAN..... *[INSERT DATE (S)].*	Manual Input	N/A
GCC Reference	**50. SECURITIES** 50.1 THE PERFORMANCE SECURITY SHALL BE PROVIDED TO THE PROCURING ENTITY NO LATER THAN THE DATE SPECIFIED IN THE LETTER OF ACCEPTANCE AND SHALL BE ISSUED IN AN AMOUNT SPECIFIED IN THE **SCC,** BY A BANK OR SURETY ACCEPTABLE TO THE PROCURING ENTITY, AND DENOMINATED IN THE TYPES AND PROPORTIONS OF THE CURRENCIES IN WHICH THE CONTRACT PRICE IS PAYABLE. THE PERFORMANCE SECURITY SHALL BE VALID UNTIL A DATE 28 DAY FROM THE DATE OF ISSUE OF THE CERTIFICATE OF COMPLETION IN THE CASE OF A BANK GUARANTEE, AND UNTIL ONE YEAR FROM THE DATE OF ISSUE OF THE COMPLETION CERTIFICATE IN THE CASE OF A PERFORMANCE BOND.	-	-

SCC Detail	THE PERFORMANCE SECURITY AMOUNT IS…… *[INSERT AMOUNT(S) DENOMINATED IN THE TYPES AND PROPORTIONS OF THE CURRENCIES IN WHICH THE CONTRACT PRICE IS PAYABLE, OR IN A FREELY CONVERTIBLE CURRENCY ACCEPTABLE TO THE PROCURING ENTITY]* (A) PERFORMANCE SECURITY – BANK GUARANTEE: IN THE AMOUNT(S) OF [INSERT RELATED FIGURE(S)] PERCENT OF THE ACCEPTED CONTRACT AMOUNT AND IN THE SAME CURRENCY(IES) OF THE ACCEPTED CONTRACT AMOUNT. (B) PERFORMANCE SECURITY – PERFORMANCE BOND: IN THE AMOUNT(S) OF [INSERT RELATED FIGURE(S)] PERCENT OF THE ACCEPTED CONTRACT AMOUNT AND IN THE SAME CURRENCY(IES) OF THE ACCEPTED CONTRACT AMOUNT.	Manual Input	10% OF THE CONTRACT AMOUNT
GCC Reference	**56. OPERATING AND MAINTENANCE MANUALS** 56.1 IF “AS BUILT” DRAWINGS AND/OR OPERATING AND MAINTENANCE MANUALS ARE REQUIRED, THE CONTRACTOR SHALL SUPPLY THEM BY THE DATES STATED IN THE **SCC**	-	-

SCC Detail	THE DATE BY WHICH OPERATING AND MAINTENANCE MANUALS ARE REQUIRED IS..... [INSERT DATE].	Manual Input	WITHIN 14 DAYS AFTER CONTRACT SIGNING
SCC Detail	THE DATE BY WHICH "AS BUILT" DRAWINGS ARE REQUIRED IS .....[INSERT DATE].	Manual Input	WITHIN 14 DAYS AFTER CONTRACT SIGNING
GCC Reference	56.2 IF THE CONTRACTOR DOES NOT SUPPLY THE DRAWINGS AND/OR MANUALS BY THE DATES STATED IN THE SCC PURSUANT TO GCC SUB-CLAUSE 56.1, OR THEY DO NOT RECEIVE THE PROJECT MANAGER'S APPROVAL, THE PROJECT MANAGER SHALL WITHHOLD THE AMOUNT STATED IN THE **SCC** FROM PAYMENTS DUE TO THE CONTRACTOR.	-	-
SCC Detail	THE DATE BY WHICH OPERATING AND MAINTENANCE MANUALS ARE REQUIRED IS .....[*INSERT DATE].* THE DATE BY WHICH "AS BUILT" DRAWINGS ARE REQUIRED IS *[INSERT DATE].*	Manual Input	WITHIN 14 DAYS AFTER CONTRACT SIGNING
GCC Reference	**57. TERMINATION** G) THE CONTRACTOR HAS DELAYED THE COMPLETION OF THE WORKS BY THE NUMBER OF DAYS FOR WHICH THE MAXIMUM AMOUNT OF LIQUIDATED DAMAGES CAN BE PAID, AS DEFINED IN THE **SCC**; OR	-	-

SCC Detail	THE MAXIMUM NUMBER OF DAYS IS: ..... *[INSERT NUMBER; CONSISTENT WITH CLAUSE 47.1 ON LIQUIDATED DAMAGES].*	Manual Input	30
GCC Reference	**58. PAYMENT UPON TERMINATION** 58.1 IF THE CONTRACT IS TERMINATED BECAUSE OF A FUNDAMENTAL BREACH OF CONTRACT BY THE CONTRACTOR, THE PROJECT MANAGER SHALL ISSUE A CERTIFICATE FOR THE VALUE OF THE WORK DONE AND MATERIALS ORDERED LESS ADVANCE PAYMENTS RECEIVED UP TO THE DATE OF THE ISSUE OF THE CERTIFICATE AND LESS THE PERCENTAGE TO APPLY TO THE VALUE OF THE WORK NOT COMPLETED, AS SPECIFIED IN THE **SCC**. ADDITIONAL LIQUIDATED DAMAGES SHALL NOT APPLY. IF THE TOTAL AMOUNT DUE TO THE PROCURING ENTITY EXCEEDS ANY PAYMENT DUE TO THE CONTRACTOR, THE DIFFERENCE SHALL BE A DEBT PAYABLE TO THE PROCURING ENTITY.	-	-
SCC Detail	THE PERCENTAGE TO APPLY TO THE VALUE OF THE WORK NOT COMPLETED, REPRESENTING THE PROCURING ENTITY'S ADDITIONAL COST FOR COMPLETING THE WORKS, IS ..... *[INSERT PERCENTAGE].*	Manual Input	WILL BE DETERMINED DURING CONTRACT NEGOTIATION