



**KENYATTA UNIVERSITY TEACHING,
REFERRAL & RESEARCH HOSPITAL
(KUTRRH)**

TENDER

**FOR PROVISION OF MINOR WORK- PAVING OF
ROADS AND WALKWAYS AT KUTRRH-GATUNDU**

Annex

TENDER NO:

KUTRRH /TNDR/W/039/PMW-G/2020-2022

CLOSING DATE: TUESDAY 9TH MARCH, 2021 AT 10.00 A.M.

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SECTION I
INVITATION FOR TENDERS

Tender reference No: KUTRRH /TNDR/W/039/PMW-G/2020-2021

Tender Name: PROVISION OF MINOR WORKS- PAVING OF ROADS AND WALKWAYS AT KUTRRH-GATUNDU Annex

- 1.1 Kenyatta University Teaching, Referral and Research Hospital (**KUTRRH**) invite sealed tenders from eligible candidates for the Provision of Minor Works – Paving of Roads and Walkways at KUTRRH – Gatundu Annex. Interested eligible candidates may obtain further information from and inspect the tender documents at KUTRRH during normal working hours.
- 1.2 A complete tender document may be obtained by interested candidates upon payment of a non- refundable fee of (**One thousand shillings only**) **Ksh.1,000/=** to be deposited in:-

Bank Name: Kenya Commercial Bank (KCB)
Branch: Thika Road Mall
Account Name: Kenyatta University Teaching, Referral & Research Hospital (KUTRRH)
Account Number: 1258637243

OR

Download free of charge from KUTRRH Website at www.kutrrh.go.ke .Bidders who opt to download **MUST** send their contacts details to procurement@kutrrh.go.ke

Those who buy the tenders are advised to take the banking slip to KUTRRH (Finance – Cash Office) for an official receipt thereafter you can collect the tender documents from Procurement Office, Procurement and Stores Section.

- 1.3 Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for period of (120) days from the closing date of the tender.
- 1.4 Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and be deposited in the tender box provided at (**Kenyatta University Teaching, Referral & Research Hospital – Procurement Department**) or be addressed to (**KUTRRH P.O. Box 7674 – 00100 GPO Nairobi**) so as to be received on or before, **Tuesday 9th March, 2021 at 10.00 a.m.**
- 1.5 Tenders will be opened immediately thereafter in the presence of the tenderers representatives who choose to attend the opening at KUTRRH –**Boardroom.**

The Chief Executive Officer
Kenyatta University Teaching, Referral and Research Hospital
P.O. Box 7674 – 00100, GPO
NAIROBI.

SECTION II

INSTRUCTIONS TO TENDERER

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INSTRUCTIONS TO TENDERER.

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

- 1.1 KUTRRH as defined in the Appendix to Conditions of Contract invites open tender as described in the Section 1 - Invitation to tender. The tenderer will be expected to complete the project by the Intended Completion Date specified in the tender documents.
- 1.2 The tenderer shall provide the Qualification Information, a statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or has not been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for the project or being proposed as Project Manager for the Contract. A firm that has been engaged by KUTRRH to provide consulting services for the preparation or supervision of the Project, and any of its affiliates, shall not be eligible to tender.
- 1.3 The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed project method and schedule.
- 1.4 In the event that pre-qualification of potential tenderer has been undertaken, only tenders from pre-qualified tenderer will be considered for award of Contract. This qualified tenderer should submit with their tender any information updating their original pre-qualification applications or, alternatively, confirm in their tender that the originally submitted pre-qualification information remains essentially correct as of the date of tender submission.
- 1.5 Where no pre-qualification of potential tenderer has been done, the tenderer shall include the following information and documents with their tenders, unless otherwise stated:
 - (a) Copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer:
 - (b) Total monetary value of project performed for each of the last five years:
 - (c) Experience of a similar nature and size for each of the last five years, and details of project under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts;

- (d) Major items of construction equipment proposed to carry out the Contract and an undertaking that they will be available for the Contract.
- (e) Qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.
- (f) Reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the past five years;
- (g) Evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) Authority to seek references from the tenderer's bankers;
- (i) Information regarding any litigation, current or during the last five years, in which the tenderer is involved, the parties concerned and disputed amount; and
- (j) Proposals for subcontracting components of the Project amounting to more than 10 percent of the Contract Price.

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

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

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

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

- (b) experience as main contractor in the project of at least 10 years and equipment manufacturing of not less than 10 years.
 - (c) two projects of a nature and complexity equivalent to the project over the last 10 years (to comply with this requirement, project cited should be at least 70 percent complete);
 - (d) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Project;
 - (e) a Contract manager with at least five years' experience in project of an equivalent nature and volume, including no less than three years as Manager; and
 - (f) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than 4 months of the estimated payment flow under this Contract.
- 1.8 The figures for each of the partners of a joint venture shall be added together to determine the tenderer's compliance with the minimum qualifying criteria of clause 1.7 (a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 1.7 (a), (b) and (e) for an individual tenderer, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's tender. Subcontractors' experience and resources will not be taken into account in determining the tenderer's compliance with the qualifying criteria, unless otherwise stated.
- 1.9 The tenderer shall submit only one tender, either individually or as a partner in a joint venture.
- 1.10 The tenderer shall bear all costs associated with the preparation and submission of his tender, and KUTRRH will in no case be responsible or liable for those costs.
- 1.11 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Project and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Project. The costs of visiting the Site shall be at the tenderer's own expense.
- 1.12 KUTRRH employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 1.13 No price to be charged for the tender document.

1.14 KUTRRH shall allow the tenderer to review the tender document free of charge before purchase.

2. Tender Documents

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

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

2.2 The tenderer shall examine all Instructions, Forms to be filled and Specifications in the tender documents. Failure to furnish all information required by the tender documents, or submission of a tender not substantially responsive to the tendering documents in every respect will be at the tenderer's risk and may result in rejection of his tender.

2.3 The tenderer may make an inquiry relating to the tender documents and may notify KUTRRH in writing or by cable, telex or facsimile at the address indicated in the letter of invitation to tender. KUTRRH will only respond to requests for clarification received immediately.

2.4 Before the deadline for submission of tenders, KUTRRH may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to The tenderer. The tenderer shall acknowledge receipt of each addendum in writing to KUTRRH.

2.5 To give prospective tenderer reasonable time in which to take an addendum into account in preparing their tenders, KUTRRH shall extend, as necessary, the deadline for submission of tenders, in accordance with Clause 4.2 here below.

3. Preparation of Tenders

3.1 All documents relating to the tender and any correspondence shall be in English language.

3.2 The tender submitted by the tenderer shall comprise the following:

- (a) These Instructions to Tenderer, Form of Tender, Conditions of Contract, Appendix to Conditions of Contract and Specifications;
- (b) Tender Security;

- (c) Priced Bill of Quantities ;
 - (d) Qualification Information Form and Documents;
 - (e) Alternative offers where invited; and
 - (f) Any other materials required to be completed and submitted by the tenderer.
- 3.3 The tenderer shall fill in rates and prices for all items of the Project described in the Bill of Quantities. Items for which no rate or price is entered by the tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause relevant to the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the tenderer.
- 3.4 The rates and prices quoted by the tenderer shall only be subject to adjustment during the performance of the Contract if provided for in the Appendix to Conditions of Contract and provisions made in the Conditions of Contract.
- 3.5 The unit rates and prices shall be in Kenya Shillings or any other easily transferable currency.
- 3.6 Tenders shall remain valid for a period of ONE EIGHTY (180) days from the date of submission. However, in exceptional circumstances, KUTRRH may request that the tenderer extend the period of validity for a specified additional period. The request and the tenderer' responses shall be made in writing. The tenderer agreeing to the request will not be required or permitted to otherwise modify the tender, but will be required to extend the validity of Tender Security for the period of the extension, and in compliance with Clause 3.7 - 3.11 in all respects.
- 3.7 The tenderer shall furnish, as part of the tender, a Tender Security in the amount and form specified in the appendix to invitation to tenderer. This shall be in the amount not exceeding 2 percent of the tender price
- 3.8 The format of the Tender Security should be in accordance with the form of Tender Security included in Section G - Standard forms or any other form acceptable to KUTRRH. Tender Security shall be valid for 30 days beyond the validity of the tender.
- 3.9 Tender not accompanied by an acceptable Tender Security shall be rejected. The Tender Security of a joint venture must define as "Tenderer" all joint venture partners and list them in the following

manner: a joint venture consisting of”.....”,”.....”,and
“.....”.

- 3.10 The Tender Securities if unsuccessful will be returned within 28 days of the end of the tender validity period specified in Clause 3.6.
- 3.11 The Tender Security if successful will be discharged when the tenderer has signed the Contract Agreement and furnished the required Performance Security.
- 3.12 The Tender Security may be forfeited
- (a) If the tenderer withdraws the tender after tender opening during the period of tender validity;
 - (b) If the tenderer does not accept the correction of the tender price, pursuant to Clause 5.7;
 - (c) If the tenderer fails within the specified time limit to
 - (i) Sign the Agreement, or
 - (ii) Furnish the required Performance Security.
- 3.13 Tenderer shall submit offers that comply with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. **Alternatives will not be considered, unless specifically allowed in the invitation to tender.** If so allowed, tenderer wishing to offer technical alternatives to the requirements of the tendering documents must also submit a tender that complies with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. In addition to submitting the basic tender, the tenderer shall provide all information necessary for a complete evaluation of the alternative, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated tender conforming to the basic technical requirements shall be considered.
- 3.14 The tenderer shall prepare one original of the documents comprising the tender documents as described in Clause 3.2 of these Instructions to Tenderer, bound with the volume containing the Form of Tender, and clearly marked “ORIGINAL”. In addition, the tenderer shall submit copies of the tender, in the number specified in the invitation to tender, and clearly marked as “COPIES”. In the event of discrepancy between them, the original shall prevail.

- 3.15 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer, pursuant to Clause 1.5 (a) or 1.6 (b), as the case may be. All pages of the tender where alterations or additions have been made shall be initialed by the person or persons signing the tender.
- 3.16 Clarification of tenders shall be requested by the tenderer to be received by KUTRRH not later than 1 day prior to the deadline for submission of tenders.
- 3.17 KUTRRH shall reply to any clarifications sought by the tenderer immediately upon receiving the request to enable the tenderer to make timely submission of its tender.
- 3.18 The tender security shall be in the amount of 2 per cent of the tender price.

4. Submission of Tenders

- 4.1 The tenderer shall seal the original and all copies of the tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as “**ORIGINAL**” and “**COPIES**” as appropriate. The inner and outer envelopes shall:
 - (a) Be addressed to KUTRRH at the address provided in the invitation to tender;
 - (b) Bear the name and identification number of the Contract as defined in the invitation to tender; and
 - (c) Provide a warning not to open before the specified time and date for tender opening.
- 4.2 Tenders shall be delivered to KUTRRH at the address specified above not later than **Tuesday 9th March, 2021 at 10.00 a.m.** However, KUTRRH may extend the deadline for submission of tenders by issuing an amendment in accordance with Sub-Clause 2.5 in which case all rights and obligations of KUTRRH and the tenderer previously subject to the original deadline will then be subject to the new deadline.
- 4.3 Any tender received after the deadline prescribed in clause 4.2 will be returned to the tenderer un-opened.
- 4.4 Tenderer may modify or withdraw its tender by giving notice in writing before the deadline prescribed in clause 4.2. The tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with clause 3.13 and 4.1, with the outer and inner envelopes additionally marked “**MODIFICATION**” and “**WITHDRAWAL**”, as

appropriate. No tender may be modified after the deadline for submission of tenders.

- 4.5 Withdrawal of a tender between the deadline for submission of tenders and the expiration of the period of tender validity specified in the invitation to tender or as extended pursuant to Clause 3.6 may result in the forfeiture of the Tender Security pursuant to Clause 3.11.
- 4.6 Tenderer may only offer discounts to, or otherwise modify the prices of their tenders by submitting tender modifications in accordance with Clause 4.4 or be included in the original tender submission.

5. Tender Opening and Evaluation

- 5.1 The tenders will be opened by KUTRRH, including modifications made pursuant to Clause 4.4, in the presence of the tenderer' representatives who choose to attend at the time and in the place specified in clause 4.2 above. Envelopes marked "**WITHDRAWAL**" shall be opened and read out first. Tenderer' and Employer's representatives who are present during the opening shall sign a register evidencing their attendance.
- 5.2 The tenderer' names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as may be considered appropriate, will be announced by KUTRRH at the opening. Minutes of the tender opening, including the information disclosed to those present will be prepared by KUTRRH.
- 5.3 Information relating to the examination, clarification, evaluation, and comparison of tenders and recommendations for the award of Contract shall not be disclosed to tenderer or any other persons not officially concerned with such process until the award to the successful tenderer has been announced. Any effort by the tenderer to influence KUTRRH 's officials, processing of tenders or award decisions may result in the rejection of the respective tender.
- 5.4 To assist in the examination, evaluation, and comparison of tenders, KUTRRH at her discretion, may ask the tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.7.
- 5.5 Prior to the detailed evaluation of tenders, KUTRRH will determine whether the tender (a) meets the eligibility criteria defined in Clause

1.7;(b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the tendering documents. A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the project; (b) which limits in any substantial way, inconsistent with the tendering documents, KUTRRH 's rights or the tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other tenderer presenting substantially responsive tenders.

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

5.7 If the tender will be determined to be substantially responsive it will be checked for any arithmetic errors. Errors will be corrected as follows:

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of KUTRRH, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.
- (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.
- (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work (i.e. Corrected tender sum less P.C. and Provisional Sums)
- (e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.
- (f) the amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11.

- 5.8 KUTRRH will evaluate and compare the tender if it will be determined to be substantially responsive in accordance with Clause 5.5.
- 5.9 In evaluating the tenders, KUTRRH will determine for each tender the evaluated tender price by adjusting the tender price as follows:
- (a) Making any correction for errors pursuant to clause 5.7;
 - (b) Excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Day-project where priced competitively.
 - (c) Making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and
 - (d) Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 4.6
- 5.10 KUTRRH reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for KUTRRH will not be taken into account in tender evaluation.
- 5.11 The tenderer shall not influence KUTRRH on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence KUTRRH or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.
- 5.12 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a non-indigenous sub-contractor.

6. Award of Contract

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

- 6.2 Notwithstanding clause 6.1 above, KUTRRH reserves the right to accept or reject the tender, and to cancel the tendering process and reject the tender, at any time prior to the award of Contract, without thereby incurring any liability to the affected tenderer or any obligation to inform the tenderer of the grounds for the action.
- 6.3 If the tenderer's tender has been accepted, he will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum (hereinafter and in all Contract documents called the "Contract Price") that KUTRRH will pay the Contractor in consideration of the execution, completion, and maintenance of the Project by the Contractor as prescribed by the Contract.
- The contract shall be formed on the parties signing the contract.
- 6.4 The Agreement will incorporate all agreements between KUTRRH and the successful tenderer. Within 14 days of receipt the successful tenderer will sign the Agreement and return it to KUTRRH.
- 6.5 Within 21 days after receipt of the Letter of Acceptance, the successful tenderer shall deliver to KUTRRH a Performance Security of 10% of the contract sum or the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and specified form.
- 6.6 Failure of the successful tenderer to comply with the requirements of clause 6.5 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.
- 6.7 Preference where allowed in the evaluation of tenders shall not be allowed for contracts not exceeding one year (12 months).
- 6.8 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 6.9 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 6.10 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 6.11 Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.

- 6.12 Price variation request shall be processed by KUTRRH within 30 days of receiving the request.
- 6.13 KUTRRH may at any time terminate procurement proceedings before contract award and subsequent signing and shall not be liable to any person for the termination.
- 6.14 KUTRRH shall give prompt notice of the termination to the tenderer and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 6.15 If the tenderer who gives false information in the tender document about its qualification or refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

7. Corrupt and Fraudulent practices

- 7.1 KUTRRH requires that tenderer observe the highest standards of ethics during procurement process and execution of contracts. The tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.

SECTION III CONDITIONS OF CONTRACT

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CONDITIONS OF CONTRACT

1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

“Day-project” are Work inputs subject to payment on a time basis for labour and the associated materials and plant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Interpretation

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the Appendix to Conditions of Contract, reference in the Conditions of Contract to the Project, the Completion Date and the Intended Completion Date apply to any section of the Project (other than references to the Intended Completion Date for the whole of the Project).
- 2.3 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;
- (1) Agreement,
 - (2) Letter of Acceptance,
 - (3) Contractor’s Tender,
 - (4) Appendix to Conditions of Contract,
 - (5) Conditions of Contract,
 - (6) Specifications,
 - (7) Drawings,
 - (8) Bill of Quantities,
 - (9) Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.

Immediately after the execution of the Contract, the Project Manager shall furnish both KUTRRH and the Contractor with two copies each of all the Contract documents. Further, as and when necessary the Project Manager shall furnish the Contractor [always with a copy to KUTRRH] with three [3] copies of such further drawings or details or descriptive schedules as

are reasonably necessary either to explain or amplify the Contract drawings or to enable the Contractor to carry out and complete the Project in accordance with these Conditions.

3. Language and Law

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

4 Project Manager's Decisions

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

5 Delegation

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

6 Communications

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

7 Subcontracting

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

8 Other Contractors

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

9 Personnel

9.1 The Contractor shall employ the key personnel named in the Qualification Information, to carry out the functions stated in the said Information or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key

personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Qualification Information. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the Work in the Contract.

10 Project

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

11 Safety and Temporary Project

- 11.1 The Contractor shall be responsible for the design of temporary project. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary project shall be done until such approvals are obtained.
- 11.2 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary project and all drawings prepared by the Contractor for the execution of the temporary or permanent Project, shall be subject to prior approval by the Project Manager before they can be used.
- 11.3 The Contractor shall be responsible for the safety of all activities on the Site.

12. Discoveries

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

13. Work Program

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

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

14. Possession of Site

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

15. Access to Site

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

16. Instructions

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

17. Extension or Acceleration of Completion Date

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

17.2 No bonus for early completion of the Project shall be paid to the Contractor by KUTRRH.

18. Management Meetings

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

19. Early Warning

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

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

20. Defects

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

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

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

21. Bills of Quantities

- 21.1 The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rate in the Bills of Quantities for each item.
- 21.2 If the final quantity of the Work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the Initial Contract price, the Project Manager shall adjust the rate to allow for the change.
- 21.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bills of Quantities.

22. Variations

- 22.1 All variations shall be included in updated programs produced by the Contractor.
- 22.2 The Contractor shall provide the Project Manager with a quotation for carrying out the variations when requested to do so. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period as may be stated by the Project Manager and before the Variation is ordered.
- 22.3 If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the variation does not correspond with items in the Bills of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 22.4 If the Contractor's quotation is unreasonable, the Project Manager may order the variation and make a change to the Contract price, which shall

be based on the Project Manager's own forecast of the effects of the variation on the Contractor's costs.

- 22.5 If the Project Manager decides that the urgency of varying the Work would prevent a quotation being given and considered without delaying the Work, no quotation shall be given and the variation shall be treated as a Compensation Event.
- 22.6 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 22.7 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.

23. Payment Certificates and Currency of Payments

- 23.1 The Contractor shall submit to the Project Manager monthly applications for payment giving sufficient details of the Work done and materials on Site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the monthly application and certify the amount to be paid to the Contractor within 14 days. The value of Work executed and payable shall be determined by the Project Manager.
- 23.2 The value of Work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed, materials delivered on Site, variations and compensation events. Such materials shall become the property of KUTRRH once KUTRRH has paid the Contractor for their value. Thereafter, they shall not be removed from Site without the Project Manager's instructions except for use upon the Project.
- 23.3 Payments shall be adjusted for deductions for retention. KUTRRH shall pay the Contractor the amounts certified by the Project Manager within 60 days of the date of issue of each certificate. If KUTRRH makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the Central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.
- 23.4 If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

- 23.5 Items of the Project for which no rate or price has been entered in will not be paid for by KUTRRH and shall be deemed covered by other rates and prices in the Contract.
- 23.6 The Contract Price shall be stated in Kenya Shillings or any other easily transferable currency. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Appendix to Conditions of Contract. If the Contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services KUTRRH reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. KUTRRH and the Project Manager shall be notified promptly by the Contractor of an changes in the expected foreign currency requirements of the Contractor during the execution of the Project as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.
- 23.7 No advance payment will be granted for this contract.

24. Compensation Events

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

Site investigation reports), from information available publicly and from a visual inspection of the Site.

- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by KUTRRH or additional work required for safety or other reasons.
 - (h) Other contractors, public authorities, utilities, or KUTRRH does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
 - (i) The effects on the Contractor of any of KUTRRH 's risks.
 - (j) The Project Manager unreasonably delays issuing a Certificate of Completion.
 - (k) Other compensation events described in the Contract or determined by the Project Manager shall apply.
- 24.2 If a compensation event would cause additional cost or would prevent the Work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 24.3 As soon as information demonstrating the effect of each compensation event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.
- 24.4 The Contractor shall not be entitled to compensation to the extent that KUTRRH 's interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.
- 24.5 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.
- 24.6 The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

Provided always that should the event giving rise to the claim of continuing effect, the Contractor shall submit an interim claim within the

said thirty days and a final claim within thirty days of the end of the event giving rise to the claim.

25. Price Adjustment

- 25.1 The Project Manager shall not adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.
- 25.2 The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Project. Unless otherwise stated in the Contract, if at any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case may be.
- 25.3 Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manner set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified thereunder;
- (i) The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C.) and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.
 - (ii) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.
 - (iii) No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the

date of Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

- 25.4 The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the Project as determined by the J.B.C. and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.
- 25.5 Upon the J.B.C. determining that any of the said basic prices are increased or decreased then the Contract Price shall be increased or decreased by the amount to be assessed by the Project Manager based upon the difference between the price set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 23 of these Conditions issued before the date of publication of such increase or decrease.
- 25.6 No adjustment shall be made in respect of changes in basic prices of materials which occur after the date for Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.
- 25.7 The provisions of sub-clause 25.1 to 25.2 herein shall not apply in respect of any materials included in the schedule of basic rates.

26. Retention

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

27. Liquidated Damages

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

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

28. Securities

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

29. Day-project

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

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

29.3 The Contractor shall be paid for Day-project subject to obtaining signed Day-project forms.

30. Liability and Insurance

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

- (a) The risk of personal injury, death or loss of or damage to property (excluding the Project, Plant, Materials and Equipment), which are due to;
 - (i) use or occupation of the Site by the Project or for the purpose of the Project, which is the unavoidable result of the Project, or
 - (ii) negligence, breach of statutory duty or interference with any legal right by KUTRRH or by any person employed by or contracted to him except the Contractor.

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

31. Completion and taking over

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

32. Final Account

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

33. Termination

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

- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Project, and the instruction is not withdrawn within 30 days;
- (c) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by KUTRRH to the Contractor within 60 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.
- (e) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails

to correct it within a reasonable period of time determined by the Project Manager;

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

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

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

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

34. Payment Upon Termination

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

34.2 If the Contract is terminated for KUTRRH's convenience or because of a fundamental breach of Contract by KUTRRH, 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 Project, and the Contractor's costs of protecting and securing the Project.

34.3 KUTRRH may employ and pay other persons to carry out and complete the Project and to rectify any defects and may enter upon the Project and use all materials on the Site, plant, equipment and temporary project.

34.4 The Contractor shall, during the execution or after the completion of the Project under this clause remove from the Site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default KUTRRH may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

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

35. Release from Performance

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

36. Corrupt gifts and payments of commission

The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for KUTRRH or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for KUTRRH.
- (b) Enter into this or any other contract with KUTRRH in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to KUTRRH.

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

37. Settlement of Disputes

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

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

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

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

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

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

37.5 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Project or

abandonment of the Project or termination of the Contract by either party:

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

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

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

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

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

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

37.8 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

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

A	MANDATORY REQUIREMENTS		POINTS
A1.	Copy of Pin Number from Kenya Revenue Authority (KRA)/ Internationally Recognized body	YES/NO	
A2.	Copy of Valid Tax Compliance from KRA/ TAX ID/TAX Exemption Certificate	YES/NO	
A3.	Copy of Current & valid Single Business Permit	YES/NO	
A4.	Copy of a valid Certificate of Incorporation or /Business Registration	YES/NO	
A5.	Submit a copy of tender security/Bid Bond of 2% of total tender sum in form of a bank guarantee or Insurance Guarantee payable to Kenyatta University Teaching, Referral and Research Hospital	YES/NO	
A6.	Valid registration certificate with National Construction Authority-NCA 6 and above	YES/NO	
A7.	Complete the Mandatory Business Questionnaire	YES/NO	
A8.	Two bid documents clearly labeled “Original” and “Copy”	YES/NO	
A9.	Proof of sound financial standing	YES/NO	
A10.	Provide comprehensive work plan showing duration of execution of the project	YES/NO	
A11.	Written power of attorney of the signatory of the tender to commit the tenderer	YES/NO	
A12.	Financial Capability (As supported by Audited Accounts for the last three (3) years 2016-2017, 2017-2018, 2018-2019.	YES/NO	
A13.	The bidders and the subcontractors must provide information for all the activities and areas of specialties including relevant licenses, registration and certifications for various project from government agencies/ professional bodies	YES/NO	
A14.	Attach copies of Recommendation letters from three of your major clients having undertaken similar assignment	YES/NO	
B	TECHNICAL REQUIREMENTS		

EVALUATION CRITERIA

SECTION V - SPECIFICATIONS

Notes for Specifications Preparation

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

SECTION III: APPENDIX TO CONDITIONS OF CONTRACT

The Employer is:

Name: **KENYATTA UNIVERSITY TEACHING, REFERRAL AND RESEARCH HOSPITAL**

Address: **P.O BOX 7674-00100 NAIROBI.**

Name of Authorized Representative: **CEO/PROJECT MANAGER**

Address: **P.O BOX 7674-00100 NAIROBI.**

The Project Manager is:

Name: **KENYATTA UNIVERSITY PROJECT MANAGER,**

Address: **P.O. BOX 7674-00100 NAIROBI.**

The name (and identification number) of the Contract is: - **PROVISION OF MINOR WORK- PAVING OF ROADS AND WALKWAYS AT KUTRRH-GATUNDU ANNEX - KUTRRH /TNR/W/039/PMW-G/2020-2022**

The Works consist of: - **PAVING OF ROADS AND WALKWAYS AT KUTRRH-GATUNDU ANNEX**

The Commencement Date shall be: - **AS SHALL BE AGREED WITH THE EMPLOYER.**

The Intended Completion Date for the whole of the Works shall be: - **4 WEEKS**

The following documents also form part of the Contract:
AS LISTED IN CLAUSE 2.3 OF CONDITIONS OF CONTRACT.

The Contractor shall submit a revised program for the Works within: - **(7) SEVEN** days of delivery of the Letter of Acceptance.

The Site Possession Date shall be: - **AS SHALL BE AGREED WITH THE EMPLOYER.**

The Site is located within Gatundu Level V Hospital- Gatundu.

The Defects Liability period is **(6) Months.**

Other Contractors, utilities etc., to be engaged by the Employer on the Site: **NONE**

The minimum insurance covers shall be;

1. The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor's faulty work is; **Contractor's All Risk Policy**
2. The minimum cover for loss or damage to Equipment is **Full Value of the Equipment.**
3. The minimum for insurance of other property is **Full Value of the Property.**
4. The minimum cover for personal injury or death insurance
 - For the Contractor's employees is; As **per the laws applicable in Kenya**
 - And for other people is; As **per the laws applicable in Kenya**

The following events shall also be Compensation Events:

1.NONE (ONLY AS LISTED IN CLAUSE 24 OF THE CONDITIONS OF CONTRACT.)

2. _____
3. _____
4. _____

The period between Program updates is **(7) SEVEN** days.

The amount to be withheld for late submission of an updated Program is;- **WHOLE CERTIFICATE**

The proportion of payments retained is **10%** (percent.) The limit of retention is **5%** (percent.)

The Price Adjustment Clause **SHALL NOT** apply

The liquidated damages for the whole of the Works is **Kshs. 250,000.00** (per week or part thereof).

The Performance Security shall be for the following minimum amounts equivalent as a percentage of the Contract Price **10%** (percent.)

The Completion Period for the Works is: **4 (four) Weeks**

The rate of exchange for calculation of foreign currency payments is: **NOT APPLICABLE.**

The schedule of basic rates used in pricing by the Contractor is not applicable Advance Payment

NOT APPLICABLE.

Notes for preparing Specifications

1.0 Specifications applicable are those by the Ministry of Public Works General Specifications dated March 1976 (together with any amendments issued thereof). The Contractor should obtain a copy from the Ministry of Public Works. No liability will be admitted nor claim allowed in respect of errors in Contractors tender arising from the lack of knowledge on the said specification.

PROPOSED EXTERNAL WORKS - GATUNDU LEVEL 5 HOSPITAL ROAD AND WALKWAY

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	<p>ELEMENT No. 1 ROADS AND WALKWAYS</p> <p><u>Excavations including trimming sides of excavations; maintaining and supporting sides; and keeping free from water, mud and fallen material</u></p>				
A	Excavate to formation level, load and cart away excavated material from site depth not exceeding 1.5m from the ground level	Cm	977.00		
B	Approved excavated materials to make up levels; compacted and consolidated in layers not exceeding 150mm deep; to Engineer's satisfaction	Cm	392.00		
C	Load and cart away excavated material to an approved dumping site.	Cm	585.00		
D	Trim, grade bottom of excavations to falls, crossfalls and camber including rolling and compacting to 100% M.D.D. standard compaction.	Sm	1,953.00		
E	300mm thick quarry waste fill compacted to 95% M.D.D. compacted and consolidated in layers to make up levels	Sm	1,953.00		
F	Approved quality weed killer spread at the rate of 7 litres per square metre under roads.	Sm	1,953.00		
G	150mm Thick handpacked hardcore bed compacted in layers not exceeding 150mm thick; with and including 50mm Thick sandbed spread and compacted on hardcore.	Sm	1,953.00		
Carried forward					

PROPOSED EXTERNAL WORKS - GATUNDU LEVEL 5 HOSPITAL ROAD AND WALKWAY

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
			<i>Brought down</i>		
	<u>Precast concrete units: as "cabro" or equal and approved : laid to 2.5% falls and cross falls in approved patterns : on sand bed (m.s.) : jointed in sand : mechanically vibrated to Engineer's satisfaction : as described</u>				
A	80mm Thick heavy duty finish to roads and parking	Sm	1,953.00		
B	50mm Thick light duty finish to roads and parking	Sm	378.00		
	Kerbs				
C	Precast concrete class 25/12 kerb size 125 x 250mm to B.S.340 type A finished fair on all exposed surfaces with one rounded and chamfered edge bedded, jointed and pointed in cement mortar (1:3) laid on and including 100 x 325mm plain concrete (1:3:6) - 50mm foundation haunched upon one side : including all necessary excavations, disposal and formwork : all to Engineer's detail	Lm	620.00		
D	Ditto : curved on plan to varying radii	Lm	50.00		
	Channels				
E	Precast concrete 25/12 kerbs size 125 x 250mm and channel size 125 x 110mm bedded, jointed and pointed in cement mortar (1:3) laid on and including 450 x 100mm plain concrete (1:3:6) - 50mm foundation haunched up on one side : including all necessary excavations, disposal and formwork : all to Engineer's detail	Lm	320.00		
F	Ditto : curved on plan to varying radii	Lm	50.00		
			<i>Carried forward</i>		

PROPOSED EXTERNAL WORKS - GATUNDU LEVEL 5 HOSPITAL ROAD AND WALKWAY

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
			<i>Brought down</i>		
	Road marking paint				
	<u>Prepare and apply one undercoat and two finishing coats high quality bituminous paint as supplied by an approved Manufacturer: on concrete surfaces: to</u>				
A	Kerbs : 200 - 300mm girth : black and white stripes.	Lm			620.00
B	Roads : 100mm wide : white	Lm			320.00
C	Roads : 100mm wide : yellow	Lm			320.00
	Steps				
D	Allow a provisional sum of Kshs 80,000.00 for external steps to footpaths	Sum	1.00		
Total to summary					

PROPOSED EXTERNAL WORKS - GATUNDU LEVEL 5 HOSPITAL STORM WATER DRAINAGE

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	<p>ELEMENT No. 2</p> <p>STORM WATER DRAINAGE (ALL PROVISIONAL)</p> <p><u>Installation works to include testing to Civil Engineer's and statutory approvals</u></p> <p><u>Excavate the following trenches: part backfill and compact selected excavated material: remove surplus spoil from site: grade and compact bottoms: planking and strutting: including excavating in compacted fill: for:</u></p>				
A	<p>800mm wide (top) and 450mm wide (bottom) open drains: 1000mm (average) depth: to approval.</p>	Lm	90.00		
	<p>Side slabs</p>				
B	<p>600 x 600 x 75mm thick precast concrete side slab on slopping walls of trench internally and jointed with cement sand mortar 1:3</p>	Sm	90.00		
C	<p>100mm thick compacted murram base and surround to IBD drains</p>	Sm	50.00		
	<p>IBD</p>				
D	<p>75mm thick precast concrete inverted block drain; jointed in cement sand mortar 1:3; laid in trenches (measured separately); reinforced with fabric mesh ref A142 to Engineer's detail; size 450 x 300mm deep (internal)</p>	Lm	90.00		
Total to summary					

PROPOSED EXTERNAL WORKS - GATUNDU LEVEL 5 HOSPITAL SUMMARY

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	<u>SUMMARY PAGE</u>				
1	ELEMENT 1: ROADS AND WALKWAYS				
2	ELEMENT 2: STORM WATER DRAINAGE				
3	ALLOW A SUM OF 617,580.54= FOR CONTINGENCY TO BE USED FOR ANY UNFORESEEN WORKS BY THE PROJECT MANAGER				
Total to tender					

SECTION VII - BILL OF QUANTITIES

Notes for preparing Bills of Quantities

1.0 The objectives of the Bills of Quantities are;

- (a) to provide sufficient information on the quantities of Project 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 Project executed.

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

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

(a) **Preliminaries.**

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

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

(b) **Work Items**

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

- (ii) Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage or waste. Quantities should be rounded up or down where appropriate.
- (iii) The following units of measurement and abbreviations are recommended for use.

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

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

(c) Daywork Schedule

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

- (i) a list of the various classes of labour, and materials for which basic Day work rates or prices are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Work executed on a Day work basis; and
- (ii) a percentage to be entered by the tenderer against each basic Day work Subtotal amount for labour, materials

and plant representing the Contractor's profit, overheads, supervision and other charges.

(d) Provisional Quantities and Sums

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

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

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

(e) Summary

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

CONSTRUCTION

INSTRUCTIONS TO TENDERER REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.3.1	<i>The tenderer are invited to make site visits to the Kenyatta University Teaching, Research and Referral Hospital – Gatundu Annex site to enable them confirm the Conditions facility and detailed scope of project. The tenderer shall bear all costs associated with such site visits.</i>

SECTION VIII – STANDARD FORM

- (i) Form of Invitation for Tenders
- (ii) Form of Tender
- (iii) Letter of Acceptance
- (iv) Form of Agreement
- (v) Form of Tender Security
- (vi) Performance Bank Guarantee
- (vii) Bank Guarantee for Advance Payment
- (viii) Qualification Information
- (ix) Tender Questionnaire
- (xi) Confidential Business Questionnaire
- (x) Statement of Foreign Currency Requirement
- (xi) Details of Sub-Contractors
- (x) Request for Review Form

FORM OF INVITATION FOR TENDERS

_____ *[date]*

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

Dear Sirs:

Reference: _____ *[Contract Name]*

You have been prequalified to tender for the above project.

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

A complete set of tender documents may be purchased by you from _____

_____ *[mailing address, cable/telex/facsimile numbers].*

Upon payment of a non-refundable fee of Kshs _____

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

_____ *[address and location]*

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

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

Yours faithfully,

_____ Authorised Signature

_____ *Name and Title*

FORM OF TENDER

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

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Project, we, the undersigned offer to construct, install and complete such Project and remedy any defects therein for the sum of Kshs. _____ *[Amount in figures]* Kenya Shillings _____ *[Amount in words]*
2. We undertake, if our tender is accepted, to commence the Project as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Project comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until _____ *[Insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20 _____

Signature _____ in the capacity of _____

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

Witness; Name _____

Address _____

Signature _____

Date _____

LETTER OF ACCEPTANCE
[letterhead paper of KUTRRH]

_____ [date]

To: _____
[name of the Contractor]

[address of the Contractor]

Dear Sir,

This is to notify you that your Tender dated _____
for the execution of _____
[name of the Contract and identification number, as given in the Tender documents] for
the Contract Price of Kshs. _____ [amount in figures][Kenya
Shillings _____ (amount in words)] in accordance with the
Instructions to Tenderer is hereby accepted.

You are hereby instructed to proceed with the execution of the said Project in accordance
with the Contract documents.

Authorized Signature

Name and Title of Signatory

Attachment : Agreement

FORM OF AGREEMENT

THIS AGREEMENT, made the _____ day of _____ 20 _____
between _____ of [or whose registered
office is situated at] _____
(hereinafter called “KUTRRH ”) of the one part AND
_____ of [or whose registered
office is situated at] _____
(hereinafter called “the Contractor”) of the other part.

WHEREAS KUTRRH is desirous that the Contractor executes

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

NOW THIS AGREEMENT WITNESSETH as follows:

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

complete the Project and remedy any defects therein in conformity in all respects with the provisions of the Contract.

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

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

The common Seal of _____

Was hereunto affixed in the presence of _____

Signed Sealed, and Delivered by the said _____

Binding Signature of Employer _____

Binding Signature of Contractor _____

In the presence of (i) Name _____

Address _____

Signature _____

[ii] Name _____

Address _____

Signature _____

FORM OF TENDER SECURITY

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

KNOW ALL PEOPLE by these presents that WE having our registered office at.....(hereinafter called “the Bank”), are bound unto(hereinafter called “KUTRRH ”) in the sum of Kshs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this Day of20.....

THE CONDITIONS of this obligation are:

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

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

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

[date]

[signature of the Bank]

[witness]

[seal]

PERFORMANCE BANK GUARANTEE

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

Dear Sir,

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

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

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

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

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

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

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

SIGNATURE AND SEAL OF THE GUARANTOR _____

Name of Bank _____

Address _____

Date _____

BANK GUARANTEE FOR ADVANCE PAYMENT

To: _____ *[name of Employer]* _____ *(Date)*
_____ *[address of Employer]*

Gentlemen,

Ref: _____ *[name of Contract]*

In accordance with the provisions of the Conditions of Contract of the above-mentioned Contract, We, _____ *[name and Address of Contractor]* (hereinafter called "the Contractor") shall deposit with _____ *[name of Employer]* a bank guarantee to guarantee his proper and faithful performance under the said Contract in an amount of Kshs. _____ *[amount of Guarantee in figures]* Kenya Shillings _____ *[amount of Guarantee in words]*.

We, _____ *[bank or financial institution]*, as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to _____ *[name of Employer]* on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding Kshs _____ *[amount of Guarantee in figures]* Kenya Shillings _____ *[amount of Guarantee in words]*, such amount to be reduced periodically by the amounts recovered by you from the proceeds of the Contract.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Project to be performed thereunder or of any of the Contract documents which may be made between _____ *[name of Employer]* and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until _____ *(name of Employer)* receives full payment of the same amount from the Contract.

Yours faithfully,

Signature and Seal _____

Name of the Bank or financial institution _____

Address _____

Date _____

Witness: Name: _____

Address: _____

Signature: _____

Date: _____

QUALIFICATION INFORMATION

1. Individual Tenderer or Individual Members of Joint Ventures

1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate);

Place of registration: _____

Principal place of business _____

Power of attorney of signatory of tender _____

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

Year	Volume	
	Currency	Value

1.3 Work performed as Main Contractor on project of a similar nature and volume over the last five years. Also list details of work under way or committed, including expected completion date.

Project name	Name of client and contact person	Type of work performed and year of completion	Value of Contract
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

1.4 Major items of Contractor's Equipment proposed for carrying out the Project. List all information requested below.

Item of Equipment	Description, Make and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
_____	_____	_____	_____
_____	_____	_____	_____

_____ (etc .)			
------------------	--	--	--

1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data.

Position	Name	Years of experience (general)	Years of experience in proposed position
Project Manager			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
(etc.)			

1.6 Financial reports for the last five years: balance sheets, profit and loss statements, auditor's reports, etc. List below and attach copies.

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

1.8 Name, address and telephone, telex and facsimile numbers of banks that may provide reference if contacted by KUTRRH.

1.9 Statement of compliance with the requirements of Clause 1.2 of the Instructions to Tenderer.

1.10 Proposed program (work method and schedule) for the whole of the Project.

2 Joint Ventures

2.4 The information listed in 1.1 – 1.10 above shall be provided for each partner of the joint venture.

2.5 The information required in 1.11 above shall be provided for the joint venture.

2.6 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture

2.7 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:

- a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
- c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

TENDER QUESTIONNAIRE

Please fill in block letters.

- 1. Full names of tenderer
.....
- 2. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below)
.....
- 3. Telephone number (s) of tenderer
.....
- 4. Telex address of tenderer
.....
- 5. Name of tenderer's representative to be contacted on matters of the tender during the tender period
.....
- 6. Details of tenderer's nominated agent (if any) to receive tender notices. This is essential if the tenderer does not have his registered address in Kenya (name, address, telephone, telex)
.....
.....

Signature of Tenderer

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

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part 1 – General

Business Name

Location of business premises; Country/Town.....

Plot No..... Street/Road

Postal Address..... Tel No.....

Nature of Business.....

Current Trade Licence No..... Expiring date.....

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

Name of your bankers.....

Branch.....

Part 2 (a) – Sole Proprietor

Your name in full..... Age.....

Nationality..... Country of Origin.....

*Citizenship details

Part 2 (b) – Partnership

Give details of partners as follows:

	<i>Name in full</i>	<i>Nationality</i>	<i>Citizenship Details</i>	<i>Shares</i>
1.....				
2.....				
3.....				

Part 2(c) – Registered Company:

Private or public.....

State the nominal and issued capital of the Company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows:

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

1.....

2.....

3.....

4.....

Part 2(d) – Interest in the Firm:

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

I certify that the information given above is correct.

.....
(Title)

.....
(Signature)

.....
(Date)

- Attach proof of citizenship

STATEMENT OF FOREIGN CURRENCY REQUIREMENTS

(See Clause 23] of the Conditions of Contract)

In the event of our Tender for the execution of _____
_____ (*name of Contract*) being accepted, we would
require in accordance with Clause 21 of the Conditions of Contract, which is
attached hereto, the following percentage:

(Figures)..... (Words).....

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

Currency in which foreign exchange element is required:

.....

Date: The Day of 20.....

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

Maximum foreign currency requirement shall be _____ (percent) of the
Contract Sum, less Fluctuations.

(Signature of Tenderer)

DETAILS OF SUB-CONTRACTORS

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

Failure to comply with this requirement may invalidate the tender.

(1) Portion of Project to be sublet:

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

.....

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

.....

.....

.....

(2) Portion of Project to sublet:

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

.....

.....

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

.....

.....

[Signature of Tenderer]

Date

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

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

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

FORM RB 1

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
.....dated the...day of20.....in the matter of Tender
No.....of20...

REQUEST FOR REVIEW

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

- 1.
- 2.
- etc.

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

- 1.
- 2.
- etc

SIGNED(Applicant)

Dated on.....day of/...20...

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on
day of20.....

SIGNED
Board Secretary