



# **ST.EMMANUEL SECONDARY SCHOOL**

**BILLS OF QUANTITIES**

**FOR**

**PROPOSED CONSTRUCTION TO COMPLETION OF A STOREY BLOCK 8-  
CLASSROOMS**

**TENDER NO: SESS/01/2024**

**SPECIAL CATEGORY (YOUTH/PWD/WOMEN)**

**TENDER DOCUMENTS**

**PREPARED BY**

COUNTY WORKS OFFICER  
MINISTRY OF TRANSPORT & INFRASTRUCTURE,  
TRANS-NZOIA COUNTY,  
P O BOX 4211-30200,  
**KITALE.**

**JANUARY 2024**

**ST.EMMANUEL SECONDARY SCHOOL**

**TENDER DOCUMENTS**

Supplied as part of the contract for the **PROPOSED CONSTRUCTION TO COMPLETION OF A STOREY CLASSROOMS BLOCK AT ST. EMMANUEL SECONDARY SCHOOL**

The Contract for the above mentioned works entered into this.....day of.....2024, by the undersigned parties refer to these Tender Documents consisting of pages numbered on page Pg1 and the General Specification for Building Works ,numbered A to index II4, (together with any amendments thereto issued since date of publication) both of which shall be read and construed as part of the said contract.

Signed:-

.....  
(Contractor)

.....  
(Authorized Representative)

Countersigned:-.....

(Principal st Emmanuel secondary school)

**SPECIAL NOTES**

The Contractor is required to check the number of pages of these Tender Documents and should any page be found missing or in duplicate, or figures indistinct, or should he be in doubt about the precise meaning for any reason whatsoever, he must inform the **Principal st Emmanuel secondary school Kitale** at once and have the same rectified or correct meaning decided before the date of submission of tenders.

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

The Bills of Quantities and the General Specifications and the Drawings shall be read and construed together and whenever the descriptions in the Bills of Quantities do not agree with the description in the General Specifications and the Drawings, the Bills of Quantities shall override the General Specifications and whenever the Drawings do not agree with the General Specification then the Drawings shall override the General Specifications

**REPUBLIC OF KENYA**

**ST.EMMANUEL SECONDARY SCHOOL KITALE**

**TENDER DOCUMENTS**

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FORM OF INVITATION FOR TENDERS

2024[date]

RE: PROPOSED CONSTRUCTION TO COMPLETION OF A STOREY CLASSROOMS BLOCK

The **ST. EMMANUEL SECONDARY SCHOOL –KITALE** invites sealed tenders for the **PROPOSED CONSTRUCTION TO COMPLETION OF A STOREY 8 - CLASSROOMS BLOCK**

- 1.1 Interested eligible contractors may obtain further information and inspect tender documents at the **Principals office at St. Emmanuel secondary school kitale**
- 1.2 A complete set of tender documents may be obtained by interested contractors upon payment of a non – fundable fees of Kshs. 5,000/= in cash or Banker’s Cheque payable to the **Principals office at St. Emmanuel secondary school kitale**
- 1.3 Prices quoted should be inclusive of all taxes, must be in Kenya Shillings and shall remain valid for 120 days from the closing date of tender.
- 1.4 Completed tender documents are to be enclosed in plain sealed envelopes marked with tender name and reference number and deposited in the **Tender Box which is situated at the Principals office at St Emmanuel secondary school Kitale** , so as to be received at or before 11.00 am on 21<sup>st</sup> February, 2024
- 1.5 Tenders will be opened immediately thereafter in the presence of the contractor’s or their representatives who choose to attend at the school.

Yours faithfully, -----

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**PRINCIPAL ST.EMMANUEL SECONDARY SCHOOL**

**INSTRUCTIONS TO BIDDERS  
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## INSTRUCTIONS TO TENDERERS

### 1. General

- 1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful Tenderer will be expected to complete the Works by the Intended Completion Date specified in the tender documents.

### 2. Fraud and Corruption

2.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset 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-contractors are not debarred from participating in public procurement proceedings.

2.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to the Form of Tender.

2.3 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

2.4 Unfair Competitive Advantage -Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender being tendered for. The Procuring Entity shall indicate in the **TDS** firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

### 3. Eligible Tenderers

3.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.7 or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. Public employees and their close relatives (*spouses, children, brothers, sisters and uncles and aunts*) are not eligible to participate in the tender. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is

awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the **TDS**.

3.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

3.3 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:

- a) Directly or indirectly controls, is controlled by or is under common control with another tenderer; or
- b) Receives or has received any direct or indirect subsidy from another tenderer; or
- c) Has the same legal representative as another tenderer; or
- d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process; or
- e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender; or
- f) Any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as Engineer for the Contract implementation; or
- g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document or
- h) Has a close business or family relationship with a professional staff of the Procuring Entity who:
  - i) Are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or
  - ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.

3.4 A tenderer shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. A tenderer that is proven to have been involved any of these practices shall be automatically disqualified.

3.5 A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender.

3.6 A Tenderer 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 equivalent documents of constitution or

association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub consultants for any part of the Contract including related Services.

3.7 Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA [www.ppra.go.ke](http://www.ppra.go.ke).

3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are accredited by PPRA to be (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.

3.9 A Firms and individuals may be ineligible if their countries of origin (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

### **III - EVALUATION AND QUALIFICATION CRITERIA,**

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 and has less than 51 percent ownership by Kenyan Citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya 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.

3.12 The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before such award and signature of contract. Application for registration with National Construction Authority may be accessed from the website [www.nca.go.ke](http://www.nca.go.ke).

3.13 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke)

3.14 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

#### **4. Eligible Goods, Equipment, and Services**

4.1 Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not eligible under ITT 3.9. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.

4.2 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

#### **5. Tenderer's Responsibilities**

5.1 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 for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.

5.3 The Tenderer and any of its personnel or agents will be granted permission by the Procuring Entity to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify the Procuring Entity against all liability arising from death or personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the inspection.

5.4 The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.

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

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

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

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

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the Tenderer:
- (b) total monetary value of construction work performed for each of the last five years:
- (c) Experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts:
- (d) Major items of construction equipment proposed to carry out the contract and an undertaking that they will be available for the Contract.
- (e) Qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.
- (f) Reports on the financial standing of the Tenderer, such as profit and loss statements and auditor's reports for the past five years:
- (g) Evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources).
- (h) Authority to seek references from the tenderer's bankers:
- (i) Information regarding any litigation, current or during the last five years, in which the Tenderer is involved, the parties concerned and disputed amount; and
- (j) Proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract price.

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

- (a) The tender shall include all information listed in clause 1.5 above for each joint venture partner;
- (b) The tender shall be signed so as to be legally binding on all partners;
- (c) All partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- (d) One of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of all partners of the joint venture; and
- (e) The execution of the entire Contract, including payment, shall be done exclusively with the partner in charge

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

- (a) annual volume of construction work of at least 2.5 times the estimated annual cash-flow for the contract;
- (b) experience as main contractor in the construction of at least two works of a nature and complexity equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Works;
- (d) a Contract manager with at least five years' experience in works of an equivalent nature and volume, including no less than three years as Manager;

- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than 4 months of the estimated payment flow under this Contract;
- (f) The Tenderer must be registered with the Ministry of Public Works in the category specified for the tender. Current certificates must be attached;
- (g) the Tenderer must fill the confidential business questionnaire;
- (h) the Tenderer must fill the form of tender;
- (i) The Tenderer must possess a current certificate of Tax Compliance.
- (j) the Tenderer must provide a bid security of the amount specified for the tender from a reputable bank or insurance company; and
- (k) The Tenderer must avail copies of certificates registration/incorporation, VAT registration and PIN number.

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

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

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

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

## **2. Tender Documents**

2.1 The complete set of tender documents comprises the documents listed below and any addenda issued in accordance with Clause 2.4.

- (a) These Instructions to Tenderers
- (b) Form of Tender and Qualification Information
- (c) Conditions of Contract
- (d) Appendix to Conditions of Contract
- (e) Specifications
- (f) Drawings
- (g) Bills of Quantities
- (h) Forms of Securities

- 2.2 The tender shall examine all Instructions, Forms to be filled and Specifications in the tender documents. Failure to furnish all information required by the tender documents, or submission of a tender not substantially responsive to the tendering documents in every respect will be at the tenderer's risk and may result in rejection of his tender.
- 2.3 A prospective Tenderer requiring any clarification of the tendering documents may notify the Employer in writing or by cable, telex or facsimile at the address indicated on the advertisement inviting bidders to tender. The employer will only respond to requests for clarification received earlier than seven days prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.
- 2.4 Before the deadline for submission of tenders, the Employer may modify tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all tenderers. Prospective tenderers shall acknowledge receipt of each addendum in writing to the Employer.
- 2.5 To give prospective tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders, in accordance with Clause 4.2 here below.

### **3. Preparation of Tenders**

- 3.1 All documents relating to the tender and any correspondence shall be in English language.
- 3.2 The tender submitted by the Tenderer shall comprise the following:
- (a) These Instructions to Tenderers, Form of Tender, Conditions of Contract, Appendix to Conditions of Contract and Specifications;
  - (b) Tender Security;
  - (c) Priced Bill of Quantities;
  - (d) Qualification Information Form and Documents;
  - (e) Alternative offers where invited; and
  - (f) Any other materials required to be completed and submitted by the tenderers.
- 3.3 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause relevant to the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the Tenderer.
- 3.4 The rates and prices quoted by the Tenderer shall only be subject to adjustment during the performance of the Contract if provided for in the Appendix to Conditions of Contract and provisions made in the Conditions of Contract.

- 3.5 The unit rates and prices shall be in Kenya Shillings.
- 3.6 Tenders shall remain valid for a period of 90 days from the date of submission. However in exceptional circumstances, the Employer may request that the tenderers extend the period of validity for a specified additional period. The request and the tenderers' responses shall be made in writing. A Tenderer agreeing to the request will not be required or permitted to otherwise modify the tender, but will be required to extend the validity of Tender Security for the period of the extension, and in compliance with Clause 3.7 - 3.11 in all respects.
- 3.7 The Tenderer shall furnish, as part of the tender, a Tender Security for the amount specified in the invitation to tender. This shall be in the form of a bank draft or a bank guarantee from an established and reputable bank approved by the Employer.
- 3.8 The format of the Tender Security should be in accordance with the form of Tender Security included in Section G – Standard forms or any other form acceptable to the Employer. Tender Security shall be valid for 30 days beyond the validity of the tender.
- 3.9 Any tender not accompanied by an acceptable Tender Security shall be rejected. The Tender Security of a joint venture must define as "Tenderer" all joint venture partners and list them in the following manner: a joint venture consisting of ".....", "....." and ".....".
- 3.10 The Tender Securities of unsuccessful tenderers will be returned within 28 days of the end of the tender validity period specified in Clause 3.6.
- 3.11 The Tender Security of the successful Tenderer will be discharged when the Tenderer has signed the Contract Agreement and furnished the required Performance Security.
- 3.12 The Tender Security may be forfeited:
- (a) if the Tenderer withdraws the tender after tender opening during the period of tender validity;
  - (b) if the Tenderer does not accept the correction of the tender price, pursuant to Clause 5.7;
  - (c) in the case of a successful Tenderer, if the Tenderer fails within the specified time limit to:
    - (i) Sign the Agreement, or
    - (ii) Furnish the required Performance Security.
- 3.13 The tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer, pursuant to Clause 1.5 (a) or 1.6 (b), as the case may be. All pages of the tender where alterations or additions have been made shall be initialed by the person or persons signing the tender.

#### **4 Submission of Tenders**

- 4.1 The Tenderer shall seal the tender in an envelope and the envelope shall:
- (a) be addressed to the Employer at the address provided in the invitation to tender;
  - (b) bear the name and identification number of the Contract as defined in the invitation to tender; and
  - (c) Provide a warning not to open before the specified time and date for tender opening.
- 4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender. However, the Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with Sub-Clause 2.5 in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline will then be subject to the new deadline.
- 4.3 Any tender received after the deadline prescribed in clause 4.2 will be returned to the Tenderer un-opened.
- 4.4 Tenderers may modify or withdraw their tenders by giving notice in writing before the deadline prescribed in Clause 4.2. Each tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and delivered marked "MODIFICATION" and "WITHDRAWAL", as appropriate. No tender may be modified after the deadline for submission of tenders.
- 4.5 Withdrawal of a tender between the deadline for submission of tenders and the expiration of the period of tender validity specified in the invitation to tender or as extended pursuant to Clause 3.6 may result in the forfeiture of the Tender Security pursuant to Clause 3.11.
- 4.6 Tenderers may only offer discounts to, or otherwise modify the prices of their tenders by submitting tender modifications in accordance with Clause 4.4 or be included in the original tender submission.

#### **5. Tender Opening and Evaluation**

- 5.1 The tenders will be opened by the Employer, including modifications made pursuant to Clause 4.4, in the presence of the tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender. Envelopes marked "**WITHDRAWAL**" shall be opened and read out first. Tenderers' and Employer's representatives who are present during the opening shall sign a register evidencing their attendance.
- 5.2 The tenderers' names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as may be considered appropriate, will be announced by the Employer at the opening. Minutes of the tender opening, including the information disclosed to those present will be prepared by the Employer.
- 5.3 Information relating to the examination, clarification, evaluation, and comparison of tenders and recommendations for the award of Contract shall not be disclosed to tenderers or any

other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Employer's officials, processing of tenders or award decisions may result in the rejection of his tender.

- 5.4 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may ask any Tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.7.
- 5.5 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender (a) meets the eligibility criteria defined in Clause 1.7, (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the tendering documents. A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the works; (b) which limits in any substantial way, inconsistent with the tendering documents, the Employer's rights or the tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.
- 5.6 If a tender is not substantially responsive, it will be rejected, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

5.7

#### **Arithmetical Errors**

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. Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis: -

- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
- b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
- c) if there is a discrepancy between words and figures, the amount in words shall prevail  
Tenderers shall be notified of any error detected in their bid during the notification of award.

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

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

- (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.
- (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work (i.e. Corrected tender sum less P.C. and Provisional Sums).
- (e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.
- (f) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with Clause 3.11.
- (g) A tender from a Tenderer with on-going projects exceeding four (4) in number regardless of the total value of the outstanding works shall be treated as non-responsive.
- (h) A tender from a Tenderer who has been served with a default notice on an on-going project(s) shall be treated as non-responsive.
- (i) A tender from a tendered whose on-going project(s) is/are behind schedule and without any approved extension of time shall be treated as non-responsive.
- (j) A tender from a Tenderer whose tender sum is not within plus or minus 10% of the official estimate shall be treated as non-responsive.

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

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

- (a) Making any correction for errors pursuant to clause 5.7.
- (b) Excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Day-work where priced competitively.
- (c) Making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and
- (d) Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 4.6.

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

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

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

## 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 over those in ITT.

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 1.1	The name of the contract is; <b>St. Emmanuel Secondary School</b> The reference number of the Contract is: <b>SESS/01/2024</b> The number and identification of lots (contracts) comprising this Tender are: Construction of Facilities (As per Annex..... in; 1. St. Emmanuel Secondary School
ITT 2.3	The Information made available on competing firms is as follows: <b>None</b>
ITT 2.4	The office that provided consulting services for the contract being tendered for are: <b>County Public works Office</b>
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be: <b>Two</b>
<b>B. Contents of Tender Document</b>	
8.1	A) Pre-Tender conference shall <b>NOT</b> take place: Date: N/A Time: N/A Place: N/A (B) A pre-arranged pretender visit of the site of the works shall take place as arranged by the contractor Contact person/conference coordinator: Mr/Mrs..... Principal
ITT 8.2	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than <b>7<sup>th</sup> February, 2024</b>
ITT 8.4	The Procuring Entity will not hold a pre-Tender meeting.
ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity's address is: The Principal St. Emmanuel Secondary School <b>Attn:</b> Clerk of Works St. Emmanuel Secondary School Postal Address: P.O. Box 4409, Kitale, Kenya Code: 30200 City: Trans- Nzoia Tel: (0)20..... Email: ..... Alternative Emails: .....
<b>C. Preparation of Tenders</b>	
ITP 13.1 (h)	The Tenderer shall submit the following additional documents in its Tender: <b>1.Code of Conduct for Personnel</b> The Bidder shall submit its Code of Conduct that will apply to Contractor's Personnel to ensure compliance with the Contractor's

	<p>Environmental and Social (ES) obligations under the Contract.</p> <p><b>2.Management Strategies and Implementation Plans (MSIP) to manage the (ES) risks</b></p> <p>The Bidder shall refer to the following documents, note the risks and mitigation measures and submit a written confirmation (attached as an appendix to the ESMP) to comply with the provided measures:</p> <ul style="list-style-type: none"> <li>• ESHS document at the Section VII Works’ Requirements</li> <li>• Annexed Environmental and Social Management Plan (ESMP) at Part no. 4 Bills of Quantities.</li> </ul> <p><b>3.Certified copy of Registration certificate from National Construction Authority, Category 6 and above in Building works (General Building Contractor).</b></p> <p><b>4. Certified Copy of Company Registration Certificates. (Is a registered company incorporated in Kenya under the Companies Act CAP 486).</b></p> <p><b>5. Certified copy of Valid Tax Compliance Certificate, including a certified copy of the company’s Pin No</b></p> <p><b>6. Current Business License.</b></p> <p><b>8. Evidence of physical location of office by providing certified copies of premises ownership / lease, and utility bills</b></p> <p><b>9. A Copy of CR12) issued within the last one year and showing the list of directors with ID copies.</b></p> <p><b>10. Audited statements of account (3 years)</b></p> <p><b>11. AGPO Certificate (valid)</b></p>
ITT 15.1	Alternative Tenders shall not be considered.
ITT 15.2	Alternative times for completion shall not be permitted.
ITT 15.4	Alternative technical solutions shall not be permitted.
ITT 16.5	The prices quoted by the Tenderer shall be: <b>Fixed (No variation will be Allowed without approval by clerk of works, school and committee)</b>
ITT 20.1	The Tender validity period shall be 120 days.
ITT 21.1	A Tender Security shall be required. A Bid-Securing Declaration <b>shall be</b> required. The amount and currency of the Tender Security shall be <b>NONE</b>
ITT 21.2 (d)	<b>No</b> other forms of Tender Security shall apply.
ITT 22.1	In addition to the original of the Tender, the numbers of copies are: <b>One (1) hard copy original.</b>
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: <b>An authorized power of attorney duly signed by all the parties consenting (donor/deponent and a registered commissioner of oaths)</b>
<b>D. Submission and Opening of Tenders</b>	
ITT 24.1	(A) For Tender submission purposes only, the Procuring Entity’s address is: <b>St. Emmanuel Secondary School</b> Attn: The Principal St. Emmanuel Secondary School Postal Address: P.O. Box 4409, Kitale, Kenya Code: 30200 Town: Kitale

	The deadline for Bid Submission is: Date: <b>16<sup>th</sup> February, 2024</b> Time: <b>11:00 a.m. East Africa Local time</b> Tenderers <b>shall not submit</b> tenders electronically
<b>ITT 27.1</b>	The Tender opening shall take place at the time and the address for Opening of Tenders provided below: The Principle Attn: Clerk of works St. Emmanuel Secondary School Postal Address: P.O. Box 4409, Kitale, Kenya Code: 30200 City: Kitale The deadline for Bid Submission is: Date: <b>16<sup>th</sup> February, 2024</b> Time: <b>11:00 a.m. East Africa Local time</b> Tenderers <b>shall not submit</b> tenders electronically.
<b>ITT 27.6</b>	The number of representatives of the Procuring Entity to sign is: All the members of the tender opening committee.
<b>E. Evaluation, and Comparison of Tenders</b>	
<b>ITT 32.3</b>	The adjustment shall be based on the highest price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate.
<b>ITT 35.2</b>	The invitation to tender is extended to the following groups that qualify for Reservations; <b>AGPO registered contractors</b> <b>NB:</b> <b>This is a national open tender eligible to all tenderers who meet the required qualifications.</b>
<b>ITT Reference</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
<b>ITT 36.1</b>	At this time, the Procuring Entity does not intend to execute certain specific parts of the Works by subcontractors selected in advance.
<b>ITT 36.2</b>	Contractors are prohibited from Sub-Contracting the Main Works and any contractor found having subcontracted the works under this Contract will be forwarded to Public Procurement Regulatory Authority (PPRA) for legal measures and debarment including the immediate cancellation of the contract.
<b>ITT 36.3</b>	The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows: Contractor's are required to incorporate subcontracts/ subcontractors for electrical, plumbing, mechanical works and ICT Works as domestic Sub- Contracts under them.
<b>ITT 37.2 (d)</b>	Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.
<b>ITT 51.1</b>	The person named to be appointed as Adjudicator is; <b>To be appointed by either CIArb Kenyan Chapter, IQSK, or AAK.</b> The hourly fee for this proposed Adjudicator shall be: As per the

	standard fees of the proposed bodies above.
<b>ITT 52.2</b>	Other documents required are: Beneficial Ownership Form.
<b>ITT 54.1</b>	<p>The procedures for making a Procurement-related Complaint are detailed in the “Regulations” available from the PPRA Website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a>. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit the complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p><b>For the attention:</b> St. Emmanuel Secondary School  <b>Title/position:</b> Clerk of works  <b>Client:</b> St. Emmanuel Secondary school  <b>Email address:</b></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <p>(i) the terms of the Tender Documents; and  (ii) the Procuring Entity’s decision to award the contract.</p>

## EVALUATION AND QUALIFICATION CRITERIA

### TENDER EVALUATION CRITERIA

After tender opening, the tenders will be evaluated in 3 stages, namely:

1. Determination of Responsiveness
2. Detailed Technical Examination
3. Financial Evaluation.

#### STAGE 1- DETERMINATION OF RESPONSIVENESS

##### A) PRELIMINARY AND MANDATORY REQUIREMENTS

All Tenderers **MUST** meet the following mandatory requirements.

**Tenderers that do not meet ALL the mandatory requirements will be considered non-responsive and will not be considered for further evaluation.**

**Note: All copies that require certification SHALL be certified by a registered Advocate and Commissioner for Oaths, High Court of Kenya.**

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

**These conditions may include the following:**

- (i) Category of Registration with National Construction Authority in the relevant trade and or any other statutory bodies for building works: NCA 6 and above.
- (ii) Certified copy of Valid Single business permit from any county government authority
- (iii) Certified copy of Valid Tax compliance certificate issued by Kenya Revenue Authority.
- (iv) Certified copy of Company certificate of incorporation /certificate of registration.
- (v) Dully filled, signed and stamped Form of Tender.
- (vi) Provision of Bid Security – NOT APPLICABLE
- (vii) Certified copy of CR12 and must provide copies of IDs/passport for Directors A copy of company's list of directors, beneficial owners, name of proprietor or names of partners (Copy of CR12) issued within the last one year.
- (viii) Certified Renewed copy of practicing license with NCA as per the tender notice.
- (ix) All pages MUST be serialized/ paginated

The employer may seek further clarification/confirmation if necessary to confirm authenticity/compliance of any condition of the tender.

The tenderers who do not satisfy any of the above requirements shall be considered Non-Responsive and their tenders will not be evaluated further.

**STAGE 2 - TECHNICAL EVALUATION**

**B) COMPLETENESS OF TENDER DOCUMENT**

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

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

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

<b>PARAMETER</b>	<b>MAXIMUM POINTS</b>
(i) Statement of Compliance	3
(ii) Confidential business questionnaire -----	5
(iii) Key personnel -	20
(iv) Contract Completed in the last Five (5) years -----	12
(v) Schedules of on-going projects	4
(vi) Schedules of contractors equipment -----	8
(vii) Contracts performance with the client -----	15
(viii) Audited Financial Report for the last 3 years -----	10
(ix) Evidence of Financial Resources-----	10
(x) Name, Address and Telephone of Banks (Contractor to provide) -----	5
(xi) Litigation History -----	3
(xii) Sanctity of the tender document as in accordance with clause Of instruction to Tenderer	5
<b>TOTAL</b>	<b>100</b>

The detailed scoring plan shall be as shown in the table below

Item	Description	Point scored	Max. Point
i	<p><b>Statement of Compliance</b></p> <p>Filled signed and stamped----- 3</p> <p>Signed but not stamped or vice verse.. 2</p> <p>Not signed nor stamped ----- -0</p>		<b>3</b>
ii	<p><b>Confidential Business Questionnaire form</b></p> <p>Completely filled-----5</p> <p>Partially filled -----3</p> <p>Not filled -----0</p>		<b>5</b>
iii	<p><b>Key Personnel (Attach evidence)</b></p> <p><b>Director of the firm</b></p> <ul style="list-style-type: none"> <li>• Holder of degree or diploma in relevant Engineering field-----4</li> <li>• Holder of certificate-----3</li> <li>• Holder of trade test certificate---1</li> <li>• No relevant certificate-----0</li> </ul>		<b>8</b>
	<p><b>At least 2No degree/Diploma holder of key Personal in relevant engineering field</b></p> <p>Bidders are required to provide Curriculum Vitae (CV) of two (2) key professional staff, of whom one will be the Project Team Leader (PTL) responsible for the day-to-day management of the project, with requisite qualification and experience as detailed below:</p> <p><b>a. Certified Copy of degree Certificate. (3 Marks)</b></p> <p><b>b. Certified Copy of Professional Registration/Practicing License. (4 Marks)</b></p> <ul style="list-style-type: none"> <li>• With over 10 years relevant experience 3</li> <li>• With over 5 years relevant experience 2</li> <li>• With over 3 years relevant experience 1</li> </ul>		<b>6</b>
iv	<p><b>Contract completed in the last 5 years (Amax Of 4No Projects) attach evidence</b></p> <ul style="list-style-type: none"> <li>• Project of similar nature ,complexity magnitude-----3</li> <li>• Project of similar nature but lower value a magnitude-----2</li> <li>• No ongoing project of similar nature ...0</li> </ul>		<b>12</b>
v	<p>On-going projects (A max of 2no Projects)</p> <ul style="list-style-type: none"> <li>• Project of similar nature ,complexity magnitude-----3</li> <li>• Project of similar nature but lower value a magnitude-----2</li> </ul>		<b>4</b>

	<ul style="list-style-type: none"> <li>No ongoing project of similar nature ...0</li> </ul>		
Vi	<p>Schedules of contractors equipment and transport (attach proof of ownership)</p> <ul style="list-style-type: none"> <li>Means of transport (vehicles) 4</li> <li>No means of Transport 0</li> </ul>		4
	<p>For each specific equipment required in the installation of the work being tendered for (max no of equipment to be considered 2no-2</p>		4

Item	Description	Point scored	Max .Point
vii	<p><b>Contracts performance with client</b></p> <ul style="list-style-type: none"> <li>Contracts on schedule/new contracts ..15</li> <li>Contracts behind schedule without redress from project manager.....5</li> <li>Contract with default notices without redress from manager.....3</li> <li>Terminated contract in the last five years .0</li> </ul>		15
viii	<p><b>Financial Report</b></p> <p><b>Audited financial report (Last 3 years)</b></p> <ul style="list-style-type: none"> <li>Annual turnover greater or equal to 5 times the cost of the project-----10</li> <li>Annual turnover greater or equal to 3 times the cost of the project-----6</li> <li>Annual turnover greater or equal to the cost of the project-----4</li> <li>Turnover below the cost of the project -2</li> </ul>		10
ix	<p><b>Evidence of financial resource (cash in hand ,line of credit ,over draft facility</b></p> <ul style="list-style-type: none"> <li>Has financial resource equal or above the cost of the project -----10</li> <li>Has financial resources below the cost of the project ----5</li> <li>Has not indicated sources of financial resources-----0</li> </ul>		10
x	<p><b>Name, Address and telephone of banks Contractor to provide</b></p> <ul style="list-style-type: none"> <li>Provided -----5</li> <li>Not provided-----0</li> </ul>		5
xi	<p><b>Litigation History</b></p> <ul style="list-style-type: none"> <li>Filled -----3</li> <li>Not filled -----0</li> </ul>		3
xii	<b>Sancity of the tender document</b>		5

	<ul style="list-style-type: none"> <li>• Having the document intact (not tampered With in any way) -----5</li> <li>• Having mutilated or modified the tend document -----0</li> </ul>		
	<b>TOTAL SCORE</b>		<b>100</b>

**NB: After technical evaluation of the tenders, those tenders that shall not have attained a minimum Pass mark of 70 shall be declared Non responsive and will be eliminated from the evaluation process and will therefore, not be considered for financial evaluation.**

### STAGE 3 - FINANCIAL EVALUATION

The evaluation shall be in two sections

1. Preliminary examinations and
2. Tender sum Comparisons

#### A. FINANCIAL EVALUATION CRITERIA

<u>No</u>	<u>FINANCIAL EVALUATION</u>	<u>MUST COMPLY</u>
<u>1.</u>	<u>There is no discrepancy between the Figures and Words in the Form of Tender</u>	<u>Must Comply</u>
<u>2.</u>	<u>The BoQ is accurately filled, signed and stamp with the total contract price</u>	<u>Must Comply</u>
<u>3.</u>	<u>There is no discrepancy between the total in Figures and Words of the BQ</u>	<u>Must Comply</u>
<u>4.</u>	<u>The Total Price in the BoQ must be transferred to the Form of Tender. Any discrepancy between the total amount in the BoQ and Form of Tender shall lead to automatic disqualification.</u>	<u>Must Comply</u>
<u>5.</u>	<u>Pricing consistency (same rates for similar items, price distribution amongst sections)</u>	<u>Must Comply</u>
<u>6.</u>	<u>Reasonableness of pricing (comparison with prevailing market levels, inclusion of taxes [VAT] in the rates);</u>	<u>Must Comply</u>

**STAGE 3. FINANCIAL EVALUATION.**

Upon completion of the technical evaluation a detailed financial evaluation shall follow. The financial evaluation shall proceed in the manner described in the Public Procurement and Asset Disposal Act (2015).

The evaluation shall be in three stages

- a) Determination of the Corrected Tender Sums;
- b) Comparison of Rates for major components of Works; and
- c) Consistency of the Rates

Bidder	Bidders price (Form of Tender	Error	ECF(%)	Ranking
1				
2				

## 6 QUALIFICATION FORM SUMMARY

<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Item No.</u>	<u>Qualification Subject</u>	<u>Qualification Requirement</u>	<u>Document To be Completed by Tenderer</u>	<u>For Procuring Entity's Use (Qualification met or NotMet)</u>
1	<u>Nationality</u>	<u>Nationality in accordance with ITT 3.6</u>	<u>Forms ELI – 1.1 and 1.2, with attachments</u>	
2	<u>Tax Obligations for Kenyan Tenderers</u>	<u>Has produced a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14.</u>	<u>Form of Tender</u>	
3	<u>Conflict of Interest</u>	<u>No conflicts of interest in accordance with ITT 3.3</u>	<u>Form of Tender</u>	
4	<u>PPRA Eligibility</u>	<u>Not having been declared ineligible by the PPRA as described in ITT 3.8</u>	<u>Form of Tender</u>	
5	<u>State- owned Enterprise</u>	<u>Meets conditions of ITT 3.7</u>	<u>Forms ELI – 1.1 and 1.2, with attachments</u>	
6	<u>Goods, equipment and services to be supplied under the contract</u>	<u>To have their origin in any country that is not determined ineligible under ITT 4.1</u>	<u>Forms ELI – 1.1 and 1.2, with attachments</u>	
7	<u>History of Non-Performing Contracts</u>	<u>Non-performance of a contract did not occur as a result of contractor default since 1<sup>st</sup> January 2017.</u>	<u>Form CON-2</u>	
8	<u>Suspension Based on Execution of Tender/ Proposal Securing</u>	<u>Not under suspension based on- execution of a Tender/Proposal Securing Declaration pursuant to ITT19.9</u>	<u>Form of Tender</u>	

<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Item No.</u>	<u>Qualification Subject</u>	<u>Qualification Requirement</u>	<u>Document To be Completed by Tenderer</u>	<u>For Procuring Entity's Use (Qualification met or Not Met)</u>
	<u>Declaration by the Procuring Entity</u>			
<u>9</u>	<u>Pending Litigation</u>	<u>Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer.</u>	<u>Form CON – 2</u>	
<u>10</u>	<u>Litigation History</u>	<u>No consistent history of court/arbitral award decisions against the Tenderer since 1<sup>st</sup> January 2017</u>	<u>Form CON – 2</u>	
<u>11</u>	<u>Financial Capabilities</u>	<p><u>(i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Kenya Shillings [insert amount] equivalent for the subject contract(s) net of the Tenderer's other commitments.</u></p> <p><u>(ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in</u></p>	<u>Form FIN – 3.1, with attachments</u>	

<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Item No.</u>	<u>Qualification Subject</u>	<u>Qualification Requirement</u>	<u>Document To be Completed by Tenderer</u>	<u>For Procuring Entity's Use (Qualification met or Not Met)</u>
		<p><u>progress and for future contract commitments.</u></p> <p><u>(iii) The audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to the Procuring Entity, for the last [insert number of years] years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.</u></p>		
<u>12</u>	<u>Average Annual Construction Turnover</u>	<p><u>Minimum average annual construction turnover of Kenya Shillings [Kshs 20 million], equivalent calculated as total certified payments received for contracts in progress and/or completed within the last [3] years, divided by [3] years</u></p>	<u>Form FIN – 3.2</u>	
<u>13</u>	<u>General Construction Experience</u>	<p><u>Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last [5] years, starting 1<sup>st</sup> January [2017].</u></p>	<u>Form EXP – 4.1</u>	

<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Item No.</u>	<u>Qualification Subject</u>	<u>Qualification Requirement</u>	<u>Document To be Completed by Tenderer</u>	<u>For Procuring Entity's Use (Qualification met or Not Met)</u>
14	<u>Specific Construction &amp; Contract Management Experience</u>	<p>A minimum number of <b>[Three]</b> similar contracts specified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between <b>1st January 2018</b> and tender submission deadline i.e. <b>3No. contracts, 2No. Ksh10 million, 1 No. Ksh 20Million equivalent.</b></p> <p><i>[In case the Works are to be tender as individual contracts under multiple contract procedure, the minimum number of contracts required for purposes of evaluating qualification shall be selected from the options mentioned in ITT 35.4]</i></p> <p>The similarity of the contracts shall be based on the following: <i>[Based on Section VII, Scope of Works, specify the minimum key requirements in terms of physical size, complexity, construction method, technology and/or other characteristics including part of the requirements that may be met by specialized subcontractors, if permitted in accordance with ITT 34.3]</i></p>	Form EXP 4.2(a)	



## QUALIFICATION FORMS

### FORM: 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.

<u>Item of equipment</u>		
<u>Equipment information</u>	<u>Name of manufacturer</u>	<u>Model and power rating</u>
	<u>Capacity</u>	<u>Year of manufacture</u>
<u>Current status</u>	<u>Current location</u>	
	<u>Details of current commitments</u>	
<u>Source</u>	<u>Indicate source of the equipment</u> <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Tenderer.

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

**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 the Form PER-2 below for each candidate.

Contractor' Representative and Key Personnel

<b>1.</b>	<b>Title of position: Site Agent</b>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>2.</b>	<b>Title of position: [Foreman _____]</b>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>3.</b>	<b>Title of position: [Surveyor/ QS _____]</b>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>

<b>4.</b>	<b>Title of position:</b> [ _____ ]	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>5.</b>	<b>Title of position:</b> <i>[insert title]</i>	
	<b>Name of candidate</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>

**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.

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

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

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

1.1 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attached biographical data. Refer also to Clause 1.5 (e) of the Instructions to Tenderers and Clause 9.1 of the Conditions of Contract.

Position	Name	Qualification	Years of experience (general)	Years of experience in proposed position

## QUALIFICATION INFORMATION

### 2. Individual Tenderers or individual Members of Joint Ventures.

#### 2.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate).

Place of registration: \_\_\_\_\_

Principal place of business \_\_\_\_\_

Power of attorney of signatory of tender \_\_\_\_\_

#### 2.2 Total annual volume of construction work performed in the last five years.

Year	Volume	
	Currency	Value

### PAST EXPERIENCE

#### 2.3 Work performed as Main Contractor on works of a similar nature and volume over the last five years. Also details of work under way or committed, including expected completion date. (attach award letters and completion certificate)

Project Name	Name of client	Name of contract person	Consultant	Type of Work	Contract Period	Start Date	Completion date

**4.1 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 the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	

**4.2 FORM EXP - 4.2(a)**  
**Specific Construction and Contract Management Experience**

Tenderer's Name: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 JV Member's Name \_\_\_\_\_  
 ITT No. and title: \_\_\_\_\_

<u>Similar Contract No.</u>	<u>Information</u>			
<u>Contract Identification</u>				
<u>Award date</u>				
<u>Completion date</u>				
<u>Role in Contract</u>	<u>Prime Contractor</u> <input type="checkbox"/>	<u>Member in JV</u> <input type="checkbox"/>	<u>Management Contractor</u> <input type="checkbox"/>	<u>Sub-contractor</u> <input type="checkbox"/>
<u>Total Contract Amount</u>				<b><u>Kenya Shilling</u></b>
<u>If member in a JV or sub-contractor, specify participation in total Contract amount</u>				
<u>Procuring Entity's Name:</u>				
<u>Address:</u>				
<u>Telephone/fax number</u>				
<u>E-mail:</u>				

**4.3 FORM EXP - 4.2 (a) (cont.)**

**Specific Construction and Contract Management Experience (cont.)**

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

#### 4.4 **FORM EXP - 4.2(b)**

### Construction Experience in Key Activities

Tenderer's Name: \_\_\_\_\_

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

Tenderer's JV Member Name: \_\_\_\_\_

Sub-contractor's Name<sup>2</sup> (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: \_

<b>Information</b>				
<u>Contract Identification</u>				
<u>Award date</u>				
<u>Completion date</u>				
<u>Role in Contract</u>	<u>Prime Contractor</u> <input type="checkbox"/>	<u>Member in JV</u> <input type="checkbox"/>	<u>Management Contractor</u> <input type="checkbox"/>	<u>Sub-contractor</u> <input type="checkbox"/>
<u>Total Contract Amount</u>				<b>Kenya Shilling</b>
<u>Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year</u>	<u>Total quantity in the contract</u> (i)	<u>Percentage participation</u> (ii)	<u>Actual Quantity Performed</u> (i) x (ii)	
<u>Year 1</u>				
<u>Year 2</u>				
<u>Year 3</u>				
<u>Year 4</u>				
<u>Procuring Entity's Name:</u>				
<u>Address:</u>				
<u>Telephone/fax number</u>				
<u>E-mail:</u>				

<sup>2</sup> If applicable

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

2. Activity No. Two

3. ....

1.1 Proposed subcontracts and firms involved. Refer to Clause 7.1 of the Conditions of Contract. *(attach award letters and completion certificate)*

<b>Section of the Works</b>	<b>Value of Subcontract</b>	<b>Subcontractor (name and address)</b>	<b>Experience in similar work.</b>

1.2 Financial reports for the three years: balance sheets, profit and loss statements, auditor' reports, etc. List below and attach copies.

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

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

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1.5 Statement of compliance with the requirements of clause 1.2 of the Instructions to Tenderers.

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- 1.6 Proposed program (work method and schedule) in compliance with requirement of clause 1.3 of the Instructions to Tenderers. Descriptions, drawings and charts, as necessary, to comply with the requirements of the tendering documents.

**4.5 FORM FIN – 3.1:**

**Financial Situation and Performance**

Tenderer's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

Tender 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*, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					

Type of Financial information in _____ (currency)	Historic information for previous _____ years, (amount in currency, currency, exchange rate*, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
<u>Information from Income Statement</u>					
<u>Total Revenue (TR)</u>					
<u>Profits Before Taxes (PBT)</u>					
<u>Cash Flow Information</u>					
<u>Cash Flow from Operating Activities</u>					

\*Refer to ITT 15 for the exchange rate

<sup>1</sup> If the most recent set of financial statements is for a period earlier than 12 months from the date of Tender, the reason for this should be justified.

#### 4.4.2 Sources of Finance

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

No.	Source of finance	Amount (Kenya Shilling equivalent)
<u>1</u>		
<u>2</u>		
<u>3</u>		

#### 4.4.3 Financial documents

The Tenderer and its parties shall provide copies of financial statements for \_\_\_\_\_ years pursuant Section 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<sup>1</sup> for the \_\_\_\_\_ years required above; and complying with the requirements

**2. Joint Ventures:**

- 2.4 The information listed in 1.1 – 1.10 above shall be provided for each partner of the joint venture.
- 2.5 The information required in 1.11 above shall be provided for the joint venture.
- 2.6 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture.
- 2.7 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:
  - (a) All partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - (b) One of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
  - (c) The execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

## TENDER QUESTIONNAIRE

Please fill in block letters.

1. Full names of tenderer

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

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3. Telephone number (s) of tenderer

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4. Telex address of tenderer

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

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

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**CONFIDENTIAL BUSINESS QUESTIONNAIRE**

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

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

**Part 1 – General**

Business name \_\_\_\_\_

Location of business premises, Country/Town: \_\_\_\_\_

Plot No. \_\_\_\_\_ Street/Road: \_\_\_\_\_

Postal Address: \_\_\_\_\_ Tel. No. \_\_\_\_\_

Name of Business \_\_\_\_\_

Current Trade License No. \_\_\_\_\_ Expiring date: \_\_\_\_\_

Maximum value of business which you can handle at any time in Ksh. \_\_\_\_\_

Name of your bankers \_\_\_\_\_

Branch: \_\_\_\_\_

**Part 2 (a) - Sole Proprietor**

Your name in full: \_\_\_\_\_

Nationality: \_\_\_\_\_ Country of origin: \_\_\_\_\_

\*Citizenship details: \_\_\_\_\_

**Part 2 (b) Partnership**

Give details of partners as follows:-

	Name in full	Nationality	Citizenship Details*	Shares
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

**Part 2 (c) - Registered Company:**

Private or public \_\_\_\_\_

State the nominal and issued capital of the company:

Nominal Ksh. ....

Issued Ksh. ....

Give details of all the directors as follows:-

	Name in full	Nationality	Citizenship	Details*	Shares.
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____

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

ii) Conflict of interest disclosure			
	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
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 Tender Document.		
7	Tenderer has a close business or family relationship with a 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 with a 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 stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

Is there any person/persons in \_\_\_\_\_ (name of Employer) who has interest in this firm? Yes/No. \_\_\_\_\_ (Delete as necessary)

I certify that the above information is correct.

\_\_\_\_\_  
*(Title)*                      *(Signature)*                      *(Date)*

- If Kenyan citizen, indicate under "Citizenship Details" whether by Birth, Naturalization or Registration

**STATEMENT OF FOREIGN CURRENCY REQUIREMENTS**

(See clause 23 of the Conditions of Contract)

In the event of our Tender for the execution of \_\_\_\_\_

(name of Contract) being accepted, we would require in accordance with Clause 21 of the Conditions of Contract, which is attached hereto, the following percentage:

(Figures) \_\_\_\_\_ (Words) \_\_\_\_\_

\_\_\_\_\_

of the Contract sum, (Less Fluctuations) to be paid in foreign currency.

\_\_\_\_\_

Date: The \_\_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_\_

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

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

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

**DETAILS OF SUB-CONTRACTORS**

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

Failure to comply with this requirement may invalidate the tender.

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

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

.....

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

.....

.....

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

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

.....

.....

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

.....

.....

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

\_\_\_\_\_  
Date

**STANDARD TENDER FORMS  
FORM OF TENDER**

**(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)**

**INSTRUCTIONS TO TENDERERS**

*i) All italicized text is to help the Tenderer in preparing this form.*

*ii) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. **Tenderers are reminded that this is a mandatory requirement.***

*iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION FORMS OF THE TENDERER as listed under (s) below.*

TO: \_\_\_\_\_ (Name of Employer)

\_\_\_\_\_ (Date)

\_\_\_\_\_ (Name of Contract)

Dear Sir,

In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs. \_\_\_\_\_(amount in figures) Kenya Shillings

1. We undertake, if our tender is accepted, to commence the Works as soon as is reasonable possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until \_\_\_\_\_ (Insert date), and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_

Duly authorized to sign tenders for and on behalf of

\_\_\_\_\_ (Name of Tenderer)

of \_\_\_\_\_ (Address of Tenderer)

Witness: Name \_\_\_\_\_

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

Signature \_\_\_\_\_

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



**FORM SD2**

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT 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 corrupt or  
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 deposed to here in 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 here by 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.....

Email.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....

Sign.....

Date.....

**FORM OF TENDER - SECURING DECLARATION**

[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) have withdrawn 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 of bid 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 successful Tenderer(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 in the 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 future partners 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

## STAGE 4. RECOMMENDATION FOR AWARD

### Award Criteria:

The firm attain the lowest evaluated price will be awarded the contract in line with Section 86 of the Public Procurement and Disposal Act,2015

### 6. Award of Contract

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

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

6.3 The Tenderer whose tender has been accepted will be notified on the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract Documents called the "Letter of Acceptance") will state the sum (hereinafter and in all Contract Documents called the "Contract Price") that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time the other tenderers will be informed that their tenders have not been successful.

The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security in accordance with Clause 6.6 and signing the Agreement in accordance with Clause 6.4.

6.4 The Agreement will incorporate all agreements between the Employer and the successful Tenderer. It will be signed by the Procuring Entity and sent to the successful Tenderer, within 30 days following the notification of award. Within 21 days of receipt the successful Tenderer will sign the agreement and return it to the Employer.

6.5 Within 21 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender Documents. The Performance Security shall be in the form of a Bank Guarantee, and shall be issued at the tenderers option, by a reputable bank located in Kenya and acceptable to the Employer.

6.6 Failure of the successful Tenderer to comply with the requirement of Clause 6.5 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.

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

- 6.8 Preference where allowed in the evaluation of tenders shall not be allowed for contracts not exceeding one year (12 months).
- 6.9 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 6.10 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 6.11 Unless otherwise stated in the Appendix to the Conditions of Contract, contract price variations shall not be allowed for contracts not exceeding one year (12 months).
- 6.12 Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.
- 6.13 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.
- 6.14 The procuring entity may at any time terminate procurement proceedings before contract award and shall be shall not be liable to any person for the termination.
- 6.15 The procuring entity shall give prompt notice of termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any Tenderer.
- 6.16 A Tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participation in future public procurement.

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

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

## CONDITIONS OF CONTRACT

### Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2. Interpretation

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

- 2.2 If sectional completion is specified in the Appendix to Conditions of Contract, reference in the Conditions of Contract to the Works, the completion Date and the Intended Completion Date apply to any section of the Works (other than references to the Intended Completion Date for the whole of the Works).
- 2.3 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority.
- (1) Agreement
  - (2) Letter of Acceptance
  - (3) Contractor's Tender
  - (4) Appendix to Conditions of Contract
  - (5) Conditions of Contract
  - (6) Specifications
  - (7) Drawings
  - (8) Bill of Quantities
  - (9) Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.

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

### **3. Language and Law**

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

### **4. Project Manager's Decisions**

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

### **5. Delegation**

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

### **6. Communications**

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

### **7. Subcontracting:**

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

**8. Other Contractors:**

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

**9. Personnel:**

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

**10. Works:**

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

**11. Safety and Temporary Works:**

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

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

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

**12. Discoveries**

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

**13. Work Program**

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

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

**14. Possession of Site**

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

**15. Access to Site**

15.1 The Contractor shall allow the Project Manager and any other person authorized by the Project Manager, access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

**16. Instructions**

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

**17. Extension or Acceleration of Completion Date**

17.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a variation is issued which makes it impossible for completion to be achieved by the Intended

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

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

**18. Management Meetings**

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

**19. Early Warning**

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

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

**20. Defects:**

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

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

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

## 21. Bills of Quantities

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

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

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

## 22. Variations

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

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

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

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

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

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

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

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

23.1 The Contractor shall submit to the Project Manager monthly applications for payment giving sufficient details of the Work done and materials on Site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the monthly application and certify the amount to be paid to the Contractor within 14 days. The value of Work executed and payable shall be determined by the Project Manager.

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

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

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

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

23.6 The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Appendix to Conditions of Contract. If the Contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services the Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The Employer and the Project Manager shall be notified promptly by the Contractor of any changes in the expected foreign currency requirements of the Contractor during the execution of the Works as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.

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

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

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

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

R = the amount to be reimbursed

A = the amount of the advance which has been granted

X<sup>1</sup> = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will be 80% but not less than 20%.

X<sup>11</sup> = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80% but not less than 20%.

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

## 24. Compensation Events

24.1 The following issues shall constitute Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Appendix to Conditions of Contract.
- (b) The Employer modifies the List of Other Contractors, etc., in a way that affects the Work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon the Work, which is then found to have no defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site investigation reports), from information available publicly and from visual inspection of the Site.

- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The effects on the Contractor of any of the Employer's risks.
- (j) The Project Manager unreasonably delays issuing a certificate of completion
- (k) Other compensation events described in the Contract or determined by the Project Manager shall apply.

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

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

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

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

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

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

## **25 Price Adjustment**

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

25.2 The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works. Unless otherwise stated in the Contract, if at any time during the period of the

Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case may be.

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

- (i) The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C.) and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.
- (ii) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.
- (iii) No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

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

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

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

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

## 26. Retention

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

## 27. **Liquidated Damages**

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

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

## 28. **Securities**

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

## 29. **Day works**

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

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

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

## 30. **Liability and Insurance**

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

- (a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, materials and equipment), which are due to:

- (i) Use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, Or
  - (ii) Negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
- (b) The Risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in Employer's design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.
- 30.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is the Employer's risk except loss or damage due to:-
- (a) A defect which existed on or before the Completion Date.
  - (b) An event occurring before the Completion Date, which was not itself the Employer's risk.
  - (c) The activities of the Contractor on the Site after the Completion Date.
- 30.3 From the Start Date until the Defects Correction Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the Works, plant, Materials, and Equipment) which are not Employer's risk are Contractor's risks. The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Appendix to Conditions of Contract for the following events:-
- (a) loss of or damage to the Works, Plant, and Materials
  - (b) loss of or damage to Equipment
  - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract, and
  - (d) personal injury or death.
- 30.4 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.
- 30.5 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 30.6 Alterations to the terms of insurance shall not be made without the approval of the Project Manager. Both parties shall comply with any conditions of insurance policies.

## 31. **Completion and taking over**

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

## 32. **Final Account**

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

### 33. Termination

33.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to the following:-

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

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

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

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

### 34. Payment Upon Termination

34.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the Work done and materials ordered and delivered to Site up to the date of the issue of the certificate. Additional liquidated damages shall

not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor.

- 34.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the Work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works.
- 34.3 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on the Site, plant, equipment and temporary works.
- 34.4 The Contractor shall, during the execution or after the completion of the Works under this clause remove from the Site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

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

### 35. **Release from Performance**

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

### 36. **Corrupt gifts and payments of commission**

The Contractor shall not;

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

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

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

### 37. Settlement of Disputes

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

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

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

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

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

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

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

- 37.5.1 The appointment of a replacement Project Manager upon the said person ceasing to act.
- 37.5.2 Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- 37.5.3 Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- 37.5.4 Any dispute or difference arising in respect of war risks or war damage.
- 37.6 All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Employer and the Contractor agree otherwise in writing.
- 37.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 37.8 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 37.9 The award of such Arbitrator shall be final and binding upon the parties.

## **APPENDIX TO CONDITIONS OF CONTRACT**

1. EMPLOYER IS:-**ST. ST. EMMANUEL SECONDARY SCHOOL**
2. NAME OF AUTHORISED REPRESENTATIVE IS:  
  
**THE PRINCIPAL ST.EMMANUEL SECONDARY SCHOOL**
3. THE PROJECT MANAGER IS:-  
**COUNTY WORKS OFFICER-PUBLIC WORKS**
4. THE WORKS CONSISTS OF:  
**Structural works, Masonry roof, plaster and finishes**
5. THE START DATE SHALL BE **as instructed by the Project Manager**
6. THE INTENDED COMPLETION DATE FOR THE WHOLE OF THE WORKS SHALL BE **twenty four (24) Weeks from the Start Date.**
7. THE FOLLOWING DOCUMENTS ALSO FORM PART OF THE CONTRACT:  
**As listed in clause 2.3 of the Conditions of Contract**
8. THE CONTRACTOR SHALL SUBMIT A REVISED PROGRAM FOR THE WORKS WITHIN **Seven (7) DAYS** OF DELIVERY OF THE LETTER OF ACCEPTANCE.
9. THE SITE POSSESSION DATE SHALL BE **agreed with the Project Manager**  
THE SITE IS LOCATED **at ST.EMMANUEL SECONDARY SCHOOL**
10. THE DEFECTS LIABILITY PERIOD SHALL BE **180 DAYS.(6MONTHS)**
11. OTHER CONTRACTORS, UTILITIES ETC., TO BE ENGAGED BY THE EMPLOYER ON THE SITE INCLUDE THOSE FOR THE EXECUTION OF:-  
  
**None**
12. THE MINIMUM INSURANCE COVERS SHALL BE **the Contractor's All Risk Insurance**
13. THE FOLLOWING EVENTS SHALL ALSO BE COMPENSATION EVENTS:  
  
**(Compensation Events shall be only as listed in Clause 24 of the Conditions of Contract).**
14. THE PERIOD BETWEEN PROGRAM UPDATES IS **21 DAYS.**
15. THE AMOUNT TO BE WITHHELD FOR LATE SUBMISSION OF AN UPDATED PROGRAM IS **the Full Amount of Certificate**
16. THE PROPORTION OF PAYMENTS RETAINED IS **Ten per cent (10%)**
17. LIMIT OF AMOUNT RETAINED IS **Five per cent (5%) of the total Contract Amount**
18. THE PRICE ADJUSTMENT CLAUSE **shall not APPLY.**

19. THE LIQUIDATED DAMAGES FOR THE WHOLE OF THE WORKS IS:-**Kshs.10,000/= per week**
20. THE PERFORMANCE SECURITY SHALL BE FOR THE MINIMUM AMOUNT EQUIVALENT TO **Five per cent (5%)** OF THE CONTRACT PRICE
21. THE COMPLETION PERIOD FOR THE WORKS IS **Twenty four (24) Weeks**
22. THE RATE EXCHANGE FOR CALCULATION OF FOREIGN CURRENCY PAYMENTS IS **Not Applicable**
23. ADVANCE PAYMENT **shall not** BE GRANTED.
24. PERIOD OF FINAL MEASUREMENT SHALL BE:-  
**Three (3) Months from practical completion.**

**LETTER OF ACCEPTANCE**

**[Letterhead paper of the Employer]**

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

To: \_\_\_\_\_  
[Name of the Contractor]

\_\_\_\_\_  
[Address of the Contractor]

Dear Sir,

This is to notify you that your Tender dated \_\_\_\_\_

for the execution of \_\_\_\_\_

[Name of the Contract and identification number as given in the Tender documents] for the Contract Price of Kshs.

\_\_\_\_\_ [amount in figures] [Kenya Shillings \_\_\_\_\_ (amount in words)] in accordance with the Instructions to Tenderers is hereby accepted.

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

Authorized Signature .....

Name and Title of Signatory .....

Attachment: Agreement

## FORM OF AGREEMENT

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between  
\_\_\_\_\_ of [or whose registered office is situated at]

\_\_\_\_\_ (hereinafter called "the Employer") of the one part AND  
\_\_\_\_\_ of [or whose registered office is situated at]  
\_\_\_\_\_ (hereinafter called "the Contractor") of the other part.

WHEREAS THE Employer is desirous that the Contractor executes

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

NOW THIS AGREEMENT WITNESSETH as follows:

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

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

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

The common Seal of \_\_\_\_\_

Was hereunto affixed in the presence of \_\_\_\_\_

Signed Sealed, and Delivered by the said \_\_\_\_\_

Binding Signature of Employer /Principal \_\_\_\_\_

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

In the presence of (i) Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

[ii] Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

**FORM OF TENDER SECURITY**

**WHEREAS** \_\_\_\_\_ (hereinafter called "Tenderer") has submitted his tender dated \_\_\_\_\_ for the construction of \_\_\_\_\_ (Name of Contract)

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

**THE CONDITIONS** of this obligation are:

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

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

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of the Bank)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Seal)

**PERFORMANCE BANK GUARANTEE**

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

Dear Sir,

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

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

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

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Kshs. \_\_\_\_\_ (amount of Guarantee in figures) Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words), and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

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

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

## **BILLS OF QUANTITIES**

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF A STOREY TUITION  
BLOCK OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<b><u>ELEMENT NO. 1: SUBSTRUCTURE (PROVISIONAL)</u></b>				
	<b><u>SITE CLEARANCE</u></b>				
A	Clear site off all vegetation including small trees, scrubs and bushes	459	SM		-
	<b><u>EARTHWORKS</u></b>				
B	Excavate to remove top vegetable soil and heap as directed on site; average depth of 200mm	84	CM		-
C	Excavate foundation trenches commencing from reduced level: not exceeding 1.5 m deep	127	CM		-
D	Excavate foundation column bases commencing from 1.2 m deep: not exceeding 600 mm deep	71	CM		-
E	Return, fill and ram selected soil in foundations	69	CM		-
F	Remove surplus spoil from site to a location approved by the owner	56	CM		-
	<b><u>CONCRETE</u></b>				
	<u>Plain concrete class 15/40 :in</u>				
G	50 mm Thick blinding to strip foundations	27	SM		-
H	50 mm Thick blinding to column bases	27	SM		-
	Carried to Collection				-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<u>Reinforced concrete class 20/20: vibrated: in.</u>				
A	Foundation bases	38	CM		-
B	Strip foundations	27	CM		-
C	150 mm thick floor bed	430	SM		-
	<b><u>Reinforcement</u></b>				
	<u>High tensile, square twisted bar reinforcement to BS 4461</u>				
D	10 mm Bars	448	KG		-
E	12 mm Bars	660	KG		-
	<u>Column Bases</u>				
F	16 mm Bars	912	KG		-
G	12 mm Bars	192	KG		-
	<u>Columns</u>				
H	16 mm Bars	2412	KG		-
I	10 mm Bars(rings)	900	KG		-
J	12mm Bars	327	KG		-
	<b><u>Mesh Reinforcement</u></b>				
K	Mesh reinforcement No. A142 weighing 2.22 kg per square metre: in floor slab: including all necessary supports: allow for laps and bonding to existing slabs	360	SM		-
	Carried to Collection				-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<b><u>Sawn formwork: to</u></b>				
A	Sides: strip foundation	56	SM		-
C	Sides: Columns	150	SM		-
D	Edges of surface bed: over 75 mm but not exceeding 150mm girth	100	LM		-
	<b><u>Walls</u></b>				
E	200 mm Thick natural local stone foundation walls: bedded and jointed in cement and sand (1:4) mortar	167	SM		-
	<b><u>Hardcore</u></b>				
F	300mm thick Hardcore of approved inert material: well watered and compacted in 150 mm thick (max) layers	102	CM		-
	<b><u>Murram Fill</u></b>				
G	Selected murram fill; imported; well watered and compacted in 50 mm thick (max) layers	430	SM		-
	Carried to Collection				-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<b><u>Anti-termite Treatment</u></b>				
A	Dragnet FT' anti-termite chemical treatment: applied by Insecta ltd. or other approved professional pest control specialist: applied strictly in accordance with the manufacturer's instructions: 10 year guarantee	360	SM		-
	<b><u>DPM</u></b>				
B	Gauge 1000 polythene damp proof membrane	360	SM		-
	<b><u>Plinth Finishes</u></b>				
	<u>25 mm Thick cement and sand (1:4) rendering: on concrete or stonework: wood float finished: to</u>				
C	Plinths: externally	55	SM		-
	<u>Prepare surfaces and apply undercoat and three finishing coats black bitumastic or other equal approved water resistant paint: on rendered surfaces: to</u>				
D	Plinths: externally	55	SM		-
E	600 x 600 x 50mm pre-cast concrete paving bedded and jointed with cement	62	SM		-
	Carried to Collection				-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<p><b><u>Collection</u></b></p> <p>From page 1</p> <p>From page 2</p> <p>From page 3</p> <p>From page 4</p>				<p align="right">-</p> <p align="right">-</p> <p align="right">-</p> <p align="right">-</p>
<b>TOTAL FOR SUBSTRUCTURE CARRIED TO BUILDERS WORK SUMMARY</b>					-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<b><u>ELEMENT NO. 2: WALLING</u></b>				
	<b><u>EXTERNAL WALLS</u></b>				
	<u>Machine dressed stones: bedded and jointed in cement, sand (1:3) mortar: flush vertical and horizontal joints :in</u>				
A	200mm Thick walls	324	Sm		-
	<u>Horizontal bituminous hessian base to BS 743 type A: or other equal approved damp-proof course: in cement/ sand (1:3) mortar: to</u>				
B	200mm Wide: under walling	100	Lm		-
	<b><u>INTERNAL WALLS</u></b>				
	<u>Machine dressed stones: bedded and jointed in cement, sand (1:3) mortar: flush vertical and horizontal joints :in</u>				
A	150mm Thick walls	168	Sm		-
	<u>Horizontal bituminous hessian base to BS 743 type A: or other equal approved damp-proof course: in cement/ sand (1:3) mortar: to</u>				
B	150 mm Wide: under walling	35	Lm		-
	<b><u>Ceiling Finishes</u></b>				
	<u>Extra over softboard ceiling including 50x50 &amp; 75 x 50mm intermediate brandering @ 600mm centres to ceiling</u>				
C	Soffits <u>Prepare &amp; apply undercoat and two finishing coats silk vinyl emulsion paint as equal approved on gypsum ceiling surfaces:to</u>	339	Sm		-
D	Soffits	339	Sm		-
E	<u>Cornice</u> <u>50x50 cornice:one rounded junction with wall finish:one coved junction with ceiling finish:counter sinking and flush pellating.</u>	316	Lm		-
	<u>Prepare &amp; apply undercoat and two finishing coats silk vinyl emulsion paint as equal approved on ceiling cornice:to</u>				
	<u>Cornice</u>	316	Lm		-
					-
	<b>TOTAL FOR WALLING CARRIED TO BUILDERS WORK SUMMARY</b>				

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<b><u>ELEMENT NO. 3: SUPERSTRUCTURE CONCRETE</u></b>				
	<u>In situ reinforced concrete class 20 /20: vibrated: in</u>				
A	300mm x 200mm Ring Beams	48	Cm		-
B	150mm thick:suspended slab	668	Sm		-
	<b><u>Steel reinforcement:Suspended Slab</u></b>				
	<u>Mild steel reinforcement bars: hot rolled: to BS 4449: including</u>				
	<u>bends, hooks, tying wire, distance blocks and spacers</u>				
C	10 mm Bars	31070	Kg		-
	<u>Reinforced concrete class 20/20: vibrated: in.</u>				
	<b><u>Sawn Formwork</u></b>				
	Soffits	620	SM		-
	Sides and soffits: beams	146	SM		-
	Soffits:Suspended Slab	668	SM		-
	<u>High yield square twisted steel bar reinforcement to BS 4461 and KS</u>				
	<u>02-22:1976: including bends, hooks, tying wire, distance blocks and</u>				
	<u>spacers</u>				
C	12 mm Bars	2952	Kg		-
D	16 mm Bars	2132	Kg		-
E	16 mm Bars in Column bases	1120	Kg		-
	<u>Sawn formwork: to</u>				
D	Sides and soffits: beams	200	Sm		-
<b>TOTAL FOR SUPERSTRUCTURE CARRIED TO BUILDERS WORK SUMMARY</b>					<b>-</b>

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<b><u>ELEMENT NO. 4: ROOF</u></b>				
	<b><u>ROOF STRUCTURE</u></b>				
	<u>Sawn cypress: second grade: clean: pre-treated with wood preservative to engineers approval: including jointing and connections as necessary</u>				
A	150 x 50 mm Rafter: in trusses	491	Lm		-
B	150 x 50 mm: tie beam and timber members	403	Lm		-
C	100 x 50 mm: Struts and ties	685	Lm		-
D	100 x 50 mm: King post	75	Lm		-
E	75 x 50mm purlins (over)	420	Lm		-
F	100 x 50 mm Wall plate: fixed to concrete with approved bolts at 1000 mm centres	81	Lm		-
	<b><u>ROOF COVERING</u></b>				
	<u>Gauge 28 G.I sheets or any other approved on 50x50mm timber purlins; on 100x50mm rafters, struts, tie beam on wall plate</u>				
F	Roof covering	497	Sm		-
G	Ridge cover to match	42	LM		-
	Carried to collection				-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
A	<u>Wrot cypress</u> 200 x 25 mm Fascia board complete with tie member	107	Lm		-
B	<u>Prepare surfaces: and apply undercoat and two finishing coats first grade gloss enamel paint as "Crown Paints" or other equal approved: on wooden surfaces: to</u> Fascia and barge boards: surfaces over 200 but not exceeding 300 mm girth	107	Lm		-
	Carried to collection				-
	From page 8				-
	From above				-
	Carried to collection				-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<b><u>ELEMENT NO. 1: DOOR</u></b>				
	<b><u>Steel Panel doors</u></b>				
A	1200 x 2400 mm overall - Double leaf double swing mild steel door size 1200 x 2400 mm complete with steel frame, reinforced air vent in transome, heavy duty hinges, approved hasps and fixing lugs or masonry concrete	8	No.		-
	<u>Prepare surfaces and apply one coat (undercoat) and two coats polyurethane clear lacquer paint as "Crown Paints" or other equal approved: on metal surfaces: to</u>				
B	Door: general surfaces	46	Sm		-
	Carried to collection				-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<b><u>ELEMENT NO.6: WINDOWS</u></b>				
	<u>Approved pre-cast concrete cill: bedded and jointed in cement (sand (1:3) mortar: pointed in matching coloured cement</u>				
A	150 x 25 mm Thick cill; once weathered and throated	80	Lm		-
	<b><u>Windows</u></b>				
	<u>Supply, assemble and fix the following purpose made steel casement windows as " BOOTH" standards incorporating complete with fixing lugs on, hooded mosquito proofed permanent vent, pin type hinges including all necessary cutting, 4mm thick clear sheet glass(m.s) and glazing ironmongery (m.s) from "General steel fabricators". or other equal and approved manufacturers.</u>				
B	Steel casement Window size 2000 x 1500mm high	40	No		-
	<u>4mm Thick clear sheet glass and glazing to steel casement windows with and including linseed putty: in panes</u>				
C	Panes: not exceeding 0.50 sm	120	Sm		-
	<u>Prepare surfaces: apply undercoat and two finishing coats first grade gloss paint as "Crown Paints" or other equal approved metallic paint: on metal surfaces : to</u>				
D	General surfaces: Windows internally (measured flat overall)	120	Sm		-
E	Ditto externally	120	Sm		-
	Carried to collection				-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<b><u>ELEMENT NO. 7: FINISHES</u></b>				
	<b><u>Floor finishes(Terrazzo)</u></b>				
A	12mm thick terrazzo finish in cement grout complete with dividing strips and polished as directed.	535	Sm		-
B	20 x 100 mm Skirting.	284	Lm		-
	<b><u>Internal wall Finishes</u></b>				
	<u>Plaster: 9 mm first coat of cement/lime putty/sand (1:2:9): 3 mm second coat of cement/lime putty/sand (1:1:6): steel trowelled: on masonry or concrete: to</u>				
C	Walls: internally	702	Sm		-
D	Soffits:Suspended floor slab	668	Sm		-
	<u>Prepare surfaces and apply undercoat and two finishing coats silk vinyl emulsion paint as " Crown Paints" or other equal approved on plastered masonry or concrete surfaces: to</u>				
E	Walls: internally	702	Sm		-
F	Soffits:suspended floor slab	668	Sm		-
	<b><u>External wall finishes</u></b>				
	<u>Cement and sand (1:3) Key-pointing: masonry: steel trowel finished: to</u>				
	Walls: externally to receive paint	327	Sm		-
	<u>Prepare surfaces and apply undercoat and two finishing coats first grade emulsion paint as " Crown Paints" or other equal approved on plastered masonry or concrete surfaces: to</u>				
H	Walls and concrete: externally	458	Sm		-
					-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
	<b><u>SUMMARY</u></b>				
1	SUBSTRUCTURES				-
2	WALLING				-
3	SUPERSTRUCTURE CONCRETE				-
4	ROOFING				-
5	DOORS				-
6	WINDOWS				-
7	FINISHES				-
	<b><u>PC SUM</u></b>				
A	Allow a sum of Kshs.800,000 (Eight hundred thousand shillings only) for Electrical Works.		ITEM		
B	Allow a provision sum of Kshs.1,200,000 (One Million two thousand shillings only) for Project Supervision.		ITEM		
C	Allow a provision sum of Kshs.1,900,000 (One million nine hundred thousand shillings only) for Stair case, ramp,handrails and ballustrade on balcony.		ITEM		
D	Allow a provision sum of Kshs.400,000 (Four hundred thousand shillings only) for Contingency.		ITEM		
	<b>SUB - TOTAL FOR THE CONSTRUCTION OF PROPOSED STOREY TUITION BLOCK OF 8 CLASSROOMS</b>				-
	ADD V.A.T		16%		-
	<b>GRAND - TOTAL FOR THE CONSTRUCTION OF PROPOSED STOREY TUITION BLOCK OF 8 CLASSROOMS</b>				-

**BILL OF QUANTITIES FOR PROPOSED CONSTRUCTION OF STOREY TUITION BLOCK  
OF EIGHT CLASSROOMS AT ST.EMMANUEL SECONDARY SCHOOL.**

Item	Description	Qty	Unit	Rate	Kshs
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*Amount in words kenya shillings*

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