



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES & IRRIGATION
STATE DEPARTMENT FOR CROP DEVELOPMENT**

**KENYA CEREAL ENHANCEMENT PROGRAMME – CLIMATE RESILIENT AGRICULTURAL
LIVELIHOODS WINDOW
(KCEP-CRAL)
P.O. BOX 30028 - 00100, KILIMO HOUSE,
CATHEDRAL ROAD, NAIROBI**

**TENDER FOR SPOT IMPROVEMENT WORKS FOR ROADS LEADING TO NKONDI
STORAGE FACILITY:
MOALF/SDCD/KCEP-CRAL/PROC/029/2018-2019**

**CLOSING DATE: 16th July 2019
AT: 10.00 AM EAT**

**Mandatory Site Visit: To be conducted on 24th June 2019 at 1430hrs (2.30pm) at
Nkondi store in Tharaka South Sub County approximately 62 kms from Kathwana town**

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1. SECTION I: INVITATION FOR TENDERS

TENDER NAME	TENDER FOR SPOT IMPROVEMENT WORKS FOR ROADS LEADING TO NKONDI STORAGE FACILITY
TENDER REFERENCE NO	MOALF/SDCD/KCEP-CRAL/PROC/029/2018-2019

The Kenya Cereal Enhancement Programme – Climate Resilient Agricultural Livelihoods Window (KCEP-CRAL) is a partnership between the Government of Kenya, the European Union and the International Fund for Agricultural Development (IFAD) including grant resources from the Adaptation of Smallholder Agriculture Programme-ASAP. The Programme is expected to be completed in September 2022. It is implemented by Ministry of Agriculture, Livestock, Fisheries and Irrigation and supervised by IFAD. The overall goal is to contribute to the reduction of rural poverty and food insecurity of smallholders in the targeted Counties by developing their economic potential while improving their natural resources management capacity and resilience to climate change in an increasingly fragile ecosystem.

1.1 Scope of Work

The scope of works shall be as described in the tender document.

1.2 Qualification for Tendering

Mandatory Requirements

The following must be submitted together with the bid;

- 1) Certified Copy of Certificate of incorporation
- 2) Certified Copy of Valid Registration Certificate with the National Construction Authority in the classes specified in the appendix to instructions to tenderers.
- 3) Certified Copy of Valid National Construction Authority Practicing License in the classes specified above
- 4) Copy of Valid Tax Compliance Certificate (Will be verified on the KRA TCC Checker)
- 5) Certified copy of Valid Single Business Permit
- 6) Certified copy of recent CR 12 form (Issued within the last 12 months from the Tender Opening Date).
- 7) Certified copy of Valid Certificate of Registration for access to government procurement opportunities, from The National Treasury or County Governments (For Disadvantaged groups; women, youth and Persons with Disability – Category Small Works & Engineering. (Certificates may be verified from the issuing Agencies)
- 8) Current Sworn Affidavit not more than 3 months from the tender opening date
- 9) The tenderer shall furnish, as part of its tender, a tender security for the amount of Ksh 190,000.00 with a Validity period of 150days

NOTE:

1. All Certification of Documents shall be original and executed by a Commissioner for Oaths or Notaries Public
2. Certificates/Licenses may be verified from or with the Issuing Authorities/Agencies

1.3 Other Requirements:

As specified in the respective tender documents covering the following: -

- 1) Similar previous experience where applicable.
- 2) Professional and Technical Personnel.
- 3) Current work load.
- 4) Litigation history (provide sworn affidavit) should have been sworn within 3 months of the tender opening date)

1.4 Eligibility:

- a) **To enhance equity, bidders shall bid for a maximum of two (2) Tenders under this Tender Notice. Bidders who participates in more than two (2) tenders shall be disqualified.**
- b) **Director (s) bidding under different companies for the same tender shall be disqualified**
- c) **Director (s) bidding under different companies should not participate in more than two (2) tenders**
- d) **Only those bidders registered in the Category as indicated in the tender document shall bid for the respective tenders**
- e) **Any form of Canvassing will lead to disqualification**

The procurement for the spot improvement works for roads shall be conducted in adherence to the IFAD procurement guidelines and the PPAD ACT 2015.

There shall be mandatory pre-tender site visits or Pre - Bid Conferences as specified in the Tender Notice:

Mandatory Site Visit: To be conducted on 24th June 2019 at 1430hrs (2.30pm) at Nkondi store in Tharaka South Sub County approximately 62 kms from Kathwana town

A representative of the Programme shall be available to meet the intending tenderers at the Site. Tenderers must provide their own transport. The representative will not be available at any other time for site inspection visits. Each tenderer shall complete the Certificate of Tenderer's Visit to the Site at the time of the organized site visit. Non-attendance of the Mandatory site and Pre-tender meeting visit will lead to automatic disqualification of a Tenderer.

The Kenya Cereal Enhancement Programme-Climate Resilient Agricultural Livelihoods Window (KCEP-CRAL) invites sealed tenders from eligible and competent candidates for the **Spot improvement works for Roads leading to Nkondi Storage Facility**

The works to be carried out under this contract comprises of Construction of a drift and related works and the construction of small span box culvert and its related works. Drawings are provided for the box culvert that indicates the measurement of the box culvert to be constructed and the schedule for reinforcement.

1.5 Invitation to Tenderers

- 1.5.1 Special precautions shall be required throughout the contract period to avoid damage to the existing structures and other services within the site. The Contractor shall allow for making good any damage arising from his actions during execution of this contract at his own expense.

- 1.5.2 Interested bidders may obtain further information from and inspect the tender document in English from KCEP-CRAL procurement office situated at KALRO KABETE grounds, along Waiyaki Way in Westlands, before the tender closing date within working hours from 8.30 am to 4.30 pm on Mondays to Fridays, except on public holidays.
- 1.5.3 The document shall be downloaded FREE OF CHARGE from the Ministry's website: **www.kilimo.go.ke** under "tender" links or from the Programme Website **www.kcepcral.go.ke**
- 1.5.4 Eligible bidders must forward their particulars immediately for records and any further tender clarifications and addenda. Downloaded copies are FREE. Email particulars to **tenders.kcepcralprogramme@gmail.com**
- 1.5.5 All bidders are also advised to regularly visit the above Programme website, to obtain any additional information/addendum on the tender that may be issued before the closing date. The website will also be used to publish and publicize the notifications to both the successful and unsuccessful bidders.
- 1.5.6 Prices quoted should be net inclusive of all taxes, must be in Kenya shillings and shall remain valid **for (120) days** from the closing date of tender.
- 1.5.7 Tenders must be accompanied by security in the format specified in the attached form of tender Security, in a bank's letterhead, and amount indicated. The tender must be delivered in plain sealed envelope clearly marked "**TENDER FOR SPOT IMPROVEMENT WORKS FOR ROADS LEADING TO NKONDI STORAGE FACILITY: MOALF/SDCD/KCEP-CRAL/PROC/029/2018-2019**"
- 1.5.8 The **original** and **one** copy of the tender must be delivered to and dropped in the tender box situated at the reception of MOALF Ground floor Kilimo house, Cathedral Road. so as to reach the below address
**The Principal Secretary,
State Department for Crop development,
P.O. Box 30028-00100,
Kilimo House, cathedral road, Nairobi
On or before: 16th July 2019 at 10.00am**
- Bulky Tenders shall be received, stamped and recorded in the Supply Chain Management Office on 4th Floor on or before the above date and time**
- 1.5.9 Tenders will be opened at **16th July 2019 at 10.30am**. In the presence of the candidates' Representatives who choose to attend at MOALF ASCU boardroom on Upper Floor, Kilimo House.

PROGRAMME COORDINATOR

SECTION II - INSTRUCTIONS TOTENDERERS

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2. SECTION II - INSTRUCTION TO TENDERERS

Note: The tenderer must comply with the following conditions and instructions and failure to do so is liable to result in rejection of the tender.

GENERAL

2.1 Definitions

- a) "Tenderer" means any persons, partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications, Drawings and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative.
- b) "Approved tenderer" means the tenderer who is approved by the Employer
- c) Any noun or adjective derived from the word "tender" shall be read and construed to mean the corresponding form of the noun or adjective "bid". Any conjugation of the verb "tender" shall be read and construed to mean the corresponding form of the verb "bid."
- d) "Employer" means The Kenya Cereal Enhancement Programme-Climate Resilient Agricultural Livelihoods Window (KCEP-CRAL)
- e) Throughout these bidding documents, the terms bid and tender and their derivatives (bidder/tenderer, bid/tendered, bidding/tendering etc.) are synonymous, and day means calendar day. Singular also means plural.

2.2 Eligibility and Qualification Requirements

2.2.1 Eligibility requirements

This Invitation for Tenders is open to all tenderers eligible as described in the Appendix to Instructions to Tenderers.

This invitation to bid is open to all bidders who are legally registered or incorporated in the Republic of Kenya as of the time of bid submission. Registration with the National Construction Authority (NCA) as a contractor is mandatory.

Bidders shall not have a conflict of interest. Bidders shall be considered to have conflict of interest, if they participated as a consultant in the preparation of the design, documentation or technical specifications of the works that are the subject of this bidding other than as far as required by the Employer

2.2.2 Qualification Requirements

2.2.2.1 To be qualified for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility pursuant to section 55 of the PPAD ACT 2015 and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to submit;

- a) Details of experience and past performance of the tenderer on the works of a similar nature and details of current work on hand and other contractual commitments.

- b) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site. Major items of construction plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.
- c) Details of sub-contractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Condition of Contract.
- d) A draft Program of Works in the form of a bar chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Programme Engineer.
- e) Details of any current litigation or arbitration proceedings in which the tenderer is involved as one of the parties.

2.2.3 Joint Ventures

Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements:-

- (a) The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners
- (b) One of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners
- (c) The partner in charge shall be authorized to incur liabilities and receive instructions for an on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender)
- (e) A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

2.3 Cost of Tendering

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

2.3.2 The procuring entity shall allow the tenderer to view the tender document free of charge before purchase.

2.3.3 The document shall be downloaded **FREE OF CHARGE** from the Ministry's website: www.kilimo.go.ke under "tender" links or from the Programme Website www.kcepcral.go.ke

2.4 Site Visit

- 2.4.1** The tenderer is advised to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the Site shall be the tenderer's own responsibility
- 2.4.2** The tenderer and any of his personnel or agents will be granted permission by the Employer to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, his personnel or agents, will release and indemnify the Employer from and against all liability in respect of, and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.
- 2.4.3** The Employer shall organize a site visit at a date to be notified. A representative of the Employer will be available to meet the intending tenderers at the Site.
- 2.4.4** Tenderers must provide their own transport. The representative will not be available at any other time for site inspection visits.
- 2.4.5** Each tenderer shall complete the Certificate of Tenderer's Visit to the Site, whether he in fact visits the Site at the time of the organized site visit or by himself at some other time.
- 2.4.6** The Employer will conduct a Site Visit concurrently with the pre-bid meeting referred to in Clause 19, attendance for which is mandatory for all bidders. Failure to attend the site visit by any bidder will lead to disqualification of his /her bid.
- 2.4.7** The bidders' representatives who are present shall sign a register while the employer's representative shall sign the Certificate of Bidder's Visit to Site evidencing bidders' attendance.

2.5 Tender Documents

- 2.5.1** The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 2.8 of these instructions to tenderers.
- a) Form of Invitation for Tenders
 - b) Instructions to Tenderers
 - c) Form of Tender
 - d) Appendix to Form of Tender
 - e) Form of Tender Surety
 - f) Statement of Foreign Currency Requirements
 - g) Tender and Confidential Business Questionnaires
 - h) Details of Sub contractors
 - i) Schedules of Supplementary Information
 - j) General Conditions of Contract – Part I
 - k) Conditions of Particular Application – Part II
 - l) Specifications
 - m) Bills of Quantities
 - n) Drawings
 - o) Declaration Form
- 2.5.2** The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 2.24.2 Instructions to

Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.

- 2.5.3** All recipients of the documents for the proposed Contract for the purpose of submitting a tender (whether they submit a tender or not) shall treat the details of the documents as "private and confidential".

2.6 Inquiries by tenderers

- 2.6.1** A tenderer making an inquiry relating to the tender document may notify the Employer in writing or by telex, cable or facsimile at the Employer's mailing address indicated in the Invitation to Tender. The Employer will respond in writing to any request for clarification which he receives earlier than 10 days prior to the deadline for the submission of tenders. Written copies of the Employer's response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased the tender documents.

2.7 Amendment of Tender Documents

- 2.7.1** The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.
- 2.7.2** At any time prior to the deadline for submission of tenders the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.
- 2.7.3** Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them.
- 2.7.4** In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Employer may, at his discretion, extend the deadline for the submission of tenders.

PREPARATION OF TENDER

2.8 Language of Tender

- 2.8.1** The tender and all correspondence and documents relating to the tender exchanged between the tenderer and the Employer shall be written in the English language. Supporting documents and printed literature furnished by the tenderer with the tender may be in another language provided they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the tender, the English language shall prevail.

2.9 Documents Comprising the Tender

- 2.9.1** The tender to be prepared by the tenderer shall comprise:
- 1) The Form of Tender and Appendix thereto
 - 2) Tender Security
 - 3) The Priced Bills of Quantities and Schedules
 - 4) The information on eligibility and qualification
 - 5) Any other materials required to be completed and submitted in accordance with the Instructions to Tenderers.
- The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 2.14.2 regarding the alternative forms of Tender Surety.

2.10 Tender Prices

- 2.10.1** All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Bills of Quantities shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialed by the person or persons signing the tender. A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not. Items against which no rate or price is entered by the tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.
- 2.10.2** The prices and unit rates in the Bills of Quantities are to be the full [all- inclusive] value of the Work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause prior to the deadline for submission of tenders, shall be included in the rates and prices and the total Tender Price submitted by the tenderer.
- 2.10.3** Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.
- 2.10.4** Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.
- 2.10.5** Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Bills of Quantities for Contingencies and Variation of Prices [V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.
- 2.10.6** The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of basic unit rates for the supply of items listed where appropriate. The Employer may require the tenderer to justify such rates so obtained from the suppliers or manufacturers.
- 2.10.7** The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the Provisions of the Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other supporting information as required
- 2.10.8** Contract price variations shall not be allowed within the first 12 months of the contract.
- 2.10.8.1** Where quantity contract variation is allowed, the variation shall not exceed 20% of the original contract quantity.
- 2.10.8.2** Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.
- 2.10.8.3** The cumulative value of all contract variations do not result in an increment of the total contract price by more than twenty five (25) per cent of the original contract price.

2.11 Currencies of Tender and Payment

2.11.1 Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.

2.12 Tender Validity

2.12.1 The tender shall remain valid and open for acceptance for a **period of 120 days** from the specified date of tender opening or from the extended date of tender opening

2.12.2 In exceptional circumstances prior to expiry of the original tender validity period, the Employer may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing or by cable, telex or facsimile. A tenderer may refuse the request without forfeiting his Tender Surety. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Surety correspondingly.

2.13 Tender Security

2.13.1 The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix to Instructions to Tenderers.

2.13.2 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in one of the following forms;

- a. Cash.
- b. A bank Guarantee.
- c. Such insurance guarantee approved by the Authority.
- d. Letter of credit.

2.13.3 The tender security shall not exceed 2 percent of the tender price.

2.13.4 The Tender Security shall be valid at least thirty (30) days beyond the tender validity period.

2.13.5 Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive.

2.13.6 The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible as but not later than twenty eight (28) days after expiration of the tender validity period. The Tender Surety of the successful tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.

2.13.7 The Tender Surety may be forfeited:

- a) if a tenderer withdraws his tender during the period of tender validity: or
- b) in the case of a successful tenderer, if he fails, within the specified time limit
 - I. to sign the Agreement, or
 - II. to furnish the necessary Performance Security
- c) If a tenderer does not accept the correction of his tender price pursuant to clause 2.25.

2.14 No Alternative Offers

2.14.1 The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix.

2.14.2 Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture. A tenderer who submits or participates in more than one tender will be disqualified.

2.14.3 The tenderer shall not attach any conditions of his own to his tender. If a counter offer is given, this shall be deemed as non-responsive.

2.14.4 The tender price must be based on the tender documents. The tenderer is not required to present alternative construction options and he shall use without exception, the Bills of Quantities as provided, with the amendments as notified in tender notices, if any, for the calculation of his tender price. Any tenderer who fails to comply with this clause will be disqualified.

2.15 Pre-tender Meeting

2.15.1 If a pre-tender meeting is convened, the tenderer's designated representative is invited to attend at the venue and time in the Invitation to Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

2.15.2 The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than five (5) days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:

- a) Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the tender documents.
- b) Any modification of the tender documents listed in – Clause 2.6.1 which may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 2.8.1 and not through the minutes of the pre- tender meeting.

2.15.3 Non- attendance at the pre-bid meeting **shall** be cause for disqualification of a bidder.

2.16 Format and Signing of Tenders

2.16.1 The tenderer shall prepare his tender as outlined in clause 9 above and mark appropriately one set "ORIGINAL" and the other "COPY".

2.16.2 The copy of the tender and Bills of Quantities 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. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender.

2.16.3 The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

SUBMISSION OF TENDERS

2.17 Sealing and Marking of Tenders

- 2.17.1** The tenderer shall seal the original and copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer separate envelope.
- 2.17.2** The inner and outer envelopes shall be addressed to the Employer at the address stated in the Appendix to Instructions to Tenderers and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of tenders stated in the said Appendix.
- 2.17.3** The inner envelopes shall each indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late", while the outer envelope shall bear no mark indicating the identity of the tenderer.
- 2.17.4** If the outer envelope is not sealed and marked as instructed above, the Employer will assume no responsibility for the misplacement or premature opening of the tender. A tender opened prematurely for this cause will be rejected by the Employer and returned to the tenderer.

2.18 Deadline for Submission of Tenders

- 2.18.1** Tenders must be received by the Employer at the address specified in clause 2.18.2 and on the date and time specified in the Letter of Invitation, subject to the provisions of clause 2.19.4 and 2.19.5
- 2.18.2** Tenders delivered by hand must be placed in the "tender box" provided in the office of the Employer.
- 2.18.3** Proof of posting will not be accepted as proof of delivery and any tender delivered after the above stipulated time, from whatever cause arising will not be considered.
- 2.18.4** The Employer may, at his discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline shall thereafter be subject to the new deadline as extended.
- 2.18.5** Any tender received by the Employer after the prescribed deadline for submission of tender will be returned unopened to the tenderer.

2.19 Modification and Withdrawal of Tenders

- 2.19.1** The tenderer may modify or withdraw his tender after tender submission, provided that written notice of the modification or withdrawal is received by the Employer prior to prescribed deadline for submission of tenders. The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of tenders, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.
- 2.19.2** No tender may be modified subsequent to the deadline for submission of tenders.

2.19.3 No tender may be withdrawn in the interval between the deadline for submission of tenders and the period of tender validity specified on the tender form. Withdrawal of a tender during this interval will result in the forfeiture of the Tender Surety.

2.19.4 Subsequent to the expiration of the period of tender validity prescribed by the Employer, and the tenderer having not been notified by the Employer of the award of the Contract or the tenderer does not intend to conform with the request of the Employer to extend the period of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Surety.

TENDER OPENING AND EVALUATION

2.20 Tender Opening

2.20.1 The Employer will open the tenders in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

2.20.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 2.20, will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the documents have been properly signed and whether the tenders are generally in order.

2.20.3 At the tender opening, the Employer will announce the tenderer's names, total tender price, tender price modifications and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.

2.20.4 The Employer shall prepare minutes of the tender opening including the information disclosed to those present.

2.20.5 Tenders not opened and read out at the tender opening shall not be considered further for evaluation, irrespective of the circumstances.

2.21 Process to be Confidential

2.21.1 After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenderers or other persons not officially concerned with such process until the award of Contract is announced.

2.21.2 Any effort by a tenderer to influence the Employer in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender.

2.22 Clarification of Tenders

2.22.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, 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 arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 2.25

2.22.2 No tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

2.23 Determination of Responsiveness

2.23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.

2.23.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.

2.23.3 Each price or unit rate inserted in the Bills of Quantities shall be realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.

2.23.4 A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.

2.24 Correction of Errors

2.24.1 Tenders determined to be substantially responsive shall be checked by the Employer for any arithmetic errors in the computations and summations. Errors will be corrected by the Employer as follows:

- a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
- b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case 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 Bills 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 Prime Cost 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 valuations 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 2.14
- g) The bidder shall within three (3) days after issuance of the written notice by the employer, or such further time as the employer may allow, correct his tender in such a manner as may be agreed or directed by the employer failing which the tender may be absolutely rejected and the bid security forfeited in accordance with sub-clause 2.13.7

2.25 Conversion to Single Currency

- 2.25.1** For compensation of tenders, the tender price shall first be broken down into the respective amounts payable in various currencies by using the selling rate or rates of the Central Bank of Kenya ruling on the for the submission of tenders.
- 2.25.2** The Employer will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Day works where priced competitively) to Kenya Shillings at the selling rates stated in clause 2.26.1

2.26 Evaluation and Comparison of Tenders

- 2.26.1** The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 2.24
- 2.26.2** In evaluating tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:
 - a) Making any correction for errors pursuant to clause 2.25
 - b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.
- 2.26.3** The Employer reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Employer, shall not be taken into account in tender evaluation.
- 2.26.4** Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.
- 2.26.5** If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 2.30 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.
- 2.26.6** 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.
- 2.26.7** Preference where allowed in the evaluation of tenders shall not exceed 15%

- 2.26.8** The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.26.9** The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 2.26.10** A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.
- 2.26.11** Poor past performance shall not be used as an evaluation criteria unless specifically provided for in the appendix.
- 2.26.12** Qualification will be based on meeting all of the technical criteria regarding the Applicant's general and particular experience, personnel and equipment capabilities as well as financial position. The Employer reserves the right to waive minor deviations, if they do not materially affect the capacity of an applicant to perform the contract. Subcontractor's experience and resources shall not be taken into account in determining the Applicant's compliance with qualifying criteria

2.26.13 Financial Evaluation

- 2.26.13.1** The Employer will compare the tenderers' rates with the Engineer's estimates for major items of construction. If some bids are seriously unbalanced or front loaded in relation to the Engineer's estimates for the major items of work to be performed under the contract, the Employer may require the bidder to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated contract payments, the Employer may require that the amount of the Performance Security set forth be increased at the expense of the bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the contract.

AWARD OF CONTRACT

2.27 Award Criteria

- 2.27.1** Subject to Sub-clause 2.28.2, the Employer will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works as required in Clause 2.2
- 2.27.2** The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.

2.28 Notification of Award

- 2.28.1** Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, telefax or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.

2.28.2 At the same time that the Employer notifies the successful tenderer that his tender has been accepted, the Employer shall notify the other tenderers that the tenders have been unsuccessful.

2.28.3 Within fourteen [14] days of receipt of the Form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.

2.28.4 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.

2.29 Performance Guarantee

2.29.1 Within fifteen [15] *days* of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in the amount stated in the Appendix to Instructions to Tenderers and in the format stipulated in the Conditions of Contract.

2.29.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by a reputable Bank approved by the Employer and located in the Republic of Kenya and shall be divided into two elements namely, a performance security payable in foreign currencies and a performance security payable in Kenya Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.

2.30 Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract. The Employer may award the Contract to the next ranked tenderer.

2.31 Contract Effectiveness

2.31.1 The Contract will be effective only upon signature of the Agreement between the Contractor and the Employer.

2.32 Advance Payment

2.32.1 An advance payment, if approved by the Employer, shall be made under the Contract, if requested by the Contractor, in accordance with clause 60.12 of the Conditions of Contract. The Advance Payment Guarantee shall be denominated in the proportion and currencies named in the form of foreign currency requirements. For each currency, a separate guarantee shall be issued. The guarantee shall be issued by a Bank located in the Republic of Kenya, or a foreign Bank through a correspondent Bank located in the Republic of Kenya, in either case subject to the approval of the Employer.

2.33 Corrupt or fraudulent practices

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

2.34 Execution Of Works

2.34.1 The work execution will be carried out based on the documents as listed below:

- a) Conditions of Contract Part I: General Conditions of Contract
- b) Conditions of Contract Part II (Conditions of Particular Application)
- c) Road Maintenance Manual
- d) Standard Specifications
- e) Special Specifications
- f) Supervision and Contract Evaluation Manual
- g) Bills of Quantities

1. **APPENDIX TO INSTRUCTIONS TO TENDERERS**

The following Appendix to Instructions to Tenderers shall complement or amend the provisions of the Instructions to Tenderers (Section II). Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 2.2.1	The invitation is open to all eligible, qualified and competent bidders registered with the National Construction Authority in category 4, 5, 6 and 7 only .
ITT 2.4	The document may also be downloaded FREE OF CHARGE from the Ministry's website: www.kilimo.go.ke under "tender" links or from the Programme Website http://www.kcepccral.go.ke/tenders
ITB 2.5.3	Mandatory Site Visit: To be conducted on 24TH June 2019 at 1430hrs (2.30pm) at Nkondi store in Tharaka South Sub County approximately 62 kms from Kathwana town <ul style="list-style-type: none"> - Bidders must Attend the pre-bid meeting/ visit - Bidders must sign the attendance register - Certificate must be signed by the employers representative
ITB 2.7.1	Tender Clarifications shall be addressed to: The Programme Coordinator, KCEP-CRAL Programme P.O. BOX 30028-00100, Nairobi, Kenya Email: tenders.kcepccralprogramme@gmail.com Mobile: 0770 174 188
ITB 2.13.1	Tenders shall remain valid for a period of one hundred and twenty (120) days from the date of submission
ITB 2.14.3	The tenderer shall furnish, as part of its tender, a tender security for the amount of Ksh 190,000.00 with a Validity period of 150days
ITB 2.19.1	The original and one copy of the tender must be delivered to and dropped in the tender box situated at the reception of MOALF Ground floor Kilimo house, Cathedral Road clearly marked “TENDER SPOT IMPROVEMENT WORKS FOR ROADS LEADING TO NKONDI STORAGE FACILITY: MOALF/SDCD/KCEP-CRAL/029/2018-2019” and addressed and delivered to: The Principal Secretary, State Department for Crop Development, P.O. Box 30028-00100, Kilimo House, cathedral road, Nairobi On or before: 16th July 2019 at 10.00am EAT Bulky Tenders shall be received, stamped and recorded in the Supply Chain Management Office on 4th Floor on or before the above date and time Tenders shall be opened immediately thereafter at 10.30am at ASCU Boardroom Upper Floor , Kilimo House, Nairobi
ITB 2.26.6 ITB 2.26.7	The preference for domestic bidders shall not be applicable for this bid

#	Evaluation Criteria	
1.	<p>Mandatory Evaluation Criteria: - Stage One: Mandatory / Preliminary Evaluation:</p> <ol style="list-style-type: none"> 1. Certified Copy of Certificate of Incorporation. 2. Certified Copy of Registration Certificate with the National Construction Authority (NCA) in Category 4, 5, 6, and 7 Only for Civil works- Roads 3. Valid NCA practicing license for the relevant NCA registration 4. Certified Copy of Valid Tax Compliance Certificate (will be verified on the KRA TCC Checker 5. Certified Copy of Valid business permit (trade license) 6. Certified copy of recent CR 12 form (Issued within the last 12 months from the Tender Opening Date). 7. Certified copy of Valid Certificate of Registration for access to government procurement opportunities, from The National Treasury or County Governments (For Disadvantaged groups; women, youth and Persons with Disability – Category Small Works & Engineering. (Certificates may be verified from the issuing Agencies) 8. Duly filled, signed and stamped business questionnaire form in all sections 9. Duly filled and Signed Form of Tender 10. Tender Security of Ksh 190,000.00 11. Mandatory Site Visit attendance certificate: <ul style="list-style-type: none"> ✓ Representatives of the Programme shall be available to meet the intending tenderers at the Site. Tenderers must provide their own transport. ✓ The representatives will not be available at any other time for site inspection visits. Each tenderer shall complete the Certificate of Tenderer’s Visit to the Site at the time of the organized site visit. ✓ Non- attendance of the Mandatory site and Pre-tender meeting visit will lead to automatic disqualification of a Tenderer. 12. Duly serialized and or paginated bid document including all the attachments in the bid document in a Sequential manner <p>Note:</p> <ul style="list-style-type: none"> ✚ Bidders shall ensure that all the mandatory forms and the standard forms attached in the bid document are duly filled, signed and stamped. ✚ All Certification of Documents shall be original and executed by a Commissioner for Oaths or Notaries Public ✚ Bidders shall ensure that the submitted bid is a well-organized bid document, with a reference table of contents including all the attachments in the bid. <p>All items must be submitted to proceed to the next stage.</p>	<p>Mandatory (Yes/ NO)</p>
2.	<p>Technical Evaluation</p>	<p>Pass/ Fail</p>
	<ol style="list-style-type: none"> 1. Provide evidence of successful completion as a prime contractor or sub-contractor in the execution of at least three roads rehabilitation or new construction projects of a similar nature and comparable in complexity to the proposed contract within the last three years for which 	

	<p>at least two must be in Kenya. (Attach Completion Certificates, contracts, letter of reference giving details of the contract, value, contact person and period of contract) <i>Note: Bidders should use the format provided in the standard form i.e. schedule of completed road works in the last three years</i></p> <p>2. Provide Evidence that the construction firm is equipped with skilled personnel that includes:</p> <ol style="list-style-type: none"> 1. The Site Agent should have a minimum of a diploma in civil engineering, construction management and other related fields while the Foreman should have a minimum of certificate in road construction or related fields : Must Attach copies of Qualification attained and CV- 2. Equipment, Machinery and Vehicles necessary for the spot roads improvement. 3. The bidder should list down, the plants and equipment that are in his ownership and the ones proposed for hire which should be suitable for executing contract works. – Applicants must attach evidence of ownership or hiring arrangements. <i>(Certified copies of log books for Ownership of Machines and Equipment. Those hiring MUST provide certified copies of Lease Agreement and certified copies of Logbooks)</i> <p><i>Note: Bidders should use the format provided in the standard form i.e key Personnel</i></p> <p>3. Provide the schedule of works clearly indicating the sequence of works to be carried out</p> <p>All the documents must be submitted to proceed to the next qualification and financial Evaluation</p>	
3	<p>Qualification Criteria</p> <p>Qualification will be based on meeting all of the above technical criteria regarding the Applicant’s general and particular experience, personnel and equipment capabilities as well as financial position. The Employer reserves the right to waive minor deviations, if they do not materially affect the capacity of an applicant to perform the contract. Subcontractor’s experience and resources shall not be taken into account in determining the Applicant’s compliance with qualifying criteria.</p> <p>The following shall be considered during post qualification:</p> <ol style="list-style-type: none"> 1. General Experience. The Applicant shall demonstrate an Average turnover for the last 3 years of Ksh 30,000,000.00. 2. Cash flow statement The Applicant should demonstrate that he has access to or has available, liquid assets, unencumbered real assets, lines or credit, and other financial means sufficient to meet the construction cash flow for a period of 3 months, estimated at 50% of the estimated tender sum. 	
4	Financial Evaluation	
	1. Award shall be done on the lowest evaluated total bid	

	<ol style="list-style-type: none"> 2. The bidder with the lowest evaluated financial bid will be recommended for the award of the contract for the works 3. If there is a tie on the lowest evaluated quoted sum price, The successful bidder that shall demonstrate the highest number of completed works 4. A person shall not be disqualified on the basis that a bidder quoted above or below a certain percentage of engineers estimate <p>Bidders are encouraged to avoid front-loading for the major items of work to be performed under the contract. The Employer may require the bidder to produce detailed price analyses for any or all items in the Bill of Quantities to demonstrate the internal consistency of those prices with the construction methods and schedule proposed.</p>	
2.31	<p>There shall be No advance payment for the spot improvement works for roads. No works, goods or services contract shall be paid for before they are executed or delivered</p>	

The Programme will verify information submitted. Any form of forgery or misinformation from the bidder shall lead to cancellation of the bid/award, institution of legal proceedings and blacklisting for all future KCEP-CRAL contracts.

Signature of Tenderer..... Date

3. SECTION III

3.1 CONDITIONS OF CONTRACT, PART I – GENERAL CONDITIONS

3.1.1 The Conditions of Contract, Part I – General Conditions, shall be those forming Part I of the "Conditions of Contract for works of Civil Engineering Construction, Fourth Edition 1987, re-printed in 1992 with further amendments, prepared by the *Federation Internationale des Ingenieurs Conseils* (FIDIC). The Conditions are subject to variations and additions set out in Part II hereof entitled "Conditions of Contract, Part II - Conditions of Particular Application".

3.1.2 The Conditions of Particular Application take precedence over the General Conditions of Contract.

3.1.3 Copies of the FIDIC Conditions of Contract can be obtained from:

FIDIC Secretariat

World Trade Center II, Geneva Airport

P.O. Box 311

CH-1215 Geneva 15

Switzerland

Fax: +41 22 799 4901

Telephone: +41 22 799 4900

Email: fidic@fidic.org

www.fidic.org

4. SECTION IV CONDITIONS OF CONTRACT PART II

4.1 CONDITIONS OF PARTICULAR APPLICATION)

The following Conditions of Particular Application shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The Particular Condition is preceded by the corresponding clause number of the General Conditions to which it relates.

Sub Clause 1.1 – Definitions

Amend this sub-clause as follows:

(a) (i) The "Employer" is the Kenya Cereal Enhancement Programme- Climate Resilient Agricultural Livelihoods Window (KCEP-CRAL)

(ii) The "Engineer" is the Programme Civil Engineer - Kenya Cereal Enhancement Programme- Climate Resilient Agricultural Livelihoods Window (KCEP-CRAL).

(b) (i) Insert in line 2 after the Bills Of Quantities", the following, "the rates entered by the Contractor (whether or not such rate be employed in computation of the Contract Price)," Amend subparagraph (b) (v) of Sub-Clause 1.1 by adding the following words at the end: The word "BID" is synonymous with "bid" and the word "Appendix to BID" with "Appendix to Bid" and the word "BID documents" with "bidding documents".

Add the following at the end of this sub-clause:

(h) (i) "Materials" means materials and other things intended to form or forming part of the Permanent Work

Sub Clause 2.1 - Engineer's Duties and Authority.

With reference to Sub-Clause 2.1 (b), the following shall also apply: The Engineer shall obtain the specific approval of the Employer before taking any of the following actions specified in Part 1:

- (a) Consenting to the subletting of any part of the works under Clause 4;
- (b) Certifying additional cost determined under Clause 12;
- (c) Determining an extension of time under Clause 44;
- (d) Issuing a variation under Clause 51;
- (e) Fixing rates or prices under Clause 52
- (f) The works specified under this Contract shall be executed, supervised and evaluated in accordance to the Contract Supervision and Evaluation Manual developed by the Ministry of Roads – Version 2012

Sub Clause 5.1 - Language and Law

The Contract document shall be drawn up in the ENGLISH LANGUAGE. Communication between the Contractor and the Engineer's Representative shall be in this given language.

(a) The Laws applicable to this Contract shall be the Laws of the Republic of Kenya.

Sub Clause 5.2 – Priority of Contract Documents

Delete the documents listed 1-6 and substitute:

- (1) The Contract Agreement (if completed)
- (2) The Letter of Acceptance;
- (3) The Bid and Appendix to Bid;

- (4) The Conditions of Contract Part II;
- (5) The Conditions of Contract Part I;
- (6) The Special Specifications;
- (7) The Standard Specification for Road and Bridge Construction, 1986;
- (8) The Drawings;
- (9) The priced Bills of Quantities
- (10) Other documents as listed in the Appendix to form of Bid

Sub Clause 10.1 - Performance Security

Replace the text of Sub-clause 10.1 with the following:

"The Contractor shall provide security for his proper performance of the Contract within 21 days after receipt of the Letter of Acceptance. The Performance Security shall be in the form of a bank guarantee as stipulated by the Employer in the Appendix to Bid. The Performance Security shall be issued by a bank incorporated in Kenya. The Contractor shall notify the Engineer when providing the Performance Security to the Employer.

"Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost, the Contractor, at the Engineers written request, shall promptly increase the value of the Performance Security by an equal percentage.

Sub Clause 10.2 - Validity of Performance Security

The Performance Security shall be valid until a date 28 days after the date of issue of the Defects Liability Certificate. The security shall be returned to the Contractor within 14 days of expiration.

Sub Clause 10. 3 - Claims under Performance Security

Delete the entire sub-clause 10.3.

Sub Clause 10. 4 - Cost Of Performance Security

The cost of complying with the requirements of this clause shall be borne by the Contractor.

Sub Clause 11. 1 - Inspection of Site

In line 17 after "affect his BID" add

"and the Contractor shall be deemed to have based his BID on all the aforementioned"

Delete the last paragraph completely and replace with the following:

"The Employer in no way guarantees completeness nor accuracy of the soil, materials, subsurface and hydrological information made available to the Contractor at the time of BIDDING or at any other time during the period of the Contract, and the Contractor shall be responsible for ascertaining for himself all information as aforesaid for the execution of works and his BID shall be deemed to have been priced accordingly

Sub Clause 11.2 - Access to Data

Data made available by the Employer in accordance with Clause 11.1 shall be deemed to include data listed elsewhere in the Contract as open for inspection at the address stipulated in the Appendix to Bid.

Sub Clause 14.1 Program to Be Submitted

The time within which the program shall be submitted shall be as specified in the Appendix to the Form of Bid.

This detailed program shall be based upon the program submitted by the Contractor as part of his BID, where this was required, and shall in no material manner deviate from the said program.

The program shall be in the form of a Critical Path Method Network (CPM Network) showing the order of procedure and a description of the construction methods and arrangements by which the Contractor proposes to carry out the works. It should also be supplemented by a time –bar chart of the same program. The program shall be coordinated with climatic, groundwater and other conditions to provide for completion of the works in the order and by the time specified. The program shall be revised at three-month intervals and should include a chart of the principle quantities of work forecast for execution monthly.

The Contractor shall submit to the Engineer not later than the day or date mentioned in the Appendix to the Form of Bid, a general description of his proposed arrangements and methods for the execution of the Works, including temporary offices, buildings, access roads, construction plant and its intended production output, working shift arrangements, labour strength, skilled and unskilled, supervision arrangements, power supply arrangements, supply of materials including a materials utilization program, stone crushing, aggregate production and storage, cement handling, concrete mixing and handling, methods of excavation, dealing with water, testing methods and facilities.

During the execution of the works, the Contractor shall submit to the Engineer full and detailed particulars of any proposed amendments to the arrangements and methods submitted in accordance with the foregoing.

If details of the Contractors proposals for Temporary Works are required by the Engineer for his own information the Contractor shall submit such details within fourteen days of being requested to do so.

The various operations pertaining to the works shall be carried out in such a progressive sequence as will achieve a continuous and consecutive output of fully completed road works inclusive of all bridge works and culverts within the time limits specified in the Contract. Generally the Contractor shall start at one end of the road and progress continuously towards the other without leaving any isolated section or sections of uncompleted road provided always that the site of the works has been acquired in its entirety and the encumbrances and services thereon removed.

The Contractor shall allow in his Programme for the following public holidays per calendar year during which the Contractor shall not be permitted to work.

- New Year's Day (1st January)
- Good Friday
- Easter Monday
- Labour day (1st May)
- Madaraka Day (1st June)
- Idd Ul Fitr
- Mashujaa Day (20th October)
- Jamhuri day (12th December)
- Christmas Day (25th December)
- Boxing day (26th December)

The Contractor shall also allow per calendar year for a further 2 unspecified public holidays which may be announced by the Government of Kenya with no prior notification upon which he shall not be permitted to work.

Sub clause 14.3- Cash Flow Estimate

The time within which the detailed cash flow estimate shall be submitted shall be as specified in the Appendix to the Form of Bid.

Sub clause 15.1- Contractor's Superintendence

Add the following at the end of the first paragraph of sub-clause 15.1:

"The Contractor shall, within seven (7) days of receipt of the Engineer's order to commence the works inform the Engineer in writing the name of the Contractor's Representative and the anticipated date of his arrival on site."

The Contractor shall also submit a specimen signature of his proposed Road Manager who SHALL be the signatory to payment of certificates/Monthly statements from the Contractor.

Sub clause 15.2- Language Ability and Qualifications of Contractor's Authorized Agent

Add the following Sub-clause 15.2

The Contractor's Agent or Representative on the site shall be an Ordinary Diploma Holder in Civil Engineering or equivalent, approved by the Engineer and shall be able to read and write English fluently.

The Contractor's Agent or Representative shall have at least 5 years' experience in road works.

Sub clause 16.2- Engineer at Liberty to Object

At the end of this Clause add

"by a competent substitute approved by the Engineer and at the Contractors own expense."

Add the following Sub-Clauses 16.3 and 16.4

Sub clause 16.3- Qualification and Language Ability of Superintending Staff

The Contractor's superintending staff shall meet the following minimum qualifications:

Should have a working knowledge of English or Kiswahili. Should any of the superintending staff not be able to meet this condition, the Contractor shall propose to the Engineer arrangements for provision of a sufficient number of interpreters of approved qualifications. The Engineer, at his discretion, may amend, approve or reject such arrangements or reject deployment of superintending staff not meeting the language requirements. The Engineer may at any time during the duration of the Contract amend any approved arrangements made for interpreters, which shall be implemented at the Contractors expense.

The key staff listed below must have academic qualifications from government-recognized institutions or equivalent institutions of the levels set out in Section 5, Part 6.

- Site Agent
- Site Surveyor
- Foremen

(b) Qualifications as above shall be subject to verification and approval on site by the Engineer or his representative on site before commencement of the said works.

Sub clause 16.4 – Employment of Local Personnel

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience who are Kenya citizens.

Sub clause 19.1- Safety, Security and Protection of The Environment

Add Sub-Clause-paragraph (d) of Sub-Clause 19 as follows:

Notwithstanding the Contractor's obligation under Sub-Clause-paragraph (a), (b) and 9(c) of Sub-Clause 19.1 of the Conditions of Contract, the Contractor shall observe the following measures with a view to reducing or elimination adverse environmental effects by the site works:

- (i) All quarries and borrow pits shall be filled and landscaped to their original state after extraction of construction material
- (ii) Soil erosion due to surface runoff or water from culverts or other drainage structures should be avoided by putting in place proper erosion control measures that shall include, but are not limited to grassing and planting if trees
- (iii) Long traffic diversion roads shall be avoided so as to minimize the effect of dust on the surrounding environment. In any case all diversions shall be kept damp and dust free
- (iv) Spillage of oils, fuels and lubricants shall be avoided and if spilt, shall be collected and disposed off in such a way as not to adversely affect the environment
- (v) Rock blasting near settlement areas shall be properly coordinated with the relevant officers of the Government so as to minimize noise pollution and community interference.

Sub clause 20.4 - Employers Risks

(c) Delete Sub-Clause (h) and substitute with;

(d) (h) any operation of the forces of nature (insofar as it occurs on site) which an experienced contractor:

(i) could not have reasonably foreseen, or

(ii) could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures:

(A) prevent loss or damage to physical property from occurring by taking appropriate measures or

(B) insure against such loss or damage

Sub clause 21.1 - Insurance of Works and Contractor's Equipment

Add the following words at the end of Sub-paragraph (a) and immediately before the last word of Sub-paragraph (b) of Sub-Clause 21.1:

"It being understood that such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred"

Delete the first sentence of this Clause and replace with the following:

"prior to commencement of the Works the Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 20, insure to the satisfaction of the Employer:"

Sub clause 21.2 – Scope of Cover

Amend sub-paragraph (a) of Sub-Clause 21.2 as follows:

Delete words "from the start of work at the site" and substitute the words "from the first working day after the Commencement Date"

Add the following as Sub-Clause (c) under Sub-Clause-Clause 21.2

(c) It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract.

Sub Clause 21.4 - Exclusions

Amend Sub-Clause 21.4 to read as follows:

"There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by the risks listed under Sub-Clause 20.4 sub-paragraph (a) (i) to(iv) of the Conditions of Particular Application."

Sub Clause 23.2 – Minimum Amount of Insurance

Add the following at the end of this Clause:

".. with no limits to the number of occurrences".

Sub Clause 25.1 – Evidence and Terms

Amend Sub-Claus OF INSURANCE 25.1 as follows:

Insert the words "as soon as practicable after the respective insurances have been taken out but in any case" before the words "prior to the start of work at the site"

Add the following Sub-Clauses 25.6, 25.7

Sub Clause 25.6 – Insurance Notices

Each policy of insurance effected by the Contractor for purposes of the Contract shall include a provision to the effect that the Insurer shall have a duty to give notice in writing to the Contractor and Employer of the date when a premium becomes payable. This shall not be more than thirty (30) days before that date and the policy shall remain in force until thirty (30) days after the giving of such notice.

Sub Clause 25.7 – Notification to Insurers

It shall be the responsibility of the Contractor to notify insurers under any of the insurance referred to in the preceding clauses 21, 23 and 24 on any matter or event, which by the terms of such insurance are required to be so notified. The Contractor shall indemnify and keep indemnified the Employer against all losses, claims, demands, proceedings, costs, charges and expenses whatsoever arising out of or in consequence of any default by the Contractor in complying with the requirements of this Sub-Clause whether as a result of avoidance of such insurance or otherwise.

Sub Clause 28.2 – Royalties

Add at the end of this Sub-Clause the following sentence:

"The Contractor shall also be liable for all payments or compensation if any that are levied in connection with the dumping of part or all of any such material."

Sub Clause 29.1 – Interference with Traffic

Supplement Sub-Clause 29.1 by adding the following sentence at the end:

"The Contractor will be permitted to use existing public roads for access to the site. The Contractor shall pay vehicle license tax and road maintenance duty in accordance with relevant regulations and shall obtain any necessary permits or licenses from relevant authorities for transporting his equipment."

Add the following sub clause 29.2:

Sub Clause 29.2 – Reinstatement and Compensation for Damages to Persons and Property

The Contractor shall reinstate all properties whether public or private which are damaged in consequence of the construction and, maintenance of the works to a condition as specified and at least equal to that prevailing before his first entry on them.

If in the opinion of the Engineer the Contractor shall have failed to take reasonable and prompt action to discharge his obligations in the matter of reinstatement, the Engineer will inform the Contractor in writing of his opinion, in which circumstances the Employer reserves the right to employ others to do the necessary work of reinstatement and to deduct the cost thereof from any money due or which shall become due to the Contractor.

The Contractor shall refer to the Employer without delay all claims which may be considered to fall within the provisions of Clause 22.1.

Sub Clause 34.2 – conditions of employment of labour

Add the following Sub-Clause 34.2 to 34.8

The Contractor shall be responsible for making all arrangements for and shall bear all costs relating to recruitment, obtaining of all necessary visas, permits or other official permission for movements of staff and labour.

Sub Clause 34.3 – fair wages

The Contractor shall, in respect of all persons employed anywhere by him in the execution of the Contract, and further in respect of all persons employed by him otherwise than in the execution of the Contract in every factory, Workshop or place occupied or used by him for the execution of the Contract, observe and fulfil the following conditions:

- a) The Contractor shall pay rates of wages, observe hours of labour and provide conditions of labour, housing, amenities and facilities not less favourable than those required by the latest Regulation of Wages (Building and Construction Industry) Order as of the time of bid submission, and subsequent amendments thereto, or in any wage scales, hours of work or conditions agreed by the Ministry of Labour or other Government Department in consultation with the appropriate wage fixing authority and generally recognized by other employees in the district whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- b) In the absence of any rates of wages, hours or conditions of labour so established the Contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other Employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- c) Where the absence of established rates of wages, hours and conditions of labour or the dissimilarity of the general circumstances in the trade of industry in which the Contractor is engaged prevent the Contractor from observing rates of wages, hours and conditions of labour ascertained under sub-paragraph (a) and (b) above the Contractor in fixing the rates of wages, hours and conditions of labour of his employees shall be guided by the advice of the Labour Department.
- d) The Contractor shall recognize the freedom of his employees to be members of trade unions.
- e) The Contractor shall maintain records in English of the time worked by, and the wages paid to, his employees. The Contractor shall furnish to the Engineer or Employer, if called

upon to do so, such particulars of the rates, wages and conditions of labour as the Employer or Engineer may direct.

- f) The Contractor shall at all times during the continuance of the contract display, for the information of his employees in every factory, workshop or place occupied or used by him for the execution of the Contract, a copy of this clause together with a notice setting out the general rates of wages, hours and conditions of labour of his employees.
- g) The Contractor shall be responsible for the observance of this clause by sub-Contractors employed in the execution of the works.

Sub Clause 34.4 – Breach of Fair Wages Clause

Any Contractor or Sub-Contractor who is found to be in breach of Fair Wages Clause shall cease to be approved as a Contractor or Sub-Contractor for such period as the Permanent Secretary for the Ministry of Transport and Infrastructure may determine.

Should a claim be made to the Employer alleging the Contractor's default in payment of Fair Wages of any workman employed on the Contract and if proof thereof satisfactory to the Employer is furnished by the Labour Authority, the Employer may, failing payment by the Contractor, pay the claims out of any monies due or which may become due to the Contractor under the Contract

Sub Clause 34.5 – Recruitment of Unskilled Labour

Any additional unskilled labour which is required by the Contractor for the works and which is not in his employ at the time of the acceptance of the BID shall be recruited by the Contractor from the Labour Exchange or Exchange or Exchanges nearest to the site or sites of the work.

Sub Clause 34.6 – Compensation for Injury

The Contractor shall in accordance with the Workmen's Compensation Act of the Laws of Kenya and any other regulations in force from time to time pay compensation for loss or damage suffered in consequence of any accident or injury or disease resulting from his work to any workman or other person in the employment of the Contractor or any Subcontractor.

Sub Clause 34.7 – Labour Standards

- (a) The Contractor shall comply with the existing local labour laws, regulations and labour standards
 - (b) The Contractor shall formulate and enforce an adequate safety program with respect to all work under his contract, whether performed by the Contractor or subcontractor. The Contractor has assurance from the Employer of cooperation where the implementation of these safety measures requires joint cooperation.
 - (c) Upon written request of the Employer the Contractor shall remove or replace any of his employees employed under this Contract.
- Add the following Sub-Clause 35.2 and 35.3.

Sub Clause 35.2 – records of safety and health

The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Engineer may from time to time prescribe.

Sub Clause 35.3 – reporting of accidents

The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify

the Engineer immediately by the quickest available means. The Contractor shall also notify the relevant authority whenever the Laws of Kenya require such a report.

Sub Clause 41.1 – commencement of works

Amend Sub-Clause 41.1 as follows:

Delete the words “as soon as is reasonably possible” in the first sentence and replace with “within the period stated in the Appendix to Bid”.

Sub Clause 43.1 – Time for Completion

Amend Sub-Clause 43.1 as follows:

Delete the words “within the time” to “such extended time” and substitute “by the date or dates stated or implied in Clause 14 of these Conditions of Particular Application.

Sub Clause 44.1 – Extension of Time for Completion

Add at the end of Sub-Clause 44.1 the following:

“Neither rains falling within the rainy seasons as occurs in Kenya nor floods caused by such rains shall be deemed exceptional weather conditions such as may fairly entitle the Contractor to an extension of time for the completion of the work.”

Sub Clause 45.1 – Restriction on Working Hours

Add at the end of Sub-Clause 45.1 the following:

“If the Contractor requests permission to work by night as well as by day, then if the Engineer shall grant such permission the Contractor shall not be entitled to any additional payments for so doing. All such work at night shall be carried out without unreasonable noise or other disturbance and the Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while or in carrying out night work and from and against all claims, demands, proceedings, costs, charges and expenses whatsoever in regard or in relation to such liability.

“In addition the Contractor will be required to provide, for any work carried out at night or recognized days of rest, adequate lighting and other facilities so that the work is carried out safely and properly.

“In the event of the Engineer granting permission to the Contractor to work double or rotary shifts or on Sundays, the Contractor shall be required to meet any additional costs to the Employer in the administration and supervision of the Contract arising from the granting of this permission.”

Sub Clause 47.2 – Reduction of Liquidated Damages

Add the following paragraphs at the end of this Sub-Clause:

“There shall be no reduction in the amount of liquidated damages in the event that a part or a section of the Works within the Contract is certified as completed before the whole of the Works comprising that Contract.

The Employer shall pay no bonus for early completion of the Works to the Contractor.

The sum stated in the Appendix to Bid as liquidated damages shall be increased by a sum equivalent to any additional amount payable by the Employer to the Contractor under clause 70.1 in respect of an increase in costs in such a period that would not have been incurred by the Contractor if the works had been completed by the due date for completion prescribed by Clause 43.”

Sub Clause 52.1 – Valuation and Variations

Add new Clause 52.2(c)

No change in the unit rates or prices quoted shall be considered for items included in the schedule of Day works rates, or Provisional Sums and items, or for any item in the BOQ.

Modification to Clause 52(3)

Sub Clause 52.4 – Day works

Add the following at the end of Sub-Clause 52.4:

The work so ordered shall immediately become part of the works under the contract. The Contractor shall, as soon as practicable after receiving the Day works order from the Engineer undertake the necessary steps for due execution such work. Prior to commencement of any work to be done on a Day works basis, the Contractor shall give an advance notice to the Engineer stating the exact time of such commencement.

Sub Clause 54.1 – Contractor’s Equipment, Temporary Works and Materials

: Exclusive use for the works

Amend Sub-Clause 54.1 as follows:

Line 5: add “written” between “the” and “consent”.

Delete Sub-Clauses 54.2 and 54.5.

Sub Clause 55.2 – Omissions of Quantities

Items of Works described in the Bills of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Employer.

Add the following Sub-Clause 58.4:

SUB CLAUSE 58.4 – PROVISIONAL ITEMS

Provisional items shall be read as Provisional Sums and shall be operated as such in accordance with Sub-Clauses 58.1 to 58.3.

Clause 60 of the General Conditions is deleted and substituted with the following:-

Sub Clause 60.1 – Monthly Statement

The Contractor shall submit a statement to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable;

- the value of the Permanent Work executed up to the end of previous month
- such an amount (not exceeding 90 percent of the value) as the Engineer may consider proper on account of materials for permanent work delivered by the Contractor in the site
- such amount as the Engineer may consider fair and reasonable for any Temporary Works for which separate amounts are provided in the Bill of Quantities
- adjustments under Clause 70
- any amount to be withheld under retention provisions of Sub-clause 60.3
- any other sum to which the Contractor may be entitled under the Contract

If the Engineer disagrees with or cannot verify any part of the statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes and corrections in the statement as may be directed by the Engineer. In cases where there is difference in opinion as to the value of any item, the Engineer’s view shall prevail.

Sub Clause 60.2 interim payment certificate

The Contractor shall forward to the Engineer an Interim Payment Certificate based on the statement as corrected above and, should it be necessary in the Engineers opinion, shall promptly make any further amendments and corrections to the Interim Payment Certificate.

The Engineer shall not unreasonably withhold certifying an Interim Payment Certificate and in case of likely delay in establishing the value of an item, such item may be set aside and the remainder certified for payment.

Within 45 days after receipt of the Interim Payment Certificate and subject to the Contractor having made such further amendments and corrections as the Engineer may require, the Engineer will forward to the Employer the certified Interim Payment Certificate.

Provided that the Engineer shall not be bound to certify any payment under this Clause if the net amount thereof, after all retentions and deductions, would be less than the minimum amount of Interim Payment Certificate's stated in the Appendix to Form of Bid. However in such a case, the uncertified amount will be added to the next interim payment, and the cumulative unpaid certified amount will be compared to the minimum amount of interim payment.

Sub Clause 60.3 – Payment of Retention Money

A retention amounting to the percentage stipulated in the Appendix to Bid shall be made by the Engineer in the first and following Interim Payment Certificates until the amount retained shall reach the "Limit of Retention Money" named in the Appendix to Form of BID.

Upon the issue of the Taking-Over Certificate, with respect to the whole of the works one half of the retention money shall become due and shall be paid to the Contractor when the Engineer shall certify in writing that the last section of the whole works has been substantially completed.

Upon expiration of the Defects Liability Period for the works, the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor.

Provided that in the event of different Defects Liability Periods being applicable to different Sections of the Permanent Works pursuant to Clause 48, the expression "expiration of the Defects Liability Period" shall, for the purpose of this sub-clause, be deemed to mean the expiration of the latest of such periods.

Provided also that if at such time, there remain to be executed by the Contractor any work instructed, pursuant to Clause 49 and 50, in respect of the works, the Engineer shall be entitled to withhold certification until completion of any such work or so much of the balance of the Retention money as shall in the opinion of the Engineer, represents the cost of the remaining work to be executed.

Sub Clause 60.4– Correction of Certificates

The Engineer may in any Interim Payment Certificate make any correction or modification to any previous Interim Payment Certificate signed by him and shall have authority, if any work is not being carried out to his satisfaction to omit or reduce the value of such work in any Interim Payment Certificate.

Sub Clause 60.5– Statement at Completion

Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the works, the Contractor shall submit to the Engineer a statement at completion showing in detail, in a form approved by the Engineer;

The final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate.

Any further sums which the Contractor considers to be due; and

An estimate of amounts that the Contractor considers will become due to him under the Contract.

Estimate amounts shall be shown separately in the Statement at Completion. The Contractor shall amend and correct the Statement as directed by the Engineer and submit a Certificate at Completion to be processed as in Sub-Clause 60.2.

Sub Clause 60.6 – Final Statement

Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration a draft final statement with supporting documents showing in detail, in the form approved by the Engineer;
The final value of all work done in accordance with the Contract; Any further sums which the Contractor considers to be due to him.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonable require and shall make such changes in the draft as may be required.

Sub Clause 60.7– Discharge

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment under the Final Payment Certificate issued pursuant to Sub-Clause 60.8 has been made and the Performance Security referred to in Sub-Clause 10.1 has been returned to the Contractor.

Sub Clause 60.8 – Final Payment Certificate

Upon acceptance of the Final Statement as given in Sub-Clause 60.6, the Engineer shall prepare a Final Payment Certificate which shall be delivered to the Contractor's authorized agent or representative for his signature. The Final Payment Certificate shall state:
The final value of all work done in accordance with the Contract;
After giving credit to the Employer for all amounts previously paid by the Employer, the balance, if any, due from the Employer to the Contractor or the Contractor to the Employer.
Final Certificate shall be issued for any sum due to the Contractor even if such is less than the sum named in the Appendix to the Form of BID.

Sub Clause 60.9– Cessation of Employers Liability

unless the Contractor notifies the Engineer of his objection to the Final Certificate within fourteen days of delivery thereof he shall be deemed to have agreed that he accepts the total Contract Price as set out in the Final Certificate as full settlement for all Work Done under the Contract including any variations and omissions thereof but excluding any variations and claims previously made in writing.

Sub Clause 60.10 – Time for Payment

The amount due to the Contractor under any Interim Payment Certificate or Final Payment Certificate issued pursuant to this Clause or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor as follows:

- I. In the case of Interim Payment Certificate, within the time stated in the Appendix to Form of Bid, after the Engineer has signed the Interim Payment Certificate.
- II. In the case of the Final Payment Certificate pursuant to Sub clause 60.8, within the time stated in the Appendix to Form of Bid, after the Engineer has signed the Final Payment Certificate.

- III. In the event of the failure of the Employer to make payment within the times stated, the Employer shall make payment to the Contractor of simple interest at a rate equal to two percentage points above the average Base Lending Rate of three leading banks namely Kenya Commercial Bank, Standard Chartered Bank and Barclays Bank for the time being or as shall be the case from the time to time obtained from the Central Bank of Kenya. The provisions of this sub clause are without prejudice to the Contractor's entitlements under Clause 69 or otherwise.

Sub Clause 60.11 – Currency of Payment

The Contract Price shall be designated in Kenyan Currency.

All work performed by the Contractor under the Contract shall be valued in Kenya Shillings using the rates and prices entered in the Bills of Quantities together with such other increases to the Contract Price, except for variation of price payments in accordance with Clause 70.1.

Sub Clause 60.12 – Advance Payment

"The Employer **MAY** make an interest free advance payment to the contractor for the cost of mobilization in respect of the Works, in a lump sum of **any amount not exceeding ten (10) percent** of the Contract Price named in the Letter of Acceptance and Award. Non-Payment or delayed payment of the Advance shall not be a cause for any claim whatsoever. The Contractor is expected to have adequate financial resources to mobilize and execute the works with due diligence without the advance payment being made. Payment of such advance amount will be due under a separate certification by the Engineer after:

(i) Provision by the Contractor of the Performance Security in accordance with Clause 10 of the Conditions of Contract, and

(ii) Provision by the Contractor of a Bank Guarantee which shall remain effective until the advance payment has been completely repaid by the Contractor out of current earnings under the Contract and certified accordingly by the Engineer.

A form of Bank guarantee acceptable to the Employer is included in the Tender Documents. The advance payment shall be used by the Contractor exclusively for mobilization expenditures, in connection with the works. The advance payment shall not be subject to retention money.

The advance payment shall be repaid with percentage reductions from the monthly interim payments certified by the Engineer. The reimbursement of the lump sum advance payment shall be made by deductions from the interim payments and where applicable from the balance owing to the contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original contract sum. It shall have been completed by the time 80% of the contract sum is reached.

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

$$RI = A(x-X)$$

80-20

Where:

RI = the amount to be reimbursed.

A = the amount of the advance which has been granted.

x = the amount of proposed cumulative payments as a percentage of the original amount of the contract. This figure will exceed 20% but not 80%.

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

With each reimbursement the guarantee will be reduced accordingly

Sub Clause 60.13 Materials for Permanent Works

With respect to materials brought by the Contractor to the site for incorporation into the permanent works, the Contractor shall,

- Receive a credit in the month in which these materials are brought to site,
- Be charged a debit in the month in which these materials are incorporated in the permanent works.

Both such credit and debit to be determined by the Engineer in accordance with the following provisions.

No credit shall be given unless the following conditions shall have been met to the Engineers satisfaction

The materials are in accordance with the specifications for the works;

The materials have been delivered to site and are properly stored and protected against loss, damage or deterioration;

The Contractors record of the requirements, orders receipts and use of materials are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;

The Contractor has submitted a statement of his cost of acquiring and delivering the materials and plant to the Site, together with such documents as may be required for the purpose of evidencing such cost;

The materials are to be used within a reasonable time.

The amount to be credited to the Contractor shall not be more than 75% of the Contractor's reasonable cost of the materials delivered to site, as determined by the Engineer after review of the documents listed in subparagraphs (a) (iv) above;

The amount to be debited to the Contractor for any materials incorporated into the works shall be equivalent to the credit previously granted to the Contractor for such materials pursuant to Clause (b) above as determined by the Engineer.

Sub Clause 67.1 – Engineer's Decision

Delete the entire sub-clause 67.1 and add the following;

"If a dispute of any kind whatsoever arises between the Employer and the Contractor in any connection with, or arising out of, the Contract or the execution of the works, whether during the execution of the works or after their completion and whether before or after repudiation or other termination of the Contract including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state it is made pursuant to this clause. No later than 28 (twenty eight) days after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state it is made pursuant to this clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an Amicable Settlement, Adjudicator's or Arbitrator's award.

If either the Employer or the Contractor be dissatisfied with the any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the 28th (twenty eighth) day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the 28th (twenty eighth) day after the day the day on which he received notice of such decision, or on or before the 28th (twenty eighth) day after the day on which the said period of 28 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence Adjudication, as hereinafter provided, as to the

matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence Adjudication, as hereinafter provided, as to such dispute; no adjudication in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence adjudication as to such dispute has been given by either the Employer or the Contractor on or before the twenty eighth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor. "

Sub Clause 67.2 – Amicable Settlement

Delete the entire Sub Clause 67.2 and add the following;

"Where notice of intention to commence adjudication as to a dispute has been in accordance with Sub Clause 67.1, the parties shall attempt to settle such dispute amicably before the commencement of Adjudication; provided that, unless the parties otherwise agree, Adjudication may be commenced on or after the 14th (fourteenth) day after the day on which notice of intention to commence adjudication of such dispute was given, even if an attempt at amicable settlement thereto has been made."

Sub Clause 67.3 – Adjudication

Delete the entire Sub Clause 67.3 and add the following;

"The Adjudicator shall be appointed by the Chartered Institute of Arbitrators (Kenya) unless the appointment is agreed by the parties within 7 (seven) days of the notice to adjudication.

The adjudication process shall be conducted according to the Laws of Kenya and the Rules of the Chartered Institute of Arbitrators (Kenya)."

Sub Clause 67.3 – Arbitration

Delete the entire Sub Clause 67.3 and add the following;

"Any dispute in respect of which:

The decision, if any, of the Adjudicator has not become final and binding pursuant to Sub Clause 67.1, and Amicable settlement has not been reached within the period stated in Sub Clause 67.2, shall be finally settled, under the Laws of Kenya and the Arbitration Rules of the Chartered Institute of Arbitrators (Kenya Branch) by one or more arbitrators appointed by the Chartered Institute of Arbitrators (Kenya Branch). Neither party shall be limited in the proceedings before such arbitrator/s to the evidence nor arguments put before the Adjudicator for the purpose of obtaining his said decision pursuant to Sub Clause 67.1.

Arbitration may be commenced prior to or after completion of the works, provided that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the works.

Sub Clause 68.2 – Notices to Employer and Engineer

Delete in Sub-Clause 68.2 the words "nominated for that purpose in Part II of these conditions".

a. The Employer's address is:

The Programme Coordinator

KCEP-CRAL

P.O. Box 30028- 00100

NAIROBI

Email: tenders.kcepccralprogramme@gmail.com

Sub Clause 68.4 – All letters and notices from the Contractor to the Employer and/Engineer must be signed by the Managing Director or the person given written power of Attorney.

Clause 69 – Default Of Employer

Delete Sub-Clause 69.1 (c)

In Sub-Clause 69.4 add at the end of first paragraph the following “the period of such suspension shall be as agreed upon by both parties and in any case not more than six (6) months”.

In Sub Clause 69.4 of General Conditions of Contract Part I, insert at the end

“The amounts of such costs which shall be added to the Contract Price shall exclude any cost due to idle time for equipment, plant and labour.”

Clause 70: Changes in Cost and Legislation

Sub-Clause 70.1 – Increase or Decrease of Cost

Delete Sub-Clause 70.1 of part 1 in its entirety and substitute the following:

“The Contract Price shall be deemed to have been calculated in the manner set below and shall be subject to the adjustment in the event specified hereunder:

The rates contained in the priced Bills of Quantities are based upon the rates of wages and other emoluments and expenses applicable at the site at the date of Bid pricing (as defined in Sub-Clause 70.4 hereinafter);

(a) If the said rates of wages and other emoluments and expenses shall be increased or decreased by Act, Statute, Decree, Regulation and the like after the said Date of Bid Pricing then the net amount of increase or decrease the emoluments and expenses shall, as the case may be, be paid to or allowed by the Contractor;

(b) The rates contained in the priced Bills of Quantities are based upon the rates of the Contractor’s compulsory contributions payable at the date of Bid under or by virtue of any Act, Statute, Regulations and the like applicable at the site;

(c) If any of the said rates of contribution shall be increased or decreased by any Act, Statute, Decree, Regulation and the like after the said Date of Bid Pricing, or if any new statutory contribution becomes payable after that date then the net amount of increase or decrease of the emoluments and expenses shall, as the case may be, be paid to or allowed by the Contractor. The difference between what the Contractor actually pays in respect of work people engaged upon or in connection with the works and what he would have paid in respect of such person had any of the said rates not been increased or decreased or had a new contribution not become payable as aforesaid, shall as the case may be, be paid to or allowed by the Contractor. Provided always that the Engineer and the Contractor may agree a sum which shall be deemed to be the net amount of the aforesaid difference, and such sum shall be deemed for the purpose of this contract to be that which is to be paid to or allowed by the Contractor by virtue of this sub-paragraph;

(d) The rates contained in the priced Bills of Quantities are based upon the market prices of the materials and goods specified in the Schedule of Basic Materials attached hereto and current at the Date of Bid Pricing (hereinafter referred to as “the basic prices” and the Contractor shall state in the said schedule the basic prices of such materials and goods. Such prices shall be supported by bona fide quotations from suppliers;

(e) If the market price of any materials or goods specified as aforesaid shall be increased or decreased after the said Date of Bid Pricing, then the net amount of difference between the basic price and the market price payable by the Contractor and current when any such goods and

materials are bought shall, as the case may be, be paid to or allowed by the Contractor. Orders for materials and goods listed as aforesaid shall have been placed within a reasonable time after the date at which sufficient information is available for the placing of such orders, and the placing of orders at that time shall be a condition precedent to any payments being made to the Contractor in respect of increased market prices.”

Sub-Clause 70.2: Subsequent Legislation

Add the following to Sub Clause 70.2:

“Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid for or credited as aforesaid if the same shall already have been taken into account in accordance with the other provisions of Clause 70.

Add the following sub clause:-

Sub-Clause 70.3: Sub-Contract

(a) If the Contractor shall decide subject to Clause 4 thereof to sub-let any portion of the work he shall incorporate in the sub-contract provisions to the like effect as those contained in sub-clause (1) of this Clause;

(a) If the price payable under a sub-contract as aforesaid is increased above or decreased below the price in such sub-contract by reason of the operation of the incorporated provisions of sub-clause (1) of this clause then the net amount of such increase or decrease shall as the case may be, be paid to or allowed by the Contractor under this contract.

Sub-Clause 70.4: Nominated Sub-Contractors

This clause shall not apply in respect of work executed by any nominated sub-Contractor (fluctuation in relation to nominated sub-Contractors shall be dealt with under provisions in relation thereto which may be included in the appropriate sub-contract or contract of sale).

Sub-Clause 70.5: Date of Bid Pricing

The expression “the date of Bid pricing” as used in this Clause means the date 30 days prior to the final date for submission of Bids as determined by the Employer in the Bid documents.

Sub-Clause 70.6: Prime Cost

For imported materials, the supplier’s/ manufacturer’s Prime costs shall be C.I.F. cost at point of entry by the same means of transport as determined by the Contractor’s Basic Rate.

For locally produced materials, the supplier’s or manufacturer’s prime costs shall be at their nearest depot or the nearest railway station relevant to the works.

For materials which are subject to Government Price Control, payments for price variations will be determined from the difference between the control price in force at a date 30 days prior to the final date for submission of Bids and the price in force on the date of purchase.

Sub-Clause 70.7: Materials to Which Variation Clause Applies

The materials to which this Variation Clause applies are:

Petroleum Products & All bituminous products

- Cement
- Lime
- Flex beam guardrail
- Gabion mesh
- Reinforcing steel
- All specified fuels and lubricants

Sub-Clause 70.8: Change of Supplier

The Contractor shall not change the supplier or manufacturer during the Contract without the approval of the Engineer.

Sub-Clause 70.9: Contractors Head Office Expenses

No payments will be made for price variation related to expenses incurred by the Contractor in his Head Office in Kenya, or overseas.

Sub-Clause 70.10: Currency of Payments under Clause 70

All payments made pursuant to Clause 70 shall be in Kenya Shillings.

Sub-Clause 70.11 – Cost Of Preparing Variation of Price Claims

No payments will be made for the cost of preparing V.O.P. claims.

Clause 72 – Rates Of Exchange Cost

Delete clause 72 in its entirety and substitute the following:

The currency of Bid and payment is Kenya Shillings and rates of exchange requirements are not applicable.

Clause 73 – Bribery and Collusion

Add new Clause 73.1:

"The Contractor shall not:

(a) Offer or give or agree to give to any person in the service of the Government of Kenya any gift or consideration or 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 to which the Government of Kenya is a party or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the Government of Kenya.

(b) Enter into this or any other contract with the Government of Kenya in connection with which commission has been paid or agreed to be paid by or on his behalf or to his knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer. Any breach of this condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf in relation to this or any other contract to which the Government of Kenya is a party shall entitle the Employer to determine the Contract (See Condition 63 hereof) and/ or to recover from the Contractor the amount or value of any such gift, consideration or commission.

Any dispute or difference of opinion arising in respect of either the interpretation, effect or application of this condition or of the amount recoverable hereunder by the Employer from the Contractor shall be decided by the Employer, whose decision shall be final and conclusive

Clause 74 – Contract Confidential

Add new Clause 74.1:

The Contractor shall treat the details of this Contract as Private and Confidential and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere (save in so far as may be necessary for the purpose thereof) without the previous consent in writing of the Government. If any dispute arises as to the necessity of any publication

or disclosures for the purposes of this Contract the same shall be referred to the decision of the Engineer mentioned in the said Conditions of Contract whose award shall be final.

Clause 75- Safety, Security and Protection of the Environment

Add at the end of sub clause 75.1 the following: -

The formulation and enforcement of an adequate safety program shall be the obligation of the Contractor with respect to all the Works under this Contract, regardless of whether performed by the Contractor or his subcontractors. The Contractor shall, within 14 days after commencement of the Works, meet the Engineer to present and discuss his plan for the establishment of such safety measures as may be necessary to provide against accidents, unsafe acts and so forth. Within 28 days after commencement of the Works, the Contractor shall submit a written safety program to the Engineer covering the overall Works and based on the laws and regulations of Kenya. In addition, he shall prepare special safety programs for blasting and handling of explosives as stipulated in the General and Special Specifications.

Notwithstanding the foregoing, the Contractor shall observe the following measures with a view to reducing or eliminating adverse environmental effects by the Site Works:

- a) All queries and borrow pits shall be filled and landscaped to their original state after extraction of construction material
- b) Soil erosion due to surface runoff or water from culverts or other drainage structures should be avoided by putting in place proper erosion control measures that shall include, but not limited to grassing , planting of trees, gabions etc.
- c) Long traffic diversion roads shall be avoided so as to minimize the effect of dust on the surrounding environment. In any case all diversions shall be kept damp and dust free at the Contractor's expense.
- d) Spillage of oils, fuels and lubricants shall be avoided and if spilt, shall be collected and disposed off in such a way as not to adversely affect the environment.
- e) Rock blasting near settlement areas shall be properly coordinated with the relevant officers of the Government so as to minimize noise pollution and community interference.
- f) Dumping shall be done only at designated dumping areas and not haphazardly on surroundings.

APPENDIX TO CONDITIONS OF PARTICULAR APPLICATION

1. All bidders should ensure that the execution of the works shall also comply with the conditions as prescribed in the **Social, Environmental and Climate Assessment Procedures; Managing risks to create opportunities 2017 Edition**
2. **IFAD's and the EU Anti-Corruption Guidelines** and its prevailing sanctions policies and procedures.

3. Defects Liability:

3.1 Completion of Outstanding Work and Remedying Defects

The Contractor shall:

- a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- b) execute all work required to remedy defects or damage, as may be notified by the Employer on or before the expiry date of the Defects Notification Period for the Works or Section.

3.2 Cost of Remedying Defects

All remedy work shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- a) any design for which the Contractor is responsible,
- b) Plant, Materials or workmanship not being in accordance with the Contract, or
- c) Failure by the Contractor to comply with any other obligation.

3.3 Extension of Defects Notification Period

The Employer shall be entitled to an extension of the Defects Notification Period for the Works if the Works, cannot be used for the purposes for which they are intended by reason of a defect or damage.

However, a Defects Notification Period shall not be extended by more than two years.

3.4 Failure to Remedy Defects

If the Contractor fails to remedy any defect, a date may be fixed by the Employer, on or by which the defect or damage is to be remedied.

If the Contractor fails to remedy the defect and this remedial work was to be executed at the cost of the Contractor, the Employer may:

- a) carry out the work himself or by others;
- b) require the Engineer to determine a reduction in the Contract; or
- c) If the defect or damage deprives the Employer of substantially the benefit of the Works, terminate the Contract as a whole, or in respect of such part which cannot be put to the intended use.

The Employer shall then be entitled to recover all sums paid for the Works or for such part, plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

3.5 Removal of Defective Work

If the defect **cannot be remedied** and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective.

This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items.

3.6 Further Tests

If the work of remedying any defect may affect the performance of the Works, the Engineer may require the repetition of any of the tests.

The requirement shall be made by notice within 28 days after the defect is remedied.

These tests shall be carried out at the risk and cost of the Party liable for the cost of the remedial work

4. Right of Access

Until the Performance Certificate has been issued, the Contractor shall have right of access to the Works except as may be inconsistent with the Employer's reasonable security restrictions.

5. Works to be measured

Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

- a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and
- b) supply any particulars requested by the Engineer

Wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer.

If the Contractor does not give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

5. SECTION V: SPECIFICATIONS

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

5.2 SPECIAL SPECIFICATIONS

100 SPECIAL SPECIFICATIONS

Special specification is supplementary to the Standard Specifications and the two must be read in conjunction. In any case where there appears to be conflict between the two then the Special Specifications will take precedence.

When the term "Period of Maintenance" has been used in the Standard Specifications, it shall be changed to "Defects Liability Period"

101 Location And Extent of Site.

1. The works are located Tharaka South Sub County, Tharaka Nithi County for road spot improvement works of roads leading to Nkondi store
2. The works involve:
 - a) **Construction of a 6 x 2.4 x 2m small span box culvert across Erimba stream a and b stream**
 - b) **Construction of 40m x 6m drifts across river at Kionyo b river crossing**
 - c) **Repair and extension of drift at Ntenderuni river**
3. The site of the works shall be the area within the road reserve and any other places as may be designated in the Contract.

Extent of Contract.

The major works to be executed under the Contract comprise mainly of but are not limited to the following:

- i. Preliminary and General Items
- ii. Provide for passage of traffic through to minimal inconvenience and ensure smooth passage of traffic through the works over the drift construction period
- iii. Scarify the existing pavement layers and cart to waste
- iv. Demolition and disposal of existing structures
- v. Excavation for structure as may be instructed
- vi. Provide and place class 15/20 concrete to beds
- vii. Provide formwork to provide F2 finish
- viii. Vertical formwork class F2 finish
- ix. Provide, cut bend and fix into position high yield reinforcement bar to BS 4461
- x. Provide, cutting, shaping and placing high yield, high bond strength bars diameter greater than 16mm
- xi. Provide, place and compact class 20/25 concrete to headwalls, wing walls, aprons, surround to walls, inlets and outlets to pipe culverts
- xii. Manual reshaping of the approaches upto 200m either side

- xiii. Provide, Gravel wearing course-excavation, free haul, spread, water and compact well; 300m
- xiv. And any other works as instructed by the Engineer

The works shall be executed within the contract period on instruction of the Engineer taking into consideration the rain patterns of the project road and maintenance cycle.

104 Programme of Execution of the Works

The contractor shall provide the works Programme, required under clause 14 of the Conditions of Contract, within 14 days of receipt of the Engineer's Order to commence work.

The Programme shall be coordinated with climatic and other conditions to provide for the completion of the works in the order and by the time specified.

The Contractor shall carry out the contract in accordance with the Programme agreed with the Engineer, but he shall in no manner be relieved by the Engineer's approval of the Programme, of his obligation to complete the works in the prescribed order and by the prescribed completion date and he shall from time to time review his progress and make such amendments to his rate of execution of the works as may be necessary to fulfil his obligations.

The Contractor shall allow in his Programme for construction of trial sections and carrying out tests upon them as directed by the Engineer in accordance with the provisions of Clause 129 of the Standard Specification. The time for completion of the Contract shall not be extended because of the time taken to carry out tests and evaluate trial sections.

105 Order of Execution of Works

In addition to Clause 105 of the Standard Specification the Contractor shall carry out the Works such that a continuous and consecutive output of fully complete work is achieved.

107 Taking Over Certificate

The minimum length of the road for which a certificate will be issued is the entire length of the project road when substantially completed.

109 Notice of Operations

Add the following sub- Clause.

Notification Terms

It shall be the Contractor's responsibility to notify the Engineer when any item of works scheduled are completed and ready for approval, and the contractor shall give sufficient notice to allow control test to be performed.

Explosive and Blasting

The requirements of the Laws of Kenya governing explosives and other requirements and regulations of Government of Kenya and other authorities shall be complied with.

(b) No explosives of any kind shall be used without prior written consent of the Engineer.

(c) The Contractor shall be solely responsible for the provision, handling, storage and transporting of all explosives, ancillary materials and all other items of related kind whatsoever required for blasting.

117 Health, Safety And Accidents

Add the following:

In addition to providing, equipping and maintaining adequate first aid stations throughout the works in accordance with the laws of Kenya, the contractor shall provide and maintain on site during the duration of the Contract, a fully equipped dispensary. This shall be with a qualified Clinical Officer / Nurse who shall offer the necessary medical advice on HIV and related diseases to the Engineer's and Contractor's Site staff. The Contractor shall allow for this in the rates and be responsible for all site welfare arrangements at his own cost.

121 Diversion of Services

(a) The Contractor shall acquaint himself with the location of all existing services such as telephone lines, electricity cables, water pipes, sewers etc., before execution of any works that may affect the services. The cost of determining the location of the existing services together with making good or repairing of any damage caused all to the satisfaction of the Engineer shall be included in the BID rates.

(b) Subject to the agreement with the Engineer, the Contractor shall be responsible for removal of alteration and relocation of existing services.

(c) The Contractor shall indemnify the Employer against claims originating from damage to existing services or works.

123 Liaison with Government and Police Officials

The Contractor shall keep in close touch with the Police and the other Government officials of the area regarding their requirements in the control of traffic, or other matters, and shall provide all assistance or facilities, which may be required by such officials in the execution of their duties.

124 Land for All Camps Sites and For the Contractor's Own Purposes, Including Temporary Works

Notwithstanding Clause 124 of the Standard Specification all requirements of land for temporary works and construction purposes shall be to the approval of the Engineer but the Contractor will make all necessary arrangements with the property owners concerned and pay all charges arising there from. On or before completion of the Contract, the Contractor shall remove all temporary works and shall restore all such land to the condition in which it was immediately prior to the occupation thereof as far as is reasonable and practicable. No separate payment will be made to the Contractor on account of these items and the Contractor must make due allowance for them in his rates.

Notwithstanding Clause 120 of the Standard Specifications, the Contractor shall be required to appoint competent surveyors who will liaise with the Engineer on matters related to the demarcation of the existing road reserve, site measurements, removal and reinstatement of existing services.

127.2 Trial Sections

The Contractor shall allow in his Programme for constructing trial sections and carrying out tests upon them as directed by the Engineer. Trials would normally be required at the start of each pavement layer and if changes of materials, method or equipment deem it necessary as directed by the Engineer.

The time for completion of the Contract shall not be extended because of the time needed to construct trial sections and evaluate the tests on them.

At least fourteen days before the work of laying any pavement layer is commenced, the contractor shall construct trial sections of at least 100 m in length and to the full construction width and the specified pavement layer thickness. For each trial section, the Contractor shall use the materials, mix proportions, mixing, laying, compaction plants and construction procedure that he proposes to use for the main work. The main work of laying the pavement layer shall not be commenced until this trial has been tested and approved by the Engineer. No variation in the construction procedure, mix proportions, size, grading or source of any of the constituents shall be made without the agreement of the Engineer who may first require new trial sections to be carried out.

Trial sections, if found satisfactory, will be paid for under the rates in the Bill of Quantities for the appropriate items, as if the trial sections were part of the normal work. No separate payment will be made for trial sections and testing and the Contractor shall be deemed to have provided for this in his rates.

The Contractor shall make good, at his own expense, any trial sections that fail to meet the specified standards. The standards shall include, but not be limited to, material quality, layer thickness, levels and compaction.

128 Storage of Materials

All materials shall be stored on Site in a manner approved by the Engineer and the Contractor shall carefully protect from the weather all work and materials which may be affected thereby.

129 Test Certificates

When instructed by the Engineer the Contractor shall submit certificates of test from the suppliers of materials and goods required in connection with the works as the Engineer may require.

Such certificates shall certify that the materials or goods concerned have been tested in accordance with the requirements of the specifications and shall give the results of all the tests carried out. The Contractor shall provide adequate means of identifying the materials and goods delivered to the site with the corresponding certificates.

130 Progress Photographs

Notwithstanding the provision of Clause 130 of the Standard Specifications, the Contractor shall not be responsible for taking of progress photographs. Progress Photographs shall be taken by the Engineer's Representative and relevant costs charged to the Contractor who will be reimbursed under Miscellaneous Accounts.

131 Signboards

The Contractor shall provide and erect **two (2)** publicity signboards on the site as directed. The Engineer shall, as shown in the Drawings, direct the minimum dimensions of the boards. The signs shall be printed reflective Vinyl Stickers on galvanized steel plates min 350mm high. Posts shall be galvanized steel. Main headings lettering shall be Yellow and min 80mm high, while subheadings lettering shall be White and min 60mm high as per the drawings.

137 Attendance upon the Engineer and His Staff

The Contractor shall pay wages (including all overtime) and house all attendant staff to fulfill the requirements of Clause 137 of the Standard Specification.

The number of junior support staff required by the Engineer shall be about: 4 (four) No. Office attendants, 6 (six) No chainmen, and 6 No. laboratory attendants. The Contractor will be paid

on a prime cost basis plus a percentage for overheads and profits under appropriate items in the Bills of Quantities. The payment referred to in this clause shall exclude the cost of maintaining the offices in compliance with clause 137, paragraphs 1, 2 and 4 of the standard specifications which are deemed to be included in the rates for providing the Office.

138 Vehicles and Drivers for the Engineer and His Staff and Method of Payment

The Contractor shall **when instructed** to do so provide and maintain in good working condition for the exclusive use of the Engineer and his staff throughout the contract, brand new vehicles, right hand drive, diesel powered and fitted with air-conditioner, CD/mp3 music player, SRS Air bags, power windows, central locking, alarm system, alloy wheels and power steering as described below. The Engineer will approve the type of vehicle and confirm the number of each type to be provided.

Type 2 with the following specifications;

- Heavy duty, utility passenger vehicle, 4x4, l.w.b., 4000 - 4200cc, diesel.
- Engine type diesel, 4 stroke.
- Engine cooling system, water.
- Piston displacement range - 4000-4200cc
- Maximum power output, (kw/ rpm), min.- 80kw/3800rpm
- Maximum torque developed, (nm/ rpm), min. - 260nm/3400rpm
- Manual transmission.
- Hydraulic, clutch actuation.
- All synchromesh gearbox, with 2 speed reduction transfer gearbox.
- Transmission speeds – 5 speed
- Permanent 4wd or with selector from 2wd to 4wd.
- Differential lock/ freewheeling hubs provided.
- Assisted hydraulic, dual brake system.
- Brakes, disc at front or all round
- Mechanical parking brake, to act on transmission or rear wheels
- Independent heavy duty front and rear suspension.
- Heavy duty leaf or coil springs with telescopic dampers.
- Station wagon - 4 no. Side doors and rear side-swing door station wagon (five door hard top).
- To seat at least 8 adults (including driver) comfortably.
- To be fitted with adequate winding/sliding windows for good ventilation and wide view.

The Contractor shall insure comprehensively the vehicles for any licensed drivers and shall provide competent drivers during normal working hours and whenever required by the Engineer including recognized days of rest.

Should any vehicle supplied not be in road worthy condition, the Contractor shall provide an acceptable equivalent replacement vehicle until such time as the original vehicle is repaired to the satisfaction of the Engineer and returned for use.

Payment for the vehicles (up to 4,000Km per veh.month), shall be by vehicle months. Payment for mileage above 4,000Km per vehicle month, shall be made at a rate per Kilometre. These payments shall be inclusive of all fuels, lubricants, servicing, insurance, maintenance, drivers and repairs. The rate shall include any overtime the drivers might be due or any other allowances in addition to the normal working hours. Payment shall be made under appropriate items in the Bills of Quantities.

139 Receipted Accounts

The Contractor may be instructed by the Engineer to make payments of general miscellaneous accounts for such items as stationary, stores and equipment and miscellaneous supervision personnel and claims or the Engineer may direct the Contractor to purchase or pay for the above. The Contractor will be paid on a prime cost basis plus a percentage for overheads and profits under appropriate items in the Bills of Quantities.

141 Measurement and Payment

Delete Sub-Clause 141 (a) entirely and substitute with: -

a) No Preliminary item has been included in this Contract. All Contractor's mobilization and general costs shall therefore be included in relevant rates in the Bill of Quantities.

Delete Sub-Clause 141 (m) entirely

Section 2 - Materials and Testing Of Materials

All materials testing shall be in accordance with Section 2 of the Standard Specifications.

205 Soils and Gravel

Whenever in the Contract Document a minimum California Bearing Ratio (CBR) is specified, the CBR of the material shall be determined at the specified state of compaction;

a) After four days soaking in the case of neat materials and

b) After seven days curing plus seven days soaking in the case of cement/lime improved materials

SECTION 3 - SETTING OUT & TOLERANCES

301 Setting Out

a) In addition to the provisions of clause 3.01(a) if the traverse points to be used for the setting out are close to the existing carriageway and interfere with construction works then the Contractor will have to relocate them to a location where they will not be disturbed. The co-ordinates and heights of all traverse points so located shall be listed and provided to the Engineer for checking and/or approval. Contractor shall also monument the new centerline every 200m along straight and all salient points along curves by a pin in the concrete beacon before commencement of any works.

The road reserve boundary posts shall have 12mm diameter steel pins embedded in concrete, 200mm long with 25mm exposed to the air, sticking out from its top surface. This pin shall be coordinated and heighted and result of the same shall be provided to the Engineer for approval. Cost of these works shall be included in the rates as no separate item has been provided.

b) Detailed Setting Out

Reference pegs shall be 50mm by 50mm in section 600mm long driven 400mm firmly into ground and painted white above the ground. The offset from centre line shall be indicated by small nail 20mm to 25mm long with its head driven flush with the top of the peg. Chainages, offset and reference elevation shall be clearly indicated to the sides of the peg to the satisfaction of the Engineer.

After cutting of benches and prior to commencement of earthworks or subgrade works, Contractor shall take cross-sections again and submit the copy of the same to Engineer for agreement. These cross-sections shall then be used as basis of measurement for all subsequent layers, unless otherwise stated.

SECTION 4- SITE CLEARANCE AND TOP SOIL STRIPPING

401 Site Clearance

Site Clearance shall be carried out as directed by the Engineer.

Removal of Topsoil

Topsoil shall include up to 200mm depth of any unsuitable material encountered in existing or newly constructed drains, drainage channels, and accesses.

SECTION 5 - EARTHWORKS

504 Preparation Prior to Forming Embankment

In cuttings, the contractor shall excavate to a level that would accommodate the 300mm subgrade and the existing ground below this **MUST** be processed and compacted in accordance with clause 504 of the standard specifications

505 Construction of Embankments

Only material approved by the Engineer shall be used for fill in embankments.

Material with high swelling characteristics or high organic matter content and any other undesirable material shall not be used, unless specifically directed by the Engineer. Unsuitable material shall include:

- (i) All material with CBR Values of less than 2%
- (ii) All material containing more than 5% by weight of organic matter (such as topsoil, material from swamps, mud, logs, stumps and other perishable material)
- (iii) All material with a swell of more than 3% (such as black cotton soil)
- (iv) All clay of plasticity index exceeding 50.
- (v) All material having moisture content greater than 105% of optimum moisture content (Standard Compaction)

Subgrade

Subgrade shall mean upper 300mm of earthworks either *in situ* or in fill and subgrade shall be provided for as part of earthworks operation and payment shall be made as "fill in soft material".

The material for subgrade for a road section shall have an average CBR of not less than 14% with no value being less than 10% measured after a 4-day soak in a laboratory mix compacted to a dry density of 100% MDD (AASHTO T99) and a swell of less than 1%. Where the *in situ* material does not meet this criterion, it shall be excavated and cart to spoil to a depth that can accommodate a new 300mm improved subgrade.

No extra payment will be made for haulage of suitable material from borrow pits as the overhaul costs shall be deemed to have been factored in the rates inserted in the Bills of Quantities

508 Compaction of Earthworks

At pipe culverts, all fill above ground level around the culverts shall be compacted to density of 100% MDD (AASHTO T.99) up to the level of the top of the pipes or top of the surround(s), if any and for a width equal to the internal diameter of the pipe on either side of the pipe(s) or surround(s) as applicable.

At locations adjacent to structures (up to 100m away from structure), all fill above ground level up to the underside of the subgrade shall be compacted to density of 105% MDD (AASHTO

T.99). In case of fill around box culverts this should be carried out for the full width of the fill and for a length bounded by the vertical plane passing through the ends of the wingwalls. Notwithstanding the provision of clause 503 of the standard Specification, Compaction of subgrade material (i.e. material immediately below formation) in cut areas shall not be carried out by the contractor in areas where the formation is formed in hard material, unless specific instructions to the contrary are issued by the Engineer.

Where improved sub-grade material shall be required, the material shall have a CBR greater than 14% and this shall be compacted and finished to the same standards and tolerances as those required for normal subgrade and clauses in the specifications applying to normal subgrade shall also apply.

509 Mass-Haul Diagram

Delete Clause 509 entirely and substitute "No Mass-Haul diagram has been provided with the Documents. The Contractor shall be responsible for locating suitable materials for constructing earthworks along the alignment and elsewhere and shall include in his rates for fill, spoil and for the cost of haulage".

511 BORROW PITS

The first part of the Standard Specification is amended as follows: -

Fill material which is required in addition to that provided by excavation shall be obtained from borrow pits to be located and provided by the Contractor but to the approval of the Engineer contrary to what has been stated.

515 Side Drains

Whenever excavation works in side drains constitutes a separate operation from the bulk earthworks, such excavation shall be classified as catch water drains under Section 8 of the Specifications

517 Measurement And Payment

Notwithstanding the provisions of clause 517 of the standard specifications, the rate for compaction of fill in soft material shall allow for the requirements of clause 508 of the special specification and no extra payment shall be made for compaction around pipe culverts (100% MDD AASHTO T.99).

SECTION 7 - EXCAVATION AND FILLING FOR STRUCTURES

703 Excavation of Foundations for Structures

Unless otherwise instructed by the Engineer, all excavated surfaces in material other than hard material, on which foundations for structures shall be placed, shall be compacted to 100% MDD (AASHTO T.99) immediately before structures are constructed.

Paragraph 4, last line: - Replace "95%" with "100%".

707 Backfilling for Structures

Unless otherwise instructed by the Engineer, all backfilling material shall be compacted to a minimum of 100% MDD (AASHTO T.99).

709 Excavations for River Training And New Water Courses

Payments for river training and establishment of new watercourses shall only be made where such work constitute permanent works. Works done for road deviation or other temporary

works shall not qualify for payment be carried out in accordance with Clause 710 of the Standard Specifications.

711 Gabions

Where instructed by the Engineer the Contractor will install gabions as protection works to washout areas or bridge Piers and or Abutments. Gabions shall be constructed in accordance with Clause 711 of the Standard Specification.

In cases where existing gabions have been damaged, the Contractor shall identify them and notify the Engineer for his agreement of the extent of the Work required and his approval and instructions to proceed with the Works.

The Works shall involve removal of the damaged gabions / rocks, excavation to the correct levels and grades as directed by the Engineer, and in accordance with Clause 711 of the Standard Specifications and reconstruction with new gabions and other necessary materials as necessary. The damaged gabions shall be recovered and transported to the nearest KCEP-CRAL Regional offices.

712 Rip-Rap Protection Work

Quarry waste or similar approved material shall be used to backfill scoured and eroded side, outfall and cut-off drain. The material shall be compacted to form a flat or curved surface preparatory to stone pitching of drainage channels, existing and new scour checks as directed by the Engineer

The surface to receive the pitching shall be compacted and trimmed to slope and the stone hand laid, interlocked and rammed into the material to give an even finished surface. The interstices of the Pitching shall be rammed with insitu material. The insitu material immediately behind the pitching shall be compacted to minimum density of 100% MDD compaction (AASHTO T.99)

714 Backfill Below Structures

Where instructed this shall be carried out in compliance with the requirements of Clause 507 and 804 of the Standard Specification.

SECTION 10: GRADING AND GRAVELLING

Scope:

Grading covers the works involved in the reinstatement of the carriageway to the camber by removing the high points and filling up gullies corrugations and wheel ruts to restore smooth running surface. Graveling consists of excavation, loading hauling and spreading of gravel wearing course material on the formation of carriageway. Gravel shall include lateritic gravel, quartzitic gravel, calcareous gravel, decomposed rock, soft stone coral rag, clayey sand and crushed rock.

The material may be obtained from borrow pits or excavation in cuttings. Gravel material shall conform to the requirement given in Table 10.1

Table 10.1: Requirement for Gravel Wearing Course

GRADING REQUIREMENTS AFTER COMPACTION		PLASTICITY INDEX REQUIREMENTS PI		
Sieve (mm)	% by Weight Passing	Zone	Min	Max
40	100	WET	5	20

28	95-100
20	85-100
14	65-100
10	55-100
5	35-92
2	23-77
1	18-62
0.425	14-50
0.075	10-40

DRY	10	30
BEARING		STRENGTH
Traffic VPD	CBR	DCP Equivalent mm/Blow
Greater than 15	20	11
Less than 15	15	14
CBR at 95% at MDD, Modified AASHTO and 4 days soak		
Lower quality material (CBR 15) may be accepted if no better material can be found		

NB: Wet Zone - mean annual rainfall greater than 500 mm.

Dry zone - mean annual rainfall less than 500 mm.

Alternative sources of gravel material whose quality can be shown to be in compliance with the specification requirements may be used, with the proviso that the Employer is not to incur additional expenses in connection with its winning and haulage. Contractor is deemed to have included in his rates for the provision of the gravel material to have included the cost of complying with the testing requirements.

1001 Removal of Overburden

The Item consists of excavation of overburden including loading, hauling and stockpiling at the approved locations. The thickness of the overburden layer to be removed shall be determined from the depths of the trial pits dug at a 30m grid within the quarry area.

The overburden shall be removed and deposited neatly in order to use it again to reinstate the quarry at the end of improvement work.

Work Method:

The contractor shall use **labour** or **equipment** to carry out this item of work

Quality Control

- The location and manner of stock piling of the overburden for the reinstatement of the quarry shall be visually checked

Measurement and Payment

No separate measurement and payment shall be made for removal of overburden and contractor shall be deemed to have allowed in his rates and prices for the cost

1002 Excavation of Gravel

The gravel shall be excavated from quarries approved by the Engineer. It is the Contractors obligation to inform the Engineer in the case that the quality / availability of the gravel changes during the course of excavation.

Oversize stones and boulders shall be removed from the excavated gravel and deposited outside the quarry at locations approved by the Engineer. Such stones and boulders may be reused for structures and scour checks

Work Method

I. Labour based methods

The contractor shall excavate and stockpile the gravel in bays for efficient loading by labour.

II. Equipment methods

The Contractor shall excavate the gravel and stockpile in heap(s) for the efficient loading by equipment.

Quality Control

- The widths of the loading bays shall be checked before excavation can commence.
- The loading bays shall be checked to ensure it is free draining.

Measurement and Payment

No separate measurement and payment shall be made for excavation of gravel and contractor shall be deemed to have allowed in his rates and prices for the cost.

1003 Haulage

This activity involves loading of excavated gravel, haulage by appropriate equipment and off-loading of the same as specified in the drawings or as directed by the Engineer. Where the loads delivered in any load falls short of agreed equipment capacity, dumping shall not be permitted unless the agreed spacing is adjusted accordingly.

Where loads supplied are found to contain material other than from the approved quarry and thus of unacceptable quality, the Engineer shall cause them to be removed from site at the contractor's expense.

Work Method

The Contractor shall use a combination of both Labour and equipment to carry out this Item work.

Quality Control

- No haulage equipment shall be used unless its capacity has been ascertained the Engineer.
- The quality of gravel dumped on the carriageway/carrageeway shall be visually checked daily.
- The quantity of material delivered in each load shall be checked before dumping is allowed.
- The distance between the stacks shall be checked using tape measure.

Measurement and Payment

No separate measurement and payment shall be made for haulage of gravel and contractor shall be deemed to have allowed in his rates and prices for the cost.

1004 Spreading and compaction of gravel

i. Labour methods ii. Equipment methods

This activity involves spreading gravel material, shaping to ensure uniform thickness of the layer across the full width of the carriageway and to the specified camber. Spreading also includes, removing any oversized stones or boulders which cannot be broken down to required size, spoil dump.

Where water needs to be added, it shall be applied in an even manner and the rate of application shall be such that no transverse or longitudinal flows occur. Unless otherwise instructed by the Engineer, the moisture content shall be within the range of +/- 2% of the optimum moisture content. Compaction will be carried out as specified in 5.05.

Work Method

The Contractor shall use **Labour** or Equipment to carry out this Item work.

Quality Control

- The gravel surface width shall be checked at every 100m interval using tape measure and shall have tolerance of + / - 50mm.
- Trial holes at every 100m shall be used to check the gravel surface thickness and shall have a tolerance of + 5mm / - 0mm.
- The camber cross fall shall be checked at every 50m and the maximum tolerances shall be + / - 1 %
- The longitudinal profile shall be checked with every load to ensure a smooth surface with no corrugations or depressions

Measurement: m3

The unit of measurement shall be in cubic metres of compacted material on carriageway

Payment

The unit rate shall be the full compensation for labour, tools, equipment and any incidental costs required for carrying out the work.

1006 Carriageway Grading

i) Light Grading

This activity shall consist of trimming of the carriageway to control roughness and corrugations using either a towed grader or a motorized grader. The width of the carriageway shall be as specified in the drawings or as directed by the Engineer.

The material shall be bladed toward the center of the carriageway starting from both edges to the specified camber.

Work Method

The contractor shall use equipment to carry out this item work.

Quality Control

- The width of the carriageway shall be checked using tape measure at every 10m with tolerance of +50mm or -20mm.
- The camber shall be checked using camber board at every 5m with and shall have a tolerance of +/- 1%

Measurement: m2

The unit of measurement shall be square metres of carriageway graded.

Payment

The unit rate shall be the full compensation for labour, equipment and any incidental costs required for carrying out the work.

ii) Heavy Grading and Compaction

This activity shall consist of scarifying of the existing carriageway/carriageway surface, cutting high spots and moving materials to fill potholes, corrugations and wheel ruts and reshaping of the surface to the specified camber, using either towed or motorized grader. All loose rocks, roots grasses shall be removed and disposed well clear of the drains.

Pegs 300 to 400mm shall be placed at 10 to 20 m intervals to mark edge of the carriageway.

The material shall be bladed toward the center of the carriageway starting from both edges until the specified camber is achieved. Compaction will be carried out as specified in 5.05.

Work Method

The contractor shall use equipment to carry out this item work.

Quality Control

• The width of the carriageway shall be checked using tape measure at every 10m with tolerance of + 50mm or -20mm.

The camber shall be checked using camber board at every 5m with and shall have a tolerance of +/- 1%

Measurement: m2

The unit of measurement shall be square metres of carriageway graded.

Payment

The unit rate shall be the full compensation for labour equipment and any incidental costs required for carrying out the work.

1007 Restoration of Quarries and Borrow pits

The ground shall be levelled, topsoil hauled back and uniformly spread over the entire exposed/excavation area.

Adequate drainage provisions shall be made to protect excavation areas. Where necessary appropriate protection measures may be taken to avoid erosion of the spread topsoil layer. Grass and trees may be replanted as directed by the Engineer.

Work Method

The Contractor may choose Labour, Equipment or a combination of both to carry out this Item depending on the degree of difficulty of the work.

Quality Control

The Engineer shall check that the required measures have been satisfactorily taken.

Measurement and Payment

No separate measurement and payment shall be made for restoration of quarries and borrow pits and contractor shall be deemed to have allowed in his rates and prices for the cost.

SECTION 17 - CONCRETE WORKS

1703 Materials for Concrete

This work shall consist of placing selected approved material of 250mm minimum diameter on the foundation put after excavation to receive levelling concrete in accordance with these specifications and in conformity with the lines, grades and cross sections shown on the Drawings as directed by the Engineer.

Materials

Selected rock: The selected rock builders to be placed for this work shall be hard, sound, durable quarry stones as approved by the Engineer. Samples of the stone to be used shall be submitted to and approved by the Engineer before any stone is placed.

The maximum size of the stone boulders shall be 300mm.

(b) Construction Method

After completion of the structural excavation the surface of the loose soil shall be levelled and compacted. Then the stone of the above sizes shall be placed in one layer of 250mm over the compacted bed where the bottom slab will rest. Coarse sand shall be spread to fill up the voids in the stone boulders, and compaction with vibratory compactors should be performed to make this layer dense whereon a concrete of levelling course shall be placed.

(c) Measurement and payment

Measurement for the bedding materials shall be made in cubic metres for the completed and accepted work, measured from the dimension shown on the Drawings, unless otherwise directed by the Engineer.

Payment for the bedding Materials for Levelling Concrete Works shall be full compensation for furnishing and placing all materials, all labour equipment, tools and all other items necessary for proper completion of the work in accordance with the Drawings and specifications and as directed by the Engineer.

1703(A) LEVELLING CONCRETE (CLASS 15/20) FOR BOTTOM SLAB INCLUSIVE OF COST OF FORM WORKS

This work shall consist of placing and levelling lean concrete class 15/20 over the prepared bed of stone boulders in the foundation for bottom slab and wing walls in accordance with these specifications and which conformity with the lines, grades, thickness and typical cross-sections shown on the drawings unless otherwise directed by the Engineer.

Materials for Levelling Concrete

Requirement for the concrete class 15/20 is specified as follows:-

Design compressive strength (28) days : 15N/mm²

Maximum size of coarse aggregate : 20mm

Maximum cement content : 300 kg/m³.

Maximum water/cement ration of 50% with slump of 80mm.

(b) Construction Method

The bed of stone boulders upon which the levelling concrete will be placed shall be smooth, compacted and true to the grades and cross-section shall be set to the required lines and grades.

(c) Measurement and payment

Measurement for levelling concrete (class 15/20) shall be made in cubic metres completed and accepted levelling concrete work measured in place which is done in accordance with the Drawings and the Specifications.

Payment for this work shall be the full compensation for furnishing and placing all materials, labour, equipment and tools, and other incidentals to Specifications and as directed by the Engineer.

Pay item No. 17/02 Levelling Concrete Works (Class 15/20) for Box Culvert and wingwalls inclusive of Cost of Form works.

1703 (C) FORMWORK FOR CULVERT WALLS

This work shall consist of all temporary moulds for forming the concrete for culvert walls and slabs together with all temporary construction required for their support. Unless otherwise directed by the Engineer all formworks shall be removed on completion of the walls and slabs.

(a) Materials

Forms shall be made of wood or metal and shall conform to the shape, lines and dimensions shown on the Drawings.

All timber shall be free from holes, loose material, knots, cracks, splits and warps or other defects affecting the strength or appearance of the finished structure.

Release Agents – Release agents shall be either neat oils containing a surface activating agent, cream emulsions, or chemical agents to be approved by the Engineer.

(b) Construction Method

(i) Formworks

Formworks shall be designed to carry the maximum loads that may be imposed, and so be rigidly constructed as to prevent deformation due to load, drying and wetting, vibration and other causes. After forms have been set in correct location, they shall be inspected and approved by the Engineer before the concrete is placed.

If requested, the contractor shall submit to the Engineer working drawings of the forms and also, if requested, calculations to certify the rigidity of the forms.

1703(D) Concrete Works (Class 20/20) Of Culvert Walls and Slabs

This work shall consist of furnishing, mixing, delivering and placing of the concrete for the construction of culvert walls and slabs, in accordance with these Specifications and in conformity with the requirements shown on the Drawings.

Concrete class 20/20 shall be used for Culvert walls and slabs.

a) Concrete Materials

(i) Cement: Cement shall be of Portland type and shall conform to the requirements of BS 12 or equivalent.

The contractor shall select only one type or brand of cement or others. Changing of type or brand of cement will not be permitted without a new mix design approved by the Engineer. All cement is subject to the Engineer's approval, however, approval of cement by the Engineer shall not relieve the Contractor of the responsibility to furnish concrete of the specified compressive strength.

Conveyance of cement by jute bags shall not be permitted. Storage in the Contractor's silo or storehouse shall not exceed more than two (2) months, and age of cement after manufacture at mill shall not exceed more than four (4) months. The Contractor shall submit to the Engineer for his approval the result of quality certificate prepared by the manufacturer.

Whenever it is found out that cement have been stored too long, moist, or caked, the cement shall be rejected and removed from the project.

(b) Aggregates

Fine and coarse aggregates must be clean, hard, strong and durable, and free from absorbed chemicals, clay coating, or materials in amounts that could affect hydration, bonding, strength and durability of concrete.

Grading of aggregates shall conform to the following requirements:

(i) Grading of Fine Aggregates

Sieve Size	Percentage by Weight Passing
10 mm	100
5 mm	89-100
2.5 mm	60-100
1.2 mm	30-100
0.6 mm	15-54
0.3 mm	5-40
0.15 mm	0-15

(ii) Grading of Coarse Aggregates

Size of Coarse Aggregate	Amounts finer than each standard sieve percentage by weight						
	40	30	25	20	15	10	5
2.5	-	-	90-100	-	30-69	0-10	

Other requirements for aggregates are as follows:

(iii) Fine Aggregates

Fitness Modulus, AASHTO M: 6: 2.3 – 3.1
Sodium Sulphate Soundness, AASHTO T104: Max. 10% loss
Content of Friable Particles AASHTO 112: Max 1% by weight
Sand Equivalent, AASHTO T176: Min. 75

(iv) Coarse Aggregate

Abrasion, AASGTO T96: Max. 405 loss
Soft Fragment and shale, AASHTO M80: Max. 5% by weight
Thin and elongated Pieces, AASHTO M80: Max. 15%

(v) Water

All sources of water to be used with cement shall be approved by the Engineer. Water shall be free from injurious quantities of oil, alkali, vegetable matter and salt as determined by the Engineer.

(vi) Admixture

Only admixture, which have been tested and approved in the site laboratory through trial mixing for design proportion shall be used.
Before selection of admixture, the Contractor shall submit to the Engineer the specific information or guarantees prepared by the admixture supplier.
The contractor shall not exclude the admixture from concrete proportions.

Concrete class 20/20

Concrete class 20/20 shall be used for culvert walls and slabs. The requirements of Concrete class 20/20 are provided as follows unless otherwise the Engineer will designate any alteration.

Design compressive strength (28 days): 20N/mm²
Maximum size of coarse aggregates: 20mm
Maximum water/cement ratio of 45% with slump of 80mm

(d) Proportioning Concrete

The Contractor shall consult with the Engineer as to mix proportions at least thirty (30) days prior to beginning the concrete work. The actual mix proportions of cement, aggregates, water and admixture shall be determined by the Contractor under supervision of the Engineer in the site laboratory.

The Contractor shall prepare the design proportions which has 120% of the strength requirement specified for the designated class of concrete.

No class of concrete shall be prepared or placed until its job-mix proportions have been approved by the Engineer.

(e) Concrete Work

(i) Batching

Batching shall be done by weight with accuracy of:

Cement : ½ percent

Aggregate : ½ percent

Water and Admixture : 1 percent.

Equipment should be capable of measuring quantities within these tolerances for the smartest batch regularly used, as well as for larger batches.

The accuracy of batching equipment should be checked every month in the presence of the Engineer and adjusted when necessary

(iii) Mixing and delivery

Slump of mixed concrete shall be checked and approved at an accuracy of +25mm against designated slump in these specifications.

(iv) Concrete in hot weather

No concrete shall be placed when the ambient air temperature is expected to exceed thirty three degrees celsius (33°C) during placement operations).

(v) Concreting at night

No concrete shall be mixed, placed or finished when natural light is insufficient, unless an adequate approved artificial lighting system is operated, such night work is subject to approval by the engineer.

(vi) Placing

In preparation of the placing of concrete, the interior space of forms shall be cleaned and approved by the engineer prior to placing concrete. All temporary members except tie bars to support forms shall be removed entirely from the forms and not buried in the concrete. The use of open and vertical chute shall not be permitted unless otherwise directed by the engineer.

The Contractor shall provide a sufficient number of vibrators to properly compact each batch immediately after it is placed in the forms.

(f) Measurement and Payment

Measurements for the Concrete Works Class 20/20 of culvert walls and slabs shall be made in cubic metres for the walls and slabs actually constructed, measured from their dimensions shown on the Drawings. Payment for the Concrete Works (Class 20/20) of culvert walls and slabs shall be the full compensation for furnishing all materials of the concrete mixing, delivering, placing and curing the concrete, equipment and tools, labour and other incidental necessary for the completion of the work in accordance with the Drawings and these Specifications and as directed by the Engineer.

**SECTION 20 - ROAD FURNITURE
2011 BOLLARDS**

Where directed by the Engineer, the contractor shall provide and install class 20/20 200mm diameter reinforced concrete bollards concreted 300mm into the ground.

SECTION 15: SUPERVISION AND CONTRACT EVALUATION MANUAL 2012

The Manual refers to the Ministry of Roads `Supervision and Contract evaluation Manual for road Maintenance Works 2012.

6. SECTION VI: BILLS OF QUANTITIES

- 6.1**The Bill of Quantities shall form part of the Contract Documents and is to be read in conjunction with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications and Drawings.
- 6.2**The brief description of the items in the Bill of Quantities is purely for the purpose of identification, and in no way modifies or supersedes the detailed descriptions given in the conditions of Contract and Specifications for the full direction and description of work and materials.
- 6.3**The Quantities set forth in the Bill of Quantities are estimated and provisional, representing substantially the work to be carried out, and are given to provide a common basis for tendering and comparing of Tenders. There is no guarantee to the Contractor that he will be required to carry out all the quantities of work indicated under any one particular item or group of items in the Bill of Quantities. The basis of payment shall be the Contractor's rates and the quantities of work actually done in fulfillment of his obligation under the Contract.
- 6.4**The prices and rates inserted in the Bills of Quantities will be used for valuing work executed, and the Engineer will measure the whole of the works executed in accordance with this Contract.
- 6.5**A price or rate shall be entered in ink against every item in the Bill of Quantities with the exception of items, which already have provisional sums, affixed thereto. The Tenderers are reminded that no "nil" or "included" rates or "lump-sum" discounts will be accepted. The rates for various items should include discounts if any. Tenderers who fail to comply will be disqualified.
- 6.6**Provisional sums (including Day works) in the Bill of Quantities shall be expended in whole or in part at the discretion of the Engineer in accordance with Sub-clause 52.4 and Clause 58 of part of the Conditions of Contract.
- 6.7**The price and rates entered in the Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional plant to be used, labour, insurance, supervision, compliance, testing, materials, erection, maintenance or works, overheads and profits, taxes and duties (excluding VAT) together with all general risks, liabilities and obligations set out or implied in the Contract, transport, electricity and telephones, water, use and replenishment of all consumables, including those required under the Contract by the Engineer and his staff.
- 6.8**Errors will be corrected by the evaluation committee for any arithmetic errors in computation or summation as follows:
- (a) Where there is a discrepancy between amount in words and figures, the amount in words will govern; and
 - (b) Where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer, there is an obviously gross misplacement of the decimal point in the unit price, in which event the total amount as quoted will govern and the unit rate will be corrected.
 - (c) If a Tenderer does not accept the correction of errors as outlined above, his Tender will be rejected.
- 6.9**The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no Items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.

- 6.10** "Authorized" "Directed" or "Approved" shall mean the authority, direction or approval of the Engineer.
- 6.11** The method of measurement of completed work for payment shall be in accordance with Standard Specification for Road and Bridge Construction of the Ministry of Transport and Communications, 1986.
- 6.12** Unless otherwise stated, all measurements shall be net taken on the finished work carried out in accordance with the details shown on the drawings or instructed, with no allowance for extra cuts or fills, waste or additional thickness necessary to obtain the minimum finished thickness or dimensions required in this contract. Any work performed in excess of the requirements of the plans and specifications will not be paid for, unless ordered in writing by the Engineer
- 6.13** The Bills of Quantities, unless otherwise expressly stated therein, shall be deemed to have been prepared in accordance with the principles of the latest edition of the Civil Engineering Standard Method of Measurement (CESMM).
- 6.14** Units of Measurement and abbreviations used herein shall have the following meanings:

Unit cubic meter	Abbreviation m ³ or cu m	Unit millimeter	Abbreviation mm
hectare	Ha	month	mth
hour	Hr	number	No
kilogram	Kg	provisional sum	P.S
kilometre	Km	square meter	m ² or sq m
lump sum	L.S	square millimeter	mm ² or sq m
meter	M	vehicle	veh
metric ton (1,000 kg)	T	week	wk
months	mths		

- 6.15** Hard material, in this Contract, shall be defined as the material which, in the opinion of the Engineer, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and which cannot be extracted by ripping with a dozer tractor of at least 150 brake horse power (112 kilowatt) with a single, rear-mounted, hydraulic ripper. Boulders of more than 0.2m³ occurring in soft material shall be classified as hard material.
- 6.16** Soft material shall be all material other than hard material.

6.17 BILL OF QUANTITIES

SPOT IMPROVEMENT OF KEREIRIA- GIEKURI AND KIRARUNI- KAROU ROADS LEADING TO NKONDI STORE IN THARAKA SOUTH SUB COUNTY					
1. PROPOSED 40M LONG DRIFT AT KIONYO B RIVER CROSSING					
Bill No. 1	General: Office administration/Preliminaries			NKONDI STORE IN THARAKA SOUTH SUB COUNTY	
Item No.	Description	Units	Quantity	Rate	Amount
01-80-010	Allow a prime cost of sum for material testing as directed by the Engineer	PC SUM	30,000		
01-80-011	Extra over item 01-80-010 for contractors overheads and profits	%	30,000		
01-80-016	Provide and erect publicity signs as directed by the Engineer	NO.	30,000		
01-80-030	Allow a prime cost for attendance to the RE,s supervisory staff including overtime	PC SUM	200,000		
01-80-031	Include percentage of PC sum in item 01-80-030 for contractors overhead and profit	%	200,000		
Bill No. 8	CULVERT AND DRAINAGE WORKS				
07-50-001	Excavate for structure in soft material	M ³	160		
07-50-006	Fill with Selected granular fill material	M ³	72		
Bill No. 10	GRADING AND GRAVELLING				
10-50-004	Light Manual Reshaping (Grab edge, Fill gullies and reshape carriageway)	M ²	3000		
10-60-001	Provide gravel wearing course- excavation, free haul, spread and compact gravel-equipment	M ³	270		
Bill No. 17	REINFORCED CONCRETE WORKS				
17-60-001	Provide place and compact concrete class 15/20 for blinding	M ³	24		
17-60-002	Provide place and compact concrete class 20/25 concrete	M ³	48		
17-60-003	Vertical framework class F2 finish	M ²	46		
17-60-005	Provide and place A142 fabric mesh reinforcement	M ²	240		
Bill No. 20	ROAD FURNITURE REPAIR AND MAINTENANCE				
20-50-004	Edge marker posts	No.	18		

2. PROPOSED DRIFT REPAIR AND EXTENSION AT NTENDERUNI RIVER					
Item No.	Description	Units	Quantity	Rate	Amount
Bill No. 8 CULVERT AND DRAINAGE WORKS					
07-50-001	Excavate for structure in soft material	M ³	80		
07-50-006	Fill with Selected granular fill material	M ³	36		
Bill No. 10 GRADING AND GRAVELLING					
10-50-004	Light Manual Reshaping (Grab edge, Fill gullies and reshape carriageway)	M ²	2000		
10-60-001	Provide gravel wearing course-excavation, free haul, spread and compact gravel-equipment	M ³	180		
Bill No. 17 REINFORCED CONCRETE WORKS					
17-60-001	Provide place and compact concrete class 15/20 for blinding	M ³	12		
17-60-002	Provide place and compact concrete class 20/25 concrete	M ³	24		
17-60-003	Vertical framework class F2 finish	M ²	26		
17-60-005	Provide and place A142 fabric mesh reinforcement	M ²	120		
Bill No. 20 ROAD FURNITURE REPAIR AND MAINTENANCE					
20-50-004	Edge marker posts	No.	12		

3. PROPOSED 6M X 3.2M SMALL SPAN SINGLE CELL BOX CULVERT ACROSS ERIMBA STREAM A					
Item No.	Description	Units	Quantity	Rate	Amount
Bill No. 8	CULVERT AND DRAINAGE WORKS				
07-50-001	Excavate for structure in soft material	M ³	75		
07-50-006	Fill with Selected granular fill material	M ³	12		
Bill No. 10	GRADING AND GRAVELLING				
10-50-004	Light Manual Reshaping (Grab edge, Fill gullies and reshape carriageway)	M ²	3000		
10-60-001	Provide gravel wearing course-excavation, free haul, spread and compact gravel-equipment	M ³	270		
Bill No. 17	REINFORCED CONCRETE WORKS				
17-60-001	Provide place and compact concrete class 15/20 for blinding	M ³	5		
17-60-002	Provide place and compact concrete class 20/25 concrete	M ³	42		
17-60-003	Vertical framework class F2 finish	M ²	150		
17-80-005	Provide, cut, bend and fix steel reinforcement of diameter greater, equal to or less than 16 per the drawing or as instructed by the Engineer	TON	3365		
Bill No. 20	ROAD FURNITURE REPAIR AND MAINTENANCE				
20-50-004	Edge marker posts	No.	4		

4. PROPOSED 6M X 3M X 2.4 SMALL SPAN SINGLE CELL BOX CULVERT ACROSS ERIMBA STREAM B					
Item No.	Description	Units	Quantity	Rate	Amount
Bill No. 8	CULVERT AND DRAINAGE WORKS				
07-50-001	Excavate for structure in soft material	M ³	75		
07-50-006	Fill with Selected granular fill material	M ³	12		
Bill No. 10	GRADING AND GRAVELLING				
10-50-004	Light Manual Reshaping (Grab edge, Fill gullies and reshape carriageway)	M ²	2000		
10-60-001	Provide gravel wearing course-excavation, free haul, spread and compact gravel-equipment	M ³	180		
Bill No. 17	REINFORCED CONCRETE WORKS				
17-60-001	Provide place and compact concrete class 15/20 for blinding	M ³	5		
17-60-002	Provide place and compact concrete class 20/25 concrete	M ³	42		
17-60-003	Vertical framework class F2 finish	M ²	150		
17-80-005	Provide, cut, bend and fix steel reinforcement of diameter greater, equal to or less than 16 per the drawing or as instructed by the Engineer	TON	3365		
Bill No. 20	ROAD FURNITURE REPAIR AND MAINTENANCE				
20-50-004	Edge marker posts	No.	4		
	SUBTOTAL FOR WORKS				
	ADD 16% VAT				
	TOTAL BID PRICE (CARRIED TO FORM OF TENDER)				

1. SECTION VII – STANDARD FORMS

LIST OF STANDARD FORMS

1. Form of Tender
2. Appendix to Form of Tender
3. Form of Agreement
4. Form of Tender Security
5. Form of Performance Security
6. Bank Guarantee For Advance Payment
7. Tender Questionnaire
8. Mandatory Business Questionnaire
9. Certificate of Site Visit
10. Form of Written Power of Attorney
11. Key Personnel
12. Schedule of Completed Civil Works for Road Works
13. Schedule of Ongoing Projects
14. Declaration Form
15. Notification of Award
16. Tender Securing Declaration Form

1. Form of Tender (Mandatory)

To: Kenya Cereal Enhancement Programme-Climate Resilient Agricultural Livelihoods Window of P.O. Box 30028-00100 Nairobi

Tender Name: TENDER FOR ROAD SPOT IMPROVEMENT WORKS FOR ROADS LEADING TO NKONDI STORAGE FACILITY

Tender Reference: MOALF/SDCD/KCEP-CRAL/PROC/029/2018-2019

Dear Sir,

1) Having examined the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above-named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of:

(Insert amount in words)

.....
.....

(Insert amount in figures).....

.....

As specified in the Appendix to Bid or such other sums as may be ascertained in accordance with the said Conditions.

- 2) We undertake, if our bid is accepted, to commence the works within Fourteen (14) days of receipt of the Engineer's order to commence, and to complete and deliver the whole of the works comprised in the contract within the time stated in the Appendix to Bid.
- 3) If our bid is accepted we will, when required, obtain the guarantee of a Bank or other sureties (to be approved by you) to be jointly and severally bound with us in a sum not exceeding 10% of the above named sum for the due performance of the contract under the terms of a Bond to be approved by you.
- 4) We agree to abide by this Tender for a period of [number] **120** days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- 5) We understand that you are not bound to accept the lowest or any bid you may receive.

- 6) The Tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be subject of correction, adjustment or amendment in any way by any person or entity.
- 7) On the basis of our previous experience we are fully experienced and competent in the type of work included in this tender and we have adequate financial resources to carry out the works described within the period for completion. We are in a position to fulfil the contract for which we have tendered
- 8) Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof and signing of the contract by the accounting officer or an officer authorized in writing by the accounting officer shall constitute a binding Contract between us.

Dated this _____ day of _____ 20_____

Signature _____ in the capacity of _____

duly authorized to sign tenders for and on behalf of

_____ *[Name of Tenderer]* of

_____ *[Address of Tenderer]*

(Name of Witness).....

(Signature of Witness).....

(Address of Witness).....

(Occupation of Witness).....

2. APPENDIX TO FORM OF TENDER

(This appendix forms part of the tender)

CONDITIONS OF CONTRACT	CLAUSE	AMOUNT
Tender Security (Bank Guarantee only)		Ksh 190,000.00
Amount of Performance Security (Unconditional Bank Guarantee)	10.1	10 percent of Tender Sum in the form of Unconditional Bank Guarantee Submitted by the 15th day from the date of the award letter
Program to be submitted	14.1	Not later than fourteen (14) days after issuance of Order to Commence
Cash flow estimate to be submitted	14.3	Not later than fourteen (14) days after issuance of Order to Commence
Minimum amount of Third Party Insurance	23.2	Contract Price
Submission of Contractors All Risk Insurance Cover		Submitted by the 15th day from the date of award letter
Period for commencement, from the Engineer's order to commence	41.1	Fourteen (14) days
Time for completion	43.1	Six Months (6) Months
Amount of liquidated damages	47.1	0.05 % of the contract price per day.
Limit of liquidated damages	47.1	5% of contract value
Defect Liability period	49.1	One (1) Year
Percentage of Retention	60.5	5% of Interim Payment Certificate
Limit of Retention Money	60.5	5 % of Contract Price
Minimum amount of interim certificates	60.2	5% of Contract sum
Time within which payment to be made after Interim Payment Certificate signed by Engineer	60.10	Ninety (90) days
Time within which payment to be made after Final Payment Certificate signed by Engineer	60.10	Ninety (90) days
Advance Payment	60.12	Not Applicable
Appointer of Arbitrator	67(3)	The Chartered Institute of Arbitrators - Kenya.
Notice to Employer and Engineer	68.2	The Employers address is: The Programme Coordinator KCEP-CRAL P.O.Box 30028 Nairobi The Engineer's address is: The Programme Engineer KCEP-CRAL P.O.BOX 30028 Nairobi

Signature of Tender..... Date.....

3. FORM OF AGREEMENT (To be filled at the time of contract signing)

This contract (hereinafter called "the Contract") is made on the _____ day of _____ 2019 between the **Ministry Of Agriculture, Livestock, Fisheries and Irrigation, State Department for Crop Development on behalf of Kenya Cereal Enhancement Programme-Climate Resilient Agricultural Livelihoods Window of P.O. Box 30028-00100 Nairobi whose registered office is situated at Kilimo House along Cathedral Road** (hereinafter referred to as "the Client") whose expression shall where the context so admits include its successors, administrators or permitted assignees on the one part

AND

_____ of _____ (hereinafter called "the Contractor") whose Certificate of Registration is _____ and whose registered office is situated at _____ on the other part (hereinafter the 'Contractor' whose expression shall where the context so admits include its successors, administrators or permitted assignees) on the other part.

WHEREAS the Client invited tenders through a National Competitive Bid **SPOT IMPROVEMENT WORKS FOR ROADS LEADING TO NKONDI STORAGE FACILITY: MOALF/SDCD/KCEP-CRAL/PROC/029/2018-2019** and the contractor has accepted the spot works for roads leading to Nkondi Storage facility for a total contract sum of price of _____ inclusive of **16% VAT** hereinafter called "the contract price)

NOW THIS CONTRACT WITNESSETH AS FOLLOWS:

1. In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Contract and in case of any discrepancies or inconsistencies in the contract agreement, the order of precedence of the contract documents shall be as follows;
 - a) The Contract Agreement Form
 - b) The Form of Tender
 - c) The Price Schedule
 - d) The Special Conditions of Contract;
 - e) The General Conditions of Contract;
 - f) The Technical Specifications
 - g) The Notification of Award
 - h) The Letter of Acceptance
3. In consideration of the payments to be made by the Client to the Contractor as hereinafter mentioned, the Contractor hereby covenants with procuring entity to provide the works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Client hereby covenants to pay the Contractor in consideration of the works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of State Department for Crop Development, Kenya Cereal Enhancement Programme-Climate Resilient Agricultural Livelihoods Window:

Date:

**Principal Secretary
State Department for Crop Development**

WITNESSED BY:

Date:

**Programme Coordinator
KCEP-CRAL**

For and on behalf of Contractor

Date:

WITNESSED BY:

Date:

4. FORM OF TENDER SECURITY (Mandatory)

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 "the Employer") in the sum of Kshs..... for which payment will 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 tenderers
Or
- 2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
 - (a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;
 - (c) Rejects a correction or an arithmetic error in the tender.

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

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

_____	_____
[date]	[signature of the Bank]
_____	_____
[witness]	[seal]

(Amend accordingly if provided by the Insurance Company)

5. PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)

To: [Name KCEP-CRAL]

Dear Sir,

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

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a 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 Works to be performed there under 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 _____

(Amend accordingly if provided by Insurance Company)

6. 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 Works to be performed there under 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: _____

7. TENDER QUESTIONNAIRE (Mandatory)

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 of tenderer;

.....

5. 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*)

8. MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE (Mandatory)

Name of Applicant(s).....

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

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

Part 1 -General
Business Name
.....
Location of Business Premises
.....
Plot No ... Street/Road..... Postal address..... Tel No.
.....
Fax Email.....
Nature of Business (Attach Company Profile)
.....
Registration Certificate No. (Attach Copy)
.....
Tax Compliance No (Attach Copy)
.....
Maximum value of business which you can handle at any one time –
Ksh.....
Name of your bankers.....
Branch.....
Bank Account Number.....
Payment Terms.....

Part 2 (a) – Sole Proprietor

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

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

Citizenship details.....

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

Part 2 (b) – Partnership

Given details of partners as follows

Name	Nationality	Citizenship Details	Shares
------	-------------	---------------------	--------

1.....

2.....

3.....

4.....

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

Part 2 (c) – Registered Company

Private or Public

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

State the nominal and issued capital of company

Nominal Kshs. Issued Kshs.

Give details of all directors as follows

Name	Nationality	Citizenship Details	Shares
------	-------------	---------------------	--------

1.

2.

3.

4.

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

1. Company.....Tel/ Mobile.....

Contact Person.....Designation.....

2. Company.....Tel/Mobile.....

Contact Person.....Designation.....

3. Company.....Tel/Mobile.....

Contact Person.....Designation.....

4. Company.....Tel/Mobile.....

Contact Person.....Designation.....

Part 4-(a) Debarment

I/We declare that I/We have not been debarred from any procurement process and shall not engage in any fraudulent or corrupt acts with regard to this or any other tender by the KCEP-CRAL and any other public or private institutions.

Full Names.....

Signature.....

Dated thisday of2019

In the capacity of.....

Duly authorized to sign Tender for and on behalf of

.....

Part 4-(b) Bankruptcy / Insolvency / receivership.

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

Full Names.....

Signature.....

Dated thisday of2019

Duly authorized to sign Tender for and on behalf of

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

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

- a).....
- b).....
- c).....

Have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three (3) years preceding the commencement of procurement proceedings.

Signed.....

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

In the capacity of

.....

Dated thisday of2019.

Suppliers' / Company's Official Rubber Stamp

.....

Part 4-(d) Conflict of Interest

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

- a)
- b)
- c)
- d)

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

In the capacity of

Dated thisday of2019

Suppliers' / Company's Official Rubber Stamp

Part 4-(e) – Interest in the Firm:

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

Yes/No (Delete as necessary)

Institution

(Title) (Signature) (Date)

PART 5(I) – EXPERIENCE: Please list here below similar projects accomplished or companies / clients you have supplied with similar items or materials / Services in the last 3 years

	COMPANY NAME	COUNTRY	CONTRACT ORDER NO	VALUE	CONTRACT PERSON (FULL NAMES)	EMAIL	CELL PHONE NO
1							
2							
3							
4							
5							

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

AGPO firms must provide evidence from their bank that the account to which KCEP-CRAL shall make payment has a youth or a woman or a PWD listed in the CR12 form/ partnership deed/sole proprietor certificate as a MANDATORY signatory of that account, - Sec.157 (11) of PPADA:

Account No.....

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

ID No(s):...../.....

Signature and stamp of the authorized Banker Representative.....Date.....

Part 7--Declaration

I/We the undersigned state that the above information is correct and that I/We give KCEP-CRAL to seek any other references concerning my/our company from whatever sources deemed e.g. company registrar’s office, banks etc.

Full names
.....

Signature.....

For and on behalf of M/s

In the capacity of
.....

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

Company’s Rubber Stamp.....

9. CERTIFICATE OF TENDERER'S VISIT TO SITE
(Mandatory)

This is to certify that [Name/s].....

.....

Being the authorized representative/Agent of [Name of Tenderer]

.....

.....

Participated in the organized inspection visit of the site of the works for the
(Name of Contract:)

..... day of.....20.....

Signed.....

(Employer's Representative)

.....

NOTE: This form is to be completed when the site visit is made at the time of the organized site Visit and pre-bid meeting.

10.FORM OF WRITTEN POWER-OF-ATTORNEY Mandatory

The Tenderer consisting of a joint venture shall state here below the name and address of his representative who is authorized to receive on his behalf correspondence in connection with the Tender.

.....
(Name of Tenderer's Representative in block letters)

..... (Address of
Tenderer's Representative)

..... (Signature of
Tenderer's Representative)

11. KEY PERSONNEL *(Mandatory)*

DESIGNATION	NAME	NATIONALITY	SUMMARY OF QUALIFICATIONS AND EXPERIENCE		
			Qualifications	General Experience (Yrs)	Specific Experience (Yrs)
Headquarters: 1 Partner/ Director or other key staff (Give Designation)					
Site Office: Site Agent Site Surveyor Foreman					

Note: The Bidder shall list in this schedule the key personnel he will employ from the Contractor’s headquarters and from the Contractor’s site office to direct and execute the work together with their qualifications, experience, position held and nationality in accordance with the Conditions of Contract Part II (where required, use separate sheets to add extra data for column 4). Bidders shall attach certified copies of academic certificates, and CVs of all key staff.

I certify that the above information is correct.

.....
(Name & Title)

.....
(Signature)

.....
(Date)

**12.SCHEDULE OF COMPLETED ROAD WORKS CARRIED OUT BY
THE TENDERER IN THE LAST THREE YEARS (Mandatory)**

DESCRIPTION OF WORKS	NAME OF CLIENT	TOTAL VALUE OF WORKS (KSHS)	CONTRACT PERIOD (YEARS)	YEAR COMPLETED

Note: Bidders shall attach certified copies of letters of award (for each listed project), certified copies of completion certificates.

I certify that the above Civil Works were successfully carried out and completed by ourselves.

.....
(Title)

.....
(Signature)

.....
(Date)

***Value in Kshs using Central Bank of Kenya mean exchange rate at a reference date 30 days before date of tender opening.**

13.SCHEDULE OF ONGOING PROJECTS *(Mandatory)*

DESCRIPTION OF WORKS	NAME OF CLIENT	DATE OF COMMENCEMENT	DATE OF COMPLETION	VALUE OF WORKS IN KSH	VALUE COMPLETED UP TO DATE %	PHYSICALLY COMPLETED UP TO DATE %

- Note:**
- 1. Bidders shall attach certified copies of letters of award (for each listed project) and any certified evidence for executed works e.g copy of recent payment certificate.**
 - 2. Bidders must indicate all their on-going works as at the time of bidding. Any non-disclosure shall constitute non-responsiveness)**

I certify that the above Civil Works are being carried out by ourselves and that the above information is correct.

.....
(Name & Title)

.....
(Signature)

.....
(Date)

14. DECLARATION FORM (Mandatory)

Date:

To: Kenya Cereal Enhancement Programme-Climate Resilient Agricultural Livelihoods Window of P.O. Box 30028-00100 Nairobi

Tender Name: TENDER FOR ROAD SPOT IMPROVEMENT WORKS FOR ROADS LEADING TO NKONDI STORAGE FACILITY

Tender Reference: MOALF/SDCD/KCEP-CRAL/PROC/029/2018-2019

I/ WE (name and address of the tenderer)

.....
.....

Declare the following:

- 1) That I/WE have not been debarred from participating in public procurement in Kenya
- 2) That I/WE have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.
- 3) That we do not have any conflict of interest in the above tender
- 4) That I have no relative (Relative as defined in section 66 (11) PPAD ACT 2015) working in the Programme.

Name and Title.....

Signature.....Date

(To be signed by authorized representative and officially stamped)

15.LETTER OF NOTIFICATION OF AWARD (Do not Fill)

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

16.OTHER SUPPLEMENTARY INFORMATION

1. Road Maintenance Manual

The Manual refers to the Ministry of Roads 'Road Maintenance Manual, May 2010 Edition'.

2. Supervision and Contract Evaluation Manual 2012

The Manual refers to the Ministry of Roads 'Supervision and Contract evaluation Manual for road Maintenance Works 2012.