



<b>TENDER NAME</b>	<b>TENDER FOR THE PROPOSED RENOVATIONS WORKS TO THE SEWER SYSTEM AT TELPOSTA GTI ESTATE IN GILGIL TOWN NEXT TO GTI INDUSTRIES</b>
<b>TENDER REFERENCE</b>	<b>TPS/PROC/004/2023-2024</b>
<b>CLOSING DATE</b>	<b>20<sup>TH</sup> NOVEMBER, 2023</b>
<b>CLOSING TIME</b>	<b>11.00AM</b>

**TELPOSTA PENSION SCHEME,  
TELPOSTA TOWERS, 13TH FLOOR,  
KENYATTA AVENUE,  
P. O. BOX 45610 – 00100,  
NAIROBI.  
EMAIL: [tenders@telpostapension.org](mailto:tenders@telpostapension.org)**

## **SECTION I: INVITATION FOR TENDERS**

**Tender Reference No:** TPS/PROC/004 /2023

**Tender name:** Tender for The Proposed Renovations Works to The Sewer System at Telposta GTI Estate in Gilgil Town next to GTI Industries

- 1.1 The TelPosta Pension Scheme invites sealed tenders from eligible and competent bidders for the **Tender for The Proposed Renovations Works to The Sewer System at Telposta GTI Estate In Gilgil Town Next To GTI Industries**
- 1.2 The works to be carried out under this contract comprises of;
- a) **Site Clearance**
  - b) **Excavations**
  - c) **Materials suitability and workmanship**
  - d) **Concrete works, masonry works and formwork – septic tanks and soakways.**
  - e) **Drains, sewers, inspection chambers and manholes**
  - f) **Pipe laying and jointing, plus connections.**
  - g) **Measurements of sewers and connections**
  - h) **Testing**
  - i) **Pipe work protection, ancillaries**
- 1.3 Tendering will be conducted under open National competitive method (National) using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
- 1.4 This contract will be implemented in a manner consistent with Social, Environmental and Climate Assessment Procedures (**SECAP**)
- 1.5 Special precautions shall be required throughout the contract period to avoid damage to the existing the structures and other services within the site. The Contractor shall allow for making good any damage arising from his actions during execution of this contract at his own expense.
- 1.6 Eligible bidders must forward their particulars immediately for records and any further tender clarifications and addenda. Email particulars to: [tenders@telpostapension.org](mailto:tenders@telpostapension.org)
- 1.7 Tender documents may be viewed and downloaded for free from the website [telpostapension.org](http://telpostapension.org) Tenderers who download the tender document must forward their particulars immediately to [tenders@telpostapension.org](mailto:tenders@telpostapension.org) and indicate the official email, telephone and postal address) to facilitate any further clarification or addendum
- 1.8 There will be a Mandatory Site Visit on: **15<sup>th</sup> November 2023 at 11.00am at Telposta GTI Estate In Gilgil Town Next To GTI Industries**
- 1.9 The bidder at their own responsibility, cost, 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 quotation and entering into a contract for the construction of works.
- 1.10 Prices quoted should be net inclusive of all taxes, must be in **Kenya shillings** and shall remain valid for **(120) days** from the closing date of tender.
- 1.11 All Tenders must be accompanied by a tender Security of **Kshs 250,000.00** in the format provided in the tender security form.
- 1.12 Tenders must be accompanied by security in the format specified in the attached form of tender Security, in a bank's letterhead, and amount indicated. The tender must be delivered in plain sealed envelope clearly marked **'Tender for The Proposed Renovations Works To The Sewer System At Telposta GTI Estate In Gilgil Town Next To GTI Industries**
- 1.13 The Tenderer shall chronologically serialize all pages of the tender documents submitted.

I.14 The **original** document of the tender must be delivered to and dropped in the tender box situated at the reception of **TelPosta Pension Scheme's Boardroom at TelPosta Towers 13th floor, Uhuru Wing, Kenyatta Avenue, Nairobi (Core C, Entrance)** so as to reach the below address

**The Administrator/Trust Secretary,  
TelPosta Pension Scheme,  
P.O. Box 45610-00100,  
Nairobi.**

**On or before: 20<sup>TH</sup> November 2023 at 11.00am**

**Tenders will be opened at 11.30am**

I.15 Any form of Canvassing will lead to disqualification

I.16 Late tenders will be rejected.

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**The Administrator/ Trust Secretary,  
TELPOSTA PENSION SCHEME.**

# **I. SECTION I: INSTRUCTIONS TO TENDERERS**

## **I. General Provisions**

### **I. Scope of Tender**

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

### **2. Fraud and Corruption**

- 2.1 The Procuring Entity requires compliance with the provisions of the Public Procurement 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 (*wives, 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:
- Directly or indirectly controls, is controlled by or is under common control with another tenderer; or
  - Receives or has received any direct or indirect subsidy from another tenderer; or
  - Has the same legal representative as another tenderer; or
  - 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.
- 3.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in "SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9".
- 3.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya 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.

## **2. B. Contents of Tender Documents**

### **6. Sections of Tender Document**

6.1 The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITT 8.

### **3. PART I Tendering Procedures**

- i) Section I - Instructions to Tenderers (ITT)
- ii) Section II - Tender Data Sheet (TDS)
- iii) Section III - Evaluation and Qualification Criteria
- iv) Section IV - Tendering Forms

### **4. PART 2 Works Requirements**

- i) Section V - Drawings
- ii) Section VI - Specifications
- iii) Section VII - Bills of Quantities

### **5. PART 3 Conditions of Contract and Contract Forms**

- i) Section VIII - General Conditions of Contract (GCC)
- ii) Section IX - Special Conditions of Contract (SC)
- iii) Section X - Contract Forms

6.2 The Invitation to Tender Document (ITT) issued by the Procuring Entity is not part of the Contract documents.

6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 8. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

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

### **7. Site Visit**

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. The costs of visiting the Site shall be at the Tenderer's own expense.

### **8. Pre-Tender Meeting**

8.1 The Procuring Entity shall specify in the **TDS** if a pre-tender meeting will be held, when and where.

The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender site visit will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

- 8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.
- 8.3 Minutes of the pre-Tender meeting and the pre-arranged pretender site visit of the site of the works, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.
- 8.4 The Procuring Entity shall also promptly publish anonym ized (*no names*) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pretender meeting and the pre-arranged pretender site visit, shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

## **9. Clarification and amendments of Tender Documents**

- 9.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre- arranged pretender visit of the site of the works if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 8.4.



## **10. Amendment of Tendering Document**

- 10.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.
- 10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.4.
- 10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 25.2 below.

## **6. C. Preparation of Tenders**

### **11. Cost of Tendering**

- 11.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

### **12. Language of Tender**

- 12.1 The Tender, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring Entity, shall be written in the English Language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate and notarized translation of the relevant passages into the English Language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

### **13. Documents Comprising the Tender**

- 13.1 The Tender shall comprise the following:
  - a) Form of Tender prepared in accordance with ITT 14;
  - b) Schedules including priced Bill of Quantities, completed in accordance with ITT 14 and ITT 16;
  - c) Tender Security or Tender-Securing Declaration, in accordance with ITT 21.1;
  - d) Alternative Tender, if permissible, in accordance with ITT 15;
  - e) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;
  - f) Qualifications: documentary evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
  - g) Conformity: a technical proposal in accordance with ITT 18;
  - h) Any other document required in the **TDS**.
- 13.2 **In addition to the requirements under ITT 11.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful**

**Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement. The Tenderer shall chronologically serialize pages of all tender documents submitted.**

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

#### **14. Form of Tender and Schedules**

- 14.1 The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested.

#### **15. Alternative Tenders**

- 15.1 Unless otherwise specified in the **TDS**, alternative Tenders shall not be considered.
- 15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **TDS**, and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.
- 15.3 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price the Procuring Entity's design as described in the Tender Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by the Procuring Entity. When specified in the **TDS**, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the **TDS**, as will the method for their evaluating, and described in Section VII, Works' Requirements.

#### **16. Tender Prices and Discounts**

- 16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements specified below.
- 16.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Procuring Entity. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.
- 16.3 The price to be quoted in the Form of Tender, in accordance with ITT 14.1, shall be the total price

of the Tender, including any discounts offered.

- 16.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT 14.1.
- 16.5 It will be specified in the **TDS** if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, except in cases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Procuring Entity may require the Tenderer to justify its proposed indices and weightings.
- 16.6 Where tenders are being invited for individual lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 16.4, provided the Tenders for all lots (contracts) are opened at the same time.
- 16.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

## **17. Currencies of Tender and Payment**

- 17.1 Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer in the Bill of Quantities, entirely in Kenya shillings. A Tenderer expecting to incur expenditures in other currencies for inputs to the Works supplied from outside Kenya shall device own ways of getting foreign currency to meet those expenditures.

## **18. Documents Comprising the Technical Proposal**

- 18.1 The Tenderer shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Tender Forms, in sufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.

## **19. Documents Establishing the Eligibility and Qualifications of the Tenderer**

- 19.1 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance with ITT 4.
- 19.2 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Tender Forms.
- 19.3 A margin of preference will not be allowed. Preference and reservations will be allowed, individually or in joint ventures. Applying for eligibility for Preference and reservations shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.

- 19.4 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 19.5 The purpose of the information described in ITT 19.4 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 19.6 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 19.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 19.8 If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 19.9 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) if the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
  - ii) if the contract has been awarded to that tenderer, the contract award will be set aside,
  - iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 19.10 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

## 20. Period of Validity of Tenders

- 20.1 Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 24). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 21.1, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 20.3.
- 20.3 If the award is delayed by a period exceeding the number of days to be specified in the **TDS** days beyond the expiry of the initial tender validity period, the Contract price shall be determined as follows:
- a) in the case of fixed price contracts, the Contract price shall be the tender price adjusted by the factor specified in the TDS;
  - b) in the case of adjustable price contracts, no adjustment shall be made; or in any case, tender evaluation shall be based on the tender price without taking into consideration the applicable correction from those indicated above.

## 21. Tender Security

- 21.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the **TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified in the **TDS**. A Tender-Securing Declaration shall use the form included in Section IV, Tender Forms.
- 21.2 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:
- a) an unconditional Bank Guarantee issued by reputable commercial bank); or
  - b) an irrevocable letter of credit;
  - c) a Banker's cheque issued by a reputable commercial bank; or
  - d) another security specified **in the TDS**,
- 21.3 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 20.2.
- 21.4 If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.

- 21.5 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the **TDS**. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined nonresponsive or a bidder declines to extend tender validity period.
- 21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security, and any other documents required in the **TDS**.
- 21.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- e) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension thereto provided by the Tenderer; or
  - f) if the successful Tenderer fails to:
    - i) sign the Contract in accordance with ITT 50; or
    - ii) furnish a Performance Security and if required in the TDS, and any other documents required in the TDS.
- 21.8 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.
- 21.9 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.
- 21.10 A tenderer shall not issue a tender security to guarantee itself.

## **22. Format and Signing of Tender**

- 22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 15, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 22.2 Tenderers shall mark as "CONFIDENTIAL" all information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

- 22.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

## **7. D. Submission and Opening of Tenders**

### **23. Sealing and Marking of Tenders**

- 23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- a) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, as described in ITT I I; and
  - b) in an envelope or package or container marked “COPIES”, all required copies of the Tender; and
- I. if alternative Tenders are permitted in accordance with ITT I 5, and if relevant:
- II. in an envelope or package or container marked “ORIGINAL –ALTERNATIVE TENDER”, the alternative Tender; and
  - III. in the envelope or package or container marked “COPIES- ALTERNATIVE TENDER”, all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) bear the name and address of the Procuring Entity.
- b) bear the name and address of the Tenderer; and
- c) bear the name and Reference number of the Tender.

23.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

### **24. Deadline for Submission of Tenders**

- 24.1 Tenders must be received by the Procuring Entity at the address specified in the **TDS** and no later than the date and time also specified in the **TDS**. When so specified in the **TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the **TDS**.
- 24.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of

the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **25. Late Tenders**

- 25.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT 24. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## **26. Withdrawal, Substitution, and Modification of Tenders**

- 26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 22.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- a) prepared and submitted in accordance with ITT 22 and ITT 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and
- b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 24.

- 26.2 Tenders requested to be withdrawn in accordance with ITT 26.1 shall be returned unopened to the Tenderers.

- 26.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

## **27. Tender Opening**

- 27.1 Except in the cases specified in ITT 23 and ITT 26.2, the Procuring Entity shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified in the **TDS**, in the presence of Tenderers' designated representatives who chooses to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 24.1, shall be as specified in the **TDS**.

- 27.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the corresponding Tender shall not be opened, but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

- 27.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at



Tender opening.

- 27.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.
- 27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.
- 27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed by the members of the tender opening committee attending the opening. The number of representatives of the Procuring Entity to sign shall be specified in the **TDS**.
- 27.7 At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 25.1).
- 27.8 The Procuring **Entity shall prepare minutes of the Tender Opening that shall include, as a minimum:**
- a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
  - b) the Tender Price, per lot (contract) if applicable, including any discounts;
  - c) any alternative Tenders;
  - d) the presence or absence of a Tender Security, if one was required.
  - e) number of pages of each tender document submitted.
- 27.9 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall be distributed to all Tenderers upon request.

## **8. E. Evaluation and Comparison of Tenders**

### **28. Confidentiality**

- 28.1 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 46.
- 28.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.

28.3 Notwithstanding ITT 28.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any **matter related to the tendering process, it shall do so in writing.**

## 29. Clarification of Tenders

29.1 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the tenders, in accordance with ITT 33.

29.2 If a tenderer does not provide clarifications of its tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

## 30. Deviations, Reservations, and Omissions

30.1 During the evaluation of tenders, the following definitions apply:

- a) "Deviation" is a departure from the requirements specified in the tender document;
- b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tender document; and
- c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender document.

## 31. Determination of Responsiveness

31.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the tender itself, as defined in ITT 13.

31.2 A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, **reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:**

- a) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
- b) limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights or the tenderer's obligations under the proposed contract; or
- c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.

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

31.4 If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## **32. Non-material Non-conformities**

32.1 Provided that a tender is substantially responsive, the Procuring Entity may waive any non-conformities in the tender.

32.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the tenderer submit the necessary information or documentation, within a reasonable period, to rectify nonmaterial non-conformities in the tender related to documentation requirements. Requesting information or documentation on such non- conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to comply with the request may result in the rejection of its tender.

32.3 Provided that a tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS**.

## **33. Arithmetical Errors**

33.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

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

d) 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.

e) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, and subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and

f) if there is a discrepancy between words and figures, the amount in words shall prevail

33.3 Tenderers shall be notified of any error detected in their bid during the notification of a ward.

## **34. Currency provisions**

34.1 Tenders will priced be in Kenya Shillings only. Tenderers quoting in currencies other than in Kenya shillings will be determined non-responsive and rejected.

### **35. Margin of Preference and Reservations**

- 35.1 No margin of preference shall be allowed on contracts for small works.
- 35.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and/or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to those specified groups are the only ones eligible to tender. Otherwise if no so stated, the invitation will be open to all tenderers.

### **36. Nominated Subcontractors**

- 36.1 Unless otherwise stated in the **TDS**, the Procuring Entity does not intend to execute any specific elements of the Works by subcontractors selected in advance by the Procuring Entity.
- 36.2 Tenderers may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the **TDS**. Subcontractors proposed by the Tenderer shall be fully qualified for their parts of the Works.
- 36.3 The subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works unless their specialized parts of the Works were previously designated by the Procuring Entity in the **TDS** as can be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Tenderer may be added to the qualifications of the Tenderer.

### **37. Evaluation of Tenders**

- 37.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Best Evaluated Tender in accordance with ITT 40.
- 37.2 To evaluate a Tender, the Procuring Entity shall consider the following:
- a) price adjustment due to discounts offered in accordance with ITT 16;
  - b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 39;
  - c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 30.3; and
  - d) any additional evaluation factors specified in the TDS and Section III, Evaluation and Qualification Criteria.
- 37.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.
- 37.4 In the case of multiple contracts or lots, Tenderers shall be allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) combinations, including

any discounts offered in the **Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.**

### **38. Comparison of Tenders**

38.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 38.2 to determine the Tender that has the lowest evaluated cost.

### **39. Abnormally Low Tenders**

39.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.

39.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

39.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

### **40. Abnormally High Tenders**

40.1 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

40.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

- I. If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
- II. If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

40.3 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (often due to collusion, corruption or other

*manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

#### **41. Unbalanced and/or Front-Loaded Tenders**

- 41.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.
- 41.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:
- a) accept the Tender; or
  - b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price; or
  - c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
  - d) reject the Tender,

#### **42. Qualifications of the Tenderer**

- 42.1 The Procuring Entity shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 42.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 19. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the Tender document), or any other firm(s) different from the Tenderer.
- 42.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.
- 42.4 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.
- 42.5 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in

relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

- 42.6 After evaluation of the price analyses, if the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

#### **43. Best Evaluated Tender**

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

- a) Most responsive to the Tender document; and
- b) the lowest evaluated price.

#### **44. Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders.**

- 44.1 The Procuring Entity reserves the right to accept or reject any Tender and to annul the Tender process and reject all Tenders at any time prior to Contract Award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenderers shall be notified with reasons and all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

### **9. F. Award of Contract**

#### **45. Award Criteria**

- 45.1 The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

#### **46. Notice of Intention to enter into a Contract**

- 46.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract / Notification of award to all tenderers which shall contain, at a minimum, the following information:

- a) the name and address of the Tenderer submitting the successful tender;
- b) the Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
- d) the expiry date of the Standstill Period; and
- e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

#### **47. Standstill Period**

- 47.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.
- 47.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter **into a Contract with the successful Tenderer.**

#### **48. Debriefing by the Procuring Entity**

- 48.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 46, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.
- 48.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending **such a debriefing meeting.**

#### **49. Letter of Award**

- 49.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

#### **50. Signing of Contract**

- 50.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.
- 50.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.
- 50.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period

#### **51. Appointment of Adjudicator**

- 51.1 The Procuring Entity proposes the person named in the **TDS** to be appointed as Adjudicator under the Contract, at the hourly fee specified in the **TDS**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in his Tender. If, in the Letter of Acceptance, the Procuring Entity does not agree on the appointment of the Adjudicator, the Procuring Entity will request the Appointing Authority designated in the Special Conditions of Contract (SCC) pursuant to



Clause 23.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator.

## **52. Performance Security**

- 52.1 Within twenty-one (21) days of the receipt of the Letter of Acceptance from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the **TDS**, in accordance with the General Conditions of Contract, subject to ITT 40.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent bank is not required.
- 52.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the **TDS**, or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.
- 52.3 Performance security shall not be required for contracts estimated to cost less than Kenya shillings five million shillings.

## **53. Publication of Procurement Contract**

- 53.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:
- a) name and address of the Procuring Entity;
  - b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
  - c) the name of the successful Tenderer, the final total contract price, the contract duration.
  - d) dates of signature, commencement and completion of contract;
  - e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

## **54. Procurement Related Complaints and Administrative Review**

- 54.1 The procedures for making Procurement-related Complaints are as specified in the **TDS**.
- 54.2 A request for administrative review shall be made in the form provided under contract forms.

## 2. 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	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
	<b>A. General</b>
ITT 1.1	The name of the contract is:  <b>TENDER FOR THE PROPOSED RENOVATIONS WORKS TO THE SEWER SYSTEM AT TELPOSTA GTI ESTATE IN GILGIL TOWN NEXT TO GTI INDUSTRIES</b>  The reference number of the Contract is: <b>TPS/PROC/004-2023</b>
ITT 2.3	The Information made available on competing firms is as follows:  _____
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be: <b>2</b>
<b>B. Contents of Tender Document</b>	
8.1	(A) Pre-Tender conference [ <b>“shall not”</b> ] take place at the following date, time and place:  (B) A pre-arranged pretender visits of the site of the works shall take place on <b>15th November 2023 at 11.00am at Telposta GTI Estate In Gilgil Town Next To GTI Industries</b>
ITT 8.2	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than <b>17<sup>th</sup> November 2023</b>
ITT 8.4	The Procuring Entity’s website where Minutes of the pre-Tender meeting and the pre-arranged pretender site visit will be published is: <a href="https://www.telpostapension.org/">https://www.telpostapension.org/</a>
ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity’s address is:  <b>TELPOSTA PENSION SCHEME, TELPOSTA TOWERS, 13<sup>TH</sup> FLOOR, KENYATTA AVENUE, P. O. BOX 45610 – 00100, NAIROBI. EMAIL: <a href="mailto:tenders@telpostapension.org">tenders@telpostapension.org</a></b>
<b>C. Preparation of Tenders</b>	

ITP 13.1 (h)	<p>The Tenderer shall submit the following documents in its Tender:</p> <ol style="list-style-type: none"> <li>1. A Copy of Certificate of Incorporation.</li> <li>2. Certified Copy of Registration Certificate with the National Construction Authority (NCA) in Category 5 and above for water works category</li> <li>3. Copy of a Valid NCA practicing license Category 5 and above for Water Works Category</li> <li>4. A Copy of Valid Tax Compliance Certificate (will be verified on the KRA TCC Checker</li> <li>5. Copy of Valid business permit (trade license)</li> <li>6. Duly filled and signed letter of bid/ form of tender in the in the format provided. This form must be stamped or in the company letter head</li> <li>7. Duly Filled, Signed and Stamped Eligibility and Qualification Tendering Forms: <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">a. Form Equ: Equipment</td> <td style="width: 33%;">e. Form Eli -1.1</td> <td style="width: 33%;">i. Form Fin – 3.2:</td> </tr> <tr> <td>b. Form Per -1</td> <td>f. Form Eli -1.2</td> <td>j. Form Fin – 3.3:</td> </tr> <tr> <td>c. Form Per-2:</td> <td>g. Form Con – 2</td> <td>k. Form Fin – 3.4:</td> </tr> <tr> <td>d. Tenderer's Qualification Without Pre-Qualification</td> <td>h. Form Fin – 3.1:</td> <td>l. Form Exp - 4.1</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>m. Form Exp - 4.2(A)</td> <td>r. Certificate of Independent Tender Determination</td> <td></td> </tr> <tr> <td>n. Form Exp - 4.2 (A) (Cont.)</td> <td>s. Self - Declaration Forms</td> <td></td> </tr> <tr> <td>o. Form Exp - 4.2(B)</td> <td>t. Form Sd1</td> <td></td> </tr> <tr> <td>p. Form of Tender</td> <td>u. Form Sd2</td> <td></td> </tr> <tr> <td>q. Tenderer's Confidential Questionnaire Eligibility-Business</td> <td>v. Declaration And Commitment To The Code Of Ethics</td> <td></td> </tr> </table> </li> <li>8. Mandatory Site Visit attendance certificate</li> <li>9. Schedule of completed building and water sewer works in the last three years</li> <li>10. Equipment, Machinery and Vehicles necessary for the renovations of water sewers and construction works</li> <li>11. Evidence that the construction firm is equipped with skilled personnel</li> <li>12. Demonstrate that the firm has access to or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means sufficient to meet the rehabilitation / construction cash flow for a period of 3 months.</li> </ol>	a. Form Equ: Equipment	e. Form Eli -1.1	i. Form Fin – 3.2:	b. Form Per -1	f. Form Eli -1.2	j. Form Fin – 3.3:	c. Form Per-2:	g. Form Con – 2	k. Form Fin – 3.4:	d. Tenderer's Qualification Without Pre-Qualification	h. Form Fin – 3.1:	l. Form Exp - 4.1				m. Form Exp - 4.2(A)	r. Certificate of Independent Tender Determination		n. Form Exp - 4.2 (A) (Cont.)	s. Self - Declaration Forms		o. Form Exp - 4.2(B)	t. Form Sd1		p. Form of Tender	u. Form Sd2		q. Tenderer's Confidential Questionnaire Eligibility-Business	v. Declaration And Commitment To The Code Of Ethics	
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ITT 15.1	Alternative Tenders <b>“shall not be”</b> considered.																														
ITT 15.2	Alternative times for completion <b>“shall not be”</b> permitted.																														
ITT 15.4	<p>Alternative technical solutions shall be permitted for the following parts of the Works:</p> <p><i>[If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.]</i></p> <p><b>Not Applicable</b></p>																														
ITT 16.5	The prices quoted by the Tenderer shall be: <b>“fixed”</b>																														

<b>ITT 20.1</b>	The Tender validity period shall be 120days [counting as of the deadline for Tender submission] days.
<b>ITT 20.3 (a)</b>	(a) The delayed to exceeding:60 number of days.
<b>ITT 21.1</b>	A Tender Security “ <b>Shall Not Be</b> ” required. If a Tender Security shall be required, the amount and currency of the Tender Security shall be; <b>None</b>
<b>ITT 21.2 (d)</b>	The other Tender Security shall be: { <b>Only as specified in 21,2 a-c</b> }
<b>ITT 21.5</b>	On the Performance Security, other documents required shall be: <b>None</b>
<b>ITT 22.1</b>	In addition to the original of the Tender, the number of copies is: <b>One</b>
<b>ITT 22.3</b>	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: <b>Full Names of the Representative; ID Number and Designation</b>
<b>D. Submission and Opening of Tenders</b>	
<b>ITT 24.1</b>	(A) For <u>Tender submission purposes only</u> , the Procuring Entity’s address is: <b>Telposta Pension Scheme, Telposta Towers, 13<sup>th</sup> Floor, Kenyatta Avenue, P. O. Box 45610 – 00100, Nairobi.</b> <b>Email:</b> <a href="mailto:Tenders@Telpostapension.Org">Tenders@Telpostapension.Org</a> Date and Time for Submission of Tenders: <b>20<sup>TH</sup> NOVEMBER 2023   11.00am</b> Tenders <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: <b>Telposta Pension Scheme, Telposta Towers, 13<sup>th</sup> Floor, Kenyatta Avenue) Boardroom</b>

	<b>State date and time of tender opening: 20<sup>th</sup> November 2023   11.30am</b>
<b>ITT 27.1</b>	If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures <b>specified below</b> <i>[insert a description of the electronic Tender opening procedures]</i> : <b>Not Applicable</b>
<b>ITT 27.6</b>	The number of representatives of the Procuring Entity to sign is: <b>Tender Opening Committee</b>
<b>E. Evaluation, and Comparison of Tenders</b>	
<b>ITT 32.3</b>	The adjustment shall be based on the “ <i>average</i> ” 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>This is an Open Invitation to all Eligible Bidders</b>
<b>ITT 36.1</b>	At this time, the Procuring Entity “ <i>does not intend</i> ” to execute certain specific parts of the Works by subcontractors selected in advance.
<b>ITT 36.2</b>	Contractor’s may propose subcontracting: Maximum percentage of subcontracting permitted is: <i>0% of the total contract amount</i> . Tenderers planning to subcontract more than 10% of total volume of work shall specify, in the Form of Tender, the activity (ies) or parts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience.  No sub-Contracting allowed.
<b>ITT 36.3</b>	<i>[Indicate N/A if not applicable]</i>  The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows:  Not Applicable

**ITT 37.2 (d)**

Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.

**Stage I: Preliminary Evaluation: Mandatory [YES / NO]**

1. A Copy of Certificate of Incorporation.
2. Copy of Registration Certificate with the National Construction Authority (NCA) in Category 5 above for water works
3. Copy of a Valid NCA practicing license Category 5 and above for water works
4. A Copy of Valid Tax Compliance Certificate (will be verified on the KRA TCC Checker
5. Copy of Valid business permit (trade license)
6. Duly filled and signed letter of bid/ form of tender in the format provided. This form must be stamped or in the company letter head
7. Duly Filled, Signed and Stamped Eligibility and Qualification Tendering Forms [All forms are listed above in Pg.27]
8. Mandatory Site Visit attendance certificate
  - ✚ Representatives of TPS shall be available to meet the intending tenderers at the Site. Tenderers must provide their own transport.
  - ✚ The representatives **shall not** be available at any other time for site inspection visits.
  - ✚ Each tenderer shall complete the Certificate of Tenderer's Visit to the Site at the time of the organized site visit.
  - ✚ **Non- attendance of the Mandatory site and Pre-tender meeting visit will lead to automatic disqualification of a Tenderer.**
9. Bidders with Ongoing / Incomplete works projects with TelPosta Pension Scheme are not eligible to bid and shall be disqualified

**All items must be submitted and evaluated as responsive to proceed to the next stage.**

**Stage II: Technical Evaluation:**

Evaluation Attribute	Marks
<p><b>General Experience</b></p> <p>1) Experience under structural and civil construction contracts in the role of contractor, subcontractor, or management contractor for at least the last Five [5] years prior to the applications submission deadline Provide evidence for the above having participated as contractor, management contractor or subcontractor, in at least two (2) contracts within the last five (5) years, each with a value of at least KShs. 15 Million (Fifteen million), that have been successfully and substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section 6, Scope of Works <b>[3Mks per Assignment] [Max 6mks]</b></p> <p>2) Provide evidence in undertaking 3 rehabilitation of sewers of similar nature or equivalent in the last 3 {3} years with a cumulative value of Kshs 30,000,000.00 in the last three years. <i>[Must Attach Contracts or Interim Completion Certificates or Certificate of Practical Completion for the works. Attach a schedule of the above with the contact details, telephone number and email address of the reference] [Attaching award letters only shall be inadequate and will not be considered as evidence of experience must be accompanied by the contract / interim or completion certificates]</i> <b>[3Mks per Assignment] [Max 9mks]</b></p>	<p><b>15</b></p>
<p><b>Qualification of Project Staff</b></p> <p>3) Provide Evidence that the construction firm is equipped with skilled personnel that includes: -</p> <p>a) The Site Agent should have a minimum of diploma in civil engineering or construction management and any other related field. Qualification = Diploma in Civil Eng General Experience = 8 yrs. Specific Experience = 6 Yrs. <b>[3Mks]</b></p> <p>b) The Foreman should have a minimum of certificate in construction management or related fields. Must Attach copies of Qualification attained and CV for both. <i>[Attach a schedule clearly identifying the Site Agent / Project Manager/ Foreman and any other personnel that is proposed for the works or clearly identify the roles assigned in the CVs]</i> Qualification = Diploma in Civil Eng General Experience = 6 yrs. Specific Experience = 4 Yrs. <b>[3Mks]</b></p> <p>c) The Site surveyor should have: Qualification = Diploma in Survey General Experience = 6 yrs. Specific Experience = 4 Yrs. <b>[3Mks]</b></p>	<p><b>9</b></p>

	<p><b>Financial Capacity</b></p> <p><b>4)</b> Submit evidence of access to financial resources to successfully complete the works i.e. access to cash, letter from a bank, credit institutions, or other financial intermediary, supporting the availability of liquid financial resources in the amount of Kshs 6,000,000.00</p> <p><i>[Bidders can attach either: Audited financial statements showing a minimum of annual turnover Kshs 30,000,000.00 or Attach a line of credit of Kshs 10,000,00.00 or Attach bank statements to demonstrate minimum cash flow of Kshs 10,000,000.00]</i></p> <p><b>[Provide evidence as guided above 6mks – less or below 0mks]</b></p>	<b>6</b>																																																						
	<p><b>Equipment</b></p> <p><b>5)</b> Demonstrate that the contractor has access to or disposal of equipment and vehicles to undertake the works. Must provide Evidence of access to Equipment under ownership/ hire or lease. Those hiring <b>MUST</b> provide certified copies of Lease or ownership of the equipment</p> <table border="1" data-bbox="391 688 1268 1793"> <thead> <tr> <th data-bbox="391 688 456 884">Item No.</th> <th data-bbox="456 688 699 884">Equipment Details</th> <th data-bbox="699 688 813 884">Minimum Number Required</th> <th data-bbox="813 688 938 884">No. of Equipment Owned by the Bidder</th> <th data-bbox="938 688 1110 884">No. of equipment to be hired/purchased by the Bidder</th> <th data-bbox="1110 688 1268 884">No. of equipment to be availed for the Contract by the Bidder</th> </tr> </thead> <tbody> <tr> <td data-bbox="391 884 456 989">1</td> <td data-bbox="456 884 699 989"> <b>A) Compressor</b>            1. Pneumatic Compressor         </td> <td data-bbox="699 884 813 989">1</td> <td data-bbox="813 884 938 989"></td> <td data-bbox="938 884 1110 989"></td> <td data-bbox="1110 884 1268 989"></td> </tr> <tr> <td data-bbox="391 989 456 1142">2</td> <td data-bbox="456 989 699 1142"> <b>B) Concrete Equipment</b>            1. Mobile concrete mixers         </td> <td data-bbox="699 989 813 1142">1</td> <td data-bbox="813 989 938 1142"></td> <td data-bbox="938 989 1110 1142"></td> <td data-bbox="1110 989 1268 1142"></td> </tr> <tr> <td data-bbox="391 1142 456 1205"></td> <td data-bbox="456 1142 699 1205">2. Concrete vibrators</td> <td data-bbox="699 1142 813 1205">1</td> <td data-bbox="813 1142 938 1205"></td> <td data-bbox="938 1142 1110 1205"></td> <td data-bbox="1110 1142 1268 1205"></td> </tr> <tr> <td data-bbox="391 1205 456 1331">3</td> <td data-bbox="456 1205 699 1331"> <b>C) Transport</b>            1. 4X2 tippers payload 7 – 12 tonnes         </td> <td data-bbox="699 1205 813 1331">1</td> <td data-bbox="813 1205 938 1331"></td> <td data-bbox="938 1205 1110 1331"></td> <td data-bbox="1110 1205 1268 1331"></td> </tr> <tr> <td data-bbox="391 1331 456 1409"></td> <td data-bbox="456 1331 699 1409">2. Flatbed lorries</td> <td data-bbox="699 1331 813 1409">1</td> <td data-bbox="813 1331 938 1409"></td> <td data-bbox="938 1331 1110 1409"></td> <td data-bbox="1110 1331 1268 1409"></td> </tr> <tr> <td data-bbox="391 1409 456 1535"></td> <td data-bbox="456 1409 699 1535">3. Water tankers (18,000 – 20,000 lots. capacity)</td> <td data-bbox="699 1409 813 1535">1</td> <td data-bbox="813 1409 938 1535"></td> <td data-bbox="938 1409 1110 1535"></td> <td data-bbox="1110 1409 1268 1535"></td> </tr> <tr> <td data-bbox="391 1535 456 1646">4</td> <td data-bbox="456 1535 699 1646"> <b>D) Earth Moving Equipment</b>            1. Trench excavator         </td> <td data-bbox="699 1535 813 1646">1</td> <td data-bbox="813 1535 938 1646"></td> <td data-bbox="938 1535 1110 1646"></td> <td data-bbox="1110 1535 1268 1646"></td> </tr> <tr> <td data-bbox="391 1646 456 1793">5</td> <td data-bbox="456 1646 699 1793"> <b>E) Diesel Generators</b>            1. Diesel generators (15 – 200 KVA)         </td> <td data-bbox="699 1646 813 1793">1</td> <td data-bbox="813 1646 938 1793"></td> <td data-bbox="938 1646 1110 1793"></td> <td data-bbox="1110 1646 1268 1793"></td> </tr> </tbody> </table>	Item No.	Equipment Details	Minimum Number Required	No. of Equipment Owned by the Bidder	No. of equipment to be hired/purchased by the Bidder	No. of equipment to be availed for the Contract by the Bidder	1	<b>A) Compressor</b> 1. Pneumatic Compressor	1				2	<b>B) Concrete Equipment</b> 1. Mobile concrete mixers	1					2. Concrete vibrators	1				3	<b>C) Transport</b> 1. 4X2 tippers payload 7 – 12 tonnes	1					2. Flatbed lorries	1					3. Water tankers (18,000 – 20,000 lots. capacity)	1				4	<b>D) Earth Moving Equipment</b> 1. Trench excavator	1				5	<b>E) Diesel Generators</b> 1. Diesel generators (15 – 200 KVA)	1				<b>6</b>
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6	F) Pipe Laying				
	1. Pipe laying Tools	1			
	2. Surveying Equipment	1			
		1			

**[Demonstrate the ownership or lease of the Key Equipment highlighted 6mks.]**

**Proposed Methodology and Work Plan**

**6)** Provide a clear schedule of works clearly indicating the sequence of works to be carried out through a Gantt chart with logical links, milestones. The Gantt Chart or table should clearly indicate the time frame and activities from start to the completion period. *The Gantt chart should be signed and stamped. [The contract completion period is 2months]*

**4**

**Total Marks**

**40**

**Pass Mark**

**32**

**Those that will attain 40 Marks and Above shall proceed to the financial Evaluation**

**Stage III: Financial Evaluation**

- 1) Award shall be done on the lowest evaluated total bid
- 2) The bidder with the lowest evaluated financial bid shall be recommended for the award of the contract for the works
- 3) If there is a tie on the lowest evaluated quoted sum price, the successful bidder shall be the one who will demonstrate the highest number of completed works
- 4) In case of a discrepancy between unit price and total in the price schedules/ BOQ, the unit price shall prevail.
- 5) A person shall not be disqualified on the basis that a bidder quoted above or below a certain percentage of engineers estimate

**Stage III: Financial Evaluation Cont....**

**Bidders are encouraged to avoid front-loading for the major items of work to be performed under the contract. The Employer may require the bidder to produce detailed price analyses for any or all items in the Bill of Quantities to demonstrate the internal consistency of those prices with the construction methods and schedule proposed.**

**Note: Clause 82:** There shall be no correction of errors. The tender sum submitted and read out during the tender opening shall be absolute and final and shall not be subject of correction, adjustment or amendment in any way by any person or entity.

<b>ITT 51.1</b>	The person named to be appointed as Adjudicator: Shall be by the Authority of the Adjudicator. Chartered Institute of Arbitrators, Kenya
<b>ITT 52.2</b>	Other documents required are: None
<b>ITT 54.1</b>	<p>The procedures for making a Procurement-related Complaints are detailed in the “Regulations” available from the PPRA Website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a>. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p>For the attention: Trust Secretary  Title/position: Trust Administrator  Procuring Entity: Telposta Pension Scheme  Email address: <a href="mailto:tenders@telpostapension.org">tenders@telpostapension.org</a></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:  (i) the terms of the Tender Documents; and  (ii) the Procuring Entity’s decision to award the contract.</p>

### **3. SECTION III - EVALUATION AND QUALIFICATION CRITERIA**

#### **I. General Provisions**

Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

- a) For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
- b) Value of single contract - Exchange rate prevailing on the date of the contract signature.
- c) Exchange rates shall be taken from the publicly available source identified in the ITT 14.3. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Document for Goods and Works** for evaluating Tenders.

#### **Evaluation and contract award Criteria**

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

#### **2. Preliminary examination for Determination of Responsiveness**

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements of “Part 2 – Procuring Entity’s Works Requirements”, including checking for tenders with unacceptable errors, abnormally low tenders, abnormally high tenders and tenders that are front loaded. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered irresponsive and will not be considered further.

**Tender Evaluation (ITT 35) Price evaluation:** in addition to the criteria listed in ITT 35.2 (a) – (c) the following criteria shall apply:

- i) **Alternative Completion Times**, if permitted under ITT 13.2, will be evaluated as follows: Not Applicable
- ii) **Alternative Technical Solutions for specified parts of the Works**, if permitted under ITT 13.4, will be evaluated as follows: Not Applicable
- iii) **Other Criteria**; if permitted under ITT 35.2(d): Not Applicable

### 3. Multiple Contracts

Multiple contracts will be permitted in accordance with ITT 35.4. Tenderers are evaluated on basis of Lots and the lowest evaluated tenderer identified for each Lot.

If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.

### 4. Alternative Tenders (ITT 13.1)

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

The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2- Works Requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

### 5. Margin of Preference is not applicable

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

- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.
- b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.
  - i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow of Kenya Shillings **Kshs 6,000,000.00**
  - ii) Minimum average annual construction turnover of Kenya Shillings **Kshs 21,000,000.00**, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last **Three Years**.
  - iii) At least **Five contract(s)** of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings **10,000,000.00 or equivalent**.
  - iv) Contractor's Representative and Key Personnel, which are specified as: **Site Agent and Foreman**
  - v) Contractors key equipment listed on the table "Contractor's Equipment" below and more specifically listed as                      *[specify requirements for each lot as applicable]*
  - vi)                      Other conditions depending on their seriousness.
- a) **History of non-performing contracts:**

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non- performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last\_\_\_\_(specify years). The required information shall be furnished in the appropriate form.
- b) **Pending Litigation**

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) **Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last \_\_\_\_\_(specify years). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

## 7. QUALIFICATIONS FORM SUMMARY:

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
1	Nationality	Nationality in accordance with ITT 3.6	Forms ELI – 1.1 and 1.2, with attachments	
2	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by the the Kenya Revenue Authority in accordance with ITT 3.14.	Form of Tender	
3	Conflict of Interest	No conflicts of interest in accordance with ITT 3.3	Form of Tender	
4	PPRA Eligibility	Not having been declared ineligible by the PPRA as described in ITT 3.8	Form of Tender	
5	State- owned Enterprise	Meets conditions of ITT 3.7	Forms ELI – 1.1 and 1.2, with attachments	
6	Goods, equipment and services to be supplied under the contract	To have their origin in any country that is not determined ineligible under ITT 4.1	Forms ELI – 1.1 and 1.2, with attachments	
7	History of Non-Performing Contracts	Non-performance of a contract did not occur as a result of contractor default since 1 <sup>st</sup> January [.....].	Form CON-2	
8	Suspension Based on Execution of Tender/Proposal Securing Declaration by the Procuring Entity	Not under suspension based on-execution of a Tender/Proposal Securing Declaration pursuant to ITT 19.9	Form of Tender	
9	Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer.	Form CON – 2	
10	Litigation History	No consistent history of court/arbitral award decisions against the Tenderer since 1 <sup>st</sup> January [insert year]	Form CON – 2	
11	Financial Capabilities	<p>(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.</p> <p>(ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.</p> <p>(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</p>	Form FIN – 3.1, with attachments	

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
		years] shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.		
12	Average Annual Construction Turnover	Minimum average annual construction turnover of Kenya Shillings [insert amount], equivalent calculated as total certified payments received for contracts in progress and/or completed within the last [insert of year] years, divided by [insert number of years] years	Form FIN – 3.2	
13	General Construction Experience	Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last [insert number of years] years, starting 1 <sup>st</sup> January [insert year].	Form EXP – 4.1	
	Specific Construction & Contract Management Experience	<p>A minimum number of [state the number] similar contracts specified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1st January [insert year] and tender submission deadline i.e. .... (number) contracts, each of minimum value Kenya shillings..... equivalent.</p> <p>[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]</p> <p>The similarity of the contracts shall be based on the following: [Based on Section VII, Scope of Works, specify the minimum key requirements in terms of physical size, complexity, construction method, technology and/or other characteristics including part of the requirements that may be met by specialized subcontractors, if permitted in accordance with ITT 34.3]</p>	Form EXP 4.2(a)	

# QUALIFICATION FORMS

## I. FORM EQU: EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <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.

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



## 2. FORM PER-1

### Contractor's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

#### Contractor' Representative and Key Personnel

1.	<b>Title of position: Contractor's Representative</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>
2.	<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>
3.	<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>
4.	<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>

### 3. FORM PER-2:

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

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

<b>Name of Tenderer</b>
-------------------------

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

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

Project	Role	Duration of involvement	Relevant experience
<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>

### Declaration

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

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

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

I understand that any misrepresentation or omission in this Form may:

- a) be taken into consideration during Tender evaluation;
- b) result in my disqualification from participating in the Tender;
- c) result in my dismissal from the contract.

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

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

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Tenderer:

Signature: \_\_\_\_\_ Date: (day month year): \_\_\_\_\_

#### 4. TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION

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

##### 4.1 FORM ELI -I.1

#### Tenderer Information Form

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

ITT	No.	and	title:	_____
Tenderer's name				
In case of Joint Venture (JV), name of each member:				
Tenderer's actual or intended country of registration: <i>[indicate country of Constitution]</i>				
Tenderer's actual or intended year of incorporation:				
Tenderer's legal address [in country of registration]:				
Tenderer's authorized representative information				
Name: _____				
Address: _____				
Telephone/Fax numbers: _____				
E-mail address: _____				
1. Attached are copies of original documents of				
<input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.6				
<input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5				
<input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing:				
• Legal and financial autonomy				
• Operation under commercial law				
• Establishing that the Tenderer is not under the supervision of the Procuring Entity				
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.				

## 4.2 FORM ELI -1.2

### Tenderer's JV Information Form (to be completed for each member of Tenderer's JV)

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

ITT No. and title: \_\_\_\_\_

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

### 4.3 FORM CON – 2

#### Historical Contract Non-Performance, Pending Litigation and Litigation History

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

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

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

ITT No. and title: \_\_\_\_\_

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria				
<input type="checkbox"/> Contract non-performance did not occur since 1 <sup>st</sup> January [insert year] specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.				
<input type="checkbox"/> Contract(s) not performed since 1 <sup>st</sup> January [insert year] specified in Section III, Evaluation and Qualification Criteria, requirement 2.1				
Year	Non-performed portion of contract	Contract Identification	Total Amount value, exchange rate and Kenya Shilling equivalent)	Contract (current currency, rate and Shilling)
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/number, and any other identification] Name of Procuring Entity: [insert full name] Address of Procuring Entity: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]	
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria				
<input type="checkbox"/> No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.				
<input type="checkbox"/> Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.				

Year dispute	of	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)

		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
		Contract Identification: Name of Procuring Entity: Address of Procuring Entity: Matter in dispute: Party who initiated the dispute: Status of dispute:	

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

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

Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.

<b>Year of award</b>	<b>Outcome as percentage of Net Worth</b>	<b>Contract Identification</b>	<b>Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)</b>
<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i>  Name of Procuring Entity: <i>[insert full name]</i>  Address of Procuring Entity: <i>[insert street/city/country]</i>  Matter in dispute: <i>[indicate main issues in dispute]</i>  Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i>  Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>



## 4.4 FORM FIN – 3.1:

### Financial Situation and Performance

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

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

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

ITT No. and title: \_\_\_\_\_

#### 4.4.1. Financial Data

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

\*Refer to ITT 15 for the exchange rate

#### 4.4.2 Sources of Finance

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

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

#### 4.4.3 Financial documents

The Tenderer and its parties shall provide copies of financial statements for \_\_\_\_\_ years 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 **three years** required above; and complying with the requirements

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<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.

## 4.5 FORM FIN – 3.2:

### Average Annual Construction Turnover

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

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

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

ITT No. and title: \_\_\_\_\_

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

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

#### 4.6 FORM FIN – 3.3:

##### Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in Section III, Evaluation and Qualification Criteria

<b>Financial Resources</b>		
<b>No.</b>	<b>Source of financing</b>	<b>Amount (Kenya Shilling equivalent)</b>
1		
2		
3		

#### 4.7 FORM FIN – 3.4:

##### Current Contract Commitments / Works in Progress

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

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

## 4.8 FORM EXP - 4.1

### General Construction Experience

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

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

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

ITT No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Starting Year	Ending Year	Contract Identification	Role of Tenderer
		Contract name: _____ Brief Description of the Works performed by 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: _____	

#### 4.9 FORM EXP - 4.2(a)

### Specific Construction and Contract Management Experience

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

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

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

ITT No. and title: \_\_\_\_\_

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

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

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

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



**4.11 FORM EXP - 4.2(b)**

**Construction Experience in Key Activities**

Tenderer's Name: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Tenderer's JV Member Name: \_\_\_\_\_  
 Sub-contractor's Name<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.

I. Key Activity No One: \_

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

<sup>2</sup> If applicable

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

## 5. **FORM OF TENDER**

### To: **TELPOSTA PENSION SCHEME**

#### Tender Reference No:

#### Tender name:

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above-named Works, we, the undersigned offer to construct and complete the Works and remedy any defects therein for the sum of Kenya Shillings [[Amount in figures]]\_\_\_\_\_ Kenya Shillings  
[amount in words]\_\_\_\_\_.
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Special Conditions of Contract.
3. We agree to adhere 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. We further understand that you are not bound to accept the lowest or any tender you may receive.
5. We, the undersigned, further declare that:
  - i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;
  - ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;
  - iii) Tender-Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's Country in accordance with ITT 19.8;
  - iv) Conformity: We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: [insert a brief description of the Works];
  - v) Tender Price: The total price of our Tender, excluding any discounts offered in item I above is:  
\_\_\_\_\_
  - vi) Discounts: The discounts offered and the methodology for their application are:
  - vii) The discounts offered are: [Specify in detail each discount offered.]
  - viii) The exact method of calculations to determine the net price after application of discounts is shown below: [Specify in detail the method that shall be used to apply the discounts];
  - ix) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
  - x) Performance Security: If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;
  - xi) One Tender Per Tender: We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;
  - xii) Suspension and Debarment: We, along with any of our subcontractors, suppliers, Project Manager, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.
  - xiii) State-owned enterprise or institution: [select the appropriate option and delete the other] [We are not a

state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITT 3.8];

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

Name of Recipient	Address	Reason	Amount

*(If none has been paid or is to be paid, indicate “none.”)*

- xv) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- xvi) Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;
- xvii) Fraud and Corruption: We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption;

- xviii) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent Tender Determination” attached below.
- xix) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from \_\_\_\_\_ (specify website) during the procurement process and the execution of any resulting contract.
- xx) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
- a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
  - b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
  - c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
  - d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in “**Appendix I- Fraud and Corruption**” attached to the Form of Tender.

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

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

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

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

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

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

### Notes

\* In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer

\*\* Person signing the Tender shall have the power of attorney given by the Tenderer to be attached with the Tender.

## A. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

**Name of Applicant(s).....**

You are requested to give the particulars indicated in Part I and either Part 2 (a), 2(b) or 2(c) whichever applied to your type

**You are advised that it is a serious offence to give false information on this form and shall lead to automatic disqualification/termination of your business proposal at your cost.**

### Part I General

Business Name

Location of Business Premises

Email

Nature of Business (Attach Company Profile)

Registration Certificate No. (Attach Copy)

Tax Compliance No (Attach Copy)

Maximum value of business which you can handle at any one time –

Ksh

Name of your bankers

Branch

Bank Account Number

Payment Terms

### Part 2

#### (a) – Sole Proprietor

Your name in full

Age

Nationality

Country of Origin

Citizenship details

If a Kenyan Citizen, indicate under Citizenship Details whether by Birth, Naturalization or Registration

**(b) – Partnership**

Given details of partners as follows

Name	Nationality	Citizenship Details	Shares
1.....			
2.....			
3.....			
4.....			

If a Kenyan Citizen, indicate under Citizenship Details whether by Birth, Naturalization or Registration

**Part 2 (c) –**

**Registered Company**

**Attach a copy of the CRI 2**

Private or Public

(Attach brochures or annual reports in case of public companies)

State the nominal and issued capital of company

Nominal Kshs. Issued Kshs.

Give details of all directors as follows

Name	Nationality	Citizenship Details	Shares
1.....			
2.....			
3.....			

**Part 3- List of corporate client customers and their addresses, telephone numbers and contact person.**

Company
Contact Person
Tel/Mobile
Company
Contact Person
Tel/Mobile
Company
Contact Person
Tel/Mobile
Company

Contact Person

Tel/Mobile

**Part 4-(a) Debarment**

I/We declare that **[insert name of the Bidder]**, its proprietor(s), Agents, Sub-Consultants, Sub-Contractors, Consortium and Joint Venture partners have not been debarred from any procurement process and have not engaged nor shall engage in any fraudulent, corrupt, collusive, coercive or obstructive practices in connection with the present procurement process or any other tender by TPS and any other public or private institutions.

I/We declare that **[insert name of the Bidder]**, its proprietor(s), Agents, Sub-Consultants, Sub-Contractors, Consortium and Joint Venture partners are not subject to a debarment recognized under the Public Procurement Regulatory Authority and the Agreement for Mutual Enforcement of Debarment Decisions (the 'Cross-Debarment Agreement')<sup>1</sup>

Full  
Names.....

Signature.....  
.....

Dated this .....day of .....2023

In the capacity of.....

Duly authorized to sign Tender for and on behalf of

<sup>1</sup> The Cross-Debarment Agreement was entered into by the World Bank Group, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank and the European Bank for Reconstruction and Development, additional information may be located at: <http://crossdebarment.org/>.

**Part 4-(b) Bankruptcy / Insolvency / Receivership.**

I/We declare that I/We have not been declared bankrupt or insolvent by the competent Authorities in Kenya and neither are we under receivership:

Full Names.....

Signature.....

Dated this .....day of .....2023



Duly authorized to sign Tender for and on behalf of

.....

**Part 4-(c) -Criminal Offence**

I/We,(Name (s) of Director(s)):-

a).....

b).....

c).....

certify that [insert name of the Bidder], its proprietor(s), Agents, Sub-Consultants, Sub-Contractors, Consortium and Joint Venture partners are not subject to a criminal conviction, administrative sanctions and/or temporary suspensions for engaging in fraudulent, corrupt, collusive, coercive or obstructive practices. I/We further certify that [insert name of the Bidder], its proprietor(s), Agents, Sub-Consultants, Sub-Contractors, Consortium and Joint Venture partners have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to the qualifications of [insert name of the Bidder] to enter into a procurement contract within a period of three (3) years preceding the commencement of procurement proceedings.

Signed.....

For and on behalf of M/s.....

In the capacity of .....

Dated this .....day of .....2023.

Suppliers' / Company's Official Rubber Stamp

.....

**Part 4-(d) Conflict of Interest**

I/We, the undersigned state that I / We have no conflict of interest in relation to this procurement:

a).....

b).....

c)

.....

Further, I/We declare that [insert name of Bidder], its proprietor(s), Agents, Sub-Consultants, Sub-Contractors, Consortium and Joint Venture partners have no actual or potential conflict of interest<sup>2</sup> that could impact their ability to serve the best interest of the TPS

For and on behalf of M/s.....

In the capacity of .....

Dated this .....day of .....2023

Suppliers' / Company's Official Rubber Stamp

.....

<sup>2</sup> Conflicts of interest arise where private or personal interests of a bidder may influence or appear to influence the impartial and objective performance of their duties. Private or personal interests include situations where a bidder appears to benefit improperly, directly or indirectly, or allows a third party to benefit improperly, from their association with an enterprise or organization that engages in business directly or indirectly with the Project.

**Part 4-(e) – Interest in the Firm:**

Is there any person/persons in TPS or any other public institution who has interest in the Firm?

Yes/No ..... (Delete as necessary)

Institution .....

(Title) (Signature) (Date)

.....

**Part 4-(f) – Gratuities, Fees, Commissions and Gifts:**

I/We, the undersigned certify that no gratuities, fees, commissions, gifts or anything else of value have been paid or exchanged by [insert name of Bidder] or are to be paid or exchanged by [insert name of Bidder] with respect to the present bidding process.

OR

[to be completed only if previous box was not checked]

I/We, the undersigned declare that the following gratuities, fees, commissions, gifts or anything else of value have been exchanged, paid by [insert name of Bidder] or are to be exchanged or paid by [insert name of Bidder] with respect to the present bidding process:

- [Name of Recipient/Address/Date/Reason/Amount]
- [Name of Recipient/Address/Date/Reason/Amount]
- [Name of Recipient/Address/Date/Reason/Amount]

**Part 5(I) – Experience**

Please list here below similar projects accomplished or companies / clients you have supplied with similar items or materials / services in the last 5 years

#	Company Name	Contract/ Order No	Value	Contact Person	Email	Phone Number
1.						
2.						
3.						
4.						
5.						

**Part 6(i or j) – Bank account details:**

AGPO firms must provide evidence from their bank that the account to which TPSL shall make payment has a youth or a woman or a PWD listed in the CR12 form/partnership deed/sole proprietor certificate as a MANDATORY signatory of that account,

- Sec.157 (11) of PPADA:

Account No.....

Name of the person(s) in the CR12 form OR in the partnership deed OR in the sole proprietor Certificate...../.....

ID No(s):...../.....Signature and stamp of the authorized Banker

**Part 7—Declaration**

I/We the undersigned certify that I/We are the authorized representative of **[Name of the Bidder]**, as well as that the information provided above is true and accurate in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may result in sanctions and remedies, including the permanent ineligibility to participate Telposta Pension Scheme-managed activities and operations, in accordance with the TPS Project Procurement Guidelines. Furthermore, I/We give Telposta Pension Scheme permission to seek any other references concerning my/our company from whatever sources deemed necessary (e.g. company registrar’s office, banks etc.).

Full name/s

.....

Signature/s.....

For                      and                      on                      behalf                      of                      M/s

.....

In the capacity of

.....

**Date..... Signature of Candidate.....**

**B. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION**

I, the undersigned, in submitting the accompanying Letter of Tender to the \_\_\_\_\_ [Name of Procuring Entity] for: \_\_\_\_\_ [Name and number of tender] in response to the request for tenders made by: \_\_\_\_\_ [Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

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

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) has been requested to submit a Tender in response to this request for tenders;
  - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable:
  - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a) prices;
  - b) methods, factors or formulas used to calculate prices;
  - c) the intention or decision to submit, or not to submit, a tender; or
  - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5)(b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;
8. the terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

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

**C. SELF - DECLARATION FORMS**

**FORM SDI**

**SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.**

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

- 1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of ..... (insert name of the Company) who is a Bidder in respect of Tender No. .... for ..... (insert tender title/description) for ..... (insert name of the Procuring entity) and duly authorized and competent to make this statement.
- 2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
- 3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

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

Bidder Official Stamp

**FORM SD2**

**D. 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 deponed to herein above is true to the best of my knowledge information and belief.

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

Bidder's Official Stamp

**E. DECLARATION AND COMMITMENT TO THE CODE OF ETHICS**

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

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

Name of Authorized signatory..... Sign.....

Position.....

Office address..... Telephone..... E-mail.....

Name of the Firm/Company.....

Date..... (Company Seal/ Rubber Stamp where applicable)

Witness

Name ..... Sign.....

Date.....



## F. APPENDIX I- FRAUD AND CORRUPTION

(Appendix I shall not be modified)

### 1. Purpose

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

### 3. Requirements

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

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

- 1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
- 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
  - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
  - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
  - a) shall not take part in the procurement proceedings;
  - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
- c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

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

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
  - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or

recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

- iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v) “obstructive practice” is:
    - deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
    - acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:
- "fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- c) Rejects a proposal for award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
  - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
  - e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
  - f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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<sup>1</sup> For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

<sup>2</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

## **FORM OF TENDER SECURITY-[Option I-Demand Bank Guarantee]**

I. **Beneficiary:** \_\_\_\_\_  
**Request for Tenders No:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**TENDER GUARANTEE No.:** \_\_\_\_\_  
**Guarantor:** \_\_\_\_\_

1. We have been informed that \_\_\_\_\_ (here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
  - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
  - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above onor before that date.

\_\_\_\_\_  
[signature(s)]

## FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

**TENDER GUARANTEE No.:** \_\_\_\_\_

1. Whereas ..... [Name of the tenderer] (hereinafter called “the tenderer”) has submitted its tender dated ..... [Date of submission of tender] for the ..... [Name and/or description of the tender] (hereinafter called “the Tender”) for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ (“the ITT”).
2. KNOW ALL PEOPLE by these presents that WE ..... of ..... [**Name of Insurance Company**] having our registered office at ..... (hereinafter called “the Guarantor”), are bound unto ..... [Name of Procuring Entity] (hereinafter called “the Procuring Entity”) in the sum of ..... (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

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

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

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

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

\_\_\_\_\_  
[Signature of the Guarantor]

\_\_\_\_\_  
[Witness]

\_\_\_\_\_  
[Seal]

# 2. PART II - WORK REQUIREMENTS

## **SECTION VII- BILLS OF QUANTITIES**

### **1. Objectives**

The objectives of the Bill of Quantities are:

- a) to provide sufficient information on the quantities of Works to be performed to enable tenders to be prepared efficiently and accurately; and
- b) when a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.

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

"C.M."	shall mean Cubic Metres.
"S.M."	shall mean Square Metres.
"MM"	shall mean Millimeters.
"Kg"	shall mean Kilogramme.
"Kg"	shall mean Kilogramme.
"No"	shall mean Number

### **2. Day work Schedule**

A Day work Schedule should be included only if the probability of unforeseen work, outside the items included in the Bill of Quantities, is high. To facilitate checking by the Procuring Entity of the realism of rates quoted by the Tenderers, the Day work Schedule should normally comprise the following:

- a) A list of the various classes of labor, materials, and Constructional Plant for which basic day work rates or prices are to be inserted by the Tenderer, together with a statement of the conditions under which the Contractor shall be paid for work executed on a day work basis.
- b) Nominal quantities for each item of day work, to be priced by each Tenderer at day work rates as Tender. The rate to be entered by the Tenderer against each basic day work item should include the Contractor's profit, overheads, supervision, and other charges.

### **3. Provisional Sums**

A general provision for physical contingencies (quantity overruns) may be made by including a provisional sum in the Summary Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a provisional sum in the Summary priced Bill of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises. Where such provisional sums or contingency allowances are used, the Special Conditions of Contract should state the manner in which they shall be used, and under whose authority (usually the Project Manager's).

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by other contractors should be indicated in the relevant part of the Bill of Quantities as a particular provisional sum with an appropriate brief description. A separate procurement procedure is normally carried out by the Procuring Entity to select such specialized contractors. To provide an element of competition among the Tenderers in respect of any facilities, amenities, attendance, etc., to be provided by the successful Tenderer as prime Contractor for the use and convenience of the specialist contractors, each related provisional sum should be followed by an item in the Bill of Quantities inviting the Tenderer to quote a sum for such amenities, facilities, attendance, etc.

These Notes for Preparing a Bill of Quantities are intended only as information for the Procuring Entity or the person drafting the tendering document. They should not be included in the final tendering document.

### **4. The Bills of Quantities**

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

- a) Preambles
- b) Preliminary items
- c) Work Items
- c) Daywork Schedule;and
- d) Provisional items
- e) Summary.

## 4.1 Particular Preliminaries

- a) The "The Employer"  
Is Teleposta Pension Scheme,  
P.O. Box 45610-00100,  
Nairobi, Kenya.
- b) Location of Site The site of the proposed works is at **Telposta GTI Estate In Gilgil Town Next To GTI Industries**

It is highly recommended that the Tenderer visits the site to acquaint themselves with the nature and conditions, means of access, water and electricity supplies etc.

- a) The nature, position, topography and access of the site
- b) The amount of the rubbish or debris to be cleared away before commencement
- c) The nature, current usage, proximity and size of adjoining property and buildings and tenants
- d) The availability of land for the erection and positioning of all temporary structures, plant and materials necessary for the execution of the works.

The Contractor shall obtain approval from the relevant Local Authority in adherence to site access and erection of temporary structures and must ensure all matters relating to the requirements of these authorities.

No claim will be allowed for travelling or other expenses which may be incurred by the Contractor in visiting the site or preparing the tender for the works.

- c) **Scope of Contract and Description of The Works**

### **SCOPE OF WORKS**

- a) **Site Clearance**
- b) **Excavations**
- c) **Materials suitability and workmanship**
- d) **Concrete works, masonry works and formwork – septic tanks and soakways.**
- e) **Drains, sewers, inspection chambers and manholes**
- f) **Pipe laying and jointing, plus connections.**
- g) **Measurements of sewers and connections**
- h) **Testing**
- i) **Pipe work protection, ancillaries**

- d) **Labour Camps** The contractor will not be allowed to erect labour camps on site and shall take full responsibility for transporting labour daily to and from the site as required, and the cost of this shall be deemed to be included in his tender.
- e) **Sign Board** Allow for providing, erecting, maintaining and removing on completion of the works a sign board; comprising of 100 x 50 x 4mm RHS steel framing and 25mm thick wrot timber boards painted to approval and as detailed by the Architect
- f) **Insurance Against Injury to Persons and Property** The Contractor shall take out insurance in accordance with Condition 12 of the Agreement and to the Employer's approval and shall provide the Employer with a copy of such insurances for their approval and record.
- g) **Possession and Commencement** The Contractor shall take possession of the site on the date indicated in the acceptance letter. The date of commencement of the works shall also be communicated to the Contractor and the contract period shall run from the commencement date.

- The Contractor is expected to utilise the period between possession and commencement to mobilise his resources to ensure smooth running of the works from the commencement date.
- h) **Telephone** The Contractor shall provide telephone facilities during the contract period and pay all charges
- i) **Fixed Price Contract** This is a fixed price contract
- j) **Direct Contracts** Notwithstanding any condition in this document, the Employer reserves the right to place a "Direct Contract" for any works which are measured in this document. In such an event, the value of such works shall be omitted from the contract sum and no claims arising from this decision shall be entertained.
- k) **Hoarding** The contractor shall allow for erecting hoarding comprising timber framework and 30 gauge GCI sheets to Architect approval
- l) **Demolitions Generally** The rates for pulling down and alterations shall be deemed to include for both labour and material include for both include for both labour and material and for any shoring, needling and strutting and temporary works in connection therewith; the rates shall also be deemed to include carting away from site (if required) any debris arising from the demolitions. The contractor must allow in his pricing for making good all works disturbed on adjacent and neighboring properties in all trades and for carting away all debris. The contractor shall indemnify the employer and shall insure against any claims arising from damage or destruction of such properties The contractor must give all the necessary notices and must exercise all due care in the demolitions. He must not collapse large sections of walls, floors, etc., at once and must provide all necessary temporary shoring and supports during the demolitions. During demolition works, the contractor shall keep the debris constantly watered to minimize the dust arising there from and this shall be deemed to be included in his tender
- m) **Urgent Completion** Fast completion of the project is of utmost importance to the employer and the contractor must also allow in his tender for working at odd hours including at night when necessary.
- n) **Noise And Disturbance** The Contractor's workman will be required to observe high standards of discipline to ensure that normal bank operations are not compromised by unnecessary noise and disturbance.
- o) **Site Visit** **It is also highly recommended that the Tenderer visits site to acquaint himself with the minimum standards of workmanship and material specifications acceptable in this project**

## 4.2 General Preliminaries

- a) **Pricing of Items of Preliminaries and Preambles** Whenever in the Contractor's priced Bills of Quantities no price appears against an item of Preliminaries or Preambles, the value of such item shall be deemed to be included in his prices for other items in the Bills of Quantities.
- b) **Abbreviations** Throughout these Bills, units of measurements and terms are abbreviated and shall be interpreted as follows:
- mm shall mean millimeter
- lm shall mean linear meter
- sm shall mean square meter
- m<sup>2</sup> shall mean square meter



- cm shall mean cubic meter
- kg shall mean kilogramme
- N shall mean Newton
- KN shall mean KiloNewton
- in/" shall mean inches
- L f shall mean linear foot
- s f shall mean square foot
- c f shall mean cubic foot
- L b shall mean pound avoirdupois
- No. shall mean number
- B.S. shall mean the current British Standard Specification published by the British Standard Institution, 2 Park Street, **LONDON W.1**, England.
- K.S. shall mean current Kenya Standard specification published by the Kenya Bureau of Standard, P.O. Box 54974. **NAIROBI**, Kenya.

'As described' shall mean as described in these Bills of Quantities.

'As before described' shall mean the whole of the previous description except as qualified in the current one.

c) **Method of Measurement**

The works are measured in accordance with the Standard Method of Measurement of Building Works 1970 Edition, published by the Architectural Association of Kenya

The exceptions to the Standard Method of Measurement are as follows:

- (a) Clause B 19 (b) of the Standard Method of Measurement is deleted and the following clause substituted:

Attendance on nominated Sub - Contractors shall be given as an item in each case and shall be deemed to include allowing use of standing scaffolding, messrooms, sanitary accommodation and welfare facilities; providing space for office accommodation and for storage of plant and materials; providing light and water for their work; clearing away rubbish; unloading facilities for storage (as specified under "Storage of Materials" in these Preliminaries) hoisting, providing water and power (as specified under "Water and Electricity supply for the works" in these Preliminaries) and removing and replacing duct covers, pipe casings and the like necessary for the execution and testing of Sub-contractor's work; providing templates, dimensions and supervision, for the proper carrying out of the Sub-contractor's work and being responsible for the accuracy of the same.

d) **Progress Chart**

The Contractor shall allow for providing, within two weeks of the date for possession fo the site and in agreement with the Architect and Employer a Progress Chart for the whole of the Woks including the Works of Nominated Sub-Contractors. One copy shall be forwarded to the Architect and another to the Employer and a further copy shall be retained on the site on which the progress shall be recorded by the Contractor. Should any circumstances arise affecting the programme or progress, the chart shall be modified as necessary and the Architecct and Employer informed.

- e) **Plant, Tools and Vehicles** Allow for providing all scaffolding, plant, tools and vehicles required for the works except in so far as may be stated otherwise herein and except for such items specifically and only required for the use of the nominated Sub-Contractor as described herein. No timber used for scaffolding, formwork or temporary works of any kind shall be used afterwards in the permanent work.
- f) **Materials and Workmanship** All materials and workmanship used in the execution of the works shall be of the best quality and description unless otherwise described.

The Contractor shall order all materials to be obtained from overseas immediately after the Contract is signed and shall also order materials to be obtained from local sources as early as necessary to ensure that they are on site when required for use in the works. The Bills of Quantities shall not be used for the purposes of ordering materials.

- g) **Sign for Materials Supplied** The Contractor will be required to sign a receipt for all articles and materials supplied by the Employer at the time of taking delivery thereof, as having received them in good order and condition, and will thereafter be responsible for any loss or damage and for replacement of any such loss or damage with articles and/ or materials which will be supplied by the Employer at current market prices including all duties and taxes, all the Contractor's own cost and expense, to the satisfaction of the Employer.

- h) **Storage of Materials** The Contractor shall provide at his own risk and cost where directed on the site weatherproof lockup sheds for the safe storage and custody of materials for the works and for the use of workmen engaged thereon and shall remove such sheds and make good damaged or disturbed surfaces upon completion to the satisfaction of the Architect. Nominated Sub-Contractors are to be liable for the cost of any storage accommodation provided especially for their use.

- i) **Samples and Testing** The Contractor shall furnish at his own cost any samples of materials or workmanship including concrete test cubes required for the works that may be called for by the Architect for his approval or rejection until such samples are approved by the Architect and the Architect may reject any materials or workmanship not in his opinion up to the approved samples.

The Contractor shall arrange for the testing of such materials as directed by the Architect. The Contractor shall pay all charges in connection with the test and such costs are deemed to be included in his tender. Notwithstanding the result of the tests the Architect may reject any materials that in his opinion are not in accordance with the specification.

The procedure for submitting samples of materials for testing and the method of marking for identification shall be as laid down by the Architect.

- j) **Government Acts Regarding Workpeople, Etc** The Contractor shall allow in his Tender for making and Delivering samples for testing and paying all charges of the Approved Testing Laboratory. Allow for complying with all Government Acts, Orders and Regulations in connection with the employment of labour and other matters related to the execution of the works. In particular the Contractor's attention is drawn to the provisions of the Factory Act of 1950, and his tender must include for all costs arising or resulting from compliance with any Act, Order or Regulations relating to Insurance, Pensions and Holidays for workpeople or the safety, health or welfare of workpeople.

The Contractor must make himself fully acquainted with current Acts and Regulations, including Police Regulations regarding the movement, housing, security and control of labour, labour camps, passes for transport, etc. It is important that the Contractor before tendering, shall obtain from the relevant Authority the fullest information regarding all such regulations and/ or restriction which may affect the organisation of the works, supply and control of labour etc., and allow accordingly in his tender. No claim in respect of want of knowledge in this connection will be entertained.

- k) **Security Generally** The Contractor shall be entirely responsible for the security of the works and shall provide all necessary watching, lighting and other precautions necessary

to ensure security against theft, loss or damage and the protection of the public

The Contractor shall also be entirely responsible for the security of the stores, materials, plant, personnel, etc., both his own and the Sub-Contractors' and shall take all measures and precautions as necessary.

The Contractor shall leave works secure at completion with all accesses locked, account for all keys and hand over to the Architect with an itemised schedule, retaining a duplicate schedule signed by the Architect as receipt. Maintain as required throughout the execution of the works and make good any damage to public or private roads arising from or consequent upon the execution of the works to the satisfaction of the local or other competent authority and the Architect.

l) **Public and Private Roads**

m) **Existing Property**

n) **Access to Site and Temporary Roads**

The Contractor shall take every precaution to avoid damage to all existing property including roads, cables, drains and other services, and he will be held responsible for and shall make good all such damage arising from the execution of this Contract at his own expense to the satisfaction of the Architect.

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

Upon completion of the works, the Contractor shall remove such temporary access roads, temporary culverts, bridges, etc., and make good and reinstate all works and surfaces disturbed to the satisfaction of the Architect.

o) **Area to Be Occupied by The Contractor**

The area of the site which may be occupied by the Contractor for use of storage and for the purpose of erecting workshops, etc., shall be defined on the site by the Architect or client.

p) **Water and Electricity Supply for The Works**

The Contractor shall provide at his own risk and cost all necessary water, electricity light and power required for use in the works. No guarantee is given or implied that sufficient water and electricity will be available from the mains and the Contractor must make his own arrangements for augmenting this supply at his own cost if necessary. He must also provide temporary storage tanks and meters as required at his own cost and clear when no longer required and make good on completion to the entire satisfaction of the Architect. The Contractor shall pay all charges in connection therewith. Nominated Sub-Contractors are to be made liable for the cost of any water or electricity used and for any installation whatsoever provided especially for their own use.

q) **Sanitation of The Works**

The sanitation of the works shall be arranged and maintained by the Contractor to the satisfaction of the Government and /Local Authorities, Labour Department, and the Architect.

r) **Supervision and Working Hours**

The works shall be executed under the direction and to the entire satisfaction in all respects of the Architect who shall at all times during normal working hours have access to the works and to the yards and workshops of the Contractor and Sub-Contractor or other places where work is being prepared for the Contract.

The working hours shall be those generally worked by good employers in the Building and Civil Engineering Trades in Kenya. No work shall be carried out at night or on gazetted holidays unless the Architect shall so direct. No work shall be covered up nor shall any concreting be carried out in the absence of the Clerk of Works without the prior approval of the Architect in writing.

s) **Provisional Sums**

The term "Provisional Sum" wherever used in these Bills of Quantities shall have the meaning stated in Section A, Item A7 (l) of the Standard Method of Measurement. Such sums are net and no addition shall be made to them for profit.

t) **Provisional Work**

All work described as "Provisional" in these Bills of Quantities is subject to

re-measurement in order to ascertain the actual Quantity executed for which payment will be made.

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

If the Contractor makes default in these respects he shall if the Architect so direct uncover at his expense the work to enable all measurements to be taken and afterwards reinstate at his own expense.

u) **Alterations to Bills, Pricing, Etc.**

Any unauthorized alteration or qualification made to the text of the Bills of Quantities may cause the Tender to be disqualified and will in any case be ignored.

The Contractor shall be deemed to have made allowance in his prices generally to cover any items against which no price has been inserted in the priced Bills of Quantities.

All items of measured work shall be priced in detail and Tenders containing Lump sums to cover trades or groups of work must be broken down to show the price of each item before they will be accepted. Lump sums to cover items of Preliminaries shall be likewise broken down if so required.

v) **Materials Arising from Excavations**

Materials of any kind obtained from the excavations shall be property of the Employer. Unless the Architect directs otherwise, such materials shall be dealt with as provided in the contract. Such materials shall only be used in the works, in substitution of materials which the Contractor would otherwise have had to supply with the written permission of the Architect. Should such permission be given the Contractor shall make due allowance for the Value of the materials so used at a price to be agreed.

w) **Protection of The Works**

Provide protection of the whole of the works contained in the Bills of Quantities, including casing up, covering or such other means as may be necessary to avoid damage to the satisfaction of the Architect and remove such protection when no longer required and make good any damage which may nevertheless have been done at completion free of cost to the Employer.

x) **Removal of Rubbish, Etc.**

Remove all rubbish and debris from the buildings and site as it accumulates and at completion of the works and remove all plant, scaffolding and unused materials at completion

y) **Works to Be Delivered Up Clean**

Clean and flush all gutters, rainwater and waste pipes manhole and drains, wash (except where such treatment might cause damage) and clean all floors, sanitary fittings, glass inside and outside and any other parts of the works which may require it; remove all marks, blemishes, stains and defects from joinery fittings and decorated surfaces generally, polish door furniture and bright parts of metalwork and leave the whole of the buildings watertight, clean, perfect and fit for occupation to the approval of the Architect.

z) **Trade Preambles**

For the full description of material and workmanship method of execution of the work and notes for pricing the Contractor is referred to the specification and preambles which follow in this document, and which shall be followed in all respects unless they conflict with the Preliminaries, or other items in these Bills of Quantities shall apply.

**Lighting and Power**

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

**Water**

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

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

## **Health & Safety**

The contractor shall take all Statutory precautions to ensure that the safety of his workpeople and authorised visitors to the Site is protected at all times. In particular the Site shall be kept tidy and clear of dangerous rubbish.

The Contractor's attention is drawn to National Construction Authority's COVID 19 Standards for Management of Construction Sites and Welfare of Workers issued on the 3rd of April 2020. The Contractor shall adhere to the measures stated at all times and provide hand sanitizers, running water and soap at entry and exit points, infrared temperature checks, face masks for workers and all the measures stated with regards to Health and Safety requirements stated in the NCA guidelines.

In addition, the Contractor shall comply with all the Ministry of Health requirements and guidelines on COVID 19.

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

The Contractor shall appoint a qualified and OSHA certified Health & Safety Officer as required by the Act and notify the relevant authorities of his/her name. The Health & Safety Officer shall be on site at all times and all directions given by the Architect/Engineer to the Safety Officer shall be deemed to be the Architect/Engineer's Instructions, and shall be complied with promptly without additional cost to the contract.

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

## **Protective Clothing**

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

This Personal Protective Equipment shall include, inter-alia, safety helmets, harnesses, gloves, goggles, earmuffs, gumboots, overalls, etc., according to the type of work. The Contractor shall ensure that safety helmets, reflective jackets and safety boots are worn by all staff/visitors/workers/consultants/clients on site at all times

## **Plant, Tools and Scaffolding**

The Contractor shall provide all necessary hoists, tackle, plant, vehicles, cranes, Pulleys, concrete batching plants, etc, tools and appliances of every description for the due performance of the Works, including Sub-Contract Works, provide special scaffolding as and when required during the works and remove on completion and make good.

The Contractor shall provide, erect and maintain all temporary scaffolding, sufficiently strong and efficient for the due performance of the Works at 5th floor, including Sub-Contract Works, provide special scaffolding as and when required during the works and remove on completion and make good.

Such scaffolding shall be constructed of tubular steel or timber of sufficient scantlings and be provided with planked footways and guardrails to approval.

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

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

<b>TELPOSTA PENSION SCHEME BILLS OF QUANTITIES</b>					
<b>GILGIL HOUSING SEWERAGE WORKS - COMBINED BLOCKS SEPTIC TANKS SYSTEM</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>Unit</b>	<b>Qty</b>	<b>Rate</b>	<b>Amount</b>
	<b>ELEMENT No. 1: GENERAL ITEMS</b>				
	<b>Site Investigations</b>				
1.01	Allow for providing, erecting, maintaining and removing on completion of the works a sign board; comprising of 100 x 50 x 4mm RHS steel framing and 25mm thick wrot timber boards painted to approval	No	1		
1.02	Allow for equipment mobilization	No	1		
1.03	Trial holes where ordered to prove location, construction size, etc of pipelines, services, or existing structures-maximum depth = 2 m (provisional).	nr	5.0		
	<b>Testing of works</b>				
1.04	Hydraulic testing and commissioning for the whole work on the sewer line, including all necessary equipment, materials and works necessary for testing, such as transportation and use of water, pipe fittings, disposal of used water.	m	2254.0		
	<b>ELEMENT No. 2: DEMOLITION AND SITE CLEARANCE</b>				
	<b>General clearance</b>				
2.01	Clear site within the sewer line corridor of all grass, shrubs, bushes etc and grab up all roots. Include for carting away the debris to tips as directed by the Engineer	ha	1.1		
	<b>Total carried to collection</b>				
	<b>ELEMENT No. 3: PIPEWORK - SUPPLY &amp; PIPE LAYING</b>				
	<b>Note:</b>				
	1) Supply and Transport to site. Transport from site store, lay and joint pipes in trench, include for excavation, preparation of surfaces, disposal of excavated material, shoring sides of excavation and backfilling.				

TELPOSTA PENSION SCHEME BILLS OF QUANTITIES					
GILGIL HOUSING SEWERAGE WORKS - COMBINED BLOCKS SEPTIC TANKS SYSTEM					
ITEM	DESCRIPTION	Unit	Qty	Rate	Amount
	2) Trench width and minimum cover to pipes is as per the Specification. The cost shall include for strutting, shuttering, stabilizing the earth faces of trenches and keeping the trenches free of water from whatever source by pumping or other means and cost of use of selected soil from the excavated material for compaction in bed and surround to backfilling of trenches, all as specified.				
3.01	Excavate for, provide, lay, joint and test 150 mm dia. H/G PVC drain pipe for individual. connections at trench depth not exceeding 1.5 m	m	690.0		
3.02	Ditto but 1.5 to 2.0 m deep.	m	140.0		
3.03	Excavate for, provide, lay, joint and test 225 mm dia. H/G PVC drain pipe for individual .connections at trench depth not exceeding 1.5 m	m	890.0		
3.04	Ditto but 1.5 to depth.	m	356.0		
3.05	Ditto but to 2.5 m depth.	m	178.0		
<b>Total carried to collection</b>					
<b>ELEMENT No. 4: PIPEWORK - MANHOLES &amp; ANCILLARIES</b>					
4.01	Excavate in ordinary material, provide, lay, joint and test precast concrete circular manholes 1220 mm dia. Include class 20 mass concrete base slab, precast rings, concrete class 20 surround, reinforced precast concrete cover slab, benching, step irons, C.I. Heavy duty manhole cover etc as specified on the drawings. Depth not exceeding .	nr	50.0		
4.02	Ditto depth to .	nr	25.0		
4.03	Ditto depth to .	nr	15.0		
4.04	Excavate in compacted hard core, provide, construct and test sewer inspection chambers of depth up to for 450 mm x 600 mm with 150 mm thick masonry walls as specified on the drawings	nr	5.0		
4.05	Ditto but 1.5 to depth	nr	3.0		
4.06	Provide and lay Y-junctions for the 150 mm dia. H/G PVC pipe house connections to main sewer.	nr	70.0		

<b>TELPOSTA PENSION SCHEME BILLS OF QUANTITIES</b>					
<b>GILGIL HOUSING SEWERAGE WORKS - COMBINED BLOCKS SEPTIC TANKS SYSTEM</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>Unit</b>	<b>Qty</b>	<b>Rate</b>	<b>Amount</b>
	<b>Total carried to collection</b>				
	<b>ELEMENT No. 5: PIPEWORK - SUPPORTS &amp; PROTECTION, ANCILLARIES TO LAYING AND EXCAVATION</b>				
5.01	Extra over to excavation and backfilling for sewer trench excavation in hard material	m <sup>3</sup>	100.0		
5.02	Extra over to excavation and backfilling for manholes and Inspection Chambers excavation in hard material	m <sup>3</sup>	101.3		
5.03	Ballast bedding for 150 mm dia. socket and spigot individual connection pipes	tonnes	20.0		
5.04	Ballast bedding for 225 mm dia. socket and spigot individual connection pipes	tonnes	10.0		
	<b>Total carried to collection</b>				
	<b>ELEMENT No. 6: SEPTIC TANKS &amp; SOAK PITS</b>				
6.01	Excavation and backfilling for septic tanks in soft material	m <sup>3</sup>	965.0		
6.02	Extra over to excavation and backfilling for septic tanks in hard material	m <sup>3</sup>	240.0		
6.03	Return, fill and ram excavated materials around walls	m <sup>3</sup>	909.0		
6.04	Load and cart away excavated material	m <sup>3</sup>	296.0		
6.05	50 mm thick blinding, class 15/20 concrete	m <sup>2</sup>	138.0		
6.06	Provide and place concrete class 25/20, including shuttering; all in accordance with the drawings and specifications, in conformity with the Engineer's instructions	m <sup>3</sup>	113.0		
6.07	Supply, cut, shape, bend and place assorted high tensile steel reinforcement bars to BS 4461, in accordance to Engineer's details	tons	14.1		
6.08	Natural stone walling, 200 mm thick, bedded and jointed in cement/sand (1:3) mortar reinforced with 40 mm wide hoop iron at every alternate course	m <sup>2</sup>	31.0		



<b>TELPOSTA PENSION SCHEME BILLS OF QUANTITIES</b>					
<b>GILGIL HOUSING SEWERAGE WORKS - COMBINED BLOCKS SEPTIC TANKS SYSTEM</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>Unit</b>	<b>Qty</b>	<b>Rate</b>	<b>Amount</b>
6.09	16 mm diameter x 300 mm girth staggered step iron built into wall at 300 mm centres	nr	107.0		
6.10	Form or leave hole for 225/150 mm diameter pipe in 200 mm thick masonry wall	nr	29.0		
6.11	Form or leave 200 x 200 mm slots in 100 mm dividing wall	nr	22.0		
6.12	Connect 225/150 mm diameter pipe to masonry and make good disturbed surfaces	nr	29.0		
6.13	12 mm cement/sand (1:3) water proofed "SIKA" plaster finish to wall steel trowelled smooth	m <sup>2</sup>	329.0		
6.14	Ditto to surface of suspended slab	m <sup>2</sup>	138.0		
6.15	Ditto to dividing wall and scum baffle	m <sup>2</sup>	61.0		
6.16	20 mm thick to floor slab	m <sup>2</sup>	138.0		
6.17	600 x 600 mm light duty cast iron manhole cover with frame, including bedding frame in concrete, bitumen air seal	nr	29.0		
6.18	225 mm diameter pitch fibre tee	nr	15.0		
6.19	Allow for septic tank to soak pit connection	nr	8.0		
6.20	Allow for 2000 mm diameter soak pit filled with approved material to detail	nr	8.0		
6.21	Allow for road crossings	nr	1.0		
<b>Total carried to collection</b>					

## MAIN SUMMARY

<b>ELEMENT No. 1: GENERAL ITEMS PLUS ELEMENT No. 2: DEMOLITION AND SITE CLEARANCE</b>	
<b>ELEMENT No. 3: PIPEWORK - SUPPLY &amp; PIPE LAYING</b>	
<b>ELEMENT No. 4: PIPEWORK - MANHOLES &amp; ANCILLARIES</b>	
<b>ELEMENT No. 5: PIPEWORK - SUPPORTS &amp; PROTECTION, ANCILLARIES TO LAYING AND EXCAVATION</b>	
<b>ELEMENT No. 6: SEPTIC TANKS &amp; SOAK PITS</b>	
<b>SUB-TOTAL</b>	
<b>CONTIGENCIES 10%</b>	
<b>GRAND TOTAL</b>	
<b>ADD 16% VAT</b>	
<b>GRAND TOTAL</b>	

**DRAWINGS:**

To be attached on a separate Zipped Folder.

# **PART III - CONDITIONS OF CONTRACT AND CONTRACT FORMS**

## **SECTION VIII - GENERAL CONDITIONS OF CONTRACT**

These General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both smaller admeasurement contracts and lump sum contracts.

### **General Conditions of Contract**

#### **A. General**

##### **1. Definitions**

1.1 Bold face type is used to identify defined terms.

- a) **The Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- b) **The Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- c) **The Adjudicator** is the person appointed jointly by the Procuring Entity and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
- e) **Compensation Events** are those defined in GCC Clause 42 hereunder.
- f) **The Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 53.1.
- g) **The Contract and Contract Period** is the Contract between the Procuring Entity and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- h) **The Contractor** is the party whose Bid to carry out the Works has been accepted by the Procuring Entity.
- i) **The Contractor's Bid** is the completed bidding document submitted by the Contractor to the Procuring Entity.
- j) **The Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- k) **Days** are calendar days; months are calendar months.
- l) **Day works** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- m) **A Defect** is any part of the Works not completed in accordance with the Contract.
- n) **The Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.
- o) **The Defects Liability Period** is the period **named in the SCC** pursuant to Sub-Clause 34.1 and calculated from the Completion Date.
- p) **Drawings** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Procuring Entity in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- q) **The Procuring Entity** is the party who employs the Contractor to carry out the Works, **as specified in the SCC**, who is also the Procuring Entity.
- r) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

- s) **“In writing” or “written”** means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- t) The Initial Contract Price is the Contract Price listed in the Procuring Entity's Letter of Acceptance.
- u) **The Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the SCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- v) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- w) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- x) **The Project Manager** is the person **named in the SCC** (or any other competent person appointed by the Procuring Entity and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- y) **SCC** means Special Conditions of Contract.
- z) **The Site** is the area of the works as **defined as such in the SCC**.
- aa) **Site Investigation Reports** are those that were included in the bidding document and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- bb) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- cc) **The Start Date** is **given in the SCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- dd) **A Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- ee) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- ff) **A Variation** is an instruction given by the Project Manager which varies the Works.
- gg) **The Works** are what the Contract requires the Contractor to construct, install, and turn over to the Procuring Entity, **as defined in the SCC**.

## 2 Interpretation

- 21 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 22 If sectional completion is specified in the SCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 23 The documents forming the Contract shall be interpreted in the following order of priority:
  - a) Agreement,
  - b) Letter of Acceptance,
  - c) Contractor's Bid,
  - d) Special Conditions of Contract,
  - e) General Conditions of Contract, including Appendices,
  - f) Specifications,
  - g) Drawings,
  - h) Bill of Quantities<sup>6</sup>, and
  - i) any other document **listed in the SCC** as forming part of the Contract.

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

- 3.1 The language of the Contract is English Language and the law governing the Contract are the Laws of Kenya.
- 3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Procuring Entity's Country when
  - a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
  - b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

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

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

### **5. Delegation**

- 5.1 Otherwise **specified in the SCC**, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.

### **6. Communications**

- 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

### **7. Subcontracting**

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

### **8. Other Contractors**

- 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the Schedule of Other Contractors, as **referred to in the SCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Procuring Entity may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

### **9. Personnel and Equipment**

- 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 9.3 If the Procuring Entity, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in Fraud and Corruption during the execution of the Works, then that employee shall be removed in accordance with Clause 9.2 above.

### **10. Procuring Entity's and Contractor's Risks**

- 10.1 The Procuring Entity carries the risks which this Contract states are Procuring Entity's risks, and the

Contractor carries the risks which this Contract states are Contractor's risks.

## **11. Procuring Entity's Risks**

- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Procuring Entity's risks:
- a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
    - i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
    - ii) negligence, breach of statutory duty, or interference with any legal right by the Procuring Entity or by any person employed by or contracted to him except the Contractor.
  - b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is a Procuring Entity's risk except loss or damage due to
- aa) a Defect which existed on the Completion Date,
  - bb) an event occurring before the Completion Date, which was not itself a Procuring Entity's risk, or
  - cc) the activities of the Contractor on the Site after the Completion Date.

## **12. Contractor's Risks**

- 12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Procuring Entity's risks are Contractor's risks.

## **13. Insurance**

- 13.1 The Contractor shall provide, in the joint names of the Procuring Entity and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the SCC** for the following events which are due to the Contractor's risks:
- a) loss of or damage to the Works, Plant, and Materials;
  - b) loss of or damage to Equipment;
  - c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - d) personal injury or death.
- 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 13.3 If the Contractor does not provide any of the policies and certificates required, the Procuring Entity may effect the insurance which the Contractor should have provided and recover the premiums the Procuring Entity has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 13.5 Both parties shall comply with any conditions of the insurance policies.

## **14. Site Data**

- 14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the SCC**, supplemented by any information available to the Contractor.

## **15. Contractor to Construct the Works**

- 15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings



## **16. The Works to Be Completed by the Intended Completion Date**

16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

## **17. Approval by the Project Manager**

17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

17.2 The Contractor shall be responsible for design of Temporary Works.

17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

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

17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

## **18. Safety**

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

## **19. Discoveries**

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

## **20. Possession of the Site**

20.1 The Procuring Entity shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the SCC**, the Procuring Entity shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

## **21. Access to the Site**

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

## **22. Instructions, Inspections and Audits**

22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

22.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub-consultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.

22.3 The Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, the Procuring Entity and/or persons appointed by the Public Procurement Regulatory Authority to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Public Procurement Regulatory Authority. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 25.1 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Public Procurement Regulatory Authority's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Public Procurement Regulatory Authority's prevailing sanctions procedures).

### **23. Appointment of the Adjudicator**

- 23.1 The Adjudicator shall be appointed jointly by the Procuring Entity and the Contractor, at the time of the Procuring Entity's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Procuring Entity does not agree on the appointment of the Adjudicator, the Procuring Entity will request the Appointing Authority designated in the SCC, to appoint the Adjudicator within 14 days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Procuring Entity and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Procuring Entity and the Contractor. In case of disagreement between the Procuring Entity and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the SCC at the request of either party, within 14 days of receipt of such request.

### **24. Settlement of Claims and Disputes**

#### **24.1 Contractor's Claims**

- 24.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.
- 24.1.2 If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clause shall apply.
- 24.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- 24.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record- keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.
- 24.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
- a) this fully detailed claim shall be considered as interim;
  - b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and

- c) the Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.
- 24.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.
- 24.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause
- 24.1.8 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- 24.1.9 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.
- 24.1.10 If the Project Manager does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 24.4 [Arbitration].
- 24.1.11 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 24.3.

## **242 Amicable Settlement**

- 24.2.1 Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 24.1 above should move to commence arbitration after the fifty-sixth day from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

## **243 Matters that may be referred to arbitration**

- 24.3.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:
- a) The appointment of a replacement Project Manager upon the said person ceasing to act.
  - b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
  - c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
  - e) Any dispute arising in respect of war risks or war damage.
  - f) All other matters shall only be referred to arbitration after the completion or alleged completion

of the Works or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

#### **24.4 Arbitration**

- 24.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 24.3 shall be finally settled by arbitration.
- 24.4.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 24.4.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 24.4.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 24.4.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 24.4.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.
- 24.4.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.
- 24.4.8 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the Works.
- 24.4.9 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

#### **24.5 Arbitration with National Contractors**

- 24.5.1 If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;
  - i) Architectural Association of Kenya
  - ii) Institute of Quantity Surveyors of Kenya
  - iii) Association of Consulting Engineers of Kenya
  - iv) Chartered Institute of Arbitrators (Kenya Branch)
  - v) Institution of Engineers of Kenya
- 24.5.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

## **24.6 Alternative Arbitration Proceedings**

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

## **24.7 Failure to Comply with Arbitrator's Decision**

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

24.7.2 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

## **24.8 Contract operations to continue**

24.8.1 Notwithstanding any reference to arbitration herein,

- a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- b) the Procuring Entity shall pay the Contractor any monies due the Contractor.

## **25. Fraud and Corruption**

25.1 The Government requires compliance with the country's Anti-Corruption laws and its prevailing sanctions policies and procedures as set forth in the Constitution of Kenya and its Statutes.

25.2 The Procuring Entity requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

## **B. Time Control**

### **26. Program**

26.1 Within the time stated in the SCC, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.

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

26.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the SCC. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the SCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

26.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

## **27. Extension of the Intended Completion Date**

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

## **28. Acceleration**

- 28.1 When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.
- 28.2 If the Contractor's priced proposals for an acceleration are accepted by the Procuring Entity, they are incorporated in the Contract Price and treated as a Variation.

## **29. Delays Ordered by the Project Manager**

- 29.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

## **30. Management Meetings**

- 30.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 30.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

## **31. Early Warning**

- 31.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 31.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

## **C. Quality Control**

### **32. Identifying Defects**

- 32.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

### **33. Tests**

- 33.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

### **34. Correction of Defects**

- 34.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the SCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 34.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

### **35. Uncorrected Defects**

- 35.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

## **D. Cost Control**

### **36. Contract Price<sup>7</sup>**

- 36.1 The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

### **37. Changes in the Contract Price<sup>8</sup>**

- 37.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Procuring Entity.
- 37.2 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

### 38. Variations

- 381 All Variations shall be included in updated Programs<sup>9</sup> produced by the Contractor.
- 382 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 383 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.
- 384 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.

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<sup>7</sup>In lump sum contracts, replace GCC Sub-Clause 36.1 as follows:

*36.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for materials on site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.*

<sup>8</sup>In lump sum contracts, replace entire GCC Clause 37 with new GCC Sub-Clause 37.1, as follows:

*The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.*

- 385 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning
- 386 If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 39.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work
- 387 Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;
- the proposed change(s), and a description of the difference to the existing contract requirements;
  - a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and
  - a description of any effect(s) of the change on performance/functionality.
- 388 The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:
- accelerate the contract completion period; or
  - reduce the Contract Price or the life cycle costs to the Procuring Entity; or
  - improve the quality, efficiency, safety or sustainability of the Facilities; or



- d) yield any other benefits to the Procuring Entity, without compromising the functionality of the Works.

389 If the value engineering proposal is approved by the Procuring Entity and results in:

- a) a reduction of the Contract Price; the amount to be paid to the Contractor shall be the **percentage specified in the SCC** of the reduction in the Contract Price; or
- b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in
  - (a) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.

### 39. Cash Flow Forecasts

39.1 When the Program <sup>11</sup>, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

### 40. Payment Certificates

40.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

40.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

40.3 The value of work executed shall be determined by the Project Manager.

40.4 The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed <sup>12</sup>.

40.5 The value of work executed shall include the valuation of Variations and Compensation Events.

40.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

40.7 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (which would be the tender price), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows:  $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$ .

### 41. Payments

41.1 Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of each certificate. If the Procuring Entity makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.

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

41.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

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

## **42. Compensation Events**

42.1 The following shall be Compensation Events:

- d) The Procuring Entity does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
- e) The Procuring Entity modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- f) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- g) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- h) The Project Manager unreasonably does not approve a subcontract to be let.
- i) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- j) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Procuring Entity, or additional work required for safety or other reasons.
- k) Other contractors, public authorities, utilities, or the Procuring Entity does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- l) The advance payment is delayed.
- m) The effects on the Contractor of any of the Procuring Entity's Risks.
- n) The Project Manager unreasonably delays issuing a Certificate of Completion.

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

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

42.4 The Contractor shall not be entitled to compensation to the extent that the Procuring Entity's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

#### 43. Tax

- 43.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 30 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

#### 44. Currency of Payment

- 44.1 All payments under the contract shall be made in Kenya Shillings

#### 45. Price Adjustment

- 45.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies:

**I.  $P = A + B I_m / I_o$**

where:

portion of the Contract Price payable.

P is the adjustment factor for the

A and B are coefficients<sup>13</sup> **specified in the SCC**, representing the non-adjustable and adjustable portions, respectively, of the Contract Price payable and  $I_m$  is the index prevailing at the end of the month being invoiced and  $I_o$  is the index prevailing 30 days before Bid opening for inputs payable.

- 45.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

#### 46. Retention

- 46.1 The Procuring Entity shall retain from each payment due to the Contractor the proportion stated in the **SCC** until Completion of the whole of the Works.
- 46.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 53.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an "on demand" Bank guarantee.

#### 47. Liquidated Damages

- 47.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the **SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.
- 47.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 41.1.

#### **48. Bonus**

- 48.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the SCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

#### **49. Advance Payment**

- 49.1 The Procuring Entity shall make advance payment to the Contractor of the amounts stated in the **SCC** by the date stated in the **SCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procuring Entity in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.
- 49.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 49.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

#### **50. Securities**

- 50.1 The Performance Security shall be provided to the Procuring Entity no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the SCC**, by a bank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 day from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

#### **51. Dayworks**

- 51.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 51.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 51.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

#### **52. Cost of Repairs**

- 52.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

## E. Finishing the Contract

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### 53. Completion

53.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

### 54. Taking Over

54.1 The Procuring Entity shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

### 55. Final Account

55.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

### 56. Operating and Maintenance Manuals

56.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the SCC.

56.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC pursuant to GCC Sub-Clause 56.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the SCC** from payments due to the Contractor.

### 57. Termination

57.1 The Procuring Entity or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

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

- a) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
- c) the Procuring Entity or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- d) a payment certified by the Project Manager is not paid by the Procuring Entity to the Contractor within 84 days of the date of the Project Manager's certificate;
- e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- f) the Contractor does not maintain a Security, which is required;
- g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**; or
- h) if the Contractor, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix A to the GCC, in competing for or in executing the

Contract, then the Procuring Entity may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel him from the Site.

573 Notwithstanding the above, the Procuring Entity may terminate the Contract for convenience.

574 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.

575 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

#### **58. *Payment upon Termination***

581 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as specified in the SCC. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.

582 If the Contract is terminated for the Procuring Entity's convenience or because of a fundamental breach of Contract by the Procuring Entity, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

#### **59. *Property***

591 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Procuring Entity if the Contract is terminated because of the Contractor's default.

#### **60. *Release from Performance***

601 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Procuring Entity or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

## **SECTION IX - SPECIAL CONDITIONS OF CONTRACT**

Except where otherwise specified, all Special Conditions of Contract should be filled in by the Procuring Entity prior to issuance of the bidding document. Schedules and reports to be provided by the Procuring Entity should be annexed.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>A. General</b>	
<b>GCC 1.1 (q)</b>	The Procuring Entity is: <b>Telposta Pension Scheme</b>
<b>GCC 1.1 (u)</b>	The Intended Completion Date for the whole of the Works shall be: <b>2Months</b>
<b>GCC 1.1 (f)</b>	The Contract Period shall be six Months. The intended completion time for the works is as above in G.C.C.I.1 (u)
<b>GCC 1.1 (x)</b>	The Project Manager is: <b>TelPosta Property Manager</b>
<b>GCC 1.1 (z)</b>	The Site is located at: <b>Telposta GTI Estate at GilGil Town next to GTI Industries</b>
<b>GCC 1.1 (cc)</b>	The Start Date shall be: <b>Not later than 14days after the Commencement Letter and Site Handover</b>
<b>GCC 1.1 (gg)</b>	The Works consist of but not limited to: <ul style="list-style-type: none"> <li>a) <b>Site Clearance</b></li> <li>b) <b>Excavations</b></li> <li>c) <b>Materials suitability and workmanship</b></li> <li>d) <b>Concrete works, masonry works and formwork – septic tanks and soakways.</b></li> <li>e) <b>Drains, sewers, inspection chambers and manholes</b></li> <li>f) <b>Pipe laying and jointing, plus connections.</b></li> <li>g) <b>Measurements of sewers and connections</b></li> <li>h) <b>Testing</b></li> <li>i) <b>Pipe work protection, ancillaries</b></li> </ul>
<b>GCC 2.2</b>	Sectional Completions <b>Shall not</b> be Applicable
<b>GCC 5.1</b>	The Project manager <b>may</b> delegate any of his duties and responsibilities.
<b>GCC 8.1</b>	Schedule of other contractors: <b>None</b>
<b>GCC 9.1</b>	<p><b>Key Personnel</b></p> <p>GCC 9.1 is replaced with the following:</p> <p>9.1 Key Personnel are the Contractor’s personnel named in this GCC 9.1 of the Special Conditions of Contract. The Contractor shall employ the Key Personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>proposed replacement of Key Personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.</p> <p><i>[insert the name/s of each Key Personnel agreed by the Procuring Entity prior to Contract signature.]</i></p>
<b>GCC 13.1</b>	<p>The minimum insurance amounts and deductibles shall be:</p> <p>(a) for loss or damage to the Works, Plant and Materials: <b>Kshs 200,000.00</b></p> <p>(b) For loss or damage to Equipment: <b>Kshs 100,000.00</b></p> <p>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract <b>Kshs 100,000.00</b></p> <p>(d) for personal injury or death:</p> <p>(i) of the Contractor's employees: <b>Kshs 100,000.00</b></p> <p>(ii) of other people: <b>Kshs 200,000.00</b></p>
<b>GCC 14.1</b>	Site Data are: <b>design report, drawings and any other reports issued by the client</b>
<b>GCC 20.1</b>	The Site Possession Date(s) shall be: <b>Not later than 14days after commencement letter</b>
<b>GCC 23.1 &amp; GCC 23.2</b>	<p>Appointing Authority for the Adjudicator:</p> <p><b>Chartered Institute of Arbitrators, Kenya</b>  <b>P.O. Box 501153 - 00200 Nairobi, Kenya</b>  <b>Email Address: <a href="mailto:info@ciarbkenya.org">info@ciarbkenya.org</a></b></p> <hr/> <p>Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <b>as per body policy</b></p>
<b>B. Time Control</b>	
<b>GCC 26.1</b>	The Contractor shall submit for approval a Program for the Works within <b>[7] days</b> from the date of the Letter of Acceptance.
<b>GCC 26.3</b>	<p>The period between Program updates is <b>[7] days</b>.</p> <p>The amount to be withheld for late submission of an updated Program is: <b>10% of amount due in next certificate</b></p>
<b>C. Quality Control</b>	
<b>GCC 34.1</b>	The Defects Liability Period is: <b>[90] days</b> .



Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>D. Cost Control</b>	
<b>GCC 38.9</b>	If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Contractor shall be: <b>Not Applicable</b>
<b>GCC 44.1</b>	The currency of the Procuring Entity's Country is: <b>Kenya Shillings</b>
<b>GCC 45.1</b>	The Contract <b>is not</b> subject to price adjustment in accordance with GCC Clause 45, and the following information regarding coefficients <b>does not</b> apply.
<b>GCC 46.1</b>	The proportion of payments retained is: <b>[10%]</b>
<b>GCC 47.1</b>	The liquidated damages for the whole of the Works are <b>0.05</b> per day. The maximum amount of liquidated damages for the whole of the Works is <b>5%</b> of the final Contract Price.
<b>GCC 48.1</b>	The Bonus for the whole of the Works is <b>0%</b> per day. The maximum amount of Bonus for the whole of the Works is <b>0%</b> of the final Contract Price.
<b>GCC 49.1</b>	There shall be <b>No</b> advance Payments
<b>GCC 50.1</b>	<p>The Performance Security amount is <b>10%</b></p> <p>(a) Performance Security – Bank Guarantee: in the amount(s) of <b>10% percent</b> of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.</p> <p>(b) Performance Security – Performance Bond: in the amount(s) of <b>10% percent</b> of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.</p>
<b>E. Finishing the Contract</b>	
<b>GCC 56.1</b>	<p>The date by which operating and maintenance manuals are required shall be <b>date of completion of works</b></p> <p>The date by which “as built” drawings are required be <b>date of completion of works</b></p>
<b>GCC 56.2</b>	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is <b>Kshs 200,000.00</b>
<b>GCC 57.2 (g)</b>	The maximum number of days is: <b>30days</b>
<b>GCC 58.1</b>	The percentage to apply to the value of the work not completed, representing the Procuring Entity's additional cost for completing the Works, is <b>170% of work not done</b>