



National Drought Management Authority

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KENYA



TENDER DOCUMENT FOR THE PROPOSED CONSTRUCTION OF KILIMBONI EARTH DAM IN KITUI COUNTY

CATEGORY : NATIONAL COMPETITIVE BID -YOUTH

TENDER NUMBER: NDMA/KCEP-CRAL/05/2020-2021

TENDER ISSUE DATE: Tuesday 2nd March, 2021

TENDER CLOSING DATE: Wednesday 17th March, 2021 AT 10:30AM

TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS3
SECTION I: INVITATION FOR TENDERS (IFT).....4
SECTION II: INSTRUCTIONS TO TENDERERS (ITT).....7
SECTION III: TENDER DATA SHEET36
SECTION IV: GENERAL CONDITIONS OF CONTRACT.....46
SECTION V: CONTRACT DATA SHEET (CDS)84
SECTION VI: TECHNICAL SPECIFICATIONS90
SECTION VII: DRAWINGS92
SECTION VIII: BILL OF QUANTITIES97
SECTION IX: TENDER FORMS105
SECTION X: FORMS OF SECURITY121
SECTION XI: APPLICATION TO PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW
BOARD 127

ABBREVIATIONS AND ACRONYMS

CDS	Contract Data Sheet
GCC	General Conditions of Contract
IFT	Invitation for Tender
ITT	Instruction to Tenderers
OAG	Office of the Auditor General
PE	Procuring Entity
PM	Project Manager
PPDA 2015	Public Procurement and Disposal Act, 2015
PPDR 2020	Public Procurement and Disposal Regulations, 2020
PPrA	Public Procurement Regulatory Authority
STD	Standard Tender Documents
SOR	Statement of Requirements
SP	Service Provider
TDS	Tender Data Sheet
VAT	Value Added Tax

SECTION I: INVITATION FOR TENDERS (IFT)



TENDER NOTICE

The National Drought Management Authority (NDMA) is a public body established by the National Drought Management Authority (NDMA) Act, 2016. The Act gives the NDMA the mandate to exercise overall coordination over all matters relating to drought risk management and to establish mechanisms, either on its own or with stakeholders, that will end drought emergencies in Kenya.

The Kenya Government has received financing from the International Fund for Agricultural Development (IFAD) through Financing Agreement between Government of Kenya and IFAD comprising a loan from IFAD, a grant from the Adaptation for smallholder Agriculture Programme (ASAP) Trust Fund and a grant from the European Union (EU) represented by the European Commission (EC) through a contribution agreement between IFAD and EC in order to implement the Kenya Cereal Enhancement Programme (KCEP – Climate Resilient Agricultural Livelihood window (KCEP-CRAL).

National Drought Management Authority now invites applications for tenders from interested and eligible contractors for the below tender:

Tender Number	Tender Description	Category
NDMA/KCEP-CRAL/05/2020-2021	Tender for proposed Construction of Kilimboni Earth Dam in Kitui County	Open

Interested eligible firms may inspect, view and download the tender document free of charge from the National Drought Management Authority Website www.ndma.go.ke OR the public procurement information portal links: <https://www.tenders.go.ke/website> or the Programme's website www.kcepccral.go.ke

Completed tender documents are to be enclosed in in plain sealed envelopes and clearly marked “**TENDER NUMBER** and **TENDER NAME**” should be addressed to:

Chief Executive Officer
National Drought Management Authority
Lonrho House, Standard Street, 8th Floor
P.O. Box 53547 – 00200, NAIROBI

and deposited in the tender box situated at the NDMA Reception, Lonrho House, Standard Street 8th Floor so as to be received on or before Wednesday 17th March, 2021 at 10:30am.

Eligible bidders who download the document from the above website(s) are required to submit their particulars (name & address of the firm, contact person & their mobile number) to the NDMA EMAIL procurement email address supplychain@ndma.go.ke using their official email addresses. All bidders are also advised to regularly visit the above NDMA/Programme website, to obtain any additional information/addendum on the tender that may be issued before the closing date.

Tender Documents will be opened immediately thereafter in the Boardroom on 17th Floor, Lonrho House, Standard Street, Nairobi in the presence of Tenderers or their representatives who choose to attend. The guidelines for the management and prevention of Covid 19 pandemic shall apply.

James Oduor

CHIEF EXECUTIVE OFFICER

SECTION II: INSTRUCTIONS TO TENDERERS (ITT)

Table of Contents

ABBREVIATIONS AND ACRONYMS	Error! Bookmark not defined.
SECTION I: INVITATION FOR TENDERS (IFT)	Error! Bookmark not defined.
TENDER NOTICE	Error! Bookmark not defined.
SECTION II: INSTRUCTIONS TO TENDERERS (ITT)	Error! Bookmark not defined.
defined.	
A. Introduction	Error! Bookmark not defined.
1. Scope of Tender	Error! Bookmark not defined.
2. Source of Funds	Error! Bookmark not defined.
3. Eligible Tenderers	Error! Bookmark not defined.
4. One Tender per Tenderer	Error! Bookmark not defined.
5. Alternative Tenders by Tenderers	Error! Bookmark not defined.
6. Cost of Tendering	Error! Bookmark not defined.
7. Site Visit and Pre-Tender Meeting	Error! Bookmark not defined.
B. Tendering Documents	Error! Bookmark not defined.
8. Content of Tendering Documents	Error! Bookmark not defined.
9. Clarification of Tendering Documents	Error! Bookmark not defined.
10. Amendments of the Tendering Documents	Error! Bookmark not defined.
C. Preparation of Tenders	Error! Bookmark not defined.
11. Language of Tender	Error! Bookmark not defined.
12. Documents Constituting the Tender	Error! Bookmark not defined.
13. Documents Establishing Eligibility and Qualifications of the Tenderer	Error! Bookmark not defined.
Bookmark not defined.	
1. Error! Bookmark not defined.	
14. Lots Package	Error! Bookmark not defined.
15. Form of Tender	Error! Bookmark not defined.
16. Tender Prices	Error! Bookmark not defined.
17. Tender Currencies	Error! Bookmark not defined.
18. Tender Validity Period	Error! Bookmark not defined.
19. Tender Security and Tender Securing Declaration	Error! Bookmark not defined.
20. Format and Signing of Tender	Error! Bookmark not defined.
D. Submission of Tenders	Error! Bookmark not defined.
21. Sealing and Marking of Tenders	Error! Bookmark not defined.
22. Deadline for Submission of Tenders	Error! Bookmark not defined.
23. Late Tenders	Error! Bookmark not defined.
24. Modification, Substitution and Withdrawal of Tenders	Error! Bookmark not defined.
defined.	
E. Opening and Evaluation of Tenders	Error! Bookmark not defined.
25. Opening of Tenders	Error! Bookmark not defined.
26. Confidentiality	Error! Bookmark not defined.
27. Clarification of Tenders	Error! Bookmark not defined.
28. Preliminary Examination of Tenders	Error! Bookmark not defined.
29. Correction of Errors	Error! Bookmark not defined.
30. Conversion to Single Currency	Error! Bookmark not defined.
31. Comparison of Tenders	Error! Bookmark not defined.
32. National Preference	Error! Bookmark not defined.
33. Determination of the Lowest Evaluated Tender	Error! Bookmark not defined.
34. Post-qualification of Tenderer	Error! Bookmark not defined.
F. Award of Contract	Error! Bookmark not defined.
35. Criteria of Award	Error! Bookmark not defined.
36. Clarifications	Error! Bookmark not defined.

- 37. [Procuring Entity’s Right to Accept any Tender and to Reject any or all Tenders](#)
Error! Bookmark not defined.
- 38. [Procuring Entities Right to Vary Quantities at the Time of Award](#) **Error!**
Bookmark not defined.
- 39. [Notification of Award](#) **Error! Bookmark not defined.**
- 40. [Signing of Contract](#) **Error! Bookmark not defined.**
- 41. [Performance Security](#) **Error! Bookmark not defined.**
- 42. [Advance Payment](#) **Error! Bookmark not defined.**
- 43. [Adjudicator](#) **Error! Bookmark not defined.**
- G. [Review of Procurement Decisions](#) **Error! Bookmark not defined.**
- 44. [Right to Review](#) **Error! Bookmark not defined.**
- 45. [Time Limit on Review](#) **Error! Bookmark not defined.**
- 46. [Submission of Applications for Review by the Public Procurement Administrative Review Board](#) **Error! Bookmark not defined.**
- 47. [Decision by the Public Procurement Administrative Review Board](#) **Error!**
Bookmark not defined.
- 48. [Appeal on the decision of the Review Board](#) **Error! Bookmark not defined.**
- 49. [Sexual Harassment, Sexual Exploitation and Abuse](#) **Error! Bookmark not defined.**
- 50. [Money Laundering and Terrorist Financing](#) 35

[SECTION III: TENDER DATA SHEET](#) **Error! Bookmark not defined.**

[SECTION IV: GENERAL CONDITIONS OF CONTRACT](#)... **Error! Bookmark not defined.**

- A. [General](#)..... **Error! Bookmark not defined.**
- 23. [Discoveries](#)..... **Error! Bookmark not defined.**
- 24. [Possession of the Site](#)..... **Error! Bookmark not defined.**
- 25. [Access to the Site](#)..... **Error! Bookmark not defined.**
- 26. [Instructions, Inspections and Audits](#)..... **Error! Bookmark not defined.**
- 27. [Disputes](#)..... **Error! Bookmark not defined.**
- 28. [Procedure for Disputes](#)..... **Error! Bookmark not defined.**
- 30. [Replacement of Adjudicator](#) **Error! Bookmark not defined.**
- B. [Time Control](#)..... **Error! Bookmark not defined.**
- 51. [Programme](#)..... **Error! Bookmark not defined.**
- 52. [Extension of the Intended Completion Date](#) **Error! Bookmark not defined.**
- 53. [Acceleration](#) **Error! Bookmark not defined.**
- 54. [Delays Ordered by the Project Manager](#) **Error! Bookmark not defined.**
- 55. [Management Meetings](#)..... **Error! Bookmark not defined.**
- 56. [Early Warning](#)..... **Error! Bookmark not defined.**
- C. [Quality Control](#)..... **Error! Bookmark not defined.**
- 57. [Identifying Defects](#)..... **Error! Bookmark not defined.**
- 58. [Tests](#) **Error! Bookmark not defined.**
- 59. [Correction of Defects](#)..... **Error! Bookmark not defined.**
- 60. [Uncorrected Defects](#)..... **Error! Bookmark not defined.**
- D. [Cost Control](#)..... **Error! Bookmark not defined.**
- 61. [Bill of Quantities](#)..... **Error! Bookmark not defined.**
- 62. [Changes in the Quantities](#) **Error! Bookmark not defined.**
- 63. [Variations](#)..... **Error! Bookmark not defined.**
- 64. [Payments for Variations](#)..... **Error! Bookmark not defined.**
- 65. [Cash Flow Forecasts](#) **Error! Bookmark not defined.**
- 66. [Payment Certificates](#) **Error! Bookmark not defined.**
- 67. [Payments](#)..... **Error! Bookmark not defined.**
- 68. [Compensation Events](#)..... **Error! Bookmark not defined.**
- 69. [Taxes](#)..... **Error! Bookmark not defined.**

SECTION II: INSTRUCTIONS TO TENDERERS (ITT)

70.	Currencies	.....	Error! Bookmark not defined.
71.	Price Adjustment	.....	Error! Bookmark not defined.
72.	Retention	.....	Error! Bookmark not defined.
73.	Liquidated DamAbages	.....	Error! Bookmark not defined.
74.	Bonus	.....	Error! Bookmark not defined.
75.	Advance Payment	.....	Error! Bookmark not defined.
76.	Performance Securities	.....	Error! Bookmark not defined.
77.	Dayworks	.....	Error! Bookmark not defined.
78.	Cost of Repairs	.....	Error! Bookmark not defined.
E.	Finishing the Contract	.....	Error! Bookmark not defined.
79.	Completion Certificate	.....	Error! Bookmark not defined.
80.	Taking Over	.....	Error! Bookmark not defined.
81.	Final Account	.....	Error! Bookmark not defined.
82.	Operating and Maintenance Manuals	.....	Error! Bookmark not defined.
83.	Termination	.....	Error! Bookmark not defined.
84.	Payment upon Termination	.....	Error! Bookmark not defined.
85.	Property	.....	Error! Bookmark not defined.
86.	Release from Performance	.....	Error! Bookmark not defined.
87.	Suspension of Financing	.....	Error! Bookmark not defined.
SECTION V: CONTRACT DATA SHEET (CDS)		.....	Error! Bookmark not defined.
Taxes and other charges		.....	Error! Bookmark not defined.
All government taxes applicable during the implementation of the contract applies.		.....	Error! Bookmark not defined.
SECTION VI: TECHNICAL SPECIFICATIONS		.....	Error! Bookmark not defined.
SECTION VII: DRAWINGS		.....	Error! Bookmark not defined.
SECTION VIII: BILL OF QUANTITIES		.....	Error! Bookmark not defined.
SECTION IX: TENDER FORMS		.....	Error! Bookmark not defined.
FORM OF TENDER		.....	Error! Bookmark not defined.
F.	Tender-Securing Declaration	.....	Error! Bookmark not defined.
G.	Confidential Business Questionnaire	.....	Error! Bookmark not defined.
H.	Integrity Declaration	.....	Error! Bookmark not defined.
I.	Letter of Acceptance	.....	Error! Bookmark not defined.
J.	Form of Contract Agreement	.....	Error! Bookmark not defined.
SECTION X: FORMS OF SECURITY		.....	Error! Bookmark not defined.
A.	Tender Security (Bank Guarantee)	.....	Error! Bookmark not defined.
B.	Performance Bank or Insurance Guarantee [Unconditional]	.....	Error! Bookmark not defined.
SECTION XI: APPLICATION TO PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD		.....	Error! Bookmark not defined.
FORM 15: CONTRACTOR'S EQUIPMENT		.....	Error! Bookmark not defined.
FORM 16: PERSONNEL		.....	Error! Bookmark not defined.
FORM 17: CURRICULUM VITAE OF PROPOSED PERSONNEL		.....	Error! Bookmark not defined.
FORM 20: PENDING LITIGATION AND ARBITRATION		..	Error! Bookmark not defined.
FORM 22: COMPLETED CIVIL WORKS		.....	Error! Bookmark not defined.

- [FORM 23: FINANCIAL SITUATION](#)**Error! Bookmark not defined.**
[FORM 24: AVERAGE ANNUAL TURNOVER](#)**Error! Bookmark not defined.**
[FORM 25: FINANCIAL RESOURCES](#)**Error! Bookmark not defined.**
[FORM 26: GENERAL EXPERIENCE](#)**Error! Bookmark not defined.**
[FORM 27: SPECIFIC EXPERIENCE](#).....**Error! Bookmark not defined.**

A. Introduction

- 1. Scope of Tender**
 - 1.1** The Procuring Entity indicated in the **Tender Data Sheet (TDS)** invites Tenders for the construction of works as specified in the **Tender Data Sheet** and Sections VI (Technical Specifications) and VII (Drawings).
 - 1.2** The successful Tenderer will be expected to complete the works by the required completion date specified in the **Tender Data Sheet**.
 - 1.3** The objectives of the works are listed in the **Tender Data Sheet**. These are mandatory requirements. Any subsequent detail is offered to support these objectives and must not be used to dilute their importance.
- 2. Source of Funds**
 - 2.1** The Government of Kenya through Procuring Entity named in the **Tender Data Sheet** has received a grant from the financing institution named in the **Tender Data Sheet** towards the cost of the Project named in the **Tender Data Sheet**. The Government of Kenya intends to apply a part of the proceeds of this grant to payments under the Contract described in the **Tender Data Sheet**.
 - 2.2** Payments will be made directly by the Procuring Entity (or by financing institution specified in the **Tender Data Sheet** upon request of the Procuring Entity to so pay) and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring Entity.
- 3. Eligible Tenderers**
 - 3.1** A Tenderer may be a natural person, private or public company, government-owned institution, subject to sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the **Tender Data Sheet**, all parties shall be jointly and severally liable.
 - 3.2** The Invitation for Tenders is open to all suppliers as defined in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulations, 2020 except as provided hereinafter.

- 3.3** National Tenderers shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya, such as the Ministry of Public Works, National Construction Authority or the Energy Regulatory Commission.
- 3.4** A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if they:
- a) Are associated or have been associated in the past directly or indirectly with employees or agents of the Procuring Entity or a member of a board or committee of the Procuring Entity;
 - b) Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the Procuring Entity to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the works under this Invitation for Tenders;
 - c) Have controlling shareholders in common; or
 - d) Receive or have received any direct or indirect subsidy from any of them; or
 - e) Have the same legal representative for purposes of this Tender; or
 - f) Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
 - g) Submit more than one Tender in this Tendering process, However, this does not limit the participation of subcontractors in more than one Tender, or as Tenderer and subcontractor simultaneously.
- 3.5** A Tenderer will be considered to have a conflict of interest if they participated as a consultant in the preparation of the design or technical specification of the project and related services that are the subject of the Tender.
- 3.6** Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the Government of Kenya in accordance with GCC sub-Clause 3.2.
- 3.7** Government owned enterprises in Kenya may participate only if they are legally and financially autonomous, if they operate

SECTION II: INSTRUCTIONS TO TENDERERS (ITT)

under commercial law, are registered by the relevant registration board or authorities and if they are not a dependent agency of the Government.

3.7 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

4. One Tender per Tenderer

4.1 A firm shall submit only one Tender, in the same Tendering process, either individually as a Tenderer or as a partner in a joint venture pursuant to ITT Clause 5.

4.2 No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process.

4.3 A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity.

4.4 A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.

5. Alternative Tenders by Tenderers

5.1 Tenderers shall submit offers that comply with the requirements of the Tendering documents, including the basic Tenderer's technical design as indicated in the specifications and Drawings and Bill of Quantities. Alternatives will not be considered, unless specifically allowed for in the **Tender Data Sheet**. If so allowed, sub-Clause 5.2 and 5.3 shall govern.

5.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **Tender Data Sheet** as will the method of evaluating different times for completion.

5.3 If so allowed in the **Tender Data Sheet**, Tenderers wishing to offer technical alternatives to the requirements of the Tendering documents must also submit a Tender that complies with the requirements of the Tendering documents, including the basic technical design as indicated in the specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity.

6. Cost of Tendering

6.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

7. Site Visit and Pre-Tender Meeting

- 7.1 The Tenderer, at the Tenderer's own responsibility and risk, is advised to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Tenderer's own expense.
- 7.2 The Procuring Entity may conduct a site visit and a pre-Tender meeting. The purpose of the pre-Tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.3 The Tenderer's designated representative is invited to attend a site visit and pre-Tender meeting which, if convened, will take place at the venue and time stipulated in the **Tender Data Sheet**.
- 7.4 The Tenderer is requested as far as possible, to submit any questions in writing or by electronic means to reach the procuring Entity before the pre-Tender meeting. It may not be practicable at the meeting to answer all questions, but questions and responses will be transmitted in accordance with sub-Clause 7.5.
- 7.5 Minutes of the pre-Tender meeting, including the text of the questions raised and the responses given together with any responses prepared after the pre-Tender meeting will be transmitted within the time stated in the **Tender Data Sheet** to all purchasers of the Tendering documents. Any modification of the Tendering documents listed in sub-Clause 8.1 that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT sub Clause 10.2 and not through the minutes of the pre-Tender meeting.
- 7.6 Non attendance during the site visit or pre-Tender meeting will not be a cause for disqualification of a Tenderer unless specified to the contrary in the **Tender Data Sheet**.

B. Tendering Documents

8. Content of Tendering Documents

- 8.1 The works required, Tendering procedures, and contract terms are prescribed in the Tendering Documents. In addition to the Section I Invitation for Tenders, Tendering documents which should be read in conjunction with any addenda issued in accordance with ITT sub Clause 10.2 include:

Section II	Instructions to Tenderers
Section III	Tender Data Sheet
Section IV	General Conditions of Contract
Section V	Contract Data Sheet
Section VI	Specifications
Section VII	Drawings
Section VIII	Bill of Quantities
Section IX	Forms of Tender

SECTION II: INSTRUCTIONS TO TENDERERS (ITT)

- Form of Tender
- Appendix to Tender
- Confidential Business Questionnaire
- Integrity Declaration
- Letter of Acceptance
- Form of Contract Agreement
- Section X Forms of Security
 - Tender Security Form
 - Tender Securing Declaration
 - Performance Bank or Insurance Guarantee
 - Advance Payment Guarantee
- Section XI Form RB 1 Application to Public Procurement Administrative Review Board

- 8.2** The number of copies to be completed and returned with the Tender is specified in the **Tender Data Sheet**.
- 8.3** The Invitation for Tenders (Section I) issued by the Procuring Entity is not part of the Tendering Documents and is included for reference purposes only. In case of discrepancies between the Invitation for Tenders and the Tendering Documents listed in sub-Clause 8.1 above, the said Tendering Documents will take precedence.
- 8.4** The Procuring Entity is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from the authorized staff of the Procuring Entity.
- 8.5** The Tenderer is expected to examine all instructions, forms, terms and specifications in the Tendering documents. Failure to furnish all information required by the Tendering Documents or to submit a Tender substantially responsive to the Tendering documents in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

9. Clarification of Tendering Documents

- 9.1** A prospective Tenderer requiring any clarification of the Tendering documents may notify the Procuring Entity in writing, e-mail or facsimile at the Procuring Entity's address indicated in the **Tender Data Sheet**.
- 9.2** The Procuring Entity will within the period stated in the **Tender Data Sheet** respond in writing to any request for clarification provided that such request is received no later than the period indicated in the **Tender Data Sheet** prior to the deadline for the submission of Tenders prescribed in sub-Clause 22.1.
- 9.3** Copies of the procuring entity's response will be forwarded to all Purchasers of the Tendering documents, including a description of the inquiry, but without identifying its source.
- 9.4** Should the Procuring Entity deem it necessary to amend the Tendering documents as a result of a clarification, it shall do

so following the procedure under ITT Clause 10.

- 10. Amendments of the Tendering Documents**
- 10.1** Before the deadline for submission of Tenders, the Procuring Entity may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, modify the Tendering documents by issuing addenda.
- 10.2** Any addendum issued shall be part of the Tender documents pursuant to sub-Clause 8.1 and shall be communicated in writing, by e-mail or facsimile to all who have obtained the Tendering documents directly from the Procuring Entity.
- 10.3** In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity at its discretion shall extend, as necessary, the deadline for submission of Tenders, in accordance with sub-Clause 22.2

C. Preparation of Tenders

- 11. Language of Tender**
- 11.1** The Tender, and all correspondence and documents related to the Tender exchanged by the Tenderer and the Procuring Entity shall be written in the Tender language stipulated in the **Tender Data Sheet**. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the above stated language, in which case, for purposes of interpretation of the Tender, the translation shall prevail.
- 12. Documents Constituting the Tender**
- 12.1** The Tender submitted by the Tenderer shall consist of the following components:
- a) The Form of Tender (in the format indicated in Section IX) completed in accordance with ITT Clause 15, 16 and 17;
 - b) Information requested by Instructions to Tenderers ITT sub-Clause 13.2; 13.3 and 13.4;
 - c) Tender Security or Tender Securing Declaration in accordance with Instructions to Tenderers ITT Clause 19;
 - d) Priced Bill of Quantities;
 - e) Qualification Information Form and Documents;
 - f) Alternative offers where invited in accordance with Instructions to Tenderers ITT Clause 5;
 - g) Written confirmation authorizing the signatory of the

Tender to commit the Tenderer in accordance with Instructions to Tenderers ITT sub Clause 19.2; and

- h) And any information or other materials required to be completed and submitted by Tenderers, as specified in the **Tender Data Sheet**.

**13. Documents
Establishing
Eligibility and
Qualifications of
the Tenderer**

13.1 Pursuant to ITT Clause 13, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.

13.2 In the event that pre-qualification of potential Tenderers has been undertaken, only Tenders from pre-qualified Tenderers will be considered for award of contract. These qualified Tenderers should submit their Tenders with any information updating the original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission. The update or confirmation should be provided in Section IX.

13.3 If the Procuring Entity has not undertaken pre-qualification of potential Tenderers, to qualify for award of the contract, Tenderers shall meet the minimum qualifying criteria specified in the **Tender Data Sheet**:

13.4 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **Tender Data Sheet**:

- a) The Tender shall include all the information listed in the **Tender Data Sheet** pursuant to sub-Clause 13.3 above for each joint venture partner;
- b) The Tender shall be signed so as to be legally binding on all partners;
- c) One of the partners will 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;
- d) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of a joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
- e) 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 statement to this effect shall be included in the authorization mentioned under (c) above as well as in the Tender

SECTION II: INSTRUCTIONS TO TENDERERS (ITT)

and in the Agreement (in case of a successful Tender);
and

- f) A copy of the joint venture agreement entered into by all partner shall be submitted with the Tender. Alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful Tender shall be signed by all partners and submitted with the Tender, together with a copy of the proposed Agreement.
- g) The Tender Security and Tender Securing Declaration as stated in accordance with ITT Clause 19, and in case of a successful Tender, the Agreement, shall be signed so as to be legally binding on all partners.

- 14. Lots Package**
 - 14.1** When Tendering for more than one contract under the lots arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being tendered in regard to:
 - a) Average annual turnover;
 - b) Particular experience including key production rates;
 - c) Financial means, etc;
 - d) Personnel capabilities; and
 - e) Equipment capabilities.
 - 14.2** In case the Tenderer fail to fully meet any of these criteria, it may be qualified only for those lots for which the Tenderer meets the above requirement.
- 15. Form of Tender**
 - 15.1** The Tenderer shall fill the Form of Tender furnished in the Tendering Documents. The Form of Tender must be completed without any alterations to its format and no substitute shall be accepted.
- 16. Tender Prices**
 - 16.1** The Contract shall be for the whole Works, as described in sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Tenderer.
 - 16.2** The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Bill of quantities.
 - 16.3** All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 15 days prior to the deadline for submission of Tenders, shall be included in the rates, prices and total Tender price submitted by the Tenderer.
 - 16.4** The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the

SECTION II: INSTRUCTIONS TO TENDERERS (ITT)

Contract if provided for in the **Tender Data Sheet** and the provisions of the Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the **Contract Data Sheet**.

17. Tender Currencies

- 17.1** The unit rates and prices shall be quoted by the Tenderer in the currency as specified in the **Tender Data Sheet**.
- 17.2** Tenderers shall indicate details of their expected foreign currency requirements in the Tender, if any. The rates of exchange to be used by the Tenderers in arriving at the local currency equivalent shall be the selling rates for similar transactions established by the authority specified in the **Tender Data Sheet** prevailing on the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Tenderer. In any case, payments will be computed using the rates quoted in the Tender.
- 17.3** Tenderers may be required by the Procuring Entity to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices and in the Contract Data Sheet are reasonable and responsive to sub-Clause 17.1.

18. Tender Validity Period

- 18.1** Tenders shall remain valid for the period specified in the **Tender Data Sheet** after the Tender submission deadline prescribed by the Procuring Entity, pursuant to ITT Clause 22. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non responsive.
- 18.2** In exceptional circumstances, prior to expiry of the original Tender validity period, the Procuring Entity may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing or by cable. A Tenderer may refuse the request without forfeiting its Tender Security or causing to be executed its Tender Securing declaration. A Tenderer agreeing to the request will not be required or permitted to otherwise modify the Tender, but will be required to extend the validity of its Tender Security or Tender Securing declaration for the period of the extension, and in compliance with ITT Clause 19 in all respects.
- 18.3** In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial Tender validity period, the contract price will be increased by a factor specified in the request for extension. The Tender evaluation shall be based on the Tender price without taking into consideration on the above correction.

19. Tender Security

- 19.1** Pursuant to ITT Clause 12, where required in the **Tender**

**and Tender
Securing
Declaration**

Data Sheet, the Tenderer shall furnish as part of its Tender, a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet**

A Tender Securing Declaration as specified in the **Tender Data Sheet** in the format provided in section X shall be provided as a mandatory requirement.

- 19.2** The Tender Security or Tender Securing Declaration is required to protect the Procuring Entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to ITT sub-Clause 19.9.
- 19.3** The Tender Security shall be denominated in the currency of the Tender and shall be in one of the following forms:
- a) Cash;
 - b) A Bank Guarantee;
 - c) An Insurance Bond issued by an insurance firm approved by the PPOA located in Kenya;
 - d) An irrevocable letter of credit issued by a reputable bank.
- 19.4** The Tender Security shall be in accordance with the Form of the Tender Security included in Section X or another form approved by the Procuring Entity prior to the Tender submission.
- 19.5** The Tender Security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 19.8 are invoked.
- 19.6** Any Tender not accompanied by a Tender Security in accordance with sub-Clauses 19.1 or 19.3 shall be rejected by the Procuring Entity as non-responsive, pursuant to ITT Clause 28.
- 19.7** The Procuring Entity shall immediately release any Tender Security if:
- a) The procuring proceedings are terminated;
 - b) The Procuring Entity determines that none of the submitted Tenders is responsive;
 - c) A contract for the procurement is entered into.
- 19.8** The Tender Security shall be forfeited and the Tender Securing Declaration executed if the Tenderer:
- a) Withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during

which Tenders must remain valid;

- b) Rejects a correction of an arithmetic error pursuant to sub-Clause 29.2;
- c) Refuse to enter into a written contract in accordance with ITT Clause 40;
- d) Fails to furnish the Performance Security in accordance with ITT Clause 41.

19.9 The Tender Security and Tender Securing Declaration of a joint venture must be in the name of the joint venture submitting the Tender.

19.10 A Tenderer shall be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time indicated in the Tender Securing Declaration:

- a) If the Tenderer withdraws its Tender, except as provided in ITT sub-Clauses 18.2 and 29.2; or
- b) In the case of a successful Tenderer, if the Tenderer fails within the specified time limit to:
 - (i) Sign the contract; or
 - (ii) Furnish the required Performance Security.

**20. Format and
Signing of Tender**

20.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT Clause 12 of these Instructions to Tenderers, with the Form of Tender, and clearly marked “**ORIGINAL**”. In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **Tender Data Sheet**, and clearly marked as “**COPIES**”. In the event of discrepancy between them, the original shall prevail.

20.2 The original and all copies of the Tenders 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. This authorization shall consist of a written confirmation as specified in the **Tender Data Sheet** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender, except for un-amended printed literature, shall be initialled by the person or persons signing the Tender.

20.3 Any interlineations, erasures, or overwriting shall be valid only if they are initialled by the person or persons signing the Tender.

20.4 The Tenderer shall furnish information as described in the

Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to contract execution if the Tenderer is awarded the contract

D. Submission of Tenders

21. Sealing and Marking of Tenders

- 21.1** The Tenderer shall seal the original and each copy of the Tender in separate envelopes, duly marking the envelopes as “**ORIGINAL**” and “**COPY**”. The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 21.2** The inner and outer envelopes shall:
- a) Be addressed to the Procuring Entity at the address given in the **Tender Data Sheet**; and
 - b) Bear the Project name indicated in the **Tender Data Sheet**, the Invitation for Tenders (IFB) title and number indicated in the **Tender Data Sheet**, and a statement: “**DO NOT OPEN BEFORE,**” to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to ITT sub-Clause 22.1.
- 21.3** In addition to the identification required in sub-Clause 21.2, the inner envelopes shall also indicate the name and address of the Tenderer to enable the Tender be returned unopened in case it is declared late, pursuant to sub-Clause 22.1 and for matching purpose under ITT Clause 23
- 21.4** If the outer envelope is not sealed and marked as required by ITT sub clause 21.2, the Procuring Entity shall assume no responsibility for misplacement or premature opening of the Tender.

22. Deadline for Submission of Tenders

- 22.1** Tenders shall be received by the Procuring Entity at the address specified under ITT sub-Clause 21.2 no later than the date and time specified in the **Tender Data Sheet**.
- 22.2** The Procuring Entity may, in exceptional circumstances and at its discretion, extend the deadline for the submission of Tenders by amending the Tendering documents in accordance with ITT Clause 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.
- 22.3** The extension of the deadline for submission of Tenders shall not be made later than the period specified in the **Tender Data Sheet** before the expiry of the original deadline.

- 23. Late Tenders**
- 23.1** The Procuring Entity shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 22.
- 23.2** Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected and returned unopened to the Tenderer
- 24. Modification, Substitution and Withdrawal of Tenders**
- 24.1** A Tenderer may modify or substitute or withdraw its Tender after it has been submitted, provided that written notice of the modification, including substitution or withdrawal of the Tender, is received by the Procuring Entity prior to the deadline prescribed for submission of Tenders prescribed under ITT sub-Clause 22.1.
- 24.2** The Tenderer’s modification or substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 20 and 21 with the outer and inner envelopes additionally marked “**MODIFICATION**” or **SUBSTITUTION** or “**WITHDRAWAL**” as appropriate. The notice may also be sent by electronic mail and facsimile, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders.
- 24.3** No Tender may be withdrawn, replaced or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Tender Form. Withdrawal of a Tender during this interval shall result in the Tenderer’s forfeiture of its Tender Security or execution of Tender Securing Declaration, pursuant to the ITT sub-Clause 19.9.
- 24.4** Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the **Tender Data Sheet** or as extended pursuant to sub-Clause 22.2 shall result in the forfeiture of the Tender Security and execution of Tender Securing Declaration pursuant to ITT sub-Clause 19.9.
- 24.5** Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender modifications in accordance with this Clause, or included in the original Tender submission.

E. Opening and Evaluation of Tenders

- 25. Opening of Tenders**
- 25.1** The Procuring Entity will open all Tenders including modifications, substitution or withdraw notices made pursuant to ITT Clause 24, in public, in the presence of Tenderers or their representatives who choose to attend and other parties with legitimate interest and Tender proceedings, at the place on the date and at time specified in the **Tender Data Sheet**. The Tenderers’ representatives who are present shall sign a register as proof of their

attendance.

- 25.2** Envelopes marked “**WITHDRAWAL**” shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 24 shall not be opened but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the “Power of Attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. Subsequently, all envelopes marked “**MODIFICATION**” shall be opened and the submissions therein read out in appropriate detail. Thereafter all envelopes marked or “**SUBSTITUTION**” opened and the submissions therein read out in appropriate detail.
- 25.3** All other envelopes shall be opened one at a time. The Tenderers' names, the Tender prices, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, the presence or absence of Tender security, and such other details as the appropriate tender opening committee may consider appropriate, will be announced by the Secretary of the Tender Opening Committee at the opening.
- 25.4** Tenders or modifications that are not opened and not read out at Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.
- 25.5** Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer’s representative shall indemnify the Procuring Entity against any claim or failure to read out the correct information contained in the Tenderer’s Tender.
- 25.6** No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 23.
- 25.7** The Secretary of the appropriate tender opening committee shall prepare minutes of the Tender opening. The record of the Tender opening shall include, as a minimum: the name of the Tenderers and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security or Tender Securing Declaration.
- 25.8** The Tenderers’ representatives who are present shall be requested to sign the record. The omission of a Tenderer’s

signature on the record shall not invalidate the contents and affect the record.

25.9 A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request.

26. Confidentiality

26.1 Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.

26.2 Any effort by a Tenderer to influence the Procuring Entity's processing of Tenders or award decisions may result in the rejection of his Tender.

26.3 Notwithstanding sub-Clause 26.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

27. Clarification of Tenders

27.1 To assist in the examination, evaluation, comparison of Tenders and post-qualification of the Tenderer, the Procuring Entity may, at its discretion, ask a Tenderer for clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered.

27.2 The request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of Tenders in accordance with ITT Clause 29.

27.3 From the time of Tender opening to the time of Contract award if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tender it should do so in writing.

28. Preliminary Examination of Tenders

28.1 Prior to the detailed evaluation of Tenders, the Procuring Entity will determine whether:

- a) The Tender has been submitted in the required format;
- b) Any Tender Security submitted is in the required form, amount and validity period;
- c) The Tender has been signed by the person lawfully authorized to do so;
- d) The required number of copies of the Tender have been submitted;

- e) The Tender is valid for the period required;
- f) All required documents and information have been submitted; and
- g) Any required samples have been submitted.

28.2 The Procuring Entity will confirm that the documents and information specified under ITT Clause 12 and ITT Clause 13 have been provided in the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected.

28.3 The Procuring Entity may waive any minor informality, nonconformity, or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer

28.4 A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tendering documents, without material deviation or reservation. A material deviation or reservation is one that:

- a) Affects in any substantial way the scope, quality, or execution of the Works;
- b) Limits in any substantial way, inconsistent with the Tendering documents, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
- c) If rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

28.5 If a Tender is not substantially responsive, it will be rejected by the Procuring Entity, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

29. Correction of Errors

29.1 Tenders determined to be substantially responsive will be checked by the Procuring Entity for any arithmetic errors. Errors will be corrected by the Procuring Entity as follows:

- a) If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;
- b) If there is an error in a total corresponding to the

addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

- c) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.

29.2 The amount stated in the Tender will, be adjusted by the Procuring Entity in accordance with the above procedure for the correction of errors and, with, the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and the Tender Security may be forfeited and the Tender Securing Declaration may be executed in accordance with sub-Clause 19.9.

30. Conversion to Single Currency

30.1 To facilitate the evaluation and comparison, the Procuring Entity will convert all Tender prices expressed in the amounts in various currencies in which the Tender prices are payable to Kenya Shillings at the selling exchange rate established for similar transactions by the Central Bank of Kenya ruling on the date specified in the **Tender Data Sheet**.

31. Comparison of Tenders

31.1 The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive in accordance with ITT Clause 28.

31.2 In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender price by adjusting the Tender price as follows:
Making any correction for errors pursuant to ITT Clause 29;
Excluding provisional sums and the provision, if any for contingencies in the Bill of Quantities, but including Day work , where priced competitively ; and
Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with sub-Clause 24.5.

31.3 The Procuring Entity may waive any minor informality or non-conformity, which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative standing of any Tenderer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the Tendering documents or otherwise result in unsolicited benefits for the Procuring Entity will not be taken into account in Tender evaluation.

32. National Preference

32.1 In the evaluation of Tenders the Procuring Entity shall apply exclusive preference to citizens of Kenya where:

- a) The funding is 100% from the Government of Kenya or a Kenyan body;

- b) The amounts are below the prescribed threshold of KShs.200 million;
- 32.2** To qualify for the preference the candidate shall provide evidence of eligibility by:
- a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or
- b) Providing proof of being a “citizen contractor” in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya.
- 32.3** The Minister of Finance may prescribe additional preference and/or reservation schemes, for example for procurements above these thresholds. If such additional preference schemes apply, details will be given in the **Tender Data Sheet**.
- 33. Determination of the Lowest Evaluated Tender**
- 33.1** The Tender with the lowest evaluated price from among those which are eligible, compliant and substantially responsive shall be the lowest evaluated Tender.
- 34. Abnormally Low Bids**
- 34.1** An abnormally low bid is one where the bid price, in combination with other constituent elements of the bid, appears unreasonably low to the extent that the bid price raises material concerns with the purchaser as to the capability of the bidder to perform the contract for the offered bid price.
- 34.2** In the event of identification of a potentially abnormally low bid, the purchaser shall seek written clarification from the bidder, including a detailed price analysis of its bid price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the bidding document
- 34.3** After evaluation of the price analysis, in the event that the purchaser determines that the bidder has failed to demonstrate its capability to perform the contract for the offered bid price, the purchaser shall reject the bid.
- 35. Post-qualification of Tenderer**
- 35.1** If specified in the **Tender Data Sheet**, post-qualification shall be undertaken.
- 35.2** The Procuring Entity will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in sub-Clause 13.3.

- 35.3** The determination will take into account the Tenderer's financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to sub-Clause 13.3, as well as such other information as the Procuring Entity deems necessary and appropriate. Factors not included in these Tendering documents shall not be used in the evaluation of the Tenderer's qualifications.
- 35.4** An affirmative determination will be a prerequisite for award of the contract to the Tenderer. A negative determination will result in rejection of the Tenderer's Tender, in which event the Procuring Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

F. Award of Contract

36. Criteria of Award

- 36.1** Subject to ITT Clause 35 and 36, the Procuring Entity will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tendering documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:
- a) Eligible in accordance with the provisions of ITT Clause 3;
 - b) Is determined to be qualified to perform the Contract satisfactorily;
 - c) Successful negotiations have been concluded.
- 36.2** If, pursuant to sub-Clause 14.1, this Contract is being awarded on a "lot and package" basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderer for award of more than one Contract.

37. Clarifications

- 37.1** Clarifications may be undertaken with the lowest evaluated Tenderer relating to the following areas:
- a) A minor alteration to the technical details of the statement of requirements;
 - b) Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the Tendering documents;

- c) A minor amendment to the Contract Data Sheet;
- d) Finalizing payment arrangements;
- e) Mobilization arrangements;
- f) Agreeing final delivery or work schedule to accommodate any changes required by the Procuring Entity;
- g) The methodology or staffing; or
- h) Clarifying details that were not apparent or could not be finalized at the time of Tendering.

37.2 Clarifications shall not change the substance of the tender.

38. Procuring Entity's Right to Accept any Tender and to Reject any or all Tenders

38.1 Notwithstanding ITT Clause 35, the Procuring Entity reserves the right to accept or reject any Tender, and to cancel the Tendering process and reject all Tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers.

38.2 Notice of the rejection of all Tenders shall be given promptly within 14 days to all Contractors that have submitted Tenders.

38.3 The Procuring Entity shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds.

39. Procuring Entities Right to Vary Quantities at the Time of Award

39.1 The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of goods or related services originally specified in these Tendering documents (schedule of requirements) provided this does not exceed by the percentage indicated in the **Tender Data Sheet**, without any change in unit price or other terms and conditions of the Tender and Tendering documents.

40. Notification of Award

40.1 The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to expiration of the Tender validity period by e-mail or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Contractor in consideration of the provision and maintenance of the Work(s) as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

- 40.2** The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security in accordance with ITT Clause 41 and signing the Contract in accordance with sub-Clause 40.2
- 40.3** At the same time as the person submitting the successful Tender is notified, the Procuring Entity will notify each unsuccessful Tenderer, the name of the successful Tenderer and the Contract amount and will discharge the Tender Security and Tender Securing Declaration of the Tenderer pursuant to ITT sub Clause 19.7.
- 40.4** If, after notification of award, a Tenderer wishes to ascertain the grounds on which it's Tender or application for pre-qualification was unsuccessful, it should address its request to the secretary of the Tender Committee that authorized the award of contract. The secretary of the Tender Committee shall, within fourteen days after a request, provide written reasons as to why the Tender, proposal or application to be pre-qualified was unsuccessful. However, failure to take this opportunity to clarify the grounds for rejection does not affect the Tenderer's right to seek immediate review by the Public Procurement Administrative Review Board under Clause 45.

41. Signing of Contract

- 41.1** Promptly, and in no case later than 14 days, after notification, Procuring Entity shall send the successful Tenderer the Agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.
- 41.2** Within the period specified in the notification or Tender Data Sheet but not earlier than fourteen (14) days since notification of award of contract, the successful Tenderer shall sign and date the contract and return it to the Procuring Entity.

42. Performance Security

- 42.1** Within thirty (30) days but after 14 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the Tender Data Sheet and the Contract Data Sheet, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.
- 42.2** If the Performance Security is provided by the successful Tenderer in the form of a Bank

Guarantee or Insurance Bond, it shall be issued either:

- a) At the Tenderer's option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm through a correspondent bank or insurance firm located in Kenya;
- b) With the consent of the Procuring entity, directly by a foreign bank acceptable to the Procuring entity.

42.3 Failure of the successful Tenderer to comply with the requirement of sub-Clause 41.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security, in which event the Procuring Entity may make the award to the next lowest evaluated Tenderer or call for new Tenders.

43. Advance Payment

43.1 The Procuring Entity will provide an Advance Payment as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the Tender Data Sheet.

43.2 The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section X. For the purpose of receiving the Advance Payment, the Tenderer shall make an estimate of, and include in its Tender, the expenses that will be incurred in order to commence work. These expenses will relate to the purchase of equipment, machinery, materials, and on the engagement of labour during the first month beginning with the date of the Procuring Entity's "Notice to Commence" as specified in the Contract Data Sheet.

44. Adjudicator

44.1 The Procuring Entity proposes the person named in the Tender Data Sheet to be appointed as Adjudicator under the Contract, at an hourly fee specified in the Tender Data Sheet, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data Sheet at the request of either party.

G. Review of Procurement Decisions

- 45. Right to Review**
- 45.1** A Tenderer who claims to have suffered or risk suffering, loss or damage or injury as a result of breach of a duty imposed on a Procuring Entity or an Approving Authority by the Public Procurement and Disposal Act, 2015 and the Public Procurement and Disposal Regulations 2020, the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:
- a) The choice of procurement method;
 - b) a decision by the Procuring Entity to reject all Tenders, proposals or quotations;
 - c) Where a contract is signed in accordance to Section 135 of the Public Procurement and Asset Disposal Act, 2015;
 - d) Where an appeal is frivolous.
- 46. Time Limit on Review**
- 46.1** The Tenderer shall submit an application for review in the number of copies and pay fees as prescribed by the Public Procurement and Disposal Regulations 2020 within fourteen (14) days of the time the Tenderer became or should have become aware of the circumstances giving rise to the complaint or dispute.
- 47. Submission of Applications for Review by the Public Procurement Administrative Review Board**
- 47.1** Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 at the address shown in the Tender Data Sheet. The secretary to the review board shall immediately after filing of the request, serve a copy thereof on the Procuring Entity or Director-General as the case may be.
- 47.2** The application for administrative review shall be in accordance with the requirements of Regulation 167 of the Public Procurement and Disposals Regulations, 2020, including:
- a) Reasons for the complaint, including any alleged breach of the Act or Regulations;
 - b) An explanation of how the provisions of the Act and or Regulation has been breached or omitted, including the dates and name of the responsible public officer, where known;
 - c) Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request;
 - d) Remedies sought;

- e) Any other information relevant to the complaint.
- 48. Decision by the Public Procurement Administrative Review Board**
- 48.1** The Administrative Review Board shall within thirty days after receipt of an application for administrative review deliver a written decision which shall indicate:
- a) Annuling anything the Procuring Entity has done in the procurement proceedings, including annulling the procurement proceedings in their entirety;
 - b) Giving directions to the Procuring Entity with respect to anything to be done or redone in the procurement proceedings;
 - c) Substituting the decision of the Review Board for any decision of the Procuring Entity in the procurement proceedings;
 - d) Order the payment of costs as between parties to the review.
- 48.2** The decision made by the Review Board shall, be final and binding on the parties unless judicial review thereof commences within fourteen (14) days from the date of the Review Board's decision.
- 49. Appeal on the decision of the Review Board**
- 49.1** Any party to the review aggrieved by the decision of the Review Board may appeal to the High Court and the decision of the High Court shall be final.
- 50. Sexual Harassment, Sexual Exploitation and Abuse**
- 50.1** IFAD requires requires that all beneficiaries of IFAD Funding, including the employer and any bidders, implementing partners, service providers, suppliers, sub-suppliers, contractors, sub-contractors, consultants, sub-consultants, and any of their agents (whether declared or not) and personnel comply with IFAD's Policy on Preventing and Responding to Sexual Harassment, Sexual Exploitation and Abuse. For the purpose of this provision, and consistent with IFAD's Policy on Preventing and Responding to Sexual Harassment, Sexual Exploitation and Abuse as it may be amended from time to time, the terms set forth below are defined as follows:
- Sexual harassment means "any unwelcome sexual advance, request for sexual favour or other verbal, non-verbal or physical conduct of a sexual nature that unreasonably interferes with work, alters or is made a condition of employment, or creates an intimidating, hostile or offensive work environment. Sexual exploitation and abuse means "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of others (sexual exploitation); the

actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions (sexual abuse)”.

50.2 Employers, Suppliers and bidders shall take all appropriate measures to prevent and prohibit sexual harassment and sexual exploitation and abuse on the part of their personnel and subcontractors or anyone else directly or indirectly employed by them or any of subcontractors in the performance of the contract. Purchasers, suppliers and bidders shall immediately report to the purchaser or IFAD any incidents of sexual harassment and sexual exploitation and abuse arising out of or in connection with the performance of the contract or prior to its execution, including convictions, disciplinary measures, sanctions or investigations. The purchaser may take appropriate measures, including the termination of the contract, on the basis of proven acts of sexual harassment, sexual exploitation and abuse arising out of or in connection with the performance of the contract.

50.3 The bidder or subcontractor or supplier is required to disclose any relevant prior sanctions, convictions, disciplinary measures or criminal records.

**51. Money Laundering
and Terrorist
Financing**

51.1 IFAD requires that all beneficiaries of IFAD funding or funds administered by IFAD, including the employer, any bidders, implementing partners, service providers and suppliers, observe the highest standards of integrity during the procurement and execution of such contracts, and commit to combat money laundering and terrorism financing consistent with IFAD’s Anti-Money Laundering and Countering the Financing of Terrorism Policy.

SECTION III: TENDER DATA SHEET

Tender Data Sheet (TDS)

Instructions to Tenderers Clause Reference

TDS Reference Number	ITT Clause Number	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
A. Introduction		
1.	1.1	The Procuring Entity is National Drought Management Authority
2.	1.1	Name of Project is PROPOSED CONSTRUCTION OF KILIMBONI EARTH DAM IN KITUI IN ZOMBE WARD, KITUI COUNTY
3.	1.2	The expected completion date of the works is 4 months after signing of the contract
4.	1.3	The project is targeting to improve community preparedness towards building their resilience to drought.
5.	2.1	Name of financing institution is International Fund for Agricultural Development (IFAD) through Financing Agreement between Government of Kenya and IFAD comprising a loan from IFAD, a grant from the Adaptation for smallholder Agriculture Programme (ASAP) Trust Fund and a grant from the European Union (EU) represented by the European Commission (EC) through a contribution agreement between IFAD and EC in order to implement the Kenya Cereal Enhancement Programme (KCEP – Climate Resilient Agricultural Livelihood window (KCEP-CRAL). Name of the Procuring Entity is National Drought Management Authority Financial Year - 2020/2021 Describe works under the contracts <ul style="list-style-type: none"> • Preliminary and General Items • Excavation and Earthworks • Draw Off System • Concrete, masonry and auxiliary works • Gabion Checks
6.	2.2	The loan/ credit number is 2000000263: 2000001121 and 200001522
7	3.3	IFAD requires that all beneficiaries of IFAD funding or funds administered by IFAD, including the employer, any bidders, implementing partners, service providers and suppliers, observe the highest standards of integrity during the procurement and execution

SECTION III: TENDER DATA SHEET

		of such contracts, and commit to combat money laundering and terrorism financing consistent with IFAD's Anti-Money Laundering and Countering the Financing of Terrorism Policy.
8	4.4	A tenderer who submits or participates in more than one tender (other than as a sub-contractor or in cases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.
9.	3.1	Only Tenderers registered as National Construction Authority Category 7 only for Water Works.
10.	5.1	Alternative Tenders are <i>NOT ALLOWED</i> in this Tender.
	5.2	Alternative time for completion N/A
11	7.3	Pre-Tender meeting shall be NOT be held
12	7.5	N/A
	7.6	N/A

B. Tendering Documents

13.	8.2	The number of copies to be completed and returned with the Tender is One (1) Copy and Original
14.	9.1	Address for clarification of Tendering Document is Chief Executive Officer National Drought Management Authority P.O. Box 53547 – 00200 Nairobi Email: supplychain@ndma.go.ke Bidders are advised to regularly check the NDMA website www.ndma.go.ke for Addendum and / or clarifications
15.	9.2	Period to Respond to request for clarification by the Procuring Entity 3 days Period Prior to deadline for submission of Tenders for Tenderers to request clarification 5days

C. Preparation of Tenders

15.	11.1	Language of Tender and all correspondence shall be English
16.	13.3	Other information or materials required to be completed and submitted by Tenderers: a) Copies of original documents defining the constitution or legal status, place of registration, and principal, place of business; written power of

SECTION III: TENDER DATA SHEET

	<p>attorney authorizing the signatory of the Tender to commit the Tenderer.</p> <p>b) The minimum required annual volume of construction work for the successful Tenderer in any of the last 3 years shall be: Kshs. 10 Million</p> <p>c) Experience as prime contractor in the construction of at least three projects of a nature and complexity equivalent to the Works in the last 3 years or the period stated in a) above (to comply with this requirement, works cited should be at least 70 percent complete).</p> <p>d) The essential equipment to be made available for the Contract by the successful Tenderer (proposals for timely acquisition or own, lease, hire, etc) shall be:</p> <ul style="list-style-type: none"> i) Excavator/Back hoe excavator ii) Tippers iii) Concrete mixer iv) 25mm concrete Poker vibrator complete with generator v) Pick UP <p>e) Earth/Water works Inspector/Work Superintendent with a minimum of 5 years' experience, 3 years in works of an equivalent nature and volume.</p> <p>f) Evidence of adequate working capital or credit accessibility for this contract.</p> <p>g) Information regarding litigation, current</p> <p>EVALUATION CRITERIA</p> <p>The following requirements must be met by the tenderer notwithstanding other requirements in the tender documents, bidders must serialize all the pages of each bid submitted.</p> <p>MANDATORY CRITERIA</p> <table border="0"> <thead> <tr> <th style="text-align: left;">No.</th> <th style="text-align: left;">Responsive or Non-Responsive</th> </tr> </thead> <tbody> <tr> <td>MR1</td> <td>Must submit a copy of certificate of registration/Incorporation</td> </tr> <tr> <td>MR2</td> <td>Must submit a copy of valid tax compliance certificate</td> </tr> <tr> <td>MR3</td> <td>Must fill the bill of quantities in the format provided (incomplete BoQs will be rejected-Both Options must be filled.</td> </tr> <tr style="background-color: yellow;"> <td>MR4</td> <td>Must fill in the tender securing declaration form in the format provided</td> </tr> <tr> <td>MR5</td> <td>Must fill the form of tender in the format provided and signed by the authorised person</td> </tr> <tr> <td>MR6</td> <td>Power of attorney proof authorising the signatory of the tenderer to commit the tenderer</td> </tr> </tbody> </table>	No.	Responsive or Non-Responsive	MR1	Must submit a copy of certificate of registration/Incorporation	MR2	Must submit a copy of valid tax compliance certificate	MR3	Must fill the bill of quantities in the format provided (incomplete BoQs will be rejected-Both Options must be filled.	MR4	Must fill in the tender securing declaration form in the format provided	MR5	Must fill the form of tender in the format provided and signed by the authorised person	MR6	Power of attorney proof authorising the signatory of the tenderer to commit the tenderer
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	<p>MR7 – Must submit a copy of valid registration by the National Construction Authority (NCA 7 for water works only) accompanied by a valid practising license.</p> <p>MR8 Must Provide Valid Business /Trading License from a Local Government</p> <p>MR9: Must submit CR12 showing names of directors</p> <p>MR10. MUST Paginate/Serialize the tender document</p> <p>MR11. Must fill in, sign and stamp Anti-Corruption Declaration Form</p> <p>MR12. Must duly fill, Sign and Stamp the Declaration Form provided</p> <p>MR 13. Must provide a copy valid AGPO certificate in the Youth Category</p> <p>At this stage, the tender’s submission will either be responsive in the entire mandatory requirement (MR) above or non-responsive. The non-responsive submission will be eliminated from the entire evaluation process and will not be considered any further.</p> <p>The Authority will verify information submitted. Any form of forgery or misinformation will lead to cancellation of the bid.</p> <p>DETAILED TECHNICAL EVALUATION OF BIDS</p> <p>(a) This stage shall involve technical evaluation of the bid to determine its compliance to the tender and schedule of requirements on a conform/not conform basis.</p> <p>(b) The Bidder shall furnish a technical proposal using the <i>Technical Proposal Forms 11 to 16</i>, including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in <i>Section IV Bidding Forms</i>, in sufficient detail to demonstrate the adequacy of the Bidders’ proposal to meet the work’s requirements and the completion time.</p> <p>(c) The bids shall first be examined to determine the consistency of the Technical Proposal submitted regarding site organization, a statement of work methods, mobilization schedule, construction schedule, contractor’s equipment, proposed key personnel, resume of key personnel, details of subcontractors, and any other information as stipulated in <i>Section IV Bidding Forms</i>, without material deviation, reservation or omission.</p> <p>(d) If a Bid is not substantially responsive to the requirements of the tender documents and works requirements, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. All bids that fail the detailed technical evaluation stage shall not be considered further in evaluation.</p> <p>STAGE 3: POSTQUALIFICATION EVALUATION OF BIDS</p> <p>(a) The bids that are responsive at the detailed technical evaluations stage shall be subjected to the post-qualification evaluation criteria. Bidders shall be evaluated to determine their capability and resources to effectively perform the contract of works, using the following criteria to be applied on</p>
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	<p>pass-fail basis.</p> <p>(b) Any bid that fails the post-qualification evaluation stage shall not be considered further in the next stage of detailed commercial evaluation of bids.</p>																			
	<table border="1"> <thead> <tr> <th>No.</th> <th>Qualification Criteria</th> <th>Required Documentary Evidence</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Pending Litigation and Arbitration: All pending litigation shall in total not represent more than 50% of the Bidder's net worth and shall be treated as resolved against the Bidder.</td> <td>Form 20 Pending Litigation and Arbitration</td> </tr> <tr> <td>2</td> <td>Financial Situation: The Bidder shall submit audited financial statements acceptable to the Employer, for the last <i>three years (2017, 2018, 2019)</i> to demonstrate the current soundness of the bidder's financial position and its prospective long-term profitability as follows: (a) Current Ratio [The Current Assets divided by Current Liabilities] should be equal or greater than 1 (one) for each year. (b) Net-Worth [difference between Total Assets and Total Liabilities] shall be positive for each year. (c) Return on Equity [The annual profit before taxes divided by the Net-Worth expressed as a percent] shall be greater than 1% each year. (d) Debt Ratio [The Total Liabilities divided by Total Assets] shall be less than 1 (one).</td> <td>Form 23: Financial Situation</td> </tr> <tr> <td>3</td> <td>Financial Resources: The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet the cash-flow requirement of KES 10 million.</td> <td>Form 25: Financial Resources</td> </tr> <tr> <td>4</td> <td>Average Annual Construction Turnover: Minimum average annual construction turnover of KES 10 million, calculated as total certified payments received for contracts in progress or completed, within the last five years, divided by five years.</td> <td>Form 24: Average Annual Turnover</td> </tr> <tr> <td>5</td> <td>General Construction Experience: General construction experience under contracts in the role of contractor, subcontractor, or management contractor: In at least three contracts each of a value of at least KES 10 million, completed within</td> <td>Form 26 General Experience Form 22: Completed</td> </tr> </tbody> </table>	No.	Qualification Criteria	Required Documentary Evidence	1	Pending Litigation and Arbitration: All pending litigation shall in total not represent more than 50% of the Bidder's net worth and shall be treated as resolved against the Bidder.	Form 20 Pending Litigation and Arbitration	2	Financial Situation: The Bidder shall submit audited financial statements acceptable to the Employer, for the last <i>three years (2017, 2018, 2019)</i> to demonstrate the current soundness of the bidder's financial position and its prospective long-term profitability as follows: (a) Current Ratio [The Current Assets divided by Current Liabilities] should be equal or greater than 1 (one) for each year. (b) Net-Worth [difference between Total Assets and Total Liabilities] shall be positive for each year. (c) Return on Equity [The annual profit before taxes divided by the Net-Worth expressed as a percent] shall be greater than 1% each year. (d) Debt Ratio [The Total Liabilities divided by Total Assets] shall be less than 1 (one).	Form 23: Financial Situation	3	Financial Resources: The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet the cash-flow requirement of KES 10 million .	Form 25: Financial Resources	4	Average Annual Construction Turnover: Minimum average annual construction turnover of KES 10 million , calculated as total certified payments received for contracts in progress or completed, within the last five years, divided by five years.	Form 24: Average Annual Turnover	5	General Construction Experience: General construction experience under contracts in the role of contractor, subcontractor, or management contractor: In at least three contracts each of a value of at least KES 10 million , completed within	Form 26 General Experience Form 22: Completed	
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SECTION III: TENDER DATA SHEET

			the last <i>three years</i> prior to the bid submission deadline.	Civil Works
		6	Specific Construction Experience: Participation as contractor, management contractor, or subcontractor for <i>similar water works</i> : In at least two contracts within the last <i>three years</i> each with a value of at least KES 10 million , that have been successfully and substantially completed and that are similar to the proposed works in terms of physical size, complexity, methods, technology.	Form 27: Specific Experience
		7	Personnel: The Bidder shall provide details of the proposed key personnel and their experience records in the relevant Forms included in <i>Section IV Bidding Forms</i> . The Bidder must demonstrate that it will have adequate number of qualified personnel for the key positions that meet the following requirements:	Form 16: Personnel Form 17: CV of Proposed Personnel
		7.1	Site Agent (x1 No.): <i>A minimum of Bachelor's Degree in Civil Engineering from a recognized University or Approved Equivalent and at least five years' general engineering experience, three of which experience should be in urban roads and Registered Engineer or registered with ERB.</i>	
		7.2	Works Supervisor - Foreman(x1 No.): <i>A minimum of Ordinary Diploma or Approved Equivalent in Civil Engineering from Kenya Polytechnic or Approved Equivalent with at least two years' experience in urban roads.</i>	
		7.3.	Surveyor (x1No.): <i>A minimum of Ordinary Diploma and at least 5 years' experience in engineering survey works 2 of which in the water works/</i>	
		8	Equipment: The Bidder shall provide details of proposed key contractor's equipment using the relevant form in <i>Section IV Bidding Form</i> . The Bidder must demonstrate that it will have access to the key contractor's equipment listed below:	Form 15: Contractor's Equipment
			<i>Equipment Type and Characteristics</i>	<i>Number</i>
		8.1	<i>Concrete mixer</i>	1
		8.2	<i>Tipper or Truck Capacity 7 to 8 tons</i>	2
		8.3	<i>Excavator 120HP</i>	1
		8.4	<i>Pick up</i>	1
		8.5	<i>25mm concrete poker vibrator complete with generator</i>	2

SECTION III: TENDER DATA SHEET

17.	13.4	In the case of joint venture each partner shall submit information required under Clause ITT Clause 13.4. In addition, the Tenderer shall furnish the following: <i>a) The Power of Attorney duly signed by Commissioner of Oaths</i> <i>b) Audited Books of Accounts with a turnover of at least Kshs. 10 Million for the last three years</i> <i>c) A copy of Joint Venture agreement entered into by all partners shall be submitted with the tender. Alternatively, a Letter of Intent to execute a joint venture agreement in the event of</i>
18.	16.4	The price shall be <i>fixed</i> d) Information to be submitted with the Tender are: The basic rates of materials and services
19.	17.1	The currency in which the prices shall be quoted shall be: <i>Kenyan Shilling</i>
20.	17.2 30.2	The authority for establishing the rates of exchange shall be Central Bank of Kenya. The applicable date for exchange rates for tendering and evaluation purposes is 28 days earlier than the final deadline for the submission of tenders.
21.	18.1	The Tender validity period shall be 120 days.
22.	19.1	No Tender Security is required for this tender. However, a Tender Securing Declaration Form must be duly completed and submitted.
23.	20.1	In addition to the original of the Tender, the Tenderer should submit one copy of the Tender
24.	20.2	Written confirmation of authorization is <i>Power of Attorney duly signed and stamped by Commissioner of Oaths</i>

D. Submission of Tenders

D. Submission of Tenders		
25.	21.2 a)	Tenders shall be submitted to: Chief Executive Officer National Drought Management Authority Standard Street Lonrho House, 8th Floor P.O. Box 53547 - 00200 Nairobi
26.	21.2 b)	Project name: Tender for the Proposed Construction of Kilimboni Earth Dam in Zombe Ward, Kitui County Tender number: NDMA/KCEP-CRAL/05/2020-21 Time and date for submission: 10:30am on Wednesday 17th March, 2021
27.	22.1	The deadline for Tender submission is a) Day: Wednesday b) Date: 17th March, 2021

SECTION III: TENDER DATA SHEET

		c) Time: 10:30am
28.	22.3	The extension of the deadline for submission of Tenders shall be made not later than 3 days before the expiry of the original deadline.
29	24.4	Expiry of Tender validity is 120 days from the tender closing date.

E. Opening and Evaluation of Tenders

29.	25.1	The Tender opening shall take place at: The Boardroom National Drought Management Authority Standard Street, Lonrho House, 17 th Floor Nairobi, Kenya Date: Wednesday 17 th March, 2021 Time: 10:30am
30.	32.3	Additional Preference: <i>N/A</i>
31.	34.1	Post- qualification will be undertaken
32.	38.1	Percentage for quantities increase or decrease is 25%

F. Award of Contract

33.	35.1	<p>a) the lowest-priced tender that is substantially responsive to the requirements of the bidding document shall be recommended for the award of the contract for the works</p> <p>b) If there is a tie on the lowest evaluated quoted sum price, the successful bidder that shall demonstrate the highest number of completed works</p> <p>c) Pursuant to Section 70 (5) (b) A person shall not be disqualified on the basis that a bidder quoted above or below a certain percentage of engineers estimate</p> <p>d) 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> <p>e) After evaluation of the price analysis, in the event that the employer determines that the bidder has failed to demonstrate its capability to perform the contract for the offered bid price, the purchaser shall reject the bid</p>
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	40.1	The contract shall be signed in 30 days but in no case earlier than 14 days from the date of notification of intention to enter into a contract.
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	41.1	The amount of Performance Security shall be <i>1% of the Contract Sum</i>
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SECTION III: TENDER DATA SHEET

34.	42.1	The Advance Payment shall be: N/A
35.	43.1	The proposed adjudicator for the project is: The Institute of Engineers of Kenya whose hour rate shall be determined by the Institution
G. Review of Procurement Decisions		
37.	46.1	The address for submitting appeals to Administrative Review Board: The Secretary, Public Procurement Administrative Review Board, The Public Procurement Regulatory Authority, 10 th Floor, National Bank House, P.O. Box 58583-00200, NAIROBI, Kenya. Tel: +254 (0) 20 3244000 Email: info@ppra.go.ke Website: www.ppra.go.ke

SECTION IV: GENERAL CONDITIONS OF CONTRACT

Table of Clauses

ABBREVIATIONS AND ACRONYMS	3
TENDER NOTICE	5
SECTION I: INVITATION FOR TENDERS (IFT).....	4
TENDER NOTICE	Error! Bookmark not defined.
SECTION II: INSTRUCTIONS TO TENDERERS (ITT).....	7
A.	Introduction
.....	11
1. Scope of Tender	11
2. Source of Funds	11
3. Eligible Tenderers.....	11
4. One Tender per Tenderer	12
5. Alternative Tenders by Tenderers.....	13
6. Cost of Tendering.....	13
7. Site Visit and Pre-Tender Meeting.....	13
B.	Tendering Documents
.....	14
8. Content of Tendering Documents	14
9. Clarification of Tendering Documents.....	15
10. Amendments of the Tendering Documents.....	15
C.	Preparation of Tenders
.....	16
11. Language of Tender	16
12. Documents Constituting the Tender.....	16
13. Documents Establishing Eligibility and Qualifications of the Tenderer.....	16
14. Lots Package	18
15. Form of Tender	18
16. Tender Prices	18
17. Tender Currencies	18
18. Tender Validity Period.....	19
19. Tender Security and Tender Securing Declaration	19
20. Format and Signing of Tender	21
D.	Submission of Tenders
.....	21
21. Sealing and Marking of Tenders	21
22. Deadline for Submission of Tenders.....	22
23. Late Tenders.....	22
24. Modification, Substitution and Withdrawal of Tenders.....	22
E.	Opening and Evaluation of Tenders
.....	23
25. Opening of Tenders.....	23
26. Confidentiality	24
27. Clarification of Tenders	25
28. Preliminary Examination of Tenders	25
29. Correction of Errors	26
30. Conversion to Single Currency	27
31. Comparison of Tenders	27
32. National Preference.....	27
33. Determination of the Lowest Evaluated Tender	28
34. Post-qualification of Tenderer	28

SECTION IV: GENERAL CONDITIONS OF CONTRACT

F.	Award of Contract	29
35. Criteria of Award		29
36. Clarifications		29
37. Procuring Entity’s Right to Accept any Tender and to Reject any or all Tenders ..		30
38. Procuring Entities Right to Vary Quantities at the Time of Award		30
39. Notification of Award		30
40. Signing of Contract		31
41. Performance Security		31
42. Advance Payment		32
43. Adjudicator		32
G.	Review of Procurement Decisions	32
44. Right to Review		32
45. Time Limit on Review		33
46. Submission of Applications for Review by the Public Procurement Administrative Review Board		33
47. Decision by the Public Procurement Administrative Review Board		33
48. Appeal on the decision of the Review Board.....		34
SECTION III: TENDER DATA SHEET		36
SECTION IV: GENERAL CONDITIONS OF CONTRACT.....		46
A.	General	66
1. Definitions.....		66
1.1 Boldface type is used to identify defined terms.		66
2. Interpretation.....		67
2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way round. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.....		67
2.2 If sectional completion is specified in the Contract Data Sheet , references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).....		67
2.3 The documents forming the Contract shall be interpreted in the order of priority given in the Contract Data Sheet :		67
(1) Agreement;		67
(2) Letter of Acceptance;		67
(3) Contract Data Sheet;.....		67
(4) Conditions of Contract;		67
(5) Technical Specifications;		67
(6) Contractor’s Tender;		67
(7) Drawings; 67		
(8) Bill of Quantities; and		67

(9) Any other document listed in the **Contract Data Sheet** as forming part of the Contract. 67

 3. Language, Law, Fraud and Corruption 67

3.1 The language of the Contract and the law governing the Contract are stated in the **Contract Data Sheet**.67

 4. Confidentiality 69

4.1 The Service Providers, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity’s business or operations without the prior written consent of the Procuring Entity.69

 5. Project Manager’s Decisions 69

5.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Procuring Entity and the Contractor in the role representing the Procuring Entity.69

 6. Delegation 69

6.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.69

 7. Communications 69

7.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered. 69

 8. Subcontracting 69

8.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Procuring Entity in writing. Subcontracting shall not alter the Contractor’s obligations.69

 9. Other Contractors 69

9.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the Schedule of Other Contractors, as referred to in the **Contract Data Sheet**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Procuring Entity may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification69

 10. Personnel 69

10.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the **Contract Data Sheet**, who shall be appropriately qualified and registered with the appropriate bodies to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.69

10.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor’s staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.70

 11. Procuring Entity’s and Contractor’s Risks 70

SECTION IV: GENERAL CONDITIONS OF CONTRACT

11.1 The Procuring Entity carries the risks which this Contract states are Procuring Entity’s risks, and the Contractor carries the risks which this Contract states are Contractor’s risks.....70

12. Procuring Entity’s Risks 70

12.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Procuring Entity’s risks:70

a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:.....70

(i) Use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or.....70

(ii) Negligence, breach of statutory duty, or interference with any legal right by the Procuring Entity or by any person employed by or contracted to him except the Contractor.70

b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity’s design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.70

12.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Procuring Entity’s risk except loss or damage due to:70

(a) A Defect which existed on the Completion Date;.....70

(b) An event occurring before the Completion Date, which was not itself an Procuring Entity’s risk; or.....70

(c) The activities of the Contractor on the Site after the Completion Date.70

13. Contractor’s Risks..... 70

13.1 From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Procuring Entity’s risks are Contractor’s risks.70

14. Insurance..... 70

14.1 The Contractor shall provide, in the joint names of the Procuring Entity and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the **Contract Data Sheet** for the following events which are due to the Contractor’s risks:70

(a) Loss of or damage to the Works, Plant, and Materials;70

(b) Loss of or damage to Equipment;70

(c) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and.....70

(d) Personal injury or death.....70

14.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager’s approval before the Start Date. All such insurance shall provide for compensation to be payable in the

types and proportions of currencies required to rectify the loss or damage incurred.
70

14.3 If the Contractor does not provide any of the policies and certificates required, the Procuring Entity may effect the insurance which the Contractor should have provided and recover the premiums the Procuring Entity has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.71

14.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.71

14.5 Both parties shall comply with any conditions of the insurance policies. 71

15. Site Investigation Reports 71

15.1 The Contractor, in preparing the Tender, shall rely on any Site Investigation Reports referred to in the **Contract Data Sheet**, supplemented by any information available to the Tenderers.....71

16. Queries about the Contract Data Sheet 71

16.1 The Project Manager will clarify queries on the **Contract Data Sheet**.
71

17. Contractor to Construct the Works 71

17.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.....71

18. Commencement and Completion..... 71

18.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.....71

19. Approval by the Project Manager 71

19.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.....71

19.2 The Contractor shall be responsible for the design of Temporary Works. 71

19.3 The Project Manager’s approval shall not alter the Contractor’s responsibility for design of the Temporary Works.71

19.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.71

19.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before their use.....71

20. Protection of the Environment 71

20.1 The Contractors shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.71

21. Labour Laws 71

SECTION IV: GENERAL CONDITIONS OF CONTRACT

21.2	The Contractor shall comply with all the relevant labour laws applicable in the Country, including laws relating to workers employment, working hours, health, safety, welfare, and immigration, and shall allow them all their legal rights.....	71
21.2	The Contractor shall require his employees to obey all applicable laws, including those concerning safety at work.....	71
22.	Health and Safety.....	71
22.1	The Contractor shall at all times take all reasonable precautions to maintain the health and safety of his personnel.	71
23.	Discoveries.....	72
23.1	Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Procuring Entity. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.....	72
24.	Possession of the Site.....	72
24.1	The Procuring Entity shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data Sheet , the Procuring Entity will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.....	72
25.	Access to the Site.....	72
25.1	The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.	72
26.	Instructions, Inspections and Audits.....	72
26.1	The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.	72
26.2	The Contractor shall permit the Kenya Government to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Kenya Government, if so required by the Kenya Government.....	72
27.	Disputes.....	72
27.1	If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.	72
28.	Procedure for Disputes.....	72
28.1	The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.....	72
28.2	The Adjudicator shall be paid by the hour at the rate specified in the Tender Data Sheet and Contract Data Sheet , together with reimbursable expenses of the types specified in the Contract Data Sheet , and the cost shall be divided equally between the Procuring Entity and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision.	

	If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator’s decision will be final and binding.	72
	29. Replacement of Adjudicator	73
29.1	Should the Adjudicator resign or die, or should the Procuring Entity and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Procuring Entity and the Contractor. In case of disagreement between the Procuring Entity and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the Contract Data Sheet at the request of either party, within 14 days of receipt of such request.....	73
	B. Time Control	73
	30. Programme.....	73
30.2	An update of the Programme shall be a programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities. 73	
30.3	The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the Contract Data Sheet . If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the Contract Data Sheet from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted. 73	
30.4	The Project Manager’s approval of the Programme shall not alter the Contractor’s obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events	73
	31. Extension of the Intended Completion Date	73
31.1	The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.	73
31.2	The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date. 73	
	32. Acceleration	74
32.1	When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.	74

SECTION IV: GENERAL CONDITIONS OF CONTRACT

33. Delays Ordered by the Project Manager 74

33.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.74

34. Management Meetings..... 74

34.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.....74

34.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.74

35. Early Warning..... 74

35.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.....74

35.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.74

C..... Quality Control 74

36. Identifying Defects..... 74

36.1 The Project Manager shall check the Contractor’s work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor’s responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.74

37. Tests 74

37.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.74

38. Correction of Defects 74

38.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the **Contract Data Sheet**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.74

38.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager’s notice. 75

38.3 If the Contractor has not corrected a defect within the time specified in the Procuring Entity’s notice, a penalty for lack of performance will be paid by the Contractor. The amount to be paid will be calculated as a percentage of the cost of having the defect correct, assessed as described in Clause 39.75

39. Uncorrected Defects..... 75

39.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager’s notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount.75

D. Cost Control
..... 75

40. Bill of Quantities..... 75

40.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.75

40.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work done at the rate in the Bill of Quantities for each item.75

41. Changes in the Quantities 75

41.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.....75

41.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Procuring Entity.75

41.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities. 75

42. Variations..... 75

42.1 All Variations shall be included in the updated Programmes produced by the Contractor.....75

43. Payments for Variations..... 75

43.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.....75

43.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work is above the limit stated in Sub-Clause 41.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.....75

43.3 If the Contractor’s quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based

	on the Project Manager’s own forecast of the effects of the Variation on the Contractor’s costs.....	75
43.4	If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event. 76	
43.5	The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.....	76
	44. Cash Flow Forecasts	76
44.1	When the Programme is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.....	76
	45. Payment Certificates	76
45.1	The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.....	76
45.2	The Project Manager shall check the Contractor’s monthly statement and certify the amount to be paid to the Contractor within twenty eight 28 days of receipt of the certificate from the contractor.....	76
45.3	The value of work executed shall be determined by the Project Manager. 76	
45.4	The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.....	76
	46. Payments	76
46.1	Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Procuring Entity makes a late payment, the Contractor shall be paid interest on the late payment in the next payment Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made as indicated in the Contract Data Sheet ..	76
46.2	If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.	76
46.3	Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.	76
46.4	Items of the Works for which no rate or price has been entered in will not be paid for by the Procuring Entity and shall be deemed covered by other rates and prices in the Contract.....	76
	47. Compensation Events.....	77

SECTION IV: GENERAL CONDITIONS OF CONTRACT

47.1 The following shall be Compensation Events:77

(a) The Procuring Entity does not give access to a part of the Site by the Site Possession Date stated in the **Contract Data Sheet**.....77

(b) The Procuring Entity modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.77

(c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.....77

(d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.77

(e) The Project Manager unreasonably does not approve a subcontract to be let.77

(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.77

(g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Procuring Entity, or additional work required for safety or other reasons.77

(h) Other contractors, public authorities, utilities, or the Procuring Entity does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.77

(i) The advance payment is delayed.....77

(j) The effects on the Contractor of any of the Procuring Entity’s Risks.77

(k) The Project Manager unreasonably delays issuing a Certificate of Completion. ..77

(l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.77

47.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.77

47.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor’s forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor’s forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager’s own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.77

47.4 The Contractor shall not be entitled to compensation to the extent that the Procuring Entity’s interests are adversely affected by the Contractor’s not having given early warning or not having cooperated with the Project Manager..77

48. Taxes 77

SECTION IV: GENERAL CONDITIONS OF CONTRACT

48.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 50.....77

49. Currencies 78

49.1 Where payments are made in currencies other than the Kenya Shillings, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor’s Tender.....78

50. Price Adjustment..... 78

50.1 The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 45.1, shall be adjusted in respect of the rise or fall in the cost of labour, Contractor’s Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause based on the prevailing consumer price index obtained from the Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya.78

51. Retention 80

51.1 The Procuring Entity shall retain from each payment due to the Contractor the proportion stated in the **Contract Data Sheet** until Completion of the whole of the Works.80

51.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the other half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.....80

51.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” Bank guarantee.....80

52. Liquidated Damages 80

52.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the **Contract Data Sheet** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the **Contract Data Sheet**. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities. 80

52.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 46.1.....80

52.3 If the Contractor has not corrected a defect within the time specified in the Procuring Entity’s notice, the Procuring Entity will assess the cost of having the defect corrected, the Contractor will pay this amount, and a penalty for lack of performance calculated as described in Clause 38.....80

53. Bonus 80

- 53.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the **Contract Data Sheet** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.80
54. Advance Payment 80
- 54.1 The Procuring Entity shall make advance payment to the Contractor of the amounts stated in the **Contract Data Sheet** by the date stated in the **Contract Data Sheet**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procuring Entity in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.80
- 54.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.80
- 54.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages. 80
55. Performance Securities 81
- 55.1 The Performance Security shall be provided to the Procuring Entity no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.81
56. Dayworks 81
- 56.1 If applicable, the Dayworks rates in the Contractor’s Tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way. 81
- 56.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done. 81
- 56.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.81
57. Cost of Repairs..... 81

57.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor’s cost if the loss or damage arises from the Contractor’s acts or omissions.....81

E.....Finishing the Contract
.....81

58. Completion Certificate..... 81

58.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.81

59. Taking Over 81

59.1 The Procuring Entity shall take over the Site and the Works within seven days of the Project Manager’s issuing a certificate of Completion.81

60. Final Account..... 81

60.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor’s account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate. 81

61. Operating and Maintenance Manuals..... 81

61.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **Contract Data Sheet**.81

61.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **Contract Data Sheet**, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the **Contract Data Sheet** from payments due to the Contractor.81

62. Termination..... 82

62.1 The Procuring Entity or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.....82

62.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:.....82

(a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Project Manager; 82

(b) The Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;82

(c) The Procuring Entity or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;82

(d) A payment certified by the Project Manager is not paid by the Procuring Entity to the Contractor within 84 days of the date of the Project Manager’s certificate;....82

- (e) The Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;.....82
 - (f) The Contractor does not maintain a Security, which is required; and82
 - (g) The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the **Contract Data Sheet**.82
 - (h) If the Contractor, in the judgment of the Procuring Entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.....82
- For the purpose of this paragraph:82
- “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution and includes inter alia, bribery and extortion or coercion which involves threats of injury to person, property or reputation, and.82
- “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.82
- 62.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 62.2 above, the Project Manager shall decide whether the breach is fundamental or not.
82
- 62.4 Notwithstanding the above, the Procuring Entity may terminate the Contract for convenience.82
- 62.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.82
63. Payment upon Termination..... 82
- 63.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the **Contract Data Sheet**. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.82
64. Property..... 83
- 64.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Procuring Entity if the Contract is terminated because of the Contractor’s default.....83
65. Release from Performance 83
- 65.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Procuring Entity or the Contractor,

SECTION IV: GENERAL CONDITIONS OF CONTRACT

the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.	83
66. Suspension of Financing	83
66.1 In the event that the source of financing is suspended to the Procuring Entity, from which part of the payments to the Contractor are being made:	83
(a) The Procuring Entity is obligated to notify the Contractor of such suspension within 7 days of having received the financing agency's suspension notice.	83
(b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 46.1, the Contractor may immediately issue a 14-day termination notice.....	83
SECTION V: CONTRACT DATA SHEET (CDS)	84
Taxes and other charges	88
The applicable tax and customs arrangements are as agreed under the Financing Agreement No . _____ with IFAD. This agreement provides for all supplies, works and services procured using IFAD funds under this programme to be full exemption from Value Added Tax (VAT), Import Duty and other government taxes. The contracting entity will facilitate the processing of the relevant tax exemption documents for this purpose	Error! Bookmark not defined.
.....	Error! Bookmark not defined.
SECTION VI: TECHNICAL SPECIFICATIONS	90
SECTION VII: DRAWINGS	92
Annex 2: DETAILED BILLS OF QUANTITIES	98
SECTION IX: TENDER FORMS	105
A. Form of Tender-	Error! Bookmark not defined.
(OPTION.....)	Error! Bookmark not defined.
(Enter A or B for the different tank option)	Error! Bookmark not defined.
B..... Tender-Securing Declaration (Mandatory)	111
C..... Confidential Business Questionnaire	112
D. Integrity Declaration	115
SITE HANDING OVER CERTIFICATE	117
E..... Letter of Acceptance	119
F..... Form of Contract Agreement	120
SECTION X: FORMS OF SECURITY	121
A. Tender Security (Bank or Insurance Guarantee).....	<u>ABBREVIATIONS AND ACRONYMS</u>
	Error! Bookmark not defined.

SECTION I: INVITATION FOR TENDERS (IFT). Error! Bookmark not defined.

TENDER NOTICE Error! Bookmark not defined.

SECTION II: INSTRUCTIONS TO TENDERERS (ITT)..... Error! Bookmark not defined.

- A. Introduction Error! Bookmark not defined.**
 - 1. Scope of Tender Error! Bookmark not defined.
 - 2. Source of Funds Error! Bookmark not defined.
 - 3. Eligible Tenderers Error! Bookmark not defined.
 - 4. One Tender per Tenderer Error! Bookmark not defined.
 - 5. Alternative Tenders by Tenderers Error! Bookmark not defined.
 - 6. Cost of Tendering Error! Bookmark not defined.
 - 7. Site Visit and Pre-Tender Meeting Error! Bookmark not defined.
- B. Tendering Documents Error! Bookmark not defined.**
 - 8. Content of Tendering Documents Error! Bookmark not defined.
 - 9. Clarification of Tendering Documents Error! Bookmark not defined.
 - 10. Amendments of the Tendering Documents Error! Bookmark not defined.
- C. Preparation of Tenders Error! Bookmark not defined.**
 - 11. Language of Tender Error! Bookmark not defined.
 - 12. Documents Constituting the Tender Error! Bookmark not defined.
 - 13. Documents Establishing Eligibility and Qualifications of the Tenderer Error! Bookmark not defined.
 - 1. Error! Bookmark not defined.**
 - 14. Lots Package Error! Bookmark not defined.
 - 15. Form of Tender Error! Bookmark not defined.
 - 16. Tender Prices Error! Bookmark not defined.
 - 17. Tender Currencies Error! Bookmark not defined.
 - 18. Tender Validity Period Error! Bookmark not defined.
 - 19. Tender Security and Tender Securing Declaration . Error! Bookmark not defined.
 - 20. Format and Signing of Tender Error! Bookmark not defined.
- D. Submission of Tenders Error! Bookmark not defined.**
 - 21. Sealing and Marking of Tenders Error! Bookmark not defined.
 - 22. Deadline for Submission of Tenders Error! Bookmark not defined.
 - 23. Late Tenders Error! Bookmark not defined.
 - 24. Modification, Substitution and Withdrawal of Tenders Error! Bookmark not defined.
- E. Opening and Evaluation of Tenders Error! Bookmark not defined.**
 - 25. Opening of Tenders Error! Bookmark not defined.
 - 26. Confidentiality Error! Bookmark not defined.
 - 27. Clarification of Tenders Error! Bookmark not defined.
 - 28. Preliminary Examination of Tenders Error! Bookmark not defined.
 - 29. Correction of Errors Error! Bookmark not defined.
 - 30. Conversion to Single Currency Error! Bookmark not defined.
 - 31. Comparison of Tenders Error! Bookmark not defined.
 - 32. National Preference Error! Bookmark not defined.
 - 33. Determination of the Lowest Evaluated Tender Error! Bookmark not defined.
 - 34. Post-qualification of Tenderer Error! Bookmark not defined.
- F. Award of Contract Error! Bookmark not defined.**
 - 35. Criteria of Award Error! Bookmark not defined.
 - 36. Clarifications Error! Bookmark not defined.
 - 37. Procuring Entity’s Right to Accept any Tender and to Reject any or all Tenders Error! Bookmark not defined.
 - 38. Procuring Entities Right to Vary Quantities at the Time of Award Error! Bookmark not defined.

SECTION IV: GENERAL CONDITIONS OF CONTRACT

39.	<u>Notification of Award</u>	Error! Bookmark not defined.
40.	<u>Signing of Contract</u>	Error! Bookmark not defined.
41.	<u>Performance Security</u>	Error! Bookmark not defined.
42.	<u>Advance Payment</u>	Error! Bookmark not defined.
43.	<u>Adjudicator</u>	Error! Bookmark not defined.
G.	<u>Review of Procurement Decisions</u>	Error! Bookmark not defined.
44.	<u>Right to Review</u>	Error! Bookmark not defined.
45.	<u>Time Limit on Review</u>	Error! Bookmark not defined.
46.	<u>Submission of Applications for Review by the Public Procurement Administrative Review Board</u>	Error! Bookmark not defined.
47.	<u>Decision by the Public Procurement Administrative Review Board</u>	Error! Bookmark not defined.
48.	<u>Appeal on the decision of the Review Board</u>	Error! Bookmark not defined.
SECTION III: TENDER DATA SHEET		Error! Bookmark not defined.
SECTION IV: GENERAL CONDITIONS OF CONTRACT		Error! Bookmark not defined.
A.	<u>General</u>	Error! Bookmark not defined.
23.	<u>Discoveries</u>	Error! Bookmark not defined.
24.	<u>Possession of the Site</u>	Error! Bookmark not defined.
25.	<u>Access to the Site</u>	Error! Bookmark not defined.
26.	<u>Instructions, Inspections and Audits</u>	Error! Bookmark not defined.
27.	<u>Disputes</u>	Error! Bookmark not defined.
28.	<u>Procedure for Disputes</u>	Error! Bookmark not defined.
30.	<u>Replacement of Adjudicator</u>	Error! Bookmark not defined.
B.	<u>Time Control</u>	Error! Bookmark not defined.
49.	<u>Programme</u>	Error! Bookmark not defined.
50.	<u>Extension of the Intended Completion Date</u>	Error! Bookmark not defined.
51.	<u>Acceleration</u>	Error! Bookmark not defined.
52.	<u>Delays Ordered by the Project Manager</u>	Error! Bookmark not defined.
53.	<u>Management Meetings</u>	Error! Bookmark not defined.
54.	<u>Early Warning</u>	Error! Bookmark not defined.
C.	<u>Quality Control</u>	Error! Bookmark not defined.
55.	<u>Identifying Defects</u>	Error! Bookmark not defined.
56.	<u>Tests</u>	Error! Bookmark not defined.
57.	<u>Correction of Defects</u>	Error! Bookmark not defined.
58.	<u>Uncorrected Defects</u>	Error! Bookmark not defined.
D.	<u>Cost Control</u>	Error! Bookmark not defined.
59.	<u>Bill of Quantities</u>	Error! Bookmark not defined.
60.	<u>Changes in the Quantities</u>	Error! Bookmark not defined.
61.	<u>Variations</u>	Error! Bookmark not defined.
62.	<u>Payments for Variations</u>	Error! Bookmark not defined.
63.	<u>Cash Flow Forecasts</u>	Error! Bookmark not defined.
64.	<u>Payment Certificates</u>	Error! Bookmark not defined.
65.	<u>Payments</u>	Error! Bookmark not defined.
66.	<u>Compensation Events</u>	Error! Bookmark not defined.
67.	<u>Taxes</u>	Error! Bookmark not defined.
68.	<u>Currencies</u>	Error! Bookmark not defined.
69.	<u>Price Adjustment</u>	Error! Bookmark not defined.
70.	<u>Retention</u>	Error! Bookmark not defined.
71.	<u>Liquidated Damages</u>	Error! Bookmark not defined.
72.	<u>Bonus</u>	Error! Bookmark not defined.
73.	<u>Advance Payment</u>	Error! Bookmark not defined.
74.	<u>Performance Securities</u>	Error! Bookmark not defined.

SECTION IV: GENERAL CONDITIONS OF CONTRACT

75.	<u>Dayworks</u>	Error! Bookmark not defined.
76.	<u>Cost of Repairs</u>	Error! Bookmark not defined.
E.	<u>Finishing the Contract</u>	Error! Bookmark not defined.
77.	<u>Completion Certificate</u>	Error! Bookmark not defined.
78.	<u>Taking Over</u>	Error! Bookmark not defined.
79.	<u>Final Account</u>	Error! Bookmark not defined.
80.	<u>Operating and Maintenance Manuals</u>	Error! Bookmark not defined.
81.	<u>Termination</u>	Error! Bookmark not defined.
82.	<u>Payment upon Termination</u>	Error! Bookmark not defined.
83.	<u>Property</u>	Error! Bookmark not defined.
84.	<u>Release from Performance</u>	Error! Bookmark not defined.
85.	<u>Suspension of Financing</u>	Error! Bookmark not defined.
SECTION V: CONTRACT DATA SHEET (CDS) ... Error! Bookmark not defined.		
	<u>Taxes and other charges</u>.....	Error! Bookmark not defined.
	<u>All government taxes applicable during the implementation of the contract applies.</u>	Error! Bookmark not defined.
SECTION VI: TECHNICAL SPECIFICATIONS Error! Bookmark not defined.		
SECTION VII: DRAWINGS Error! Bookmark not defined.		
SECTION VIII: BILL OF QUANTITIES Error! Bookmark not defined.		
SECTION IX: TENDER FORMS Error! Bookmark not defined.		
	<u>FORM OF TENDER</u>.....	Error! Bookmark not defined.
F.	<u>Tender-Securing Declaration</u>	Error! Bookmark not defined.
G.	<u>Confidential Business Questionnaire</u>	Error! Bookmark not defined.
H.	<u>Integrity Declaration</u>	Error! Bookmark not defined.
I.	<u>Letter of Acceptance</u>	Error! Bookmark not defined.
J.	<u>Form of Contract Agreement</u>	Error! Bookmark not defined.
SECTION X: FORMS OF SECURITY Error! Bookmark not defined.		
A.	<u>Tender Security (Bank Guarantee)</u>	Error! Bookmark not defined.
B.	<u>Performance Bank or Insurance Guarantee [Unconditional]</u>	Error! Bookmark not defined.
SECTION XI: APPLICATION TO PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD Error! Bookmark not defined.		
FORM 15: CONTRACTOR’S EQUIPMENT Error! Bookmark not defined.		
FORM 16: PERSONNEL Error! Bookmark not defined.		
FORM 17: CURRICULUM VITAE OF PROPOSED PERSONNEL..... Error! Bookmark not defined.		
FORM 20: PENDING LITIGATION AND ARBITRATION.. Error! Bookmark not defined.		
FORM 22: COMPLETED CIVIL WORKS Error! Bookmark not defined.		
FORM 23: FINANCIAL SITUATION Error! Bookmark not defined.		
FORM 24: AVERAGE ANNUAL TURNOVER Error! Bookmark not defined.		
FORM 25: FINANCIAL RESOURCES Error! Bookmark not defined.		
FORM 26: GENERAL EXPERIENCE Error! Bookmark not defined.		
FORM 27: SPECIFIC EXPERIENCE..... Error! Bookmark not defined.		

A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

The **Adjudicator** is the person appointed jointly by the Procuring Entity and the Contractor to resolve disputes in the first instance, as provided for in Clauses 27 and 28 hereunder.

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Tender.

Compensation Events are those defined in Clause 47 hereunder.

The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 58.1.

The **Contract** is the Contract between the Procuring Entity and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3 below.

The **Contractor** is a person or corporate body whose Tender to carry out the Works has been accepted by the Procuring Entity.

The **Contractor's Tender** is the completed Tendering document submitted by the Contractor to the Procuring Entity.

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

Days are calendar days; months are calendar months.

Dayworks are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

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

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

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

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

The **Procuring Entity** is the party who employs the Contractor to carry out the Works.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The **Initial Contract Price** is the Contract Price listed in the Procuring Entity's Letter of Acceptance.

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

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

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

The **Project Manager** is the person named in the **Contract Data Sheet** (or any other competent person appointed by the Procuring Entity and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract and shall be an "Architect"

or a “Quantity Surveyor” registered under the Architects and Quantity Surveyors Act Cap 525 or an “Engineer” registered under Engineers Registration Act Cap 530.

The **Site** is the area defined as such in the **Contract Data Sheet**.

Site Investigation Reports are those that were included in the Tendering documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

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

The **Start Date** is given in the **Contract Data Sheet**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

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

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

A **Variation** is an instruction given by the Project Manager that varies the Works.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Procuring Entity, as defined in the **Contract Data Sheet**.

“**Force Majeure**” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2. Interpretation

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

2.2 If sectional completion is specified in the **Contract Data Sheet**, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

2.3 The documents forming the Contract shall be interpreted in the order of priority given in the **Contract Data Sheet**:

- (1) Agreement;
- (2) Letter of Acceptance;
- (3) Contract Data Sheet;
- (4) Conditions of Contract;
- (5) Technical Specifications;
- (6) Contractor’s Tender;
- (7) Drawings;
- (8) Bill of Quantities; and
- (9) Any other document listed in the **Contract Data Sheet** as forming part of the Contract.

3. Language, Law, Fraud and Corruption

3.1 The language of the Contract and the law governing the Contract are stated in the **Contract Data Sheet**.

3.2 The Government requires that Procuring Entities (including

beneficiaries of Government funded projects) as well as Tenderers/Suppliers/Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. It is the responsibility of the Procuring Entity to ensure that Tenderers, suppliers, and contractors and their subcontractors observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy:

For the purpose of this provision, the following definitions are provided:

“Corruption” has the meaning assigned to it in the Anti-Corruption and Economic Crime Act 2003 and includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;

“Fraudulent Practice” includes a misrepresentation of fact in order to influence a procurement or disposal process or the execution of a contract to the detriment of the Procuring Entity and includes collusive practices amongst Tenderers prior to or after Tender submission designed to establish Tender prices at artificial non-competitive levels and deprive the Procuring Entity of the benefits of free and open competition;

“Collusive Practice” means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of the Procuring Entity prior to or after Tender submission, designed to establish Tender prices at artificial non-competitive levels and to deprive the Procuring Entity of the benefit of free and open competition;

“Coercive Practice” means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of any of them to influence improperly the actions of a Procuring Entity;

“Obstructive Practice” means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and /or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

A Procuring Entity has the right to require that Tenderers, suppliers, and contractors and their subcontractors permit persons duly appointed by KACC/PPOA/KNAO to inspect their accounts and records and other documents relating to the Tender submission and contract performance;

The Procuring Entity will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt, fraudulent practices or others stated under Clause 44.1.a in competing for the contract;

In pursuit of the policy defined in sub-Clause 44.1 the Procuring Entity will cancel the portion of the funds allocated to a contract for goods, works, or services if it at any time determines that corrupt or

fraudulent practices were engaged in by representatives of the Procuring Entity or Approving Authority or of a beneficiary of the funds during the procurement or the execution of that contract;

In the event that the Procuring Entity or Approving Authority does not take timely and appropriate action satisfactory to the Government of Kenya to remedy the situation, then the Director-General may order an investigation of procurement proceedings for the purpose of determining whether there has been a breach of the Public Procurement and Disposal Act, 2015.

3.3 The Director-General may, on the advice of the Advisory Board, debar a person from participating in procurement proceedings on the ground that the person has committed an offence under the Public Procurement and Disposal Act, 2015. A debarment shall be for a period of time of not less than five years. Before a person is so debarred, he/she will be given an opportunity to make representations to the Director-General and may request the Review Board to review the debarment.

3.4 Any communication between the Tenderers and the Procuring Entity related to matters of alleged fraud or corruption must be made in writing.

4. **Confidentiality** 4.1 The Service Providers, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.
5. **Project Manager's Decisions** 5.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Procuring Entity and the Contractor in the role representing the Procuring Entity.
6. **Delegation** 6.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
7. **Communications** 7.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
8. **Subcontracting** 8.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Procuring Entity in writing. Subcontracting shall not alter the Contractor's obligations.
9. **Other Contractors** 9.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the Schedule of Other Contractors, as referred to in the **Contract Data Sheet**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Procuring Entity may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification
10. **Personnel** 10.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the **Contract Data Sheet**, who shall be appropriately qualified and registered with the appropriate bodies to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project

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

11. Procuring Entity's and Contractor's Risks

11.1 The Procuring Entity carries the risks which this Contract states are Procuring Entity's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

12. Procuring Entity's Risks

12.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Procuring Entity's risks:

The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:

(i) Use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or

(ii) Negligence, breach of statutory duty, or interference with any legal right by the Procuring Entity or by any person employed by or contracted to him except the Contractor.

The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

12.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Procuring Entity's risk except loss or damage due to:

(a) A Defect which existed on the Completion Date;

(b) An event occurring before the Completion Date, which was not itself an Procuring Entity's risk; or

(c) The activities of the Contractor on the Site after the Completion Date.

13. Contractor's Risks

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

14. Insurance

14.1 The Contractor shall provide, in the joint names of the Procuring Entity and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the **Contract Data Sheet** for the following events which are due to the Contractor's risks:

(a) Loss of or damage to the Works, Plant, and Materials;

(b) Loss of or damage to Equipment;

(c) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and

(d) Personal injury or death.

14.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of

currencies required to rectify the loss or damage incurred.

14.3 If the Contractor does not provide any of the policies and certificates required, the Procuring Entity may effect the insurance which the Contractor should have provided and recover the premiums the Procuring Entity has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

14.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.

14.5 Both parties shall comply with any conditions of the insurance policies.

15. Site

Investigation Reports

15.1 The Contractor, in preparing the Tender, shall rely on any Site Investigation Reports referred to in the **Contract Data Sheet**, supplemented by any information available to the Tenderers.

16. Queries about the Contract Data Sheet

16.1 The Project Manager will clarify queries on the **Contract Data Sheet**.

17. Contractor to Construct the Works

17.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

18. Commencement and Completion

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

19. Approval by the Project Manager

19.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.

19.2 The Contractor shall be responsible for the design of Temporary Works.

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

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

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

20. Protection of the Environment

20.1 The Contractors shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

20.2 The Contractors shall ensure that emissions, surface discharges and effluent from his activities shall not exceed prescribed values in the environmental laws.

21. Labour Laws

The Contractor shall comply with all the relevant labour laws applicable in the Country, including laws relating to workers employment, working hours, health, safety, welfare, and immigration, and shall allow them all their legal rights. The Contractor shall require his employees to obey all applicable laws, including those concerning safety at work.

22. Health and Safety

22.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of his personnel.

22.2 The Contractor shall ensure that first aid facilities are available at all times at the site and that suitable arrangements are

made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

22.3 The Contractor shall notify the Procuring Entity details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to the property, as the Procuring Entity may reasonably require.

22.4 The Contractor shall conduct an HIV-Aids awareness programme, and shall take other such measures as specified in the **Contract Data Sheet** to reduce the risk of transfer of HIV virus between and among Contractor personnel, the Procuring Entity's Staff and the surrounding community.

- 23. Discoveries** 23.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Procuring Entity. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
- 24. Possession of the Site** 24.1 The Procuring Entity shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the **Contract Data Sheet**, the Procuring Entity will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.
- 25. Access to the Site** 25.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
- 26. Instructions, Inspections and Audits** 26.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
26.2 The Contractor shall permit the Kenya Government to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Kenya Government, if so required by the Kenya Government
- 27. Disputes** 27. 1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 28. Procedure for Disputes** 28.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
28.2 The Adjudicator shall be paid by the hour at the rate specified in the **Tender Data Sheet** and **Contract Data Sheet**, together with reimbursable expenses of the types specified in the **Contract Data Sheet**, and the cost shall be divided equally between the Procuring Entity and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.
29. 28.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the

- 30. Replacement of Adjudicator** place shown in the **Contract Data Sheet**.
- 29.1 Should the Adjudicator resign or die, or should the Procuring Entity and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Procuring Entity and the Contractor. In case of disagreement between the Procuring Entity and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the **Contract Data Sheet** at the request of either party, within 14 days of receipt of such request.

B. Time Control

- 52. Programme**
- 30.1 Within the time stated in the **Contract Data Sheet**, the Contractor shall submit to the Project Manager for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works. An update of the Programme shall be a programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 30.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the **Contract Data Sheet**. If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the **Contract Data Sheet** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.
- 30.4 The Project Manager's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events
- 53. Extension of the Intended Completion Date**
- 31.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 31.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

54. Acceleration 32.1 When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.
32.2 If the Contractor's priced proposals for acceleration are accepted by the Procuring Entity, they shall be incorporated in the Contract Price and treated as a Variation.

55. Delays Ordered by the Project Manager 33.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

56. Management Meetings 34.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
34.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

57. Early Warning 35.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
35.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

58. Identifying Defects 36.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

59. Tests 37.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

60. Correction of Defects The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the **Contract Data Sheet**. The Defects Liability Period shall be extended for as long as Defects remain to be

corrected.

Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

If the Contractor has not corrected a defect within the time specified in the Procuring Entity's notice, a penalty for lack of performance will be paid by the Contractor. The amount to be paid will be calculated as a percentage of the cost of having the defect correct, assessed as described in Clause 39.

61. Uncorrected Defects

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

D. Cost Control

62. Bill of Quantities

40.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

40.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

63. Changes in the Quantities

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

41.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Procuring Entity.

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

64. Variations

42.1 All Variations shall be included in the updated Programmes produced by the Contractor.

65. Payments for Variations

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

43.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work is above the limit stated in Sub-Clause 41.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

43.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of

the effects of the Variation on the Contractor's costs.

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

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

**66. Cash Flow
Forecasts**

44.1 When the Programme is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

**67. Payment
Certificates**

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

45.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor within twenty eight 28 days of receipt of the certificate from the contractor.

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

45.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.

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

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

45.7 The Project Manager shall not be bound to certify any payment, if the net amount, after all retentions and deductions would be less than minimum amount of Interim Payment Certificate stated in the **Contract Data Sheet**.

68. Payments

46.1 Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Procuring Entity makes a late payment, the Contractor shall be paid interest on the late payment in the next payment Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made as indicated in the **Contract Data Sheet**.

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

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

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

69. Compensation Events

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

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

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

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

70. Taxes

48.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders for the Contract and the date of the last

71. Currencies**72. Price
Adjustment**

Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 50.

49.1 Where payments are made in currencies other than the Kenya Shillings, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Tender.

50.1 The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 45.1, shall be adjusted in respect of the rise or fall in the cost of labour, Contractor's Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause based on the prevailing consumer price index obtained from the Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya.

50.2 To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

50.3 The adjustment to be applied to amount payable to the Contractor as certified in Payment Certificates shall be determined formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be as follows;

$$P_n = a + b \frac{L_n - L_o}{L_o} + c \frac{M_n - M_o}{M_o} + d \frac{E_n - E_o}{E_o} + etc.$$

where;

P_n is a price adjustment factor to be applied to the amount in each specific currency for the payment of the work carried out in the subject month, where such variations and daywork are not otherwise subject to adjustment;

a is a constant, specified in the **Appendix to Tender**, representing the nonadjustable portion in contractual payments;

b, c, d, etc., are weightings or coefficients representing the estimated proportion of each cost element (labour, materials, equipment usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the **Appendix to Tender**; the sum of a, b, c, d, etc., shall be one;

L_n, M_n, E_n, etc., are the current cost indices or reference prices of the cost elements in the specific currency of origin for month "**n**," determined pursuant to Sub-Clause 50.5, applicable to each cost element; and

L_o, M_o, E_o, etc., are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 50.5

The value of net work done, certified by the Project Manager, in any monthly Interim or Final Certificate as payable by the Procuring Entity to the Contractor before deduction of any retention money shall be increased or decreased by an amount of '**F**'.

$$F = PnxPc$$

where;

The effective value **Pc** of work done which is to be subjected to increase or decrease shall be the difference between:
the amount which, in the opinion of the Project Manager, is due to the Contractor under Clause 45 (before deduction of retention money and before deducting sums previously paid on account) less:
any amount for payment or repayment of any advance payment;
any amount for materials on site (if any);
any amounts for nominated sub-contractors (if any)
any amounts for any other items based on actual cost or current prices; or
any sums for increase or decreases in the Contract Price paid under this Sub-Clause
and
the amount calculated in accordance with (i) above of this Sub-clause and included in the last preceding statement.

50.4 The sources of indices shall be those listed in the **Appendix to Tender**, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor's proposed source of supply of inputs on the basis of which his Contract Price and expected foreign currency requirements shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his Tender the tabulation of Weightings and Source of Indices in the **Appendix to Tender**, which shall be subject to approval by the Engineer.

50.5 The base cost indices or prices shall be those prevailing on the day 28 days prior to the latest date for submission of Tenders. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.

50.6 If the Contractor fails to complete the Works within the time for completion prescribed under Clause 58 adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favourable to the Procuring Entity, provided that if an extension of time is granted pursuant to Clause 28, the above provision shall apply only to adjustments made after the expiry of such extension of time.

50.7 The weightings for each of the factors of cost given in the **Appendix to Tender** shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced, or inapplicable as a result of varied or additional work already executed or instructed under Clause 43 or for any other reason.

73. Retention

51.1 The Procuring Entity shall retain from each payment due to the Contractor the proportion stated in the **Contract Data Sheet** until Completion of the whole of the Works.

51.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the other half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

51.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” Bank guarantee.

74. Liquidated Damages

52.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the **Contract Data Sheet** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the **Contract Data Sheet**. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.

If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 46.1.

If the Contractor has not corrected a defect within the time specified in the Procuring Entity’s notice, the Procuring Entity will assess the cost of having the defect corrected, the Contractor will pay this amount, and a penalty for lack of performance calculated as described in Clause 38.

75. Bonus

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

76. Advance Payment

54.1 The Procuring Entity shall make advance payment to the Contractor of the amounts stated in the **Contract Data Sheet** by the date stated in the **Contract Data Sheet**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procuring Entity in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

54.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

54.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance

payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

77. Performance Securities

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

78. Dayworks

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

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

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

79. Cost of Repairs

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

E. Finishing the Contract

80. Completion Certificate

58.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.

81. Taking Over

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

82. Final Account

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

83. Operating and Maintenance Manuals

61.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **Contract Data Sheet**.

61.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **Contract Data Sheet**, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the **Contract Data Sheet** from payments due to the Contractor.

84. Termination

- 62.1 The Procuring Entity or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 62.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Project Manager;
 - (b) The Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
 - (c) The Procuring Entity or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - (d) A payment certified by the Project Manager is not paid by the Procuring Entity to the Contractor within 84 days of the date of the Project Manager's certificate;
 - (e) The Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
 - (f) The Contractor does not maintain a Security, which is required; and
 - (g) The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the **Contract Data Sheet**.
 - (h) If the Contractor, in the judgment of the Procuring Entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph:

“corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution and includes inter alia, bribery and extortion or coercion which involves threats of injury to person, property or reputation, and.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.

62.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 62.2 above, the Project Manager shall decide whether the breach is fundamental or not.

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

62.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

85. Payment upon Termination

63.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not

completed, as indicated in the **Contract Data Sheet**. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.

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

86. Property

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

87. Release from Performance

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

88. Suspension of Financing

66.1 In the event that the source of financing is suspended to the Procuring Entity, from which part of the payments to the Contractor are being made:

(a) The Procuring Entity is obligated to notify the Contractor of such suspension within 7 days of having received the financing agency's suspension notice.

(b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 46.1, the Contractor may immediately issue a 14-day termination notice.

SECTION V: CONTRACT DATA SHEET (CDS)

Contract Data Sheet

Instructions for completing the Contract Data Sheet

CDS Clause	GCC Clause	Description
1	1.1	<p style="text-align: center;">A. General</p> <p>(Itemise Definitions to take the same numbering as per the General Conditions)</p> <p>The Procuring Entity is The Chief Executive Officer, National Drought Management Authority, Lonrho House, 17th Floor, P.O. Box 53547 – 00200, Nairobi, Kenya.</p> <p>The Adjudicator is <i>The Institute of Engineers of Kenya (IEK)</i></p> <p>The Defects Liability Period is 180 days.</p> <p>The Project Manager is <i>Director, Technical Services</i></p> <p style="text-align: center;">The name and identification number of the Contract is Proposed –</p> <p style="text-align: center;">THE PROPOSED CONSTRUCTION OF KILIMBONI EARTH DAM IN KITUI COUNTY</p> <p>TENDER NO.: NDMA/KCEP-CRAL/05/2020-2021</p> <p>The Works consist of;</p> <ul style="list-style-type: none"> • Preliminary and General items • Excavation and earthworks • Draw off system; Water drawing system • Concrete, Masonry and Auxiliary Works • Gabion Checks <p>The Start Date shall be <i>notified by the Project Manager</i></p> <p>The Intended Completion Date for the whole of the Works shall be <i>end of Four months from the execution of the contract.</i></p> <p>The following documents also form part of the Contract:</p> <ol style="list-style-type: none"> 1. The Letter of Acceptance 2. The Form of Tender 3. The Contract Data Sheet 4. The General Conditions of Contract 5. The Completed Bill of Quantities and any other documents forming part of the contract 6. The Specifications 7. Drawings

SECTION V: CONTRACT DATA SHEET (CDS)

2.	2.2	Indicate whether there is sectional completion N/A
3.	2.3(9)	List other documents that form part of the contract if any: a) Minutes of Negotiation b) Start Date Notification Letter
4.	3.1	The language of the Contract documents is <i>English</i> The law that applies to the Contract is the Kenyan Law.
5	3	IFAD's Revised Policy on Preventing Fraud and Corruption in its Activities and Operations is applicable to all procurements and contracts involving IFAD funding or administered operations and can be found on the IFAD website IFAD may cancel any portion or all of the Funding allocated to this Contract if it determines at any time that representatives of the Employer, the Contractor or any other beneficiary were engaged in prohibited practices during the selection process or the performance of this Contract, without the Employer, the Contractor or such other beneficiary having taken timely and appropriate action satisfactory to IFAD to remedy the situation. IFAD and the Employer may pursue sanction of the Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded any IFAD funded contract if at any time either IFAD or the Employer determines that the Contractor has, directly or through an agent, engaged in any prohibited practices in competing for, or in performance of, this Contract.
6.	9.1	Include the Schedule of Other Contractors, if any. N/A
7.	10.1	Include the Schedule of Key Personnel. <i>Earth Works Inspector/Work Superintendent/Site Inspector/Surveyor/Foreman</i> <i>Mason (No)</i> <i>Plant Operators and drivers (No)</i>
8.	14.1	The minimum insurance covers shall be: (a) loss of or damage to the Works, Plant, and Materials <i>Kshs. 500,000</i>]; (b) loss of or damage to Equipment <i>Kshs. 200,000</i>]; (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract <i>Kshs. 200,000</i>]; and (d) Personal injury or death <i>Kshs. 100,000</i> .
9.	15.1	Site Investigation Reports available to the Tenderers are: a) Technical Specifications b) Bill of Quantities c) Drawings

SECTION V: CONTRACT DATA SHEET (CDS)

10.	17 & 20	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
11.	22.4	The other measures include: <ul style="list-style-type: none"> a. Minimising the number of migrant workers employed on the project and household in the site camp b. Providing access to voluntary counselling and testing (VCT) c. Providing psychological support and health care including prevention and treatment of opportunistic infections for workers infected and affected, as well as their families d. Providing condoms (male and female) to workers
12.	24.1 & 47.1	The Site Possession Date shall be <i>notified by the Project Manager</i>
13.	28.2	Hourly rate of Fees payable to the Adjudicator is: Kshs. 2,000 Types of reimbursable expenses to be paid to the Adjudicator include: <ul style="list-style-type: none"> a) Transport b) Reports production c) Accommodation
14.	28.3	Arbitration will take place at <i>National Drought Management Authority Offices at Lonrho House, Nairobi</i> in accordance with rules and regulations published by the Kenya Government as contained in the Arbitration Act
15.	29.1	Appointing Authority for the Adjudicator: <i>The Institute of Engineers of Kenya</i>
B. Time Control		
16.	30.1	The Contractor shall Submit a Programme for the Works immediately on delivery of the Letter of Acceptance.
17.	30.3	The period between Programme updates is 3 days.
18.	30.3	The amount to be withheld by the Project Manager in the case the contractor does not submit an updated programme is: N/A
C. Quality Control		
19.	38.1	The Defects Liability Period is 60 days .
D. Cost Control		
20.	45.7	Minimum Amount of Interim Payment Certificate will be 30% of Contract Price commensurate with equivalent percentage of the works done.
21.	46.1	Final Payments will be made after all works are complete and defects

SECTION V: CONTRACT DATA SHEET (CDS)

		rectified to the satisfaction of the supervisor
22.	47.1(a)	The Site Possession Date shall be <i>notified by the Project Manager</i>
23.	48	Taxes and other charges All government taxes applicable during the implementation of the contract applies.
24.	50	The contract <i>is NOT</i> subject to price adjustment in accordance with Clause 50 of the General Conditions of Contract.
25.	51.1	The amount of retention is 10% of value of works of Interim Payment Certificate.
		Limit of retention will be 10% of contract price.
26.	52.1	The rate of liquidated damages is <i>0.1 percent of the contract price per day</i>
	52.1 62.2 (g)	The maximum amount of liquidated damages is 10% of Contract Price [should be between 5% and 10% of Contract Price]
27.	53.1	The bonus for early completion is NIL
28.	54.1	The amount of advance payment shall be per cent of the contract sum payable by [<i>insert date</i>]. N/A
		Monthly Recovery of Advance Payment: percent of amount of Interim Payment Certificate. N/A
29.	55.1	The Performance Security shall be 1%
		E. Finishing the Contract
30.	61.1	As built drawings shall be supplied by the contractor after completion [<i>insert date if applicable</i>]. Operating manual shall be supplied by the contractor by alongside the claim for retention money. [<i>insert date if applicable</i>]. N/A
31.	61.2	The amount to be withheld by the Project Manager in the case the contractor does not submit as built drawings is 1% of the retention money. The amount to be withheld by the Project Manager in the case the contractor does not submit operating manual is: 0.5% [<i>State amount if applicable</i>]. N/A
32.	63.1	The percentage to apply to the value of the work not completed,

SECTION V: CONTRACT DATA SHEET (CDS)

		representing the Procuring Entity's additional cost for completing the Works, is <i>10%</i>
--	--	---

SECTION VI: TECHNICAL SPECIFICATIONS

Project Title: THE PROPOSED CONSTRUCTION OF KILIMBONI EARTH DAM IN KITUI COUNTY

Project Objectives -The project is meant to support small scale agriculture and livestock through enhancing their access to adequate and quality water for their domestic, farming and livestock use

Outputs:/Scope of work

- Preliminary and General items
- Excavation and Earth Works
- Draw off system/Water drawing system
- Concrete, masonry and auxiliary works and
- Gabion Checks

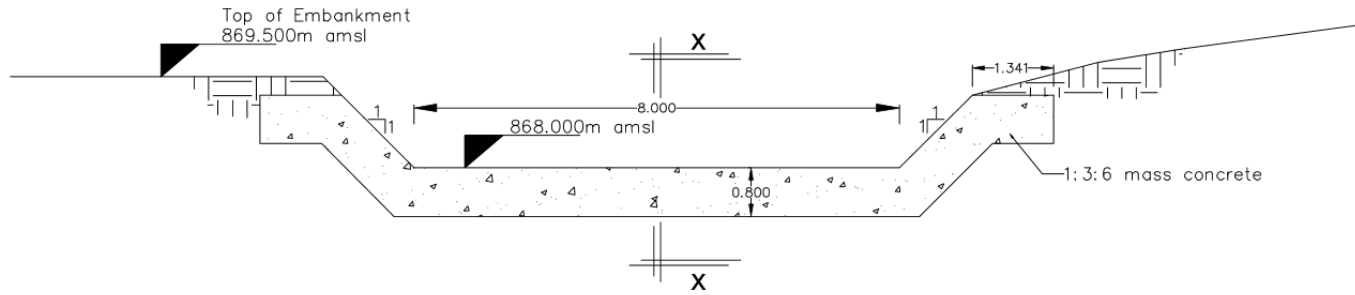
Geographical Location:

County: Kitui County

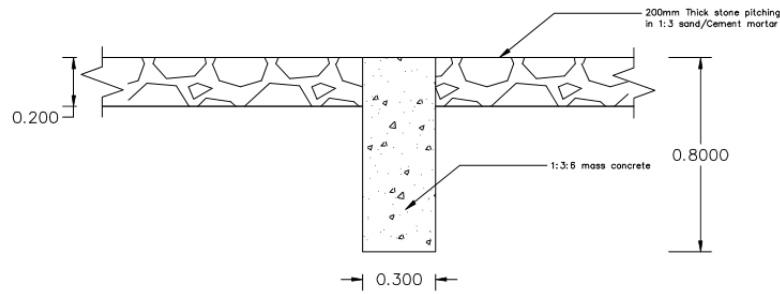
Project Location :

SECTION VII: DRAWINGS

SECTION VII: DRAWINGS



SPILLWAY CONCRETE SILL
(Scale: 1:40)



**SECTION X-X
SPILLWAY CONCRETE SILL**
(Scale: 1:10)

REVISION	
DATE	DESCRIPTION

REFERENCE DRAWINGS	
DRG. No.	DESCRIPTION

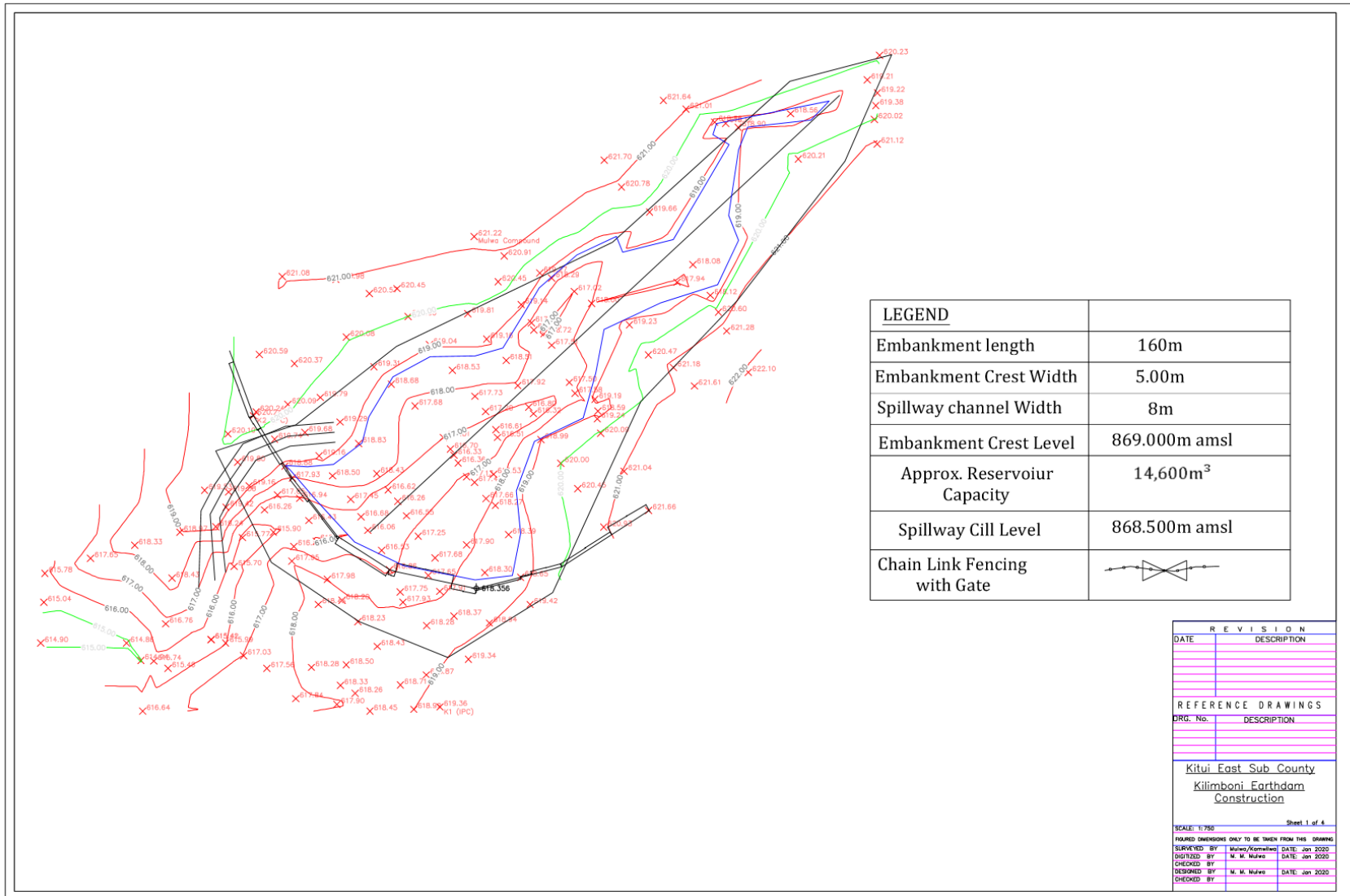
Kitui East Sub County
Kilimboni Earthdam
Construction

SCALE: As shown Sheet 2 of 4

FOOTED DIMENSIONS ONLY TO BE TAKEN FROM THIS DRAWING

SURVEYED BY	Muhoro/Kamiliro	DATE	Jan 2020
DRAWN BY	M. M. Mulwa	DATE	Jan 2020
CHECKED BY			
DESIGNED BY	M. M. Mulwa	DATE	Jan 2020
CHECKED BY			

SECTION VII: DRAWINGS



LEGEND	
Embankment length	160m
Embankment Crest Width	5.00m
Spillway channel Width	8m
Embankment Crest Level	869.000m amsl
Approx. Reservoir Capacity	14,600m ³
Spillway Cill Level	868.500m amsl
Chain Link Fencing with Gate	

REVISION	
DATE	DESCRIPTION

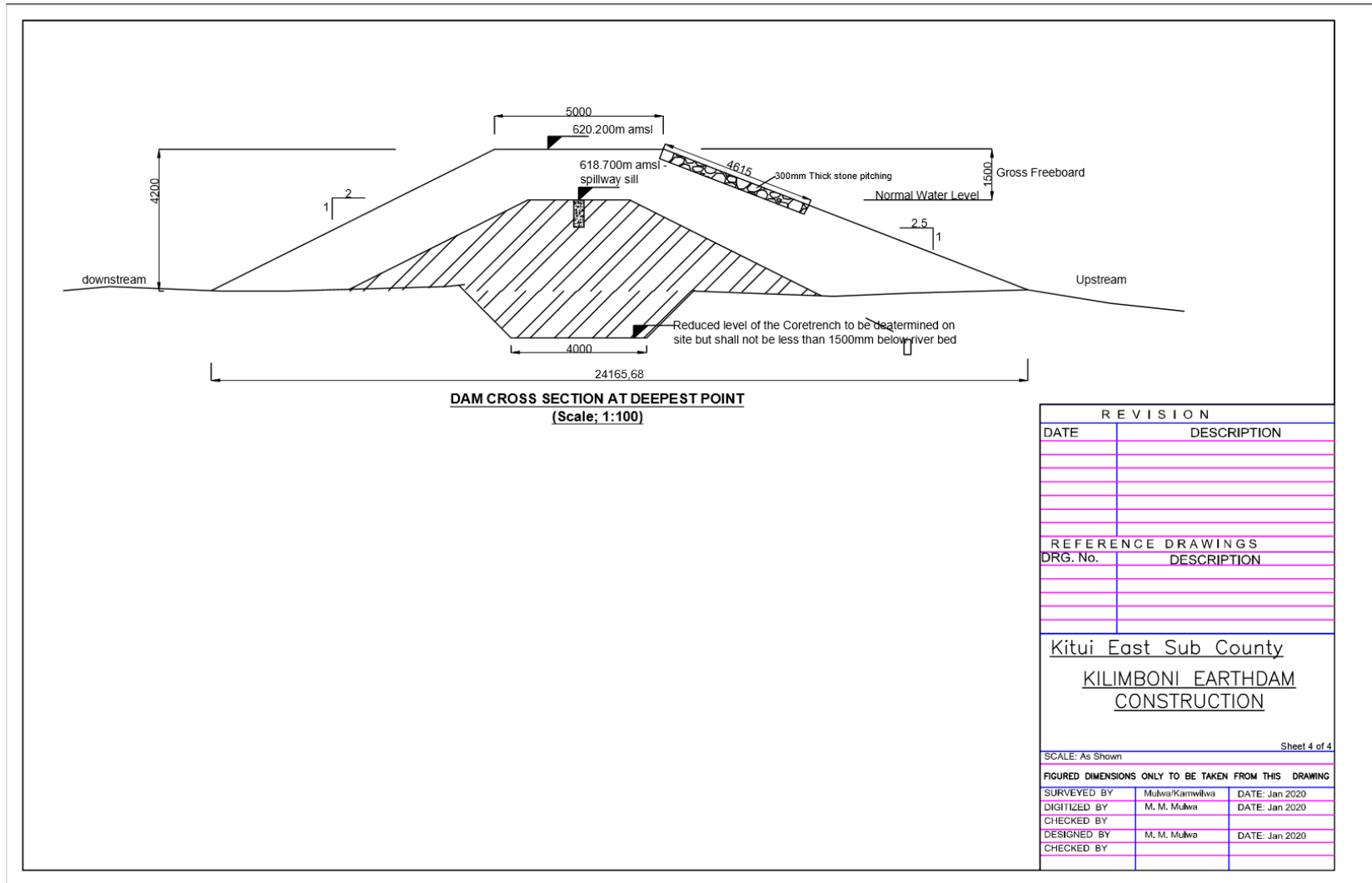
REFERENCE DRAWINGS	
DRG. No.	DESCRIPTION

Kitui East Sub County
Kilimboni Earthdam
Construction

SCALE: 1:750 Sheet 1 of 4

FOURED DIMENSIONS ONLY TO BE TAKEN FROM THIS DRAWING			
SURVEYED BY	Mulwa/Kamotho	DATE	Jan 2020
DRAWN BY	M. M. Mulwa	DATE	Jan 2020
CHECKED BY	M. M. Mulwa	DATE	Jan 2020
CHECKED BY	M. M. Mulwa	DATE	Jan 2020

SECTION VII: DRAWINGS



REVISION	
DATE	DESCRIPTION
REFERENCE DRAWINGS	
DRG. No.	DESCRIPTION

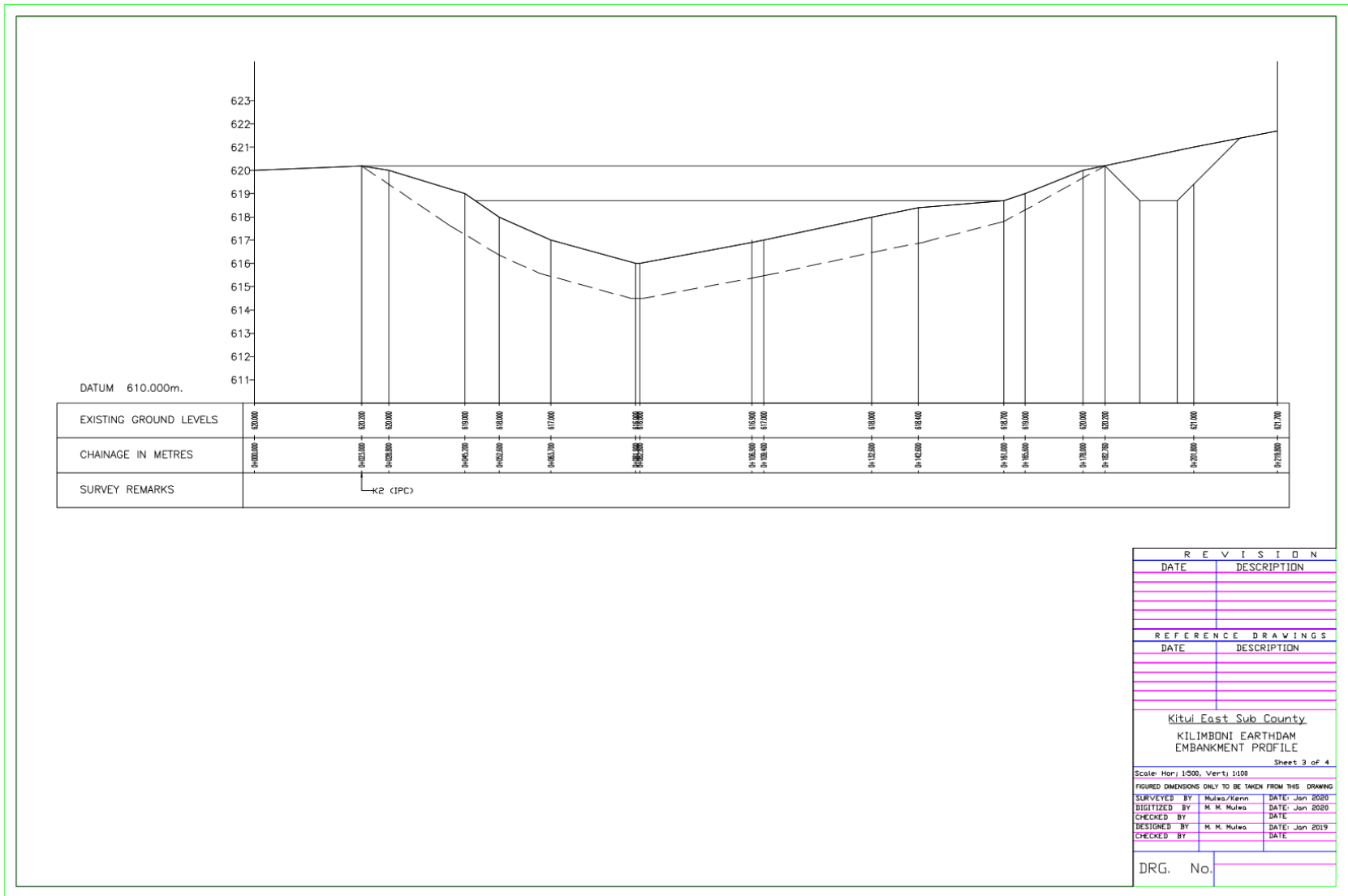
Kitui East Sub County
**KILIMBONI EARTH DAM
CONSTRUCTION**

Sheet 4 of 4

SCALE: As Shown

FIGURED DIMENSIONS ONLY TO BE TAKEN FROM THIS DRAWING		
SURVEYED BY	Mulwa/Kamwilwa	DATE: Jan 2020
DIGITIZED BY	M. M. Mulwa	DATE: Jan 2020
CHECKED BY		
DESIGNED BY	M. M. Mulwa	DATE: Jan 2020
CHECKED BY		

SECTION VII: DRAWINGS



SECTION VIII: BILL OF QUANTITIES

PREAMBLE TO BILLS OF QUANTITY

Rates quoted should include all input costs, temporary works, labour, overhead costs, all Government taxes, third party levies, contractor's profits and any cost arising from any related risks.

Annex 2: DETAILED BILLS OF QUANTITIES

THE CONSTRUCTION OF KILIMBONI EARTH DAM KITUI COUNTY (NDMA COMPONENT)

KILIMBONI EARTH DAM CONSTRUCTION					
Bill No.1: Preliminary and General Items					
Item	Description	Unit	Qty	Rate	Amount
1.1	Maintain Contractor's camps, facilities, plants, insurance, etc, include mobilization to site, and demobilization on completion of contract	L.S	Item		
1.2	Provide, erect, and maintain steel signboard as per requirements	No.	2		

2.6	Excavate from borrow area approx. 300m away , transport and place in layers of 400mm and wet compact to the satisfaction of the site engineer, approved impervious soil material for embankment	M ³	5,343		
2.7	Excavate in soil for spillway channel 1.5m depth x 8m width as directed. Include for trimming of spillway channel side slopes to the required grades	M ³	1,934		
2.8	E.O excavation in rock (provisional)	M ³	25		
Sub Total Bill No. 2 Site Clearance, Excavation and Earthworkscarried to Bill Grand Total					
KILIMBONI EARTH DAM CONSTRUCTION					
Bill No.3: Concrete, Masonry and Auxiliary Works					
Item	Description	Unit	Qty	Rate	Amount
3.1	Provide all material and construct 1:3:6 mass concrete sill as per drawing. Include for formwork	M ³	5		
3.2	Provide all material and construct 300mm. thick stone pitching on the outflow spillway channel floor and sides. Include for inflow apron.	M ²	1,170		
3.3	Provide, place and compact 200mm thick approved murrum on the dam crest as per the drawing	M ³	192		

3.6	Provide all material and construct standard VIP Latrine as per drawings	No.	1		
Sub Total Bill No. 3 Concrete, Masonry and Auxiliary Works					
KILIMBONI EARTH DAM CONSTRUCTION					
Bill No. 4: Water Drawing System					
Item	Description	Unit	Qty	Rate	Amount
1	Clear site of bushes, tree stumps and cart away or arisings	m2	7.4		
2	Excavate to a depth of 200mm depth to remove top soil and cart away as shall be directed by the Enineer	m2	1.5		
3	Set out and excavate for foundation trenches, depth not less than 1m	m3	5.8		
4	Extra over in rock (provisional)	m3	0.2		
5	225MM Thk Reinforced concrete 1:2:4 for strip foundation	M3	1.7		
6	D10 reinfoement bars bothways for concrete slab	Kgs	38.5		
7	225mm Thick Quarry stone Foundation walling upto 1m above ground level in 1:3 sand/cement motar	m2	12.1		

8	300mm Thick Hardcore filling	m3	1.1		
9	50mm Thick well compacted murram blinding	m2	0.2		
11	100mm Thick -1:2:4 RC concrete slab. Rate to include for formwork to sides of the floor slab	m3	0.6		
12	Well trowelled 1:3 sand/cement screed to floor slab with cement nil finish. Include edges of slab	m2	5.6		
13	Supply and installation of 1No. - 10,000litre Plastic Water tanks complete with 50mm outlet, overflow and 50mm inlet.	no.	1		
14	Pump & Solar power Assembly				
	<u>Supply, install and commission test a complete portable surface solar pumping unit as per the following specifications - rates to include suction pipe (6M) with strainer and all necessary fittings</u>				
i	submersible solar water pump unit with a minimum discharge capacity 0.75l/s(2.7M ³ /hr) against a total head of 30m, complete with solar modules and charge controller	No.	1		
ii	Fabricate, Supply and install a pump holding raft as shall be directed. Rate to include non corrosive manila 10mm dia. rope for anchoring	Item			
iii	32mm dia. PPR delivery pipe to tank	m	200		
Sub Total Bill No. 4 carried to Bill Grand Total					
KILIMBONI EARTH DAM CONSTRUCTION					
Bill No.5: Gabion checks					
Item	Description	Unit	Qty	Rate	Amount
	Gabion Protection				

Item	Description	Unit	Qty	Rate	Amount
1	Bill No. 1: Preliminary & General Items				
2	Bill No. 2: Excavations and Earthworks				
3	Bill No.3: Concrete, Masonry and Auxiliary Works				
4	Water Drawing System				
5	Bill No. 4: Gabion Checks				
	SUB TOTAL				
	Add % for contingencies to be expended at the dully approval of the project manager		5%		
	Add % for supervision/administration costs		3%		
	TOTAL				
	GRAND TOTAL				

SECTION IX: TENDER FORMS

FORM OF TENDER

Date _____

Tender No. _____

To: **The Chief Executive Officer**
National Drought Management Authority
P. O. Box 53547-00200, Nairobi

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. *[Insert numbers, that of which is hereby duly acknowledged, we, the undersigned, offer to provide*

- in conformity with the said tender documents for the sum of Kenya Shillings

- _____ *[As per the price Schedule]* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to provide the services in accordance with the services schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the tender guarantee in a sum as directed, being _____ percentage of the Contract Price for the due performance of the Contract, in the form prescribed by the National Drought Management Authority.
4. We agree to abide by this Tender for a period of 150 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. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

Dated this _____ day of _____ 2021

[signature] _____ *[In the* capacity
of

Duly authorized to sign tender for and on behalf
of _____

Appendix to Tender

Schedule of Adjustment Data

[In Tables A, B, and C, below, the Tenderer shall (a) indicate its amount of local currency payment, (b) indicate its proposed source and base values of indices for the different foreign currency elements of cost, (c) derive its proposed weightings for local and foreign currency payment, and (d) list the exchange rates used in the currency conversion. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.]

Table A. Local Currency

Index code	Index description	Source of index	Base value and date	Tenderer's related currency amount	Range of weighting Proposed by the Procuring Entity	Tenderer's proposed weighting
	Non adjustable	—	—	—	a: _____* b: ----- to -----* c: ----- to -----* d: ----- to -----* e: ----- to -----* etc.	a: _____* b: _____ c: _____ d: _____ e: _____ etc.
Total						1.00

Table B. Foreign Currency

State type: [If the Tenderer wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency.]

Index code	Index description	Source of index	Base value and date	Tenderer's related source currency in type/ Amount	Equivalent in Foreign Currency 1	Range of weighting Proposed by the Procuring Entity	Tenderer's proposed weighting
	Nonadjustable	—	—	—		a: _____* b: ----- to -----* c: ----- to -----* d: ----- to -----* e: ----- to -----* etc.	a: _____ b: _____ c: _____ d: _____ e: _____ etc.
Total							1.00

Table C. Summary of Payment Currencies

For[insert name of Section of the Works]

[Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The Procuring Entity should insert the names of each Section of the Works.]

Name of payment currency	A Amount of currency	B Rate of exchange (local currency per unit of foreign)	C Local currency equivalent C = A x B	D Percentage of Net Tender Price (NBP) $\frac{100 \times C}{NBP}$
Local currency		1.00		
Foreign currency #1				
Foreign currency #2				
Foreign currency #				
Net Tender Price				100.00
Provisional sums expressed in local currency	*	*	*	
TENDER PRICE				

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Tenderer: _____

Address: _____

F. Tender-Securing Declaration (Mandatory)Date: *[insert date (as day, month and year)]*Tender No.: *[insert number of Tendering process]*Alternative No.: *[insert identification No if this is a Tender for an alternative]*To: *National Drought Management Authority,*

We, the undersigned, declare that:

We understand that, according to your conditions, Tenders must be supported by a Tender-Securing Declaration.

We accept that we will automatically be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the Tender conditions, because we;

- a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- b) Having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity,
 - (i). Fail or refuse to execute the Contract, if required, or
 - (ii). Fail or refuse to furnish the Performance Security, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of;

- 1) Our receipt of your notification to us of the name of the successful Tenderer; or
- 2) Thirty days after the expiration of our Tender.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Tender Securing Declaration]*Name: *[insert complete name of person signing the Tender Securing Declaration]*Duly authorized to sign the Tender for and on behalf of: *[insert complete name of Tenderer]*Dated on _____ day of _____, _____ *[insert date of signing]*

Corporate Seal (where appropriate)

G. Confidential Business Questionnaire

- 1 **Individual Tenderer or Individual Members of joint Ventures**
- 1.1 Constitution or legal status of Tenderer: *[attach copy]*
- Place of registration: *[insert]*
- Principal place of business: *[insert]*
- Power of attorney of signatory of Tender: *[attach]*
- Registration certificate *[attach]* current Business License *[attach]*
- 1.2 Total annual volume of construction work performed in two years, in Kenyan shillings as specified in the Tender Data Sheet; *[insert]*
- 1.3 Work performed as prime Contractor on works of a similar nature and volume over the last two years or as specified in the Tender Data Sheet in Kenyan Shillings. Also list details of work under way or committed, including expected completion dates.

Project name and country	Name of client and contact person	Contractors Participation	Type of work performed and year of completion	Value of contract
(a)				
(b)				

- 1.4 Major items of Contractor's Equipment proposed for carrying out the works. List all information requested below. Refer also to sub-Clause 12.3 of the Instructions to Tenderers.

Item of equipment	Description, make, and age (years)	Condition (new, good, Poor) and number available	Owned, leased (from whom?) or to be purchased (from whom?)
(a)			
(b)			
(c)			
(d)			

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to sub-Clause 12.3 of the Instructions to Tenderers and Sub- Clause 10.1 of the General Conditions of Contract.

Position	Name	Years of Experience (general)	Years of experience in proposed position
(a)			
(b)			

1.6 Proposed sub-contractor and firms involved. Refer to Clause 7 of General Conditions of Contract.

Sections of the Works	Value of subcontract	Subcontractor (name and address)	Experience in similar work
(a)			
(b)			

1.7 Financial reports for the number of years specified in the Tender Data Sheet.

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

1.9 Name, address, and telephone, e-mail address, and facsimile numbers of banks that may provide references if contracted by the Procuring Entity.

1.10 Information on current litigation in which the Tenderer is involved.

Other party(ies)	Cause of dispute	Amount involved
(a)		
(b)		

- 1.11 Statement of compliance with the requirements of sub-Clause 3.2 of the Instructions to Tenderers.
- 1.12 Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Tendering documents.
2. **Joint Ventures**
- 2.1 The information listed in 1.1 – 1.11 above shall be provided for each partner of the joint venture.
- 2.2 The information in 1.12 above shall be provided for the joint venture.
- 2.3 Attach the power of attorney of the signatory (ies) of the Tender authorizing signature of the Tender on behalf of the joint venture.
- 2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:
- (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
 - (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
3. **Additional Requirements**
- 3.1 Tenderers should provide any additional information required in the **Tender Data Sheet** or to fulfil the requirements of sub-Clauses 12.1 of the Instructions to Tenderers, if applicable.

H. Integrity Declaration**UNDERTAKING BY TENDERER ON ANTI – BRIBERY POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME**

1. Each Tenderer must submit a statement, as part of the Tender documents, in either of the two given formats which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the Tendering company and, where relevant, of its subsidiary in the Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
2. Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the Tenderer may cover the subcontractors and consortium partners in its own statement, provided the Tenderer assumes full responsibility.
3.
 - a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
 - b) Each Tenderer will make full disclosure in the Tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the Tender and, if successful, the implementation of the contract.
 - c) The successful Tenderer will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract.
 - d) Within six months of the completion of the performance of the contract, the successful Tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that they are sufficient to establish the legitimacy of the payments made.
 - e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
4. Tenders which do not conform to these requirements shall not be considered.
5. If the successful Tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
 - a) Cancellation of the contract;
 - b) Liability for damages to the public authority and/or the unsuccessful competitors in the Tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated).
6. Tenderers shall make available, as part of their Tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.

7. The Government of Kenya has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by Tenderers for this contract, and to which in turn all Tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a Tenderer may be disclosed to another Tenderer or to the public).



NATIONAL DROUGHT MANAGEMENT AUTHORITY

(Project Name)

CONTRACT NO......

SITE HANDING OVER CERTIFICATE

This is to Certify that the Contractor M/S..... (Name of Contractor) has been handed over the above site by the Employer representative, County Drought Coordinator,Kitui County on behalf of Chief Executive Officer/Project Manager to carry out the works, as defined and stipulated in the Contract No., to completion and maintenance, today 20.....

On behalf of the Contractor

Name: -----
(Contractor's Authorized Representative)

Company Stamp: -----

On behalf of the Employer.

Name: -----
(For: Project supervisor)

Witnessed by: -----

Name: -----
(County Drought Coordinator/CIT Chair)

ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE FORM

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

I. Letter of Acceptance

[Letter head paper of the Procuring Entity]

[date]

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

This is to notify you that your Tender dated [date] for execution of the [name of the Contract and identification number, as given in the Contract Data Sheet] for the Contract Price of the equivalent of [amount in numbers and works] [name of currency], as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us.

We confirm that [insert name proposed by the procuring entity] to be the Adjudicator.

We accept that [name proposed by Tenderer] be appointed as Adjudicator.

Or

We do not accept that [name proposed by Tenderer] be appointed as adjudicator, and by sending a copy of this letter of acceptance to [insert the name of the Appointing Authority], we are hereby requesting [name], the Appointing Authority, to appoint the adjudicator in accordance with Clause 44.1 of the Instructions to Tenderers.

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

Please return the contract dully signed.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Form of Contract

J. Form of Contract Agreement

This Agreement, made the [day] day of [month], [year] between [name and address of Procuring Entity] (hereinafter called "the Procuring Entity") and [name and address of Contractor] (hereinafter called "the Contractor") of the other part.

Whereas the Procuring Entity is desirous that the Contractor execute [name and identification number of contract] (hereinafter called "the Works") with the objectives of [insert functional objectives of the works] and the Procuring Entity has accepted the Tender by the Contractor for the execution and completion of such works and the remedying of any defects therein in the sum of [contract price in words and figures] (hereinafter called "Contract Price").

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement;
2. In consideration of the payments to be made by the Procuring Entity to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Procuring Entity to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract;
3. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

The Common Seal of _____

Was hereunto affixed in the presence of: _____

Signed, Sealed, and Delivered by the said _____

In the presence of: _____

Tendering Signature of Procuring Entity _____

Binding Signature of Contractor _____

SECTION X: FORMS OF SECURITY

**A. Tender Security (Bank or Insurance Guarantee)
(Optional)**

*[If required, the **Bank or Insurance Company/Tenderer** shall fill in this Guarantee form in accordance with the instructions indicated in brackets.]*

[insert bank's or insurance company's name, and address of issuing branch or office]

Beneficiary: *[insert name and address of Procuring Entity]*

Date: *[insert date]*

TENDER GUARANTEE No.: *[insert number]*

We have been informed that *[insert name of the Tenderer; if a joint venture, list complete legal names of partners]* (hereinafter called "the Tenderer") has submitted to you its Tender dated *[insert date]* (hereinafter called "the Tender") for the execution of *[insert name of Contract]* under Invitation for Tenders No. *[insert IFT number]* ("the IFT").

Furthermore, we understand that, according to your conditions, Tenders must be supported by a Tender Guarantee.

At the request of the Tenderer, we *[insert name of bank or insurance company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in the currency of the Purchaser's Country or the equivalent amount in an international freely convertible currency] ([insert amount in words])* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer;

- a) Has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender; or
- b) Does not accept the correction of errors in accordance with the Instructions to Tenderers (hereinafter "the ITT") of the IFT; or
- c) Having been notified of the acceptance of its Tender by the Procuring Entity during the period of Tender validity;
 - (i). Fails or refuses to execute the Contract Form, if required, or
 - (ii). Fails or refuses to furnish the Performance Security, in accordance with the ITT.

This Guarantee shall expire;

- a) If the Tenderer is the successful Tenderer, upon our receipt of copies of the Contract signed by the Tenderer and of the Performance Security issued to you by the Tenderer; or
- b) If the Tenderer is not the successful Tenderer, upon the earlier of;

SECTION X: FORMS OF SECURITY

- (i) Our receipt of a copy of your notification to the Tenderer that the Tenderer was unsuccessful, or
- (ii) Thirty days after the expiration of the Tenderer's Tender.

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

[signature(s) of authorized representative(s)]

B. Performance Bank or Insurance Guarantee [Unconditional]

[The **Bank or Insurance Company/successful Tenderer** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if the Procuring Entity requires this type of security.]

[insert bank's or insurance company's name, and address of issuing branch or office]

Beneficiary: *[insert name and address of Procuring Entity]*

Date: *[insert date]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Contractor, we *[insert name of Bank or Insurance Company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or 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 expire not later than thirty days from the date of issuance of the Taking-Over Certificate.

[signature(s) of an authorized representative(s) of the Bank or Insurance Company]

C. Bank or Insurance Guarantee for Advance Payment

[Bank's or Insurance Company's Name and Address of Issuing Branch or Office]

Beneficiary: _____ *[Name and Address of Procuring Entity]*

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the contract]* dated _____ with you, for the execution of *[name of contract and brief description of Works]* (hereinafter called "the Contract").

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

At the request of the Contractor, we *[name of Bank or Insurance Company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (____) *[amount in words]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

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 thereunder or of any of the Contract documents which may be made between _____ *[name of Procuring Entity]* 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.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the ___ day of _____, 2___, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

SECTION X: FORMS OF SECURITY

Yours truly,

Signature and seal: _____

Name of Bank or Insurance Company: _____

Address: _____

Date: _____

**SECTION XI: APPLICATION TO PUBLIC PROCUREMENT
ADMINISTRATIVE REVIEW BOARD**

SECTION XI: APPLICATION TO PUBLIC PROCUREMENT ADMINISTRATIVE
REVIEW BOARD

FORM RB 1

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT

AND

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

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
.....dated the...day of20.....in the matter of Tender No.....of
.....20...

REQUEST FOR REVIEW

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

- 1.
 - 2.
- etc.

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

- 1.
 - 2.
- etc

SIGNED (Applicant)

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

FOR OFFICIAL USE ONLY

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

SIGNED
Board Secretary

FORM 15: CONTRACTOR'S EQUIPMENT

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in *Section III, Evaluation and Qualification Criteria*. A separate Form shall be prepared for each item of equipment listed. The Bidder shall provide all the information requested below, to the extent possible. The Bidder shall attach in annex the evidence of either ownership or lease of the each of the listed key equipment.

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

The following information shall be provided only for equipment not owned by the Bidder.

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

FORM 16: PERSONNEL

Bidders should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in *Section III Evaluation and Qualification Criteria*. The data on their experience should be supplied using the Form below for each personnel. *The academic and professional certificates shall be attached in annex.*

1.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name
5.	Title of position
	Name
6.	Title of position
	Name
etc.	Title of position
	Name

FORM 17: CURRICULUM VITAE OF PROPOSED PERSONNEL

Key Personnel

Name of Bidder

Position [#1]: [title of position from Form 15]											
Personnel information	<table border="1"> <tr> <td>Name:</td> <td>Date of birth:</td> </tr> <tr> <td>Address:</td> <td>E-mail:</td> </tr> <tr> <td colspan="2">Professional qualifications:</td> </tr> <tr> <td colspan="2">Academic qualifications:</td> </tr> <tr> <td colspan="2">Language proficiency:<i>[language and levels of speaking, reading and writing skills]</i></td> </tr> </table>	Name:	Date of birth:	Address:	E-mail:	Professional qualifications:		Academic qualifications:		Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
Name:	Date of birth:										
Address:	E-mail:										
Professional qualifications:											
Academic qualifications:											
Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>											
Details	<table border="1"> <tr> <td colspan="2">Address of employer:</td> </tr> <tr> <td>Telephone:</td> <td>Contact (manager / personnel officer):</td> </tr> <tr> <td>Fax:</td> <td></td> </tr> <tr> <td>Job title:</td> <td>Years with present employer:</td> </tr> </table>	Address of employer:		Telephone:	Contact (manager / personnel officer):	Fax:		Job title:	Years with present employer:		
Address of employer:											
Telephone:	Contact (manager / personnel officer):										
Fax:											
Job title:	Years with present employer:										

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

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

Declaration: I, the undersigned Key Personnel, certify that to the best of my knowledge and belief, the information contained herein correctly describes myself, my qualifications and my experience.

FORM 17: CURRICULUM VITAE OF PROPOSED PERSONNEL

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

Commitment	Details
Commitment to duration of contract:	<i>[insert period (start and end dates) for which this Key Personnel is available to work on this contract]</i>
Time commitment:	<i>[insert the number of days/week/months/ that this Key Personnel will be engaged]</i>

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

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

Name of Key Personnel: *[insert name]*

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Bidder:

Signature: _____

Date: (day month year): _____

FORM 20: PENDING LITIGATION AND ARBITRATION

[The Bidder shall provide details of all pending litigations and arbitrations using the following form]

Year	Other Party	Cause of Dispute	Amount involved (KES)

I certify that the above information is correct and we have provided all information regarding all pending litigations and arbitrations without exception.

.....
Title

.....
Signature

.....
Date

FORM 22: COMPLETED CIVIL WORKS

FORM 22: COMPLETED CIVIL WORKS

*{The Bidder to list completed civil works carried out by the Bidder in the last **five** years}*

Employer	Description of Works	Total Value of Works (KES)	Contract Period (Years)	Year Completed

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.

FORM 23: FINANCIAL SITUATION

{The Bidder shall fill completely the following form and attach to the bid the copies of audited financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions: (a) Must reflect the financial situation of the Bidder and not sister or parent companies; (b) Must be audited by a certified accountant; (c) Must be complete, including all notes to the financial statements; (d) Must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)}

Bidder Name:

Date: _____

Tender Number

Tender Description:

Financial information in Kenya Shilling	Historic information for previous 5 years						
	Year 1	Year 2	Year 3	Year 4	Year 5	Avg.	Avg. Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW=TA-TL)							
Current Assets (CA)							
Current Liabilities (CL)							
Working Capital (CA-CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							
Profit After Taxes							

FORM 24: AVERAGE ANNUAL TURNOVER

Bidder Name:

Date: _____

Tender Number

Tender Description:

Annual turnover data (construction only)			
Year	Amount in Currency	Exchange Rate	Amount (KShs)
*Average Annual Construction Turnover			

*Average annual turnover calculated as total certified payments received for work in progress or completed over the number of years specified in *Section III Evaluation and Qualification Criteria* divided by that same number of years.

FORM 25: FINANCIAL RESOURCES

The Bidder shall specify the proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as indicated in *Section III Evaluation and Qualification Criteria* and attach documentary evidence of each source.

Bidder Name:

Date: _____

Tender Number

Tender Description:

No.	Source of financing	Amount (KShs)
1	Working Capital	
2	Credit Line	
3	Other financial resources	
Total available financial resources		

FORM 26: GENERAL EXPERIENCE

Bidder Name:

Date: _____

Tender Number

Tender Description:

Starting Month / Year	Ending Month / Year	Year	Contract Identification
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:

FORM 27: SPECIFIC EXPERIENCE

Similar Contract Number: ___ [insert specific number] of ___ [insert total number of contracts required]	Information		
Contract Identification			
Award date Completion date			
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount			KSHS
If partner in a JVCA or subcontractor, specify participation of total contract amount	_____%	_____	KSHS
Employer's Name:			
Address: Telephone: E-mail:			

DECLARATION FORM (Mandatory)

NATIONAL DROUGHT MANAGEMENT AUTHORITY

TENDER NAME **TENDER FOR THE PROPOSED CONSTRUCTION OF
KILIMBONI EARTH DAM IN ZOMBE WARD, KITUI
COUNTY**

TENDER REFERENCE NO **NDMA/KCEP-CRAL/05/2020-2021**

I/ WE (name and address of the Tenderer)

.....
.....

.....
.....

Declare the following:

- a) have not been debarred from participating in public procurement, including not being subject to a debarment recognized under the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement")¹;
- b) have not been involved in and will not be involved in fraudulent, corrupt, collusive, coercive or obstructive practices regarding public procurement;
- c) are not subject to a criminal conviction, administrative sanctions and/or temporary suspensions for engaging in fraudulent, corrupt, collusive, coercive or obstructive practices;
- d) have no actual or potential conflict of interest² that could impact our capacity to serve the best interest of KCEP-CRAL and/or the International Fund for Agricultural Development (IFAD);
- e) have not paid or exchanged nor will pay or exchange any gratuity, fee, commission, gift or anything else of value with respect to the present bidding process;

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

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

OR

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

have exchanged, paid or will exchange or pay the following gratuities, fees, commissions, gifts or anything else of value with respect to the present bidding process:

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

Name and Title.....

Signature.....Date

(To be signed by authorized representative and officially stamped