REPUBLIC OF KENYA

COUNTY GOVERNMENT OF NAKURU

DEPARTMENT OF TRADE, COOPERATIVES TOURISM AND CULTURE

Telephone: Nakuru (051) 2214142
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P.O. BOX 2870-20100,
NAKURU

TENDER DESCRIPTION: TENDER FOR THE PROPOSED CONSTRUCTION OF MODERN MARKET STALLS AT KITUR CENTRE IN KABAZI WARD, SUBUKIA SUB-COUNTY.

TENDER NUMBER: CGN/TCTC/ONT/006/2026-2027

NEGOTIATION NO: 2681929

PUBLICATION DATE: MONDAY 16TH NOVEMBER 2026

CLOSING DATE: WEDNESDAY 25TH NOVEMBER 2026 AT 10:00AM

ELIGIBILITY: RESERVED FOR WOMEN

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INVITATION TO TENDER

PROCURING ENTITY: COUNTY GOVERNMENT OF NAKURU P. O BOX 2870, NAKURU.

CONTRACT DESCRIPTION; **TENDER FOR THE PROPOSED CONSTRUCTION OF MODERN MARKET STALLS AT KITUR CENTRE IN KABAZI WARD, SUBUKIA SUB-COUNTY.**
TENDER NAME: **CGN/TCTC/ONT/006/2026-2027**

The Nakuru County Government invites sealed tenders for **TENDER FOR THE PROPOSED CONSTRUCTION OF MODERN MARKET STALLS AT KITUR CENTRE IN KABAZI WARD, SUBUKIA SUB-COUNTY.**

1. Tendering will be conducted under open competitive method (National) using a standardized tenderdocument. Tendering is open to all qualified and interested Tenderers.

2. Qualified and interested tenderers may obtain further information and inspect the Tender Documentsduring office hours i.e. 0900 to 1500 hours at the address given below.

3. A complete set of tender documents may be obtained electronically from the County Government of Nakuru website; www.nakuru.go.ke, Supplier portal; supplier.treasury.go.ke or Public Procurement Information Portal; https://www.tenders.go.ke free of charge.

4. Tender documents may be viewed and downloaded for free of charge from the website www.nakuru.go.ke, www.tenders.go.ke .

5. Tenders shall be quoted be in Kenya Shillings and shall include all taxes. Tenders shall remain valid for 210 days from the date of opening of tenders.

6. The Tenderer shall chronologically serialize all pages of the tender documents submitted, from the cover page to the last page including all attachments in the numerical format of 1, 2,3…...

7. Completed tenders must be delivered to the address below on or before **WEDNESDAY 25TH NOVEMBER 2026 AT 10:00AM** Electronic Tenders will be permitted.

8. Completed tenders indicating tender number and description as described in the Tender Document shall be submitted back in both soft and hardcopies. The softcopies should be submitted through supplierportal and hard copies in plain sealed envelope indicating tender number and description as described in the Tender Document should be deposited in the Tender box located at Moi Road, County Government Headquarters Ground Floor Entrance or sent by post to address below.

9. Tenders will be opened immediately after the deadline date and time specified above or any deadlinedate and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.

The County Secretary

County Government of Nakuru,
P.O Box 2780-20100,
Moi Road, County Government HeadquartersNAKURU

so as to be received on or before **WEDNESDAY 25TH NOVEMBER 2026 AT 10:00AM**

10. Late tenders will be rejected.

11. The addresses referred to above are:

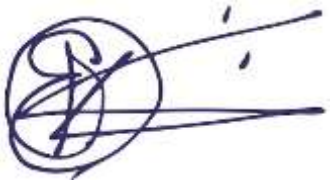
Physical address for obtaining further information:
County Government of Nakuru,
Supply Chain Office, Headquarters,1st floor, Room 19 or 21.

Physical address for hand/ Courier Delivery:
Delivery to the tender box,
Nakuru, Moi Road, County Government Headquarters Ground Floor Entrance

Address for Submission of Tenders.
The County Secretary
County Government of Nakuru,P.O Box 2780-20100,
Moi Road, County Government HeadquartersNAKURU

Address for Opening of Tenders.

County Government of Nakuru Moi Road,
County Government Headquarters,
1ST Floor, chambers



CHIEF OFFICER-TRADE

FOR: COUNTY SECRETARY & HEAD OF PUBLIC SERVICE

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 Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The name, identification, and numberof lots (contracts) of this Tender Document are **specified in the TDS.**

2. Fraud and Corruption

2.1 The Procuring Entity requires compliance with the provisions of the Public Procurement andAsset Disposal Act, 2015, 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-contractorsare 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 collusiveconduct 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 thatthe 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, theProcuring Entity shall indicate in the **Data Sheet** and make available to all the firms togetherwith 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 thatthe 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 bya 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 whoshall have the authority to conduct all business for and on behalf of any and all the membersof 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. Public Officers are also not allowed to participate in any procurement proceedings.

3.3A 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 thepurpose of this tendering process, if the tenderer:

a) Directly or indirectly controls, is controlled by or is under common control withanother 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, thatputs it in a position
to influence the tender of another tenderer, or influence the decisions of the ProcuringEntity regarding this tendering process; or

e) Any of its affiliates participated as a consultant in the preparation of the design ortechnical 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 asEngineer 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 anotherjoint venture for the purposes of the same Tender.

3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.8.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 equivalentdocuments 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 www.ppra.go.ke.

3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and beawarded 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 servicesfrom 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 ProcuringEntity, as the Procuring Entity shall reasonably request.

*3.10*Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labour) from national suppliers and contractors. To thisend, a foreign tenderer shall provide in its tender documentary evidence that this requirementis met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall beprovided in for this purpose is be provided in *"SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9".*

3.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya andhas less than 51 percent ownership by Kenyan Citizens. JVs are considered as foreign tenderersif the individual member firms are not registered in Kenya or if are registered in Kenya and 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.

3.12The 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.

3.13The 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 fromthe Competition Authority of Kenya may be accessed from the website www.cak.go.ke

3.14A 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 therelevant 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

5.1 The 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 forpreparing 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 ordamage 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 ofContract (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 part of the Contractdocuments.

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 minutesof 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 shallprevail.

The Tenderer is expected to examine all instructions, forms, terms, and specifications in the TenderDocument and to furnish with its Tender all information and documentation as is required bythe Tender document.

7. Site Visit

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examineand inspect the Site of the Required Services and its surroundings and obtain all information thatmay 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 visitwill 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 notlater 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 transmittedpromptly 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 anonym zed (*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 asa result of the pre-tender meeting and the pre-arranged pretender site visit, shall be made by theProcuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting willnot 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 Entityin writing at the
Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meetingand 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 no 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 adescription 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 followingthe 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 amendthe Tendering document by issuing addendum.

10.2 Any addendum issued shall be part of the tendering document and shall be communicated inwriting 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 inpreparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 25.2 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, regardlessof 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 exchangedby 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 ofthe 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 andITT 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 committhe Tenderer, in accordance with ITT 22.3;
f) Qualifications: documentary evidence in accordance with ITT 19establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
g) Conformity: a technical proposal in accordance with ITT 18;
h) Any other document required in the **TDS**.

13.2 In addition to the requirements under ITT 11.1, Tenders submitted by a JV shall include a copyof the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent toexecute 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 serializepages of all tender documents submitted.

13.3 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, ifany, paid or to be paid to agents or any other party relating to this Tender.

14. Form of Tender and Schedules

14.1 The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using therelevant form*s* 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 completionwill 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 tothe 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 Tendererwith the Winning Tender conforming to the basic technical requirements shall be considered bythe Procuring Entity. When specified in the **TDS**, Tenderers are permitted to submit alternativetechnical 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 ofTender 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 separatelyby 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 substantiallyresponsive 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 Formof 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 theprovisions 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 andweightings.

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 shallspecify 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.

17. Currencies of Tender and Payment

17.1 Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quotedby 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 thework'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 establishTenderer'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 inthe 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 33.1.

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 to determine whether, according to the classification established by the Procuring Entity, a contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entityidentify 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 therebyhelp 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 wouldbe 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 fora 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 obligationsto 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 ofthe 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 areasonable 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 theProcuring Entity
(whether through its own enquiries, through notification by the public or otherwise), shows anyconflict 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 6.7 will ensue unless the tenderer can show to the reasonable satisfaction ofthe 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 ofthe 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 adjustedby 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 demandguarantee 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 bankshall have a correspondent bank located in Kenya to make it enforceable. The Tender Securityshall 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 theContract 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 abidder 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 in the **TDS**.

21.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:
e) if a Tenderer withdraws its Tender during the period of Tender validity specified by theTenderer on the
Form of Tender, or any extension thereto provided by the Tenderer; or
f) if the successful Tenderer fails to:
i) sign the Contract in accordance with ITT 50; or
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 shall recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided inthe law.

21.9 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JVthat submits the Tender. If the JV has not been legally constituted into a legally enforceable JVat 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 4.1 and ITT11.2.

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 describedin 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 copiesof the Tender, in the number specified in the **TDS** and clearly mark them "COPY." In the eventof 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.

22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall besigned 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 printedbelow 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 theJV 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 usean envelope, package or container. The Tenderer shall deliver the Tender in a single sealedenvelope, or in a single sealed package, or in a single sealed container bearing the name andReference 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 comprisingthe Tender, as described in ITT 11; and
b) in an envelope or package or container marked "COPIES", all required copies of theTender; and
c) if alternative Tenders are permitted in accordance with ITT 15, and if relevant:
   i) in an envelope or package or container marked "ORIGINAL – ALTERNATIVETENDER", 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 *ProcuringEntity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

24. Deadline for Submission of Tenders

24.1 Tenders must be received by the Procuring Entity at the address specified in the **TDS** and nolater 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 8, 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 clearlymarked "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 unopenedto 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.

27. Tender Opening

27.1 Except in the cases specified in ITT 23 and ITT 26.2, the Procuring Entity shall publicly openand 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 withthe 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 andis read out at Tender opening.

27.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with thecorresponding Tender. No

Tender modification shall be permitted unless the corresponding modification notice

contains avalid 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 theTenderer 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. The number of representatives of the Procuring Entity to sign shall be specified inthe **TDS**.

27.7 At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender norreject 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 aminimum:**

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. Theomission 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 shallnot 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 inaccordance with ITT 46.

28.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders orContract 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, ifa 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 ofits 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 besought, offered, or permitted, except to confirm the correction of arithmetic errors discoveredby 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 documentationrequired 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 specifiedin the Contract; or
b) limit in any substantial way, inconsistent with the tender document, the ProcuringEntity's rights or the tenderer's obligations under the proposed contract; or
c) if rectified, would unfairly affect the competitive position of other tenderers presentingsubstantially responsive tenders.

31.3 The Procuring Entity shall examine the technical aspects of the tender submitted in accordancewith ITT 18, to
confirm that all requirements of Section VII, Works' Requirements have been met without anymaterial deviation, reservation or omission.

31.4 If a tender is not substantially responsive to the requirements of the tender document, it shallbe rejected by the Procuring Entity and may 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 non-material 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 quantifiablenon-material non-conformities related to the Tender Price. To this effect, the Tender Price shallbe adjusted, for comparison purposes only, to reflect the price of a missing or non-conformingitem or component in the manner specified in the TDS.

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 thetender, 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 thesubstance 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 a ward.

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 entityshall 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 Subcontractors

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 thevolume 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 Entityin 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 theTenderer.

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 theBest 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) and (b) above, if relevant, to a singlecurrency in accordance with ITT 39;

c) price adjustment due to quantifiable nonmaterial non-conformities in accordance withITT 30.3; and

d) any additional evaluation factors specified **in the TDS** and Section III,

Evaluation andQualification 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 Tendersestablished in accordance with ITT 38.2 to determine the Tender that has the lowest evaluatedcost.

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.

40. Abnormally High Tenders

40.1 An abnormally high price is one where the tender price, in combination with other constituentelements of the Tender, appears unreasonably too high to the extent that the Procuring Entityis 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 andconditions 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 orcause 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 isseriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstratethe consistency of the tender prices with the scope of works, proposed methodology, scheduleand 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 ofthe 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 Entitypaying 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 upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, 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 ifpermitted 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 theProcuring 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 toperform 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 analyses, if the Procuring Entity determines that the Tenderer hasfailed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

43. Best Evaluated Tender

43.1 Having compared the evaluated prices of Tenders, the Procuring Entity shall determine theBest Evaluated Tender. The Best Evaluated Tender is the Tender of the Tenderer that meetsthe Qualification Criteria and whose Tender has been determined to be:

a) Most responsive to the Tender document; and

b) the lowest evaluated price.

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 therebyincurring any liability to Tenderers. In case of annulment, all Tenderers shall be notified withreasons and all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

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 the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already revealsthe reason;
d) the expiry date of the Standstill Period; and
e) instructions on how to request a debriefing and/or submit a complaint 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 toallow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

47.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmittedto 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 adebriefing 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 shallbear 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, upon addressing a complaint that has been filed within the Standstill Period, 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 Performance Securitywithin 21days 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 shallsend the successful Tenderer the Contract Agreement.

50.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shallsign, 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 Procuring Entity proposes the person named in the **TDS** to be appointed as Adjudicator under the Contract, at the hourly fee specified in the **TDS**, plus reimbursable expenses. If theTenderer disagrees with this proposal, the Tenderer should so state in his Tender. If, in the Letter of Acceptance, the Procuring Entity does not agree on the appointment of the Adjudicator, the Procuring Entity will request the Appointing Authority designated in the Special Conditions of Contract (SCC) pursuant to Clause 23.1 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 Acceptance 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 40.2 (b), using the Performance Security and other Forms included in SectionX, 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 andother documents required in the **TDS**, or sign the Contract shall constitute sufficient grounds forthe annulment of the award and forfeiture of the Tender Security. In that event the ProcuringEntity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

52.3 Performance security shall not be required for contracts estimated to cost less than Kenya shillings five million shillings.

53. Publication of Procurement Contract

53.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. Atthe 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 andthe 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 Procurement-related Complaints are as specified in the **TDS**.

54.2 A request for administrative review shall be made in the form provided under contract forms.

Section II - Tender Data Sheet (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail overthose in ITT.

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	The Procuring Entity is: ***COUNTY GOVERNMENT OF NAKURU*** The reference number of the Invitation for Tenders is: CGN/TCTC/ONT/006/2026-2027 Tender description: **TENDER FOR THE PROPOSED CONSTRUCTION OF MODERN MARKET STALLS AT KITUR CENTRE IN KABAZI WARD, SUBUKIA SUB-COUNTY.**
ITB 1.2	**Electronic –Procurement System** The Procuring Entity shall use the following electronic-procurement system to manage this Tendering process: County Website; ***www.nakuru.go.ke*** *and Public Procurement Information Portal*; ***https://www.tenders.go.ke***. The electronic-procurement system shall be used to manage the following aspects of the Bidding process: ***Issuance of tender documents, issuance of addendum and clarifications, evaluation of tenders, publication of contract award notice.***
ITT 2.4	The Information made available on competing firms shall not apply
ITT 2.4(a)	The firms that provided consulting services for the contract being tendered for are:N/A
ITT 3.1	Maximum of 2 members in the Joint Venture (JV) shall be: **NOT APPLICABLE**
B. Contents of Tender Document	
ITT 8.1	(A) Pre tender Conference: **NOT APPLICABLE** (B) Pre tender Site Visit: **NOT APPLICABLE**
ITT 8.2	The Tenderer will submit any questions in writing, to reach the Procuring Entity not laterthan 3days before tender opening/closing date. (a) Address where to send enquiries is **supplychain@nakuru.go.ke** to reach the Procuring Entity not later than **3 days** to the deadline date for submission of bids. **(b)** The Procuring Entity shall publish its response at the following website: **www.nakuru.go.ke**
ITT 8.4	The Procuring Entity's website where Minutes of the pre-Tender meeting and the pre-arranged pretender will be published is: NOT APPLICABLE
ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for downloadingtender documents, the Procuring Entity's address is: **COUNTY GOVERNMENT OF NAKURU,P.O BOX 2780-20100, NAKURU.** **Or email @** supplychain@nakuru.go.ke to reach the Procuring Entity three (3) days prior to the deadline for submission of bids.
C. Preparation of Tenders	
ITT 13.1 (h)	The Tenderer shall submit the following additional documents in its Tender: Evaluation requirements are **as detailed in the evaluation criteria in Section III.**
ITT 15.1	Alternative Tenders ***SHALL NOT*** *be* considered.

ITT 15.2	Alternative times for completion ***SHALL NOT*** *be* permitted.
ITT 15.3	Alternative technical solutions shall be permitted for the following parts of the Works: NOTAPPLICABLE
ITT 16.5	The prices quoted by the Tenderer shall be: FIXED
ITT 17.2 (a)	The currency that shall be used for Tender evaluation and comparison purposes to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is **Kenya Shillings** The source of exchange rate shall be: ***Central Bank of Kenya*** The date for the exchange rate shall be ***deadline date for tender submission***
ITT 20.1	The Tender validity period shall be 210 days.
ITT 20.3 (a)	The delayed to award exceeding number of 60 days shall not apply

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 21.1	A tender Security *shall not be required,* instead, tenderers should **submit dully filled, signed and stamped Tender-Securing Declaration Form.**
ITT 22.1	In addition to the original of the Tender, the number of copies is: ONE
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: an authorization from the director(s) of the company designating an officer from the biddingcompany and certified by commissioner of oaths.
D. Submission and Opening of Tenders	
ITT 24.1	Submission of tenders COUNTY GOVERNMENT OF NAKURU,P.O BOX 2780-20100, MOI ROAD, COUNTY GOVERNMENT HEADQUARTERS GROUND FLOOR AT THE MAIN ENTRANCE NAKURU Date and time for submission of Tenders: ON OR BEFORE WEDNESDAY 25TH NOVEMBER 2026 AT 10:00AM
ITT 27.1	The Tender opening shall take place at the time and the address for Opening of Tendersprovided below: COUNTY GOVERNMENT OF NAKURU,P.O BOX 2780-20100, MOI ROAD, COUNTY GOVERNMENT HEADQUARTER, 1ST FLOOR, BOARD ROOMNAKURU ON OR BEFORE **WEDNESDAY 25TH NOVEMBER 2026 AT 10:00AM**
ITT 27.1	If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures specified below: **Completed tenders shall be submitted back in both soft and hardcopies. The softcopies should be submitted through supplier portal and hard copies in plain sealed envelope indicating tender number and description as described in the Tender Document should be deposited in the Tender box located at County Government headquarters Ground floor at the main entrance or send by post to address above.**
ITT 27.6	The number of representatives of the Procuring Entity to sign is; **All members of the opening committee.**
E. Evaluation, and Comparison of Tenders	
ITT 32.3	The adjustment shall be based on the_____*[insert "average" or "highest"]* price of the item or component as quoted in other substantially responsive Tenders. If the price of theitem or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate. **NOT APPLICABLE**

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 35.2	The invitation to tender is extended to the following group that qualify for Reservations;RESERVED FOR WOMEN
ITT 36.1	At this time, the Procuring Entity DOES NOT INTEND to execute certain specific parts of the Works by subcontractors selected in advance.
ITT 36.2	Contractor's may propose subcontracting: Maximum percentage of subcontracting permitted is: ___*0_% of the total contract amount.* Tenderers planning to subcontract more than 10% oftotal volume of work shall specify, in the Form of Tender, the activity (ies) or parts of the Worksto be subcontracted along with complete details of the subcontractors and their qualification andexperience: Not applicable
ITT 36.3	The parts of the Works for which the Procuring Entity permits Tenderers to propose SpecializedSubcontractors are designated as follows: NOT APPLICABLE 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 thequalifications of the Tenderer for the purpose of evaluation.
ITT 37.2 (d)	Additional requirements apply. These are detailed in the evaluation criteria in Section III,Evaluation and Qualification Criteria.
ITT 51.1	The person named to be appointed as Adjudicator is of an hourly fee of Kshs per day: SHALLNOT APPLY
ITT 52.2	Other documents required are **as detailed in the evaluation criteria in Section III.**
ITT 54.1	The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submitits complaint following these procedures, in writing (by the quickest means available, that iseither by hand delivery or email to: **THE COUNTY SECRETARY** **COUNTY GOVERNMENT OF** **NAKURU,P.O BOX 2780-20100,** **MOI ROAD, COUNTY GOVERNMENT** **HEADQUARTERSNAKURU** In summary, a Procurement-related Complaint may challenge any of the following (amongothers): (i) the terms of the Tender Documents;

SECTION III-- EVALUATION AND QUALIFICATION CRITERIA

1. General Provisions

1.1 This section contains the criteria that the Employer 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 shall use **the Standard Tender Evaluation Document for Goods and Works** for evaluating Tenders.

1.2 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 14.3. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

1.3 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. 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.

2. Preliminary examination for Determination of Responsiveness

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 for Goods and Works for evaluating Tenders provides clear guidelines on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered irresponsive and will not be considered further.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA		
Evaluation of tenders shall be carried out in three stages as indicated below A. PART ONE: PRELIMINARY/MANDATORY REQUIREMENTS The following mandatory requirements **must** be met by the Contractor submitting their bids for them to qualify for the 2nd stage i.e technical evaluation		
No	**Requirements**	**YES/NO**
MR 1	Must Provide an honest history of any claims, litigation, default notices and financial penalties levied due to defaults. This information must be provided in format provided certified by a Commissioner of Oaths	
MR 2	Must Provide a copy of the applicant's Company's Certificate of Incorporation/ registration in Kenya from the Registrar of Companies. certified by commissioner of oaths/***advocate registered in Kenya.***	
MR 3	Must provide a copy of CR12 for the Directors of company/ National ID for sole proprietorship valid for the last 12 months certified by	

	commissioner of oaths/***advocate registered in Kenya.***	
MR 4	Must Provide a certified copy of Registration with the National Construction Authority (NCA) in **Category 8 or above** as a Building Works Contractor, together with a valid NCA Practicing License.	
MR 5	Must Provide a valid copy of the company's current Certificate of Tax Compliance issued by Kenya Revenue Authority (KRA). The certificate must at least be valid on the closing date of the applications.	
MR 6	Form of tender must be completed, signed and stamped in the format provided.	
MR 7	Submit a by dully filled, signed and stamped Tender Securing Declaration Form in the format provided Witnessed by a Commissioner of Oaths/ ***advocate registered in Kenya***	
MR 8	Submit a duly filled, signed and stamped confidential business questionnaire by commissioner of oaths/***advocate registered in Kenya.***	
MR 9	Must submit current Valid business permit **(year 2026)** certified by commissioner of oaths/***advocate registered in Kenya.***	
MR 10	Submit a written power of attorney authorizing the signatory of the bid to commit the Bidder Witnessed by a Commissioner of Oaths	
MR 11	Form of tender must be completed, signed and stamped in the format provided	
MR 12	Must Submit valid AGPO Certificate for **WOMEN**	
MR 13	Tender documents must be submitted in both soft (Through IFMIS supplierportal) and hard copies in the manner described in the Invitation Notice	
MR 14	Dully filled signed and stamped tender securing declaration form.	
MR 15	Sequential Serialization & Pagination. Sequential serialization of the ENTIRE document from page 1 to the last page (format 1,2,3…) in strict compliance with Section 74(1)(i) of PPADA 2015.	
	NB: • Bidders who do not satisfy any of the above requirements shall be considered non responsive and their tenders will not be evaluated further. • Bidders are also informed to organize their evidentiary documentation in the order above for ease of reference. Order of evaluation of works will be as follows: a) Preliminary evaluation (Mandatory Requirements) b) Technical Evaluation c) Financial Evaluation	

3. *Tender Evaluation (ITT 35)*

Price evaluation: In addition to the criteria listed in ITT 35.2 (a) – (d) the following criteria shall apply:

i) **Alternative Completion Times,** if permitted under ITT 13.2, will be evaluated as follows: ……

ii) **Alternative Technical Solutions** for specified parts of the Works, if permitted under ITT 13.4, will be evaluated as follows:……

iii) **Other Criteria; i**f permitted under ITT 35.2(d)

:…….....

4. *Multiple Contracts*

4.1 Multiple contracts will be permitted in accordance with ITT 35.4. 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.

4.2

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 theLots. 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.

5. Alternative Tenders (ITT 13.1)

An alternative if permitted under ITT 13.1, will be evaluated as follows:

The Procuring Entity shall consider Tenders offered for alternatives as specified in Part2-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

6. MARGIN OF PREFERENCE

6.1 If the TDS so specifies, the Procuring Entity will grant a margin of preference of fifteen percent (15%) to be loaded one valuated price of the foreign tenderers, where the percentage of shareholding of Kenyan citizens is less than fifty-one percent (51%).

6.2 Contractors applying for such preference shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contract or or group of contractors qualifies for a margin of preference.

6.3 After Tenders have been received and reviewed by the Procuring Entity, responsive Tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders to shall be classified into the following groups:

i) Group A: tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of over fifty one percent (51%).

ii) Group B: tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty one percent (51%).

6.4 All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 3.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each tender from Group B. All tenders shall then be compared using new prices with added prices to Group Band the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected for award. If not, the lowest evaluated tender from Group B based on

the first evaluation price shall be selected.

7. Post qualification and Contract award (ITT 39), more specifically,

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) Incase 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 payment) sufficient to meet the construction cash flow of Kenya Shillings .

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.

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.

iv) 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 *[specify requirements for each lot as applicable]*_____

vi) Other conditions depending on their seriousness.

a) *History of non-performing contracts:*

Tenderer and each member of JV incase 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.

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.

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.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

Only applicants who meet **EACH** of the preliminary requirements stated above will be subjected to technical evaluation.

PART B: TECHNICAL EVALUATION CRITERIA FOR THE TENDERER

Below are the technical evaluation criteria that each Candidate shall be evaluated against:

TR. NO	EVALUATION ASPECT	EVALUATION REQUIREMENT	SCORE	TOTAL SCORE
TR. 1	General/ Specific experience of the firm in similar works	**General Experience** Number of years in business carrying out similar works/supplies (Attach evidence of LPO/LSO/Award letters and contracts for general works performed)	3 years and above= 10mks 2 -3years= 5 marks 0-2 years= 3 marks	10
		Specific Experience Annual volume of works done for Kshs. 2 million and above the past 2 years. (5 marks for every evidence provided) Attach evidence in form of L.P.O/LSO, Award, contractagreements or completion certificate	2 million and above= 20 mks 1-2 million= 15 mks Below 1 million=5 mks	20
TR. 2	Financial capacity	Submission of Certified bank statements for the past two years 2025-2024(5Mrks Each year) Letter(s) of credit from the tenderer's bank/Line of credit Certified Audited accounts for the past two 2025 - 2024 signed and stamped by	Certified bank statement - 10mks Letter of credit of- 5 mks Certified Audited accounts - 10 Mrks	25

		a certified practicing account /auditor. (5 Mrks each year)		
TR. 3	Proposed project personnel competencies.	The tenderer to provide qualified and experienced technical staff in the Company with training in building Works related field; Head office staff Graduate: director, manager or accountant With bachelor degree in civil/ structural engineer /building Site Agent/construction manager with a diploma in building construction or related field with experience.	Specific experience of over 2 years- 5 marks Experience of over 2 years- 5 marks	10
TR. 4	Essential equipment availability Machinery an dequipment	The tenderer to demonstrate their plant,machinery and equipment capacity that shall be available for the project if it is awarded, evidenced by ownership documents (purchase receipt)or lease agreements. Lease agreements must include telephone and email; Concrete mixer/Vibrator (10 Mrks for either provided) Tipper/Lorry/Pickup- (10	Concrete Mixer/vibrator - 10 Mks Lorry/tipper/pickup -10Mks	20

		mrks for either provided)		
TR. 5	Work methodology	Submit proposed work sequential/programing within set contract period. Submit methodology on safety during the construction period	Detailed work methodology Detailed safety methodology	10 5
TOTAL SCORE				100

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

FINANCIAL EVALUATION

- The bidder that qualifies technically and with lowest financial quote will be recommended forthe award of the contract.
- If there is a tie on the lowest quoted price between two firms, the firm with the highest technical score will be recommended for award.

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QUALIFICATION FORMS

1. FORM EQU: EQUIPMENT

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.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of theequipment □ Owned □ Rented □ Leased □ Specially manufactured	

Omit the following information for equipment owned by the Tenderer.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

2. FORM PER -1

Contractor's Representative and Key Personnel Schedule

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 theForm PER-2 below for each candidate.

Contractor' Representative and Key Personnel

1.	Title of position: Contractor's Representative	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: forthis position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
2.	Title of position: *[_____]*	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: forthis position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
3.	Title of position: *[ ]* Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: forthis position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
4.	Title of position: *[_____]*	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: forthis position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]

5.	Title of position: *[insert title]*	
	Name of candidate	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: forthis position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]

3. FORM PER-2:

Resume and Declaration - Contractor's Representative and Key Personnel.

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Name of Tenderer

Position [*#1*]: [*title of position from Form PER-1*]		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: *[language and levels of speaking, reading and writing skills]*	
Details		
	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnelofficer):
	Fax:	
	Job title:	Years with present Procuring Entity:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
[main project details]	*[role and responsibilities on the project]*	*[time in role]*	*[describe the experience relevant to this position]*

Declaration

I, the undersigned *[insert either "Contractor's Representative" or "Key Personnel" as applicable]*, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedulefor this position as provided in the Tender:

Commitment	Details
Commitment to duration ofcontract:	*[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]*
Time commitment:	*[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]*

I understand that any misrepresentation or omission in this Form may: a) be taken into consideration during Tender evaluation;

b) result in my disqualification from participating in the Tender;

c) result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel: [*insert name*]

Signature: _____

Date: (day month year): _____

Countersignature

of authorized representative of the Tenderer:

Signature: _____ Date: (daymonth

year): _____

4. TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

4.1 FORM ELI -1.1

Tenderer Information
FormDate: _____

ITT No. and title: _____

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended country of registration: *[indicate country of Constitution]*
Tenderer's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information Name:_____ Address:_____ Telephone/Fax numbers: _____ E-mail address:
1. Attached are copies of original documents of ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.6 ☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5 ☐ In case of state-owned enterprise or institution, in accordance with ITT3.8, documents establishing: • Legal and financial autonomy • Operation under commercial law • Establishing that the Tenderer is not under the supervision of the Procuring Entity 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

4.2 FORM ELI -1.2

Tenderer's JV Information Form (to be completed for each member of Tenderer's JV) Date: _____

ITT No. and title: _____

Tenderer's JV name:
JV member's name:

JV member's country of registration:

JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative informationName:_____ Address:_____ Telephone/Fax numbers: _____ E-mail address:
1. Attached are copies of original documents of ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.6. ☐ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not underthe supervision of the Procuring Entity, in accordance with ITT 3.8. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

4.3 FORM CON – 2

Historical Contract Non-Performance, Pending Litigation and Litigation

HistoryTenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
☐ Contract non-performance did not occur since 1st January *[insert year]* specified in SectionIII, Evaluation and Qualification Criteria, Sub-Factor 2.1. ☐ Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluationand Qualification Criteria, requirement 2.1			
Year	**Non-performed portion of contract**	**Contract Identification**	**Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)**

[insert year]	*[insert amount and percentage]*	Contract Identification: *[indicate complete contractname/ number, and any other identification]* County Government of Nakuru : *[insert full name]* Address of Procuring Entity: *[insertstreet/city/country]* Reason(s) for nonperformance: *[indicate mainreason(s)]*	*[insert amount]*
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			

☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria,SubFactor 2.3.
☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria,Sub-Factor 2.3 as indicated below.

Year of dispute	Amount in dispute(currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		Contract Identification: _____ County Government of Nakuru : _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: __ _____ Status of dispute:	
		Contract Identification: County Government of Nakuru :Address of Procuring Entity: Matter in dispute: Party who initiated the dispute:Status of dispute:	

Litigation History in accordance with Section III, Evaluation and Qualification Criteria

☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria,Sub-Factor 2.4.
☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4
as indicated below.

Year o faward	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
[insert year]	*[insert percentage]*	Contract Identification: [indicate complete contract name, number, and any other identification] County Government of Nakuru : *[insert full name]* Address of Procuring Entity: *[insert street/city/country]* Matter in dispute: *[indicate main issues indispute]* Party who initiated the dispute: *[indicate "Procuring Entity" or "Contractor"]* Reason(s) for Litigation and	*[insert amount]*

		awarddecision *[indicate main reason(s)]*	

4.4 FORM FIN – 3.1:

Financial Situation and Performance

Tenderer's Name: _____
Date: _____
JVMember's Name_____
ITT No. and title: _____

4.4.1. Financial Data

Type of Financial information in_____ (currency)	Historic information for previous_____*years,* (amount in currency, currency, exchange rate*, USDequivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth(NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Type of Financial information in_____ (currency)	**Historic information for previous_____*years,* (amount in currency, currency, exchange rate*, USDequivalent)**				
	Year 1	Year 2	Year 3	Year 4	Year 5
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from OperatingActivities					

*Refer to ITT 15 for the exchange rate

4.4.2 Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for futurecontract commitments.

No.	Source of finance	Amount (Kenya Shilling equivalent)
1		
2		
3		

4.4.3 Financial documents

The Tenderer and its parties shall provide copies of financial statements for_____years pursuantSection III, Evaluation and Qualifications Criteria, Sub-factor 3.1. 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.

 Attached are copies of financial statements[1] for the____years required above; andcomplying with requirements

FORM FIN – 3.2:

Average Annual Construction

TurnoverTenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

	Annual turnover data (construction only)		
Year	**Amount Currency**	**Exchange rate**	**Kenya Shilling equivalent**
[indicate year]	*[insert amount and indicate currency]*		
Average Annual Constructio nTurnover *			

* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

4.6 FORM FIN – 3.3:

Financial Resources

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

Financial Resources		
No.	**Source of financing (attach evidence)**	**Amount (Kenya Shilling equivalent)**
1		
2		
3		

FORM FIN – 3.4:

Current Contract Commitments / Works in Progress

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.

Current Contract Commitments					
	Name of Contract	Procuring Entity's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month)]
1					
2					
3					
4					
5					

4.8 FORM EXP - 4.1

General Construction Experience

Tenderer's

Name

:
_____ Date:
_____

JV Member's Name_____
ITT No. and title: _____

Page_____of_____pages

Starting Year	Ending Year	Contract Identification	Role of Tenderer
		Contract name: _____ Brief Description of the Works performed by theTenderer:_____ Amount of contract: _____ County Government of Nakuru : _____ Address:	
		Contract name: _____ Brief Description of the Works performed by theTenderer:_____ _____ Amount of contract: _____ : County Government of Nakuru _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by theTenderer:_____ Amount of contract: _____ : County Government of Nakuru _____ Address: _____	

FORM EXP - 4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

Similar Contract No.	Information
Contract Identification	

Award date				
Completion date				
Role in Contract	Prime Contractor □	Member inJV □	Management Contractor □	Sub-contractor □

Total Contract Amount			Kenya Shilling
If member in a JV or sub-contractor, specify participation in totalContract amount			
Procuring Entity's Name:			
Address: Telephone/fax number E-mail:			

4.10 FORM EXP - 4.2 (a) (cont.)

Specific Construction and Contract Management Experience (cont.)

Similar Contract No.	Information
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:	
1. Amount	
2. Physical size of required worksitems	
3. Complexity	
4. Methods/Technology	
5. Construction rate for key activities	
6. Other Characteristics	

4.11 FORM EXP - 4.2(b)

Construction Experience in Key Activities

Tenderer's Name: _____
Date: _____
Tenderer's JV Member Name: _____
Sub-contractor's Name[2] (as per ITT 34): _____
_____ ITT No. and
title: _____

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: _

	Information
Contract Identification	
Award date	
Completion date	

Role in Contract	Prime Contractor	Member inJV	Management Contractor	Sub-contractor
Total Contract Amount			Kenya Shilling	

Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)	Actual Quantity Performed (i) x (ii)
Year 1			
Year 2			
Year 3			
Year 4			
Procuring Entity's Name:			
Address: Telephone/fax number E-mail:			

	Information
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	

2. Activity No. Two
3. ……

OTHER FORMS

5. FORM OF TENDER

INSTRUCTIONS TO TENDERERS

i) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.

ii) All italicized text is to help Tenderer in preparing this form.

iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATIONand the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.

iv) The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.

- *Tenderer's Eligibility- Confidential Business Questionnaire*
- *Certificate of Independent Tender Determination*
- *Self-Declaration of the Tenderer*

Date of this Tender submission: *[insert date (as day, month and year) of Tender submission]*

Request for Tender No.: *[insert identification*]

Name and description of Tender *[Insert as per*

ITT)

Alternative No.: [*insert identification No if this is a Tender for an alternative*]

To: [*insert complete County Government of Nakuru*] Dear Sirs,

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

The above amount includes foreign currency amount (s) of [*state figure or a percentage and currency*][figures]_____[words]_____ .

The percentage or amount quoted above does not include provisional sums, and only allows notmore than two foreign currencies.

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

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

4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us. We further understand that youare not bound to accept the lowest or any tender you may receive.

5. We, the undersigned, further declare that:

i) *No reservations:* We have examined and have no reservations to the tender document,

including Addenda issued in accordance with ITT 28;

ii) *Eligibility:* We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;

iii) *Tender-Securing Declaration:* We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's

Country in accordance with ITT 19.8; *iv) Conformity:* We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in theconstruction schedule, the following Works: *[insert a brief description of the Works];*

v) *Tender Price:* The total price of our Tender, excluding any discounts offered in item 1 above is: *[Insert one of the options below as appropriate]*

vi) Option 1, in case of one lot: Total price is: [*insert the total price of the Tender in words andfigures, indicating the various amounts and the respective currencies*]; Or

Option 2, in case of multiple lots:

a) Total price of each lot [*insert the total price of each lot in words and figures, indicatingthe various amounts and the respective currencies*]; and

b) Total price of all lots (sum of all lots) [*insert the total price of all lots in words andfigures, indicating the various amounts and the respective currencies*];

vii) *Discounts:* The discounts offered and the methodology for their application are:

viii) The discounts offered are: [*Specify in detail each discount offered.*] ix) The exact method ofcalculations to determine the net price after application of discounts is shown below: [*Specify indetail the method that shall be used to apply the discounts*];

x) *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;

xi) *Performance Security:* If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;

xii) *One Tender Per Tender:* We are not submitting any other Tender(s) as an individual Tender, 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 submittedin accordance with ITT 13.3;

xiii) *Suspension and Debarment:* We, along with any of our subcontractors, suppliers, Project Manager, 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 or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.

xiv) *State-owned enterprise or institution:* [*select the appropriate option and delete the other*] [*We are not a state-owned enterprise or institution*] / [*We are a state-owned enterprise or institution but meet the requirements of ITT 3.8*];

xv) *Commissions, gratuities, fees:* We have paid, or will pay the following commissions, gratuities,or fees with respect to the tender process or execution of the Contract: *[insert complete nameof each Recipient, its full address, the reason for which each commission or gratuity was paidand the amount and currency of each such commission or gratuity].*

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

xvi) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;

xvii) Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;

xviii) 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;

xix) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive andmade with the intention of accepting the contract if awarded. To this effect we have signed the"Certificate of Independent Tender Determination" attached below.

xx) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from (*specify website*) during the procurement process andthe execution of any resulting contract.

xxi) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:

a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in anyconflict to interest.
b) Certificate of Independent Tender Determination – to declare that we completed thetender without colluding with other tenderers.
c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, notengage in any form of fraud and corruption.
d) Declaration and commitment to the Code of Ethics for Persons Participating in PublicProcurement and Asset Disposal

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"** attached to the Form of Tender.

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

Name of the person duly authorized to sign the Tender on behalf of the Tenderer: **[*insert completename of person duly authorized to sign the Tender*]

Title of the person signing the Tender: [*insert complete title of the person signing the Tender*]

Signature of the person named above: [*insert signature of person whose name and capacity are shown*

above] **Date signed** [*insert date of signing*] day of [*insert month*], [*insert year*]

Date signed_____day of_____ , _____

A. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS

QUESTIONNAIREInstruction to Tenderer

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV.* Tenderer is further reminded that it is an offence to give false information on this Form.

(a) **Tenderer's details**

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Numberand Expiring date	
7	Name, country and full address (*postal andphysical addresses, email, and telephone number*) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which theTenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address (*postal and physical addresses, email, and telephone number*) of state which stock exchange	

General and Specific Details

b) **Sole Proprietor,** provide the following details.

Name in full_____ Age Nationality____
_____Country of Origin Citizenship __ _____

c) **Partnership,** provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

d) **Registered Company,** provide the following details.

i) Private or public Company____

ii) State the nominal and issued capital of theCompany____

Nominal Kenya Shillings (Equivalent).....
Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

(e) DISCLOSURE OF INTEREST- Interest of the Firm in the Procuring Entity.

i) Are there any person/persons in .... (*County Government of Nakuru)* whohas/have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

ii) Conflict of interest disclosure

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship withTenderer
1	Tenderer is directly or indirectly controls, is controlled byor is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirectsubsidy from another tenderer.		
3	Tenderer has the same legal representative as anothertenderer		
4	Tender has a relationship with another tenderer, directlyor 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.		
	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
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 would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this TenderDocument.		

7	Tenderer has a close business or family relationship witha professional staff of the Procuring Entity who 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.		
8	Tenderer has a close business or family relationship witha professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship statedin item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

a) Certification

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate asat the date of submission.

Full Name_____Title

orDesignation_____

_____ _____

(Signature) *(Date)*

B. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the_____[County Government of Nakuru] for:_____[Name and number of tender] in response to the request for tenders made by: [Name of Tenderer] do hereby make thefollowing statements that I certify to be true and complete in every respect:

I certify, on behalf of_____[Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;

2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;

3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;

4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who: a) has been requested to submit a Tender in response to this request for tenders;
   b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;

5. The Tenderer discloses that [check one of the following, as applicable:
   a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
   b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and thenature of, and reasons for, such consultations, communications, agreements or arrangements;

6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been noconsultation, communication, agreement or arrangement with any competitor regarding: a) prices;
   b) methods, factors or formulas used to calculate prices;
   c) the intention or decision to submit, or not to submit, a tender; or
   d) the submission of a tender which does not meet the specifications of the request for Tenders;except as specifically disclosed pursuant to paragraph (5)(b) above;

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;

8. 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 pursuant to paragraph (5)(b) above.

Name_____Title_ Date _____

[Name, title and signature of authorized agent of Tenderer and Date].

C. SELF - DECLARATION

FORMSFORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THEPUBLIC PROCUREMENTAND ASSET DISPOSALACT 2015.

I, ……., of Post Office Box ……. being a resident of
…….. in the Republic of ……. do hereby make a statementas
follows: -

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

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act. **3.** THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

…… ……. ……
(Title)
(Signature) (Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT ORFRAUDULENT PRACTICE

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

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

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

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender 5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

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

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I ……..... (person) on behalf of *(Name of the Business/ Company/Firm*) ……. declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal. Name of Authorized signatory…….....

Sign…….....

Position…….....
...
.....

Office address……
….

Telephone…….....……

E-mail…….....
.....
……

Name of the Firm/Company…….....
……

Date…….....…

(Company Seal/ Rubber Stamp where applicable)

Witness

Name ……..... Sign.....

Date……

D. APPENDIX 1- FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

2. The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act *(no. 33 of 2015)* and its Regulation, and anyother Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

3. Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants,Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act *(no. 33 of 2015)* under Section 66 describes rules tobe followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior: -

1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement orasset disposal proceeding;
2) A person referred to under subsection (1) who contravenes the provisions of that sub- section commits an offence;
3) Without limiting the generality of the subsection (1) and (2), the person shall be: -

a) disqualified from entering into a contract for a procurement or asset disposal proceeding;or

b) if a contract has already been entered into with the person, the contract shall be voidable;

4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: - a) shall not takepart in the procurement proceedings;

b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and

c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;

7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person

in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:

i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, ofanything of value to influence improperly the actions of another party;

ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklesslymisleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

iii) "collusive practice" is an arrangement between two or more parties designed to achieve animproper purpose, including to influence improperly the actions of another party;

iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; v) "obstructive practice" is:

- deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impedeinvestigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.

b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement ordisposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and todeprive the procuring entity of the benefits of free and open competition.

c) Rejects a proposal for award[1] of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for thecontract in question;

d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents

personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2] all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement

document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

7. FORM OF TENDER SECURITY - DEMAND BANK

GUARANTEEBeneficiary: Request for Tenders No:____Date:_

_____

TENDER GUARANTEE No.: _____

Guarantor: _____

1. We have been informed that_____ (hereinafter called"the Applicant") has submitted

or will submit to the Beneficiary its Tender (hereinafter called "the Tender") for the execution of _

2

.under Request for Tenders No. ("the ITT").

3. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supportedby a Tender guarantee.

4. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiaryany sum or sums not exceeding in total an amount of ( ) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or aseparate signed document accompanying or identifying the demand, stating that either the Applicant:

(a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter ofTender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or

b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Periodor any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.

5. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies ofthe contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii)twenty-eight days after the end of the Tender Validity Period.

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

[signature(s)]

FORM OF TENDER SECURITY (TENDER BOND)

[The Surety shall fill in this Tender Bond Form in accordance with the instructions indicated.]

BOND NO. _____

1. BY THIS BOND *[name of tenderer]* as Principal (hereinafter called "the Principal"), and *[name, legaltitle, and address of surety],* **authorized to transact business in** *[name of country of* Procuring Entity*],* as Surety
   (hereinafter called "the Surety"), are held and firmly bound unto *[County Government of Nakuru]* as Obligee (hereinafter called "the Procuring Entity") in the sum of *[amount of Bond][amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety,bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Principal has submitted or will submit a written Tender to the Procuring Entity dated the day of , 20 , for the supply of *[name of Contract]* (hereinafter called the "Tender").

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:
   a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter ofTender
      ("the Tender Validity Period"), or any extension thereto provided by the Principal; or
   b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity
      Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document.

   Then the Surety undertakes to immediately pay to the Procuring Entity up to the above amount uponreceipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demandarises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. The Surety hereby agrees that its obligation will remain in full force and effect up to and including thedate 30 days after the date of expiration of the Tender Validity Period set forth in the Principal's Letter of Tender or any extension thereto provided by the Principal.

5. IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed intheir respective names this____day of 20_____.

Principal: CorpoSuretya e Seal_____ (where appropriate)

:

_____

(Signature) *(Signature)*

(Printed name and title)

(Printed name and title)

TENDER-SECURING DECLARATION FORM

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

Date: .....*[insert date (as day, month and year) of Tender Submission]*
Tender No.....*[insert number of tendering process]*
To: .....*[insert complete name of Purchaser]* I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.

2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we – (a) havewithdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period ofbid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successfulTenderer(s), upon the earlier of:
   a) our receipt of a copy of your notification of the name of the successful Tenderer; or
   b) thirty days after the expiration of our Tender.

4. I/We understand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be inthe name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all futurepartners as named in the letter of intent.

Signed:……..……..
..... Capacity /
..... title(director or partner or sole proprietor, etc.) ..... Name:
……. Duly authorized to sign the bid for and on behalf of: *[insert complete name of Tenderer]*

Dated on …… day of ..... *[Insert date of signing]* Seal or stamp

Appendix to Tender

Schedule of Currency requirements

Summary of currencies of the Tender for_____*[insert name of Section of the Works]*

Name of currency	*Amounts payable*
Local currency:	
Foreign currency #1:	
Foreign currency #2:	
Foreign currency #3:	

Provisional sums expressed in local currency	[To be entered by the Procuring Entity]

PART II - WORK REQUIREMENTS

SECTION V - DRAWINGS

A list of drawings should be inserted here. The actual drawings including Site plans should be annexed in a separate booklet.

SECTION VI - SPECIFICATIONS

Standard Specifications refers to the Standard Specifications for Road and Bridge Construction, 1986 Edition

SECTION VII- BILLS OF QUANTITIES

PROJECT NAME- TENDER FOR THE PROPOSED CONSTRUCTION OF MODERN MARKET STALLS AT KITUR CENTRE IN SUBUKIA WARD , SUBUKIA SUB-COUNTY.

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
1	**CONSTRUCTION OF 8 NO. CURIO SHOPS**				
	ELEMENT NO.1				
	SUBSTRUCTURE ***NOTE:*** *This element comprises work upto and including first floor slab*				
	EXCAVATIONS & EARTHWORKS:				
A	Excavate oversite to remove top vegetable soil average 150mm deep and cart away from site	45	SM		
B	Excavate for strip foundation trenches not exceeding 1.50 metres deep from reduced levels	23	CM		
C	Allow for keeping excavations free of all waters		ITEM		
D	Allow for planking and strutting to sides of trenches		ITEM		
E	250 mm thick hand packed hardcore well watered and compacted in 150 mm thick layers	26	SM		
F	50 mm thick Murram or stone dust blinding on hardcore	26	SM		
G	TERMIDOR 25 EC' or other equal and approved anti-termite treatment applied in accordance with Manufacturer's printed instructions	33	SM		
H	500 Gauge polythene damp proof membrane laid with 200mm laps	33	SM		
J	150 mm thick rough chisel dressed natural stonewalling jointed and bedded in cement and sand (1:3) mortar	30	SM		
K	Load and cart away excess soil away from site	11	CM		
L	Return fill and rum selected excavated materials . around foundations	12	CM		
	TOTAL CARRIED TO COLLECTION.				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	Concrete				
	Mass concrete (1:4:8) in:				
A	50 mm thick blinding under strip footings	23	SM		
	Vibrated reinforced concrete (1:2:4/20mm) in:				
B	Strip footings	5	CM		
C	100mm thick floor bed	33	SM		
	Reinforcement				
	High tensile square twisted bars to B.S.4461				
D	B.R.C. Fabric mesh reinforcement Ref: A98 laid with 200 mm laps	33	SM		
	Sawn formwork to:				
E	Sides of strip footings	10	SM		
F	Edge of floor slabs 75 - 150 mm wide	34	LM		
	TOTAL CARRIED TO COLLECTION.				
	COLLECTIONS.				
	Brought forward from CS/01 Brought forward from Above				

	TOTAL FOR SUBSTRUCTURE WORKS CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT NO.2 **STEEL FRAMING AND** **WALLING PLAIN SHEET**				
A	**WALLING** 16 Gauge galvanised plain sheet bevelled: welded and ground smooth on steel framing (m.s) to approval	95	SM		
	Mild Steel Framing				
B	50x50x2mm thick mild steel framing welded and grounded smooth to approval: horizontally and vertical members	230	LM		
	TOTAL FOR STEEL FRAMING AND WALLING CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT				
	NO.3				
	ROOFING				
A	**IT4 Roofing sheet roofing; 28 gauge**				
	Roof covering not exceeding 15º from horizontal fixed to steel structure(m/s) with roofing nails and neoprene washers 'J' bolts and nuts neoprene washers and caps	63	SM		
	STEEL ROOFING				
	THE FOLLOWING IN HOT ROLLED STEEL SECTIONS TO APPROVAL				
B	50x50x2mm thick R.H.S Mild steel Rafters	40	LM		
C	Ditto but tie beam	22	LM		
D	25x25x2mm thick ditto but struts and ties	7	LM		
E	50x50x2mm thick ditto but purlins	60	LM		
F	200x1.5mm thick ditto finial cover	46	LM		
	RAIN WATER GOODS				
	24g Galvanized mild steel sheeting all welds ground smooth				
G	250x150mm box gutter including soldering joints in the running length welded to steel frame to approval	0	LM		
H	75mm dia. Rain water downpipe fixed with and including steel straps at 900mm centers, plugged and screwed to wall	0	LM		
J	Extra over for swan neck	0	NO		
K	Extra over for horse shoe bend	0	NO		
	TOTAL FOR ROOFING CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT **NO.4 DOORS**				
A	1200x2100mm Double door complete with 50x50x3mm fixed angle frame, 2.5mm thick black sheet checkered plate built into panels, top panels left open ffor glazing "Union" 3 lever steel door lock 3x200mm lockable tower bolts	8	NO		
B	Prepare and apply three coats of gloss oil paint on metal doors	41	SM		
	TOTAL FOR DOORS CARRIED TO SUMMARY.				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT NO.5				
	INTERNAL				
	FINISHES FLOORS				
	Cement and sand (1:3) floor screeding :-				
A	25mm thick floor screeding laid to gradient and pigmented with red oxide	33	SM		
	PAINTING AND DECORATIONS				
B	Prepare and apply one undercoat and two finishing coats of gloss oil paint to general surface of wall externally	190	SM		
	EXTERNAL WORKS				
C	50mm thick in-situ paving slabs 600mm wide around the structure with and including 50mm thick murram or quarry dust well compacted to approval	21	SM		
	TOTAL FOR FINISHES CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	SUMMARY				
A	SUBSTRUCTURES		CS/02		
B	FRAMED STEEL AND WALLING		CS/03		
C	ROOFING		CS/04		
D	DOORS		CS/05		
E	FINISHES		CS/06		
	TOTAL FOR 8 NO. CURIO SHOPS CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
2	**PROVISIONAL SUM**				
A	Provide all the materials, fabricate and erect project name board in 75mm diameter 3mm thick steel pipes in 150mm wide and 600mm deep holes and supported in mass concrete class 15/20 pedestrial. The face of the board to be 1000mmx900mm written both sides as instructed.	1	NO		30,000.00

B	Allow a sum of Kenya Shillings Forty Thousand (KSh 40,000/-) only for Project Supervision by Public Works Staff.		SUM		40,000.00
C	Allow a sum of Kenya Shillings Twenty Thousand (20,000/-) only for Department of Trade project liason costs to be expended at the sole written authority and direction of the Project Manager.		SUM		20,000.00
D	Allow a sum of Kenya Shillings Nineteen Thousand Five Hundred (19,500/-)only for Project Management Commitee(PMC) supervisory Team (3No. Meetings at a rate of 6,500/- per meeting) to be expended at the sole written authority and direction of the Project Manager.		SUM		19,500.00
E	Allow a sum of Kenya Shillings Five Thousand (5,000/-)only for Environmental mitigation measures to be expended at the sole written authority and direction of the Project Manager.		SUM		5,000.00
F	Allow a sum of Kenya Shillings Three Thousand (3,000/-) only for mobilization for sensitization of project to be expended at the sole written authority and direction of the Project Manager.		SUM		3,000.00
	TOTAL FOR PROVISIONAL SUM CARRIED TO SUMMARY				**117,500.00**

ITEM	DESCRIPTION		PAGE		AMOUNT
	GRAND SUMMARY				
A	TOTAL FOR PROPOSED 8 NO. CURIO SHOPS		CS/07		
B	TOTAL FOR PROVISIONAL SUMS		CS/08		
	SUB-TOTAL 1				
	ADD 0.03% PPRA Levy				
	SUB-TOTAL 2				
	ADD 16% V.A.T				
	GRAND TOTAL CARRIED TO FORM OF TENDER				

Contract period..... Weeks

Amount in word Kenya Shillings.....
.....
Tenderers Name.....
.....
Address.....

Signature.....Date.....

Amount in words
.....

Tenderers Name
.....

Signature .....

Date.....

Nakuru County Cess Point Charges:to be determined during the contract

Item No.	Description	UNIT		QTY	Cess Charges (Ksh)	Total Amount (Ksh)
		7 ton lorry (trips)	15 ton lorry (trips)			
1	Sand					
2	Quarry Dust					
3	Ballast					
4	Masonry Blocks					
5	Murram					
6	Hardcore					
7	Timber					
	Total					

PART III - CONDITIONS OF CONTRACT AND CONTRACTFORMS

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 admeasurement contracts and lump sum

contracts.**General Conditions of Contract**

A. General

1. Definitions

1.1 Bold face type is used to identify defined terms.

a) **The Accepted Contract** Amount means the amount accepted in the Letter of Acceptance forthe 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 toresolve 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 2.3below.

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 theProcuring 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 work**s 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 ofdefects by the Contractor.

o) **The Defects Liability Period** is the period **named in the SCC** pursuant to Sub-Clause 34.1 andcalculated 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 theContract, 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) **Equipmen**t 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 timeor an acceleration order.

v) **Materials** are all supplies, including consumables, used by the Contractor for incorporation inthe Works.

w) **Plant i**s 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 theProject 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 arefactual 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 commenceexecution 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 tocarry 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 Contractorthat 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 overto the Procuring Entity, **as defined in the SCC**.

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 followingorder of priority: a) Agreement,

b) Letter of Acceptance,

c) Contractor's Bid,

d) Special Conditions of Contract,

e) General Conditions of Contract, including Appendices,

f) Specifications,

g) Drawings,

h) Bill of Quantities[1], and

i) any other document **listed in the SCC** as forming part of the Contract.

3. Language and Law

3.1 The language of the Contract is English Language and the law governing the Contract are the Lawsof Kenya.

3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goodsand services prohibitions in the Procuring Entity's Country when

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[1] *In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."*

a) as a matter of law or official regulations, Kenya prohibits commercial relations with thatcountry; 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 mattersbetween 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 onlywhen 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. Subcontractingshall 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 equalto 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 theContractor 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 isthe 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 itis 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 tobe 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 ordamage due to

aa) a Defect which existed on the Completion Date, bb) an event occurring before the Completion Date, which was not itself a Procuring Entity's risk, or cc) 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, inthe 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 andDrawings.

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 CompletionDate.

17. Approval by the Project Manager

17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Worksto 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 theTemporary Works.

17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, whererequired.

17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanentWorks, 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 bedeemed 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 isbeing 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 theapplicable laws where the Site is located.

22.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and subconsultants to keep, accurate and systematic accounts and records in respect of theWorks 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 Adjudicator shall be appointed jointly by the Procuring Entity and the Contractor, at the time of the Procuring Entity's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Procuring Entity does not agree on the appointment of the Adjudicator, the Procuring Entity will request the Appointing Authority designated in the SCC, toappoint 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 designatedin the SCC at the request of either party, within 14 days of receipt of such request.

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 Timefor 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, andsupporting 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 continuingeffect:

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 supportinga 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 accordancewith 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 Sub-Clause 8.4 [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 hehas 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 ofthe 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.

24.2 Amicable Settlement

24.2.1 Where a notice of a claim has been given, both Parties shall attempt to settle the disputeamicably 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 aboveshould 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 theseConditions.
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 notsettled 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 claimor 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 frombeing 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 mutuallyagreed 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 itto 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 anArbitrator, 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 otherinstitutions.

24.6 Alternative Arbitration Proceedings

24.6.1 Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

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 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 to continue

24.8.1 Notwithstanding any reference to arbitration herein,

a) the parties shall continue to perform their respective obligations under the Contract unlessthey 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 prevailingsanctions 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 mayhave been paid or are to be paid to agents or any other party with respect to the bidding process or execution 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 purposeof the commission, gratuity or fee.

B. Time Control

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.

26.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

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 activitywithin 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 plansfor 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 Managereither at the management meeting or after the management meeting and stated in writingto all who attended the meeting.

31. Early Warning

31.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likelyfuture 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. TheProject Manager may instruct the Contractor to search for a Defect and to uncover and testany 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

withinthe 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 Contractorshall pay this amount.

D. Cost Control

36. Contract Price[7]

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 Contractorwill be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

37. Changes in the Contract Price[8]

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

37.2If requested by the Project Manager, the Contractor shall provide the Project Manager with adetailed cost breakdown of any rate in the Bill of Quantities.

38. Variations

38.1 All Variations shall be included in updated Programs produced by the Contractor.

38.2The 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.

38.3If 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.

38.4If 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.

38.5The Contractor shall not be entitled to additional payment for costs that could have beenavoided by giving early warning

38.6If 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 statedin Sub-Clause 39.1 or the timing of its execution do not cause the cost per unit of quantityto 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

38.7Value 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 engineeringproposal; 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 theWorks.

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 thefull increase in the Contract Price.

39. Cash Flow Forecasts

39.1 When the Program[11], is updated, the Contractor shall provide the Project Manager with anupdated 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 ofthe work executed less the cumulative amount certified previously.

40.2 The Project Manager shall check the Contractor's monthly statement and certify the amountto 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 ofQuantities that have been completed.

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 theproportion 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 duringtender 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 shallbe 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 borrowingfor 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 theAdjudicator 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 ofcurrencies 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 theProcuring 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:

d) The Procuring Entity does not give access to a part of the Site by the Site Possession Datepursuant to GCC Sub-Clause 20.1.

e) The Procuring Entity modifies the Schedule of Other Contractors in a way that affects thework of the Contractor under the Contract.

f) The Project Manager orders a delay or does not issue Drawings, Specifications, orinstructions required for execution of the Works on time.

g) The Project Manager instructs the Contractor to uncover or to carry out additional testsupon work, which is then found to have no Defects.

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

i) 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 andfrom a visual inspection of the Site.

j) The Project Manager gives an instruction for dealing with an unforeseen condition, causedby the Procuring Entity, or additional work required for safety or other reasons.

k) 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. l) The advance payment is delayed.

m) The effects on the Contractor of any of the Procuring Entity's Risks.

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

42.2If 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 bythe Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the ContractPrice based on the Project Manager's own forecast. The Project Manager shall assume thatthe Contractor shall react competently and promptly to the event.

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 bythe Contractor, provided such changes are not already reflected in the Contract Price or area result of GCC Clause 44.

44. Currency y 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 forAdvance 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 belowapplies:

$$P = A + B\ Im/Io$$

where: P is the adjust ment factor for the portion of the Contract Price payable.

13 representing the non-adjustable and adjustable portions,A and B are coefficients **specified in the SCC,** respectively, of the Contract Price payable and

Im is the index prevailing at the end of the month being invoiced and IOC is the indexprevailing 30 days before Bid opening for inputs payable.

45.2If the value of the index is changed after it has been used in a calculation, the calculationshall 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.

46.2Upon 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 bythe 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 byadjusting 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** foreach 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 statedin 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 shallbe 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 tothe 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 datespecified 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 issueof the Completion Certificate in the case of a Performance Bond.

51. Dayworks

51.1 If applicable, the Dayworks 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 thatway.

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

51.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks 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 oromissions.

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 ProjectManager'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 issuewithin 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 Contractorshall 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 paymentsdue to the Contractor.

57. Termination

57.1 The Procuring Entity or the Contractor may terminate the Contract if the other party causes afundamental 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 currentProgram 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 theinstruction is not withdrawn within 30 days;
c) the Procuring Entity or the Contractor is made bankrupt or goes into liquidation other than for areconstruction or amalgamation;
d) a payment certified by the Project Manager is not paid by the Procuring Entity to the

Contractorwithin 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 themaximum 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 theContractor, 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 andMaterials 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 shallbe 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 outsidethe 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 workcarried out before receiving it and for any work carried out afterwards to which a commitment was made.

SECTION IX - SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
A. General	
GCC 1.1 (q)	The Procuring Entity is: COUNTY GOVERNMENT OF NAKURU P.O BOX 2870-20100 NAKURU.
GCC 1.1 (u)	The Intended Completion Date for the whole of the Works to be inserted in the contract agreement.
GCC 1.1 (x)	The Project Manager is CHIEF OFFICER INFRASTRUCTURE P.O BOX 2870-20100 NAKURU.
GCC 1.1 (z)	The Site is located at **SUBUKIA SUB-COUNTY** and is defined in drawings.
GCC 1.1 (cc)	The Start Date shall be: immediately after signing the contract agreement.
GCC 1.1 (gg)	The Works consist of **TENDER FOR THE PROPOSED CONSTRUCTION OF MODERN MARKET STALLS AT KITUR CENTRE IN KABAZI WARD , SUBUKIA SUB-COUNTY.**
GCC 2.2	Sectional Completions are: **shall not apply**
GCC 5.1	The Project manager MAY delegate any of his duties and responsibilities.
GCC 8.1	Schedule of other contractors shall not apply
GCC 9.1	Key Personnel GCC 9.1 is replaced with the following: 9.1 Key Personnel are the Contractor's personnel named in this GCC 9.1 of the Special Conditions of Contract. 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: Not applicable
GCC 13.1	The minimum insurance amounts and deductibles shall not apply
GCC 14.1	Site data are **TENDER FOR THE PROPOSED CONSTRUCTION OF MODERN MARKET STALLS AT KITUR CENTRE IN KABAZI WARD , SUBUKIA SUB-COUNTY.**
GCC 20.1	The Site Possession Date(s) shall be: 7 days after contract signing
GCC 23.1 &	Appointing Authority for the Adjudicator: COUNTY ATTORNEY, NAKURU COUNTY.

GCC 23.2	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: N/A
B. Time Control	
GCC 26.1	The Contractor shall submit for approval a Program for the Works within 7 days fromthe date of the Contract signing.

Number o fGC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 26.3	The period between Program updates shall not apply. The amount to be withheld for late submission of an updated Program shall not apply.
C. Quality Control	
GCC 34.1	The Defects Liability Period is: *180* days.
D. Cost Control	
GCC 38.9	If the value engineering proposal is approved by the Procuring Entity the amount to bepaid to the Contractor shall not apply
GCC 41.1	The procuring entity shall pay the contractor the amounts certified by the projectmanager within 90 days of the of each certificate
GCC 44.1	The currency of the County Government of Nakuru Country is: KENYA SHILLING.
GCC 45.1	The Contract *is not* subject to price adjustment in accordance with GCC Clause 45, andthe following information regarding coefficients shall not apply.
GCC 46.1	The proportion of payments retained is: *10%*
GCC 47.1	The liquidated damages for the whole of the Works shall be 5% of the contract sum
GCC 48.1	The Bonus for the whole of the Works shall not apply
GCC 49.1	The Advance Payments: shall not apply
GCC 50.1	The Performance Security amount is 5 % of the Contract amount (Above Kshs.5,000,000) in form of a bank guarantee or from an Insurance Company listed by IRA
E. Finishing the Contract	
GCC 56.1	The date by which operating and maintenance manuals are required shall not apply. The date by which "as built" drawings are required is DATE OF SITE TAKE OVER.
GCC 56.2	The amount to be withheld for failing to produce "as built" drawings and/or operatingand maintenance manuals by the date required in GCC 58.1 shall not apply.
GCC 57.2 (g)	The maximum number of days shall not apply.

GCC 58.1	The percentage to apply to the value of the work not completed, representing theProcuring Entity's additional cost for completing the Works, is *10%*.

FORM No 1: NOTIFICATION OF INTENTION TO AWARD

This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below. ----------

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FORMAT

1. For the attention of Tenderer's Authorized Representative

   i) Name: *[insert Authorized Representative's name] ii)* Address: *[insert Authorized Representative's Address]*
   iii) Telephone: *[insert Authorized Representative's telephone/fax numbers] iv)* Email Address: *[insert Authorized Representative's email address]*

   [IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]

2. Date of transmission: [*email*] on [*date*] (local time)

   This Notification is sent by (*Name and designation*) _____

3. Notification of Intention to Award

   i) Procuring Entity: *[insert the name of the Procuring Entity] ii)* Project: *[insert name of project]*
   iii) Contract title: *[insert the name of the contract] iv)* Country: *[insert country where ITT is issued]*
   v) ITT No: *[insert ITT reference number from Procurement Plan]*

   This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

4. Request a debriefing in relation to the evaluation of your tender

   Submit a Procurement-related Complaint in relation to the decision to awardthe contract. a) The successful tenderer

   i) Name of successful Tender___

   ii) Address of the successful Tender ____

   iii) Contract price of the successful Tender Kenya Shillings___(in wor b) Other

TenderersNames of all Tenderers that submitted a Tender. If the Tender's price was evaluated include
the evaluated price as well as the Tender price as read out. For Tenders not evaluated, giveone main reason the Tender was unsuccessful.

S/No	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5. How to request a debriefing

a) DEADLINE: The deadline to request a debriefing expires at midnight on [*insert date*] (*localtime*).

b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.

c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

i) Attention: [*insert full name of person, if applicable*] ii) Title/position: [*insert title/position*] ii) Agency: [*insert County Government of Nakuru*] iii) Email address: [*insert email address*]

d) If your request for a debriefing is received within the 3 Days deadline, we will provide thedebriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five
(3) Days after the date that the debriefing is provided. If this happens, we will notify youand confirm the date that the extended Standstill Period will end.

e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later thanfifteen (15) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint

a) Period: Procurement-related Complaint challenging the decision to award shall be submitted bymidnight, [*insert date*] (local time).

b) Provide the contract name, reference number, name of the Tenderer, contact details; and addressthe Procurement-related Complaint as follows:

i) Attention: [*insert full name of person, if applicable*] ii) Title/position: [*insert title/position*]

iii) Agency: [*insert County Government of Nakuru*] iv) Email address: [*insert email address*]

c) At this point in the procurement process, you may submit a Procurement-related Complaintchallenging the decision to award the contract. You do not need to have requested, or received,

a debriefing before making this complaint. Your complaint must be submitted within theStandstill Period and received by us before the Standstill Period ends.

d) Further information: For more information refer to the Public Procurement and Disposals Act2015 and its Regulations available from the Website info@ppra.go.ke or complaints@ppra.go.ke.

You should read these documents before preparing and submitting your complaint.

e) There are four essential requirements:

i) You must be an 'interested party'. In this case, that means a Tenderer who submitted aTender in this tendering process, and is the recipient of a Notification of Intention to Award.

ii) The complaint can only challenge the decision to award the contract.

iii) You must submit the complaint within the period stated above.

iv) You must include, in your complaint, all of the information required to support yourcomplaint.

7. Standstill Period

i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).

ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification ofIntention to Award.

iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification please do not hesitate to contact us.
Onbehalf of the Procuring Entity:

Signature: **Name:** _____

Title/position: **Telephone:**

Email: supplychain@nakuru.go.ke

FORM NO. 2 - REQUEST FOR REVIEW

FORM FOR REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO…… OF ……20……..

BETWEEN

…… APPLICANT

(Review Board)AND

……RESPONDENT (Procuring Entity)

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

REQUEST FOR REVIEW

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

1.

2.

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

that:1.

2.

SIGNED ……(Applicant) Dated on……day of ……/…20……

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Boardon… day of

……..20…….

… SIGNED

Board Secretary

FORM NO 3: NOTIFICATION OFAWARD - LETTER OF ACCEPTANCE

[letterhead paper of the Procuring Entity] [date]

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

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract andidentification number, as given in the Contract Data]* for the Accepted Contract Amount *[amount innumbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by.... (*County Government of Nakuru).*

You are requested to furnish the Performance Security within 30 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature:.....

Name and Title of Signatory:.....

County Government of Nakuru .....

Attachment: *Contract Agreement*.....

FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the_____day of_____, 20___, between _____of_____(hereinafter "the Procuring Entity"), of the one part, and_____of_____ (hereinafter"the Contractor"), of the other part:

WHEREAS the Procuring Entity desires that the Works known as_should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of theseWorks and the remedying of any defects therein,

The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents. a) the Letter of Acceptance
   b) the Letter of Tender
   c) the addenda Nos_____ (if any)
   d) the Special Conditions of Contract
   e) the General Conditions of Contract;
   f) the Specifications
   g) the Drawings*;* and
   h) the completed Schedules and any other documents forming part of the contract.

3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Procuring Entity to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

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

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordancewith the Laws of Kenya on the day, month and year specified above.

Signed and sealed by_____(for the Procuring Entity)

Signed and sealed by_____(for the Contractor).

FORM NO. 5 - PERFORMANCE SECURITY

[Option 1 - Unconditional Demand Bank Guarantee]

[Guarantorletterhead]

Beneficiary:_____*[insert name and Address of* Procuring Entity*]* **Date:** _____

_____*[Insert date of issue]*

Guarantor: [*Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that_____(hereinafter called "the Contractor") has entered into Contract No._____dated_____ with (*County Government of Nakuru*)_____(the Procuring Entity as the Beneficiary), for the execution of _____(hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_(*in words*),[1] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signeddocument accompanying or identifying the demand, stating that the Applicant is in breach ofits obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

4. This guarantee shall expire, no later than the …. Day of ……, 2……[2], and any demand for payment under it must be received by us at the office indicated above on or before that date.

5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year],* in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."
[Name of Authorized Official, signature(s) and seals/stamps].

Note: *All italicized text (including footnotes) is for use in preparing this form and shall be deletedfrom the final product.*

FORM No. 6 - PERFORMANCE SECURITY

[Option 2– Performance Bond]

[Guarantor letterhead or SWIFT identifier cod

Beneficiary: [insert name and Address of *Procuring Entity*] ***Date:*** *[Insert date of issue]*.

PERFORMANCE BOND No.:

Guarantor: [*Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond as Principal (hereinafter called "the Contractor") and] as Surety (hereinafter called "the Surety"), are held and firmly bound unto] as Obligee (hereinafter called "the Procuring Entity") in the amount of for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs,executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the day of , 20 , for in accordance with the documents, plans, specifications, andamendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:
   1) complete the Contract in accordance with its terms and conditions; or
   2) obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determinationby the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses(even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less theamount properly paid by Procuring Entity to Contractor; or
   3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract inaccordance with its terms and conditions up to a total not exceeding the amount of this Bond.

4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date ofthe issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and theSurety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day_____of_20_____.

SIGNED ON on behalf of By___in the capacity of In the presence of

SIGNED ON on behalf of By in the capacity of In the presence of

FORM NO. 7 - ADVANCE PAYMENT SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: *[Insert name and Address of* Procuring Entity*]* **Date:** _____ *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: _____*[Insert guarantee reference number]* **Guarantor:**

_____**[***Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that_____(hereinafter called "the Contractor") has entered intoContract No._____*dated*_____with the Beneficiary, for the execution of _____

2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum (*in words*) is to be made against an advance payment guarantee.

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of (*in words*)[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
   a) has used the advance payment for purposes other than the costs of mobilization in respect ofthe Works; or
   b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

4. A demand under this guarantee may be presented as from the presentation to the Guarantorof a certificate from the Beneficiary's bank stating that the advance payment referred to abovehas been credited to the Contractor on its account number____at .

5. The maximum amount of this guarantee shall be progressively reduced by the amount of theadvance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest,upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of , 2 ,[2] whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months][one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

[Name of Authorized Official, signature(s) and seals/stamps]

FORM NO. 8 - RETENTION MONEY SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: _____*[Insert name and Address of* Procuring Entity*]***Date:**_____*[Insert date of issue]*

Advance payment guarantee no. *[Insert guarantee reference number]*

Guarantor: [*Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that_*[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. _*[insert reference number of the contract]* dated_____with the Beneficiary, for the execution of_____*[insert name of contract and brief description of* Works*]* (hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retainsmoneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and payment of *[*insert the second half of the Retention Money] is to be made against a Retention Money guarantee.

3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insertamount in words*_____*])*[1] upon receipt by us of the Beneficiary's complyingdemand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach ofits obligation(s) under the Contract, without your needing to prove or show grounds for yourdemand or the sum specified therein.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referredto above has been credited to the Contractor on its account number at_____*[insert name and address of*
Applicant's bank].

5. This guarantee shall expire no lat er than the …… Day of……. , 2 ……[2], and any demand for payment under it must be received by us at the office indicated
above on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

[Name of Authorized Official, signature(s) and seals/stamps]