



In partnership with



**COUNTY GOVERNMENT OF BOMET**  
**P.O.BOX 19-20400**  
**BOMET.**

**KENYA RED CROSS SOCIETY**  
**P.O.BOX 40712-00100**  
**NAIROBI.**

**CONSTRUCTION OF CHEBANG'ANG WATER SUPPLY PROJECT IN BOMET COUNTY**

**TENDER NAME: PIPE LAYING AND INSTALLATION OF FITTINGS FOR  
CONVEYANCE PIPELINE FOR CHEBANGANG WATER SUPPLY  
PROJECT PHASE II IN BOMET COUNTY**

**TENDER NO. KRCS/PRF7925/2021**

**CLOSING DATE: 5<sup>TH</sup> MAY 2021**

**VOLUME 1: TENDER DOCUMENTS**

**DATE OF ISSUE: APRIL 2021**

*"No offer, payment, consideration, or benefit of any kind which could be regarded as an illegal or corrupt practice shall be made – neither directly nor indirectly – as an inducement, or reward in relation to tendering award of the contract or execution of the contract. Any such practice will be grounds for the immediate cancellation of this contract and for such additional action civil and/or criminal as may be appropriate. At the discretion of the Kenya Red Cross Society a further consequence of any such practice can be the definite exclusion from any tendering for projects funded by the Kenya Red Cross Society".*

**Note: Attached child protection policy must be signed and stamped for the bid to be accepted**

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## SECTION 1: TENDER NOTICE AND INVITATION TO TENDER

### **TENDER No: KRCS/PRF7925/2021**

#### **TENDER NAME: PIPE LAYING AND INSTALLATION OF FITTINGS FOR CONVEYANCE PIPELINE FOR CHEBANGANG WATER SUPPLY PROJECT PHASE II IN BOMET COUNTY**

1. The Kenya Red Cross Society (KRCS) is a humanitarian relief organization created by an Act of Parliament, Cap 256 of the Laws of Kenya on 21<sup>st</sup> December 1965. Its vision is to be the most effective, trusted and self-sustaining humanitarian organization in Kenya.

The County Government of Bomet (CGoB) and the Kenya Red Cross Society (KRCS) are jointly implementing the Bomet Integrated Development Programme Phase-II (BIDP-Phase II) and have entered into an agreement to jointly mobilize resources to implement the Projects within the programme. Chebang'angWater Supply Project is one of the projects being executed under the programme and the construction of first phase of the project has commenced.

2. KRCS is currently seeking for eligible contractors for the proposed Construction of Conveyance Pipeline for Chebang'angWater Supply in Bomet County.

The Kenya Red Cross Society (KRCS) hereby invite sealed bids from eligible and qualified bidders for Supply of Pipes for the proposed Construction of Conveyance Pipeline for Chebang'angWater Supply in Bomet County.

The Scope of works to be executed under this contract comprises of the following:

- (i) Civil works for excavation, pipe laying, backfilling, testing and commissioning of Conveyance pipeline to included supply of requisite installation materials as specified and as shown in drawings;
  - (ii) Civil works for Construction, testing and commissioning of pipeline appurtenances including river / gully crossings, Anchor blocks and piers, Section Valves, Air Valves, Washouts etc. as specified and shown in drawings.
3. Details of works and a complete set of Tender Documents in English will be available for inspection from **Friday, 16<sup>th</sup> April 2021** at KRCS website [www.redcross.or.ke](http://www.redcross.or.ke) and CGoB Website [www.bomet.go.ke](http://www.bomet.go.ke).

Interested and qualified contractors are invited to **download** the tender notice, tender documents and drawings free of charge from the Kenya Red Cross Society or County Government of Bomet **website** (links provided below).

**Complete Tender documents can be viewed and downloaded from the KRCS and CGB website at [www.redcross.or.ke](http://www.redcross.or.ke) / [www.bomet.go.ke](http://www.bomet.go.ke).**

4. Tenders are to be completed in accordance with the requirements of the Bid Documents and must be sent to [tenders@redcross.or.ke](mailto:tenders@redcross.or.ke) at or before **1100 hours local time on 5<sup>th</sup> May 2021**. **Hard Copies shall not be permitted due to the current COVID-19 pandemic**. All bids must be accompanied by a **bid security of 2%** of bid price in Kenya shillings in form of a bank guarantee issued by a reputable bank located in Kenya.

A copy of **tender security** must be submitted with the bids in line with the laid down guidelines in the tender documents.

5. Bidders should provide **a combined technical and financial proposal as per laid down guidelines in the Bid Document.**

Completed tenders and supporting documents must be sealed in plain sealed envelope clearly marked:

**PIPE LAYING AND INSTALLATION OF FITTINGS FOR CONVEYANCE  
PIPELINE FOR CHEBANGANG WATER SUPPLY PROJECT PHASE II IN BOMET  
COUNTY**

**TENDER No: KRCS/PRF7925/2021**

and addressed to:

**The Secretary General  
Kenya Red Cross Society  
P.O Box 40712 - 00100  
Nairobi, Kenya**

This should be submitted via email and addressed as per details in the tender documents.

6. Qualification Requirements as stated in Appendix to Instruction to Tenderers and as provided in Section 4, Qualification Requirements and Evaluation Criteria shall apply.
7. Interested and eligible bidders or their representatives are required to attend a mandatory site visit on **Friday, April 23<sup>rd</sup> 2021 at 8.00 a.m** to familiarize with the site conditions and obtain a signed certificate of site visit which must be submitted with the bid.  
Bidders are required to assemble at the KRCS Bomet Branch (Bomet County Assembly Offices) offices by 8 am after which they will be guided to the site and shown the same. Bidders who do not attend this mandatory site visit will be disqualified from consideration. A stamped site visit certificate must be attached to the bid document as proof of site attendance will be used to determine the same.  
In case of any queries, please send all correspondence by email to **tenders@redcross.or.ke** on or before, **28<sup>th</sup> April 2021**. Queries and Responses on the tender will be published on KRCS and CGoB Websites on or before **3<sup>rd</sup> May 2021**.
8. Completed bids will be sent via email to **tenders@redcross.or.ke**. Bids will be opened at 1200 hours local time on Wednesday, 5<sup>th</sup> May 2021 at the Society's Headquarters and due to the cessation to movement guidelines provided by the Government in relation to prevention of spread of COVID-19 pandemic in the Country, the tender opening will be conducted by the client and the Tender Opening result communicated to all bidders who bided through email address provided in the bid document.
9. The Employer reserves the right to:
- a) amend the scope and value of any contract to be Tendered;
  - b) reject any Tender and any late Tender; and
  - c) Cancel the Tender process and reject all Tenderers.

The Employer shall not be liable for any such actions and shall not be under any obligation to inform the Tenderer(s) of the grounds therefore.

**Group Head of Procurement  
For Secretary General  
Kenya Red Cross Society**

## **BID FORM**

THE SECRETARY GENERAL  
KENYA REDCROSS SOCIETY  
P. O. BOX 40712  
NAIROBI

**Dear Madam,**

**BID FOR: PIPE LAYING AND INSTALLATION OF FITTINGS FOR CONVEYANCE  
PIPELINE FOR CHEBANGANG WATER SUPPLY PROJECT PHASE II IN BOMET  
COUNTY**

Having examined the bid documents, specifications, drawing, schedules and Bills of Quantities for the works described in these documents, we the undersigned offer to carry out the supply of all pipes and materials for the said works in conformity with this Contract for the sum of

**Kshs:.....**  
.....**(Amount in words) Kshs:.....(Amount in figures).**

We undertake if our bid is accepted to commence the works as soon as it is reasonably possible after receipt of the Client's Order to commence and to complete and deliver the whole of the works comprised in the Contract within.....(days) from the Commencement date.

We agree to abide by this Bid for the Bid validity period of ninety (90) days, from the tender opening date and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We also agree that pending the preparation and execution of the formal Agreement, this Bid together with the notification of award of the contract shall constitute a binding contract between the Client and the Contractor.

Dated this .....day of ..... 2021.

		Witness
Signature	.....	.....
Name	.....	.....
In the Capacity of	.....	.....
	.....	.....

## SECTION 2: SCHEDULE OF CONTRACT DOCUMENTS

The following documents form part of the Tender:

VOLUME I - PART “Conditions of Contract for Construction for Building and Engineering Works,

A Fourth edition 1987 as published by the Fédération Internationale des Ingénieurs- Conseils, FIDIC.  
The above document is available separately and Tenderers shall obtain their own copies at their cost.

VOLUME I - PART The Tender Document i.e. this Document, containing the Conditions of Tender,

B Special Conditions of Contract, Schedule of Quantities, Schedules and Forms, etc. applicable to this Contract.

This Bid Document has been presented in three (3) separate Volumes:

- a) Volume 1: Lot-1 Tender Documents;
- b) Volume 2: Lot 1 Book of Drawings; and
- c) Volume 3: Lot 1 Technical Specifications.

## SECTION 3: INSTRUCTIONS TO TENDERERS

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## **INSTRUCTIONS TO TENDERERS**

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

### **A. GENERAL**

#### **1. Definitions**

- (a) “Tenderer” means any persons, partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications, Drawings and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative.
- (b) “Approved tenderer” means the tenderer who is approved by the Employer.
- (c) Any noun or adjective derived from the word “tender” shall be read and construed to mean the corresponding form of the noun or adjective “bid”.
- (d) Any conjugation of the verb “tender” shall be read and construed to mean the corresponding form of the verb “bid.”
- (e) “Employer” The Employer is named in the Appendix to Instruction to Tenderers.

#### **2. Eligibility and Qualification Requirements**

##### **2.1 Eligibility requirements**

This invitation to tender is open to all tenderers who are qualified as stated in the appendix to Tender.

##### **2.2 Qualifications Requirements**

To be qualified for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility under Sub clause 2.1 above and of their capability and adequacy of resources to effectively carry out the subject Contract.

- (a) Copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer;
- (b) Total monetary value of work performed for each of the last three years;
- (c) Details of experience and past performance of the tenderer on the works of a similar nature and details of current work on hand and other contractual commitments. This may include testing schedules and compliance reports to manufacturing standards;
- (d) The qualifications and experience of key management and personnel proposed for administration and execution of the contract, both on and off site;
- (e) Major items of manufacture, plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule;
- (f) Details of sub-contractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with the Condition of Contract;
- (g) A draft Program of Works (production schedule and capacity) prepared in the form of a



primavera project planner or Microsoft Project chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Engineer

- (h) Reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the past three years;
- (i) Evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (j) Authority to seek references from the tenderer's bankers;
- (k) Information regarding any litigation, current or during the last three years, in which he tenderer is involved, the parties concerned and disputed amount; and
- (l) Details of any current litigation or arbitration proceedings in which the tenderer is involved as one of the parties.

## **2.2 Joint Ventures**

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

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

## **3. Cost of Tendering**

- 3.1 The Tenderer shall bear all costs associated with the preparation and submission of his tender and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.2 There is no fee charged for the tender document.

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

**4. Site Visit**

- 4.1 The tenderer is required to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the site shall be the tenderer's own responsibility.
- 4.2 The tenderer and any of his personnel or agents will be granted permission by the Employer to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, his personnel or agents, will release and indemnify the Employer from and against all liability in respect of, and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.
- 4.3 The Employer shall organize a mandatory site visit as advised in the tender notice; **the tenderer is advised to attend on the set day**. All tenderers are required to attend this site visit as it is mandatory, the Employer will assume the Tenderer is fully advised on site and local conditions during contracting and will not entertain variations and requests for additional works and pay for matters which would become apparent through a well-executed site survey and recce during the tendering period. Tenderers are required to have a site visit form in the template provided in this bid document filled and signed by the Employers Representative. A representative of the Employer will be available to meet the intending tenderers at the KRCS Bomet Branch Office as notified in the Tender notice at **8.00 am** to proceed to site. Tenderers are requested to be punctual or risk missing the planned site visit.
- 4.4 Tenderers must provide their own transport. The employer's representative will not be available at any other time for site inspection visits.
- 4.5 Each tenderer shall complete the Certificate of Tenderer's Visit to the Site.

## **B: TENDER DOCUMENTS**

### **5. Tender Documents**

5.1 The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 7 of these instructions to tenderers.

- (a) Form of Invitation for Tenders
- (b) Appendix to the Instructions to Tenderers
- (c) Form of Tender surety
- (d) Appendix to Form of Tender
- (e) Form of Tender Security
- (f) Tender and Confidential Business Questionnaires
- (g) Schedules of Supplementary Information
- (h) General Conditions of Contract – Part I
- (i) Conditions of Particular Application – Part II
- (j) Specifications
- (k) Bill of Quantities and methods of measurements
- (l) Book of Drawings
- (m) Declaration Form

5.2 The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 23 of Instructions to Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.

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

### **6. Inquiries by Tenderers**

6.1 A tenderer making an inquiry relating to the tender document may notify the Employer in writing by email at the Employer's mailing address indicated in the **Appendix to Instruction to tenderers**. The Employer will respond in writing by email for clarification which he receives earlier than 7 days prior to the deadline for the submission of tenders. Written copies of the Employer's response (including the query but without identifying the source of the inquiry) will be uploaded on the electronic websites included on the invitation to tender. For the purpose of receiving any inquiries to the bid, the bidders are instructed to write to this email address registering their contacts and advising where they purchased the tender document upon purchase of the tender document.

6.2 Any inquiry and its subsequent response will be emailed to the tenderer who raised the query and will also be published on the same advertised websites for the attention of all prospective tenderers without indicating where the query generated from.

6.3 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

### **7. Amendment of Tender Documents**

7.1 At any time prior to the deadline for submission of tenders the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.

- 7.2 Any Addendum will be notified by publishing the same on the advertised websites for the action of all prospective tenderers, this will be binding upon them and hence tenderers are requested to regularly check for addenda posted on the websites throughout the tender process. For the purpose of receiving any addenda to the bid, the bidders are instructed to write to the email address registering their contacts and advising where they purchased the tender document upon purchase of the tender document
- 7.3 In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Employer may, at his discretion, extend the deadline for the submission of tenders.

## **C. PREPARATION OF TENDERS**

### **8. Language of Tender**

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

### **9. Documents Comprising the Bid**

- 9.1 The tender to be prepared by the tenderer shall comprise:

- i. The Form of Tender and Appendix thereto
- ii. A tender security
- iii. The Priced Bills of Quantities and Schedules
- iv. The information on eligibility and qualification
- v. Any other materials required to be completed and submitted in accordance with the Instructions to Tenderers.

The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 13.2 regarding the alternative forms of Tender Surety)

### **10. Tender Prices**

- 10.1 All the insertions made by the tenderer shall be made in indelible INK and the tenderer shall clearly form the figures. The relevant space in the Bid Form and Bills of Quantities shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialled by the person or persons signing the tender.
- 10.2 A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not. Items against which no rate or price is entered by the tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.

The prices and unit rates in the Bills of Quantities are to be the full [all-inclusive] value of the Work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties, taxes and other levies payable by the Contractor under the

Contract, or for any other cause prior to the deadline for submission of tenders, shall be included in the rates and prices and the total Tender Price submitted by the tenderer.

Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.

Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates. Unless otherwise specified the tenderer must enter the amounts representing 5% of the subtotal of the summary of the Bills of Quantities for Contingencies payments in the summary sheet and add them to the sub-total to arrive at the tender amount

- 10.3 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of basic unit rates for the supply of key construction items. The Employer may require the tenderer to justify such rates so obtained from the suppliers or manufacturers.
- 10.4 The rates and prices quoted by the tenderer are **not** subject to adjustment during the performance of the Contract only in accordance with the Provisions of the Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other supporting information as required under clause 70 of the Conditions of Contract Part II. (see **appendix to tender**)
- 10.5 Contract price variations shall not be allowed within the execution of the entire contract period. Contract work variation will be considered after justification is provided for with the application for the variation and will only come into effect after approval of the Engineer
- 10.6 Where quantity contract variation is allowed, the variation shall not exceed **15%** of the original contract quantity.
- 10.7 Work variation requests shall be processed by the procuring entity within 30 days of receiving the request.

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

- 11.1 The Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings

## **12. Tender Validity**

- 12.1 The tender shall remain valid and open for acceptance for a period of one hundred and twenty (120) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 7.3 here above) whichever is the later. Prices Quoted should be valid for a period of two hundred and forty (240) days from the date of tender submission. However, in exceptional circumstances, the Employer may request that the tenderers extend the period of validity for a specified additional period.
- 12.2 In exceptional circumstances prior to expiry of the original tender validity period, the Employer may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing or by Email. A tenderer may refuse the request without forfeiting his Tender Surety. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Surety correspondingly.

### **13. Tender Security**

- 13.1 The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix to Instruction to Tenderers.
- 13.2 The tender security shall **be 2 % (percent)** of the tender price in Kenya shillings.
- 13.3 The Tender Security shall be valid at least thirty (30) days beyond the tender validity period.
- 13.4 Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive. The Tender Security of a joint venture must define as “Tenderer” all joint venture partners and list them in the following manner: a joint venture consisting of “.....”, “.....”, and “.....”.
- 13.5 The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible as but not later than twenty-eight (28) days after expiration of the tender validity period. The Tender Surety of the successful tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.
- 13.6 The Tender Security may be forfeited:
  - a) if a tenderer withdraws his tender during the period of tender validity: or
  - b) in the case of a successful tenderer, if he fails, within the specified time limit
    - i. to sign the Agreement, or
    - ii. to furnish the necessary Performance Security
  - c) if a tenderer does not accept the correction of his tender price pursuant to clause 24.

### **14. No alternative offers**

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

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

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

### **15. Pre-tender Meeting**

- 15.1 If a pre-tender meeting is convened, the tenderer’s designated representative is invited to attend at the venue and time in the Invitation to Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 15.2 The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than seven (7) days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:
  - a) Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in – Clause 9 which may become necessary as a result of the

pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting.

- b) Non-attendance at the pre-bid meeting will not be cause for disqualification of a bidder.

## **16. Format and Signing of Tenders**

- 16.1 The tenderer shall prepare his tender as outlined in clause 9 above and mark appropriately one set “ORIGINAL” and the other “COPY” and a soft copy in CD or Flash disk. In event of discrepancy between them, the original shall prevail.
- 16.2 The copy of the tender and Bills of Quantities shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender. The power of attorney for person (s) signing the tender must be provided on the attached form provided.
- 16.3 The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## **D. SUBMISSION OF BIDS**

### **17. Sealing and Marking of Bids**

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

### **18. Deadline for Sub-mission of Bids**

- 18.1 Tenders must be received by the Employer at the address specified in clause 17.2 and on the date and time specified in the Letter of Invitation, subject to the provisions of clause 7.3, 18.2 and 18.3.

Tenders delivered by hand must be placed in the “tender box” provided in the office of the Employer.

Proof of posting will not be accepted as proof of delivery and any tender delivered after the above stipulated time, from whatever cause arising will not be considered.



18.2 The Employer may, at his discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline shall thereafter be subject to the new deadline as extended.

18.3 Any tender received by the Employer after the prescribed deadline for submission of tender will be returned unopened to the tenderer.

## **19. Modification and Withdrawal of Bids**

19.1 Tenderers may modify or withdraw their tenders by giving notice in writing before the deadline prescribed in clause 18.2. Each tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with clause 2.1 and 18.1, with the outer and inner envelopes additionally marked "MODIFICATION" and "WITHDRAWAL", as appropriate. No tender may be modified after the deadline for submission of tenders.

19.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of tenders, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.

19.3 No tender may be modified subsequent to the deadline for submission of tenders.

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

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

19.6 Tenderers may only offer discounts to, or otherwise modify the prices of their tenders by submitting tender modifications in accordance with Clause 19.1 or be included in the original tender submission.

## **E. TENDER OPENING AND EVALUATION**

### **20. Tender Opening**

20.1 The tenders will be opened by the Employer, including modifications made pursuant to Clause 19.1, in the presence of the tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender. Envelopes marked "WITHDRAWAL" shall be opened and read out first. Tenderers' and Employer's representatives who are present during the opening shall sign a register evidencing their attendance.

20.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 19, will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the documents have been properly signed and whether the tenders are generally in order. The tenderers' names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as may be Considered appropriate, will be announced by the Employer at the opening.



- 20.3 At the tender opening, the Employer will announce the tenderer's names and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.
- 20.4 The Employer shall prepare minutes of the tender opening including the information disclosed to those present.
- 20.5 Tenders not opened and read out at the tender opening shall not be considered further for evaluation, irrespective of the circumstances.

## **21. Process to be Confidential**

- 21.1 After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenderers or other persons not officially concerned with such process until the award of Contract is announced.
- 21.2 Any effort by a tenderer to influence the Employer in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender.

## **22. Clarification of Tenders**

- 22.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by Email, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 24.
- 22.2 No tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

## **23. Determination of Responsiveness**

- 23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender (a) meets the eligibility criteria defined in Clause 2.1 and qualifying criteria in clause 2.2 (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the tendering documents.
- 23.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders. These documents shall be viewed and examined during the technical proposal evaluation stage.
- 23.3 Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the

cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive. These documents shall be viewed and examined during the financial proposal evaluation stage.

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

## **24. Correction of Errors**

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

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error.
- (c) In the event of a discrepancy between the tender amount as stated in the bid form and the corrected tender figure in the main summary of the Bills of Quantities, the corrected amount shall prevail.
- (d) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender will be rejected and the Tender Security may be forfeited in accordance with clause 13.

## **25. Conversion to Single Currency**

- 25.1 The tender price and rates shall be in Kenya shillings only. No currency conversions will be required.

## **26. Evaluation and Comparison of Bids**

- 26.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 23.
- 26.2 In evaluating tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:
- (a) Making any correction for errors pursuant to clause 24;
  - (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively
  - (c) Making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 2.1; and
  - (d) Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 19.6
  - (e) The tenders shall be evaluated by firsts undertaking a technical evaluation where scores

will be awarded in accordance with the evaluating criteria provided in appendix B. There after the corrected tender sums for the bids that are with + or – 15% above or below the engineers estimates shall be scored and the scores aggregated with the technical score to get the most competitive evaluated bidder. The employer reserves the right to amend or adjust the evaluating criteria at any stage of evaluation for the purposes of completing the evaluation.

- 26.3 The Employer reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Employer, shall not be taken into account in tender evaluation.
- 26.4 Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.
- 26.5 If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 29 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.
- 26.6 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 26.7 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 26.8 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

## **F. AWARD OF CONTRACT**

### **27. Award Criteria**

- 27.1 Subject to Sub-clause 27.2, the Employer will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works as required in Sub-clause 2.1 and 2.2.
- 27.2 The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.

### **28. Notification of Award**

- 28.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, telefax or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in

all Contract documents called “the Contract Price”) which the Employer will pay to the Contractor in consideration of the execution, completion and maintenance of the Works as prescribed by the Contract.

- 28.2 At the same time that the Employer notifies the successful tenderer that his tender has been accepted, the Employer shall notify the other tenderers that the tenders have been unsuccessful.
- 28.3 Within fourteen [14] days of receipt of the Form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.
- 28.4 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

## **29. 29 Performance Guarantee**

- 29.1 Within fourteen [14] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in the amount stated in the Appendix to Instructions to Tenderers and in the format stipulated in the Conditions of Contract.
- 29.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer’s option by a reputable Bank approved by the Employer and located in the Republic of Kenya.
- 29.3 Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract. The Employer may award the Contract to the next ranked tenderer.

## **30. 30 Advance Payment**

An advance payment, if approved by the Employer, shall be made under the Contract, if requested by the Contractor, in accordance with clause 60(1) of the Conditions of Contract. The Advance Payment Guarantee shall be denominated in the proportion and currencies in Kenya shillings. The guarantee shall be issued by a Bank located in the Republic of Kenya, case subject to the approval of the Employer.

## **31. 31 Corrupt or Fraudulent Practices**

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

## **APPENDIX TO INSTRUCTIONS TO TENDERERS**

### **Notes on the Appendix to Instructions to Tenderers**

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

<b>Sub Clause</b>	<b>Reference</b>
1(e)	The name of the Employer is: <b>THE SECRETARY GENERAL KENYA RED CROSS SOCIETY (KRCS) P.O. BOX 40712-00100 NAIROBI.</b>
2.1	Delete the entire clause and substitute with the words “the requirements of section 4: Qualification and evaluation criteria in this bid document shall apply”.
2.2	Add the following at the end of clause 2.2. The tender shall in addition comply with the following: a) Compliance with Section 4: Qualification and Evaluation criteria; b) 9.1- 9.17 of Section 9: Schedules to be completed; c) Experience as main Contractor in Water Pipe Works contracts of at least Three works of a nature and complexity equivalent to the Works over the last 3 years (to comply with this requirement, works cited should be at least (70%) percent complete); d) Proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Works; e) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than 4 months of the estimated payment flow under this Contract.
2.3	Add the following at the end of clause 2.3. Firms are permitted to obtain expertise by associating with others who have not bided for this works on their own or with other partners.
3.2	There is no fee charged for the tenders
4	There shall be an organized mandatory site visit on <b><u>Friday, April 23<sup>rd</sup> 2021 at 8.00a.m</u></b> to familiarize with the site conditions and obtain a signed certificate of site visit which must be submitted with the bid. Should the contractor wish to carry out a site reconnaissance as a preparatory exercise to completing the tender, the contractor is advised to inform the Employer who shall advise a date and site representative who will introduce the proposed project site to the bidder.
5	The Employer will respond in writing to any request for clarification which he receives

	<p>earlier than seven (7) days prior to the deadline for the submission of tenders. All enquiries and correspondence must be sent via email to <b>tenders@redcross.or.ke</b></p>
7.2	All Addenda shall be notified by e-mail using the e-mail addresses provided by the participating tenderers in their applications letters.
8.1	The language of tender shall be English
9.1	The tenderer is required to submit a combined technical proposal and financial proposal.
10.2	Taxes: All Taxes are applicable except where the Client has or receives tax exemptions.
10.3	The 10% Contingency shall apply.
10.4	Add the following at the end of this clause: “the tenderer must fill in the basic unit rates in the document”
10.5	Contract price variations shall not be allowed for the duration of the contract.
10.7	Variation shall not exceed 15% of the original contract quantity.
12.2	The request for extension of tender validity shall be made by e-mail using the e-mail addresses provided by the participating tenderers in their tender submission letters/letter of bid.
13.1	The tender security shall be 2% of the bid price and shall be in the form of unconditional bank guarantee from a local bank. The attached tender security form must be used. Tenders with tender securities of lower amounts and in other forms (such as insurance) shall be rejected.
13.2	The tender security shall be 2% of the bid price and shall only be valid least thirty (30) days beyond the tender validity period.
14.1	Add the following at the end of clause 14.1; Alternative offers shall not be permitted.
15.1	No pre-proposal conference will be held
16.1	Add the following at the end of clause 16.1; Tenderers must submit <b>1 (one) original</b> and <b>1 (one) additional copy</b> of the bid document.
16.2	The power of attorney for person (s) signing the tender must be provided on the attached form.
17.2	<p>The name and address of the employer for the purposes of submission of tenders is:</p> <p><b>THE SECRETARY GENERAL KENYA RED CROSS SOCIETY P.O Box 40712-00100 NAIROBI</b></p> <p><b>TENDER No: KRCS/PRF7925/2021</b></p> <p><b>PIPE LAYING AND INSTALLATION OF FITTINGS FOR CONVEYANCE PIPELINE FOR CHEBANGANG WATER SUPPLY PROJECT PHASE II IN BOMET COUNTY</b></p> <p>The outer envelope and inner envelopes should clearly bear the Tender number as allocated in the letter of invitation.</p>
18.1	<p>The proposal submission address as shown in 17.2 <b>Information on the outer envelope should also include:</b></p> <p><b>TENDER No: KRCS/PRF7925/2021</b></p> <p><b>PIPE LAYING AND INSTALLATION OF FITTINGS FOR CONVEYANCE PIPELINE FOR CHEBANGANG WATER SUPPLY PROJECT PHASE II IN BOMET COUNTY</b></p>

20.1	Due to the cessation to movement guidelines provided by the Government in relation to prevention of spread of COVID-19 pandemic in the Country, the tender opening will be conducted by the client and the Tender Opening result communicated to all bidders who bided through email address provided in the bid document.
22.1	The request for clarification and response shall be through e-mail on: tenders@redcross.or.ke
23.4	<p>Add the following at the start of clause 23.4; In addition , tenders from the following tenderers shall be treated as <b>non - responsive</b> and therefore subject to automatic disqualification:-</p> <ul style="list-style-type: none"> <li>i) A tender from a tenderer whose on-going project [s] is / are behind schedule and without any approved extension of time.</li> <li>ii) A tender from a tenderer who has been served with a default notice on on-going projects.</li> <li>iii) A tender from a tenderer with on-going projects exceeding four (4) in number, regardless of the total value of the outstanding works.</li> <li>iv) A tender from a tenderer whose has not provided all the Mandatory requirements as required under section 4 of the bid document.</li> </ul> <p>Tenders not meeting the minimum qualifying criteria specified in the Appendix to tender sub clause 2.2 and under section 4 of the tender document shall also be declared non-responsive</p>
26.9	<p>Add after cl .26.8 the following clause</p> <p>Poor past performance on contracts awarded by the Employer, Its partners and other parties will be considered in evaluation of the tenders.</p>
27.1	<p>Add to the last sentence: The process will involve a technical evaluation as well as a financial evaluation in determining the award of contract as provided in section 4.</p>
28	The assignment is expected to commence in <b>May 2021</b>
28.4	Signing of contract by parties shall take place after lapse of 14 days from date of notification of contract award.
29.1	The winning Tenderer shall give a <b>performance bond</b> in the form an <b>irrevocable bank guarantee</b> with a value equivalent to <b>10% of the contract price</b> before signing a contract within fourteen days (14) of receipt of notification of Award from the employer
29.2	The Performance Security to be provided by the successful tenderer shall be an <b>unconditional Bank Guarantee</b> issued at the tenderer's option by a reputable Bank approved by the Employer and located in the Republic of Kenya.



## SECTION 4: QUALIFICATION AND EVALUATION CRITERIA

### APPENDIX B OF THE INSTRUCTION TO TENDERERS

#### TENDER EVALUATION CRITERIA

##### **Mandatory Requirements**

These are mandatory attachments/documents to be attached to the tender document. Absence of any will lead to bidder being disqualified and will not proceed to the next stage of evaluation.

	Yes/No
Certificate of Incorporation to include CR12	
PIN Registration	
KRA Tax compliance	
Valid Registration Certificate from National Construction Authority (NCA 6 or above) as a water works Contractor	
Valid annual practicing License from National Construction Authority as water works contractor	
Audited financial statements for the last three years (2018, 2019 and 2020)	
Duly signed and stamped Child Protection Policy from KRCS	
Proof of payment of Kshs.5000 tender price	
<i>Proceed / Not proceed to the next level of evaluation</i>	

##### **Technical Evaluation Criteria**

The technical evaluation is weighted out of 100% with a pass mark of 70%.

Any bidder scoring 70 and above in the technical evaluation will proceed to the financial evaluation stage. After which an aggregated score of the financial and technical will be computed and the winning bidder selected.

##### ***Technical Evaluation Summary sheet***

Scoring criteria			Bidders Score
	Description	Maxim Possible Score	
1	Woks of similar nature	30	
2	Equipment for the works	30	
3	Staff Competence (Technical)	20	
4	Evidence of financial capability for the work	20	
<b>TOTAL</b>		<b>100</b>	



## **1.0 EXPERIENCE /WORKS OF SIMILAR NATURE (30)**

### **Schedule 1.1 (equal or higher values) max score (10)**

	<b>Maximum Points Possible</b>	<b>Bidders score</b>
Three projects of equal or higher value in the last three years	10	
Three projects of value between 50-100% of value	6	
Any Projects less than 25% value of the tendered works.	3	
No submission of project record	0	
<b>TOTAL</b>	<b>10</b>	

**Note:**

1. Score awarded will be in line with the Bidder submitting documents which conform to the requirements above.
2. Only one score will be provided as per the submissions
3. The highest score attained will be allotted as per the submissions in accordance to the above
4. The score will be prorated based on the three largest projects of the contractor within the last three years. For example, one project of equal or higher value and two projects of value between 50-100% would score 7.3.

### **Schedule 1.2 (Similar nature) max score (14)**

<b>Criteria</b>	<b>Maximum Points Possible</b>	<b>Bidders Score</b>
Three projects of similar nature and complexity combining the majority of the major elements under this tender – (bidder to detail and clearly display similarity of proposed works to their experience) in the last 3 years.	14	
Three projects of similar nature including at a number of elements under this tender (bidder to detail and clearly display similarity of proposed works to their experience) in the last 3 years, e.g small piped distribution systems	9	
Any Three projects of similar nature but not same complexity e.g. water pans, irrigation etc	7	
Other unrelated construction works e.g. marine works , steel works road works etc	3	
No submission in details works undertaken	0	
<b>TOTAL</b>	<b>14</b>	

**Note:**

5. Score awarded will be in line with the Bidder submitting requirements which conform to the requirements above.
6. Only one score will be provided as per the submissions
7. The highest score attained will be allotted as per the submissions in accordance to the above
8. The score will be prorated based on the three most similar projects of the contractor. For example, construction of one project of similar nature complexity and two similar projects would score 10.7.

### **Schedule 1.3 (reference and clients) max score (6)**

	<b>Maximum Points Possible</b>	<b>Bidders Score</b>
Three or more similar works satisfactorily completed for CGoB/KRCS in the last 3 years (evidence for the same should be clearly submitted - reference letters, proof of payment in full, etc).	6	
Three or more similar works satisfactorily completed for GOK & other Agencies in the last 3 years (evidence for the same should be clearly submitted –completion cert, reference letters, proof of payment, etc)	5	
Works for other Clients	3	
No details and references submitted	0	

**Note:**

9. Score awarded will be in line with the Bidder submitting requirements which conform to the requirements above.
10. Only one score will be provided as per the submissions
11. The highest score attained will be allotted as per the submissions in accordance to the above except if the Bidder is judged to have done unsatisfactory works for KRCS in the past

**2.0 CONTRACTORS EQUIPMENT (30)****Schedule 2.1- No of Equipment, availability and ownership score (15)**

Plant type required		Score per item		Bidder's Score
		Owned	Leased	
1	1 No 7 ton truck	2.5	1	
2	1 No Backhoe Excavator with 0.5m <sup>3</sup> bucket	2.5	1	
3	1 No Excavator cat 320 or equivalent with rock breaker head attachment	2.5	1	
4	Water bowser- 5000 liters-1 no	2.5	1	
5	1 No one ton pick up	2	1	
6	1 No Concrete mixer 3m <sup>3</sup> min	2	1	
7	Other assorted equipment-survey equipment –total station 3 sec accuracy and automatic level	1	0.5	
	<b>MAX SUB-TOTAL SCORE</b>	<b>15</b>		

**Schedule 2.2 Age of equipment score (15)**

Plant type required		Score per item			Bidder's Score
		1-8 years	8-15 years old	Over 15 years	
1	1 No 7 ton truck	2.5	1	0.5	
2	1 No Backhoe Excavator with 0.5m <sup>3</sup> bucket	2.5	1	0.5	
3	1 No Excavator cat 320 or equivalent with rock breaker head attachment	2.5	1	0.5	
4	Water bowser- 5000 liters-1 no	2.5	1	0.5	
5	1 No one ton pick up	2	1	0.5	
6	1 No Concrete mixer 3m <sup>3</sup> min	2	1	0.5	
7	Other assorted equipment-survey equipment –total station 3 sec accuracy and automatic level	1	0.5	0.25	
	<b>MAX SUB-TOTAL SCORE</b>	<b>15</b>			

**Note:**

12. If number available is less than required prorate for the line accordingly
13. Schedule of all equipment proposed to be used for these works should be submitted
14. Proof of certificates of ownership in form of Log Book Copies, Log Books held by Banking and Credit institutions stating the equipment is hire purchased by the contractor or agreements made for Lease with copies of the Log Books of the intended equipment for hire must be provided - failure to do so will attract a zero score.
15. All equipment listed must be, as a minimum, in good condition, and this will be confirmed by due diligence checks if deemed necessary

**3.0 STAFF (cl 2.2 (b)) max score (20)****Schedule 3.1- Availability and education score (10)**

Key staff required	No. required	Maximum score for Educational qualification – Score per person			Bidder's score
<i>Management</i>		<i>Degree (civil Eng)</i>	<i>Diploma(civil Eng)</i>		
Project Engineer/Manager (Civil, water Eng. or equivalent)	1	2	1		
Ass. Engineer (Civil-any building trade)	1	1	0.5		
<b>MAX SUB-TOTAL SCORE</b>		<b>3</b>			
Supervisory	No. required	Maximum score for Educational qualification – Score per person			Bidder's Score
		Degree	Diploma	Certificate	
Site agent ( Civil or building any trade)	1	2	1	0	
Foreman 1 (Civil or building any trade)	1	1	1	1	
Ass. Foreman	1	1	1	1	
Surveyor	1	1	1	1	
<b>MAX SUB-TOTAL SCORE</b>		<b>5</b>			

Artisans	No. required	Maximum score for Educational qualification – Score per person		Bidder's Score
		Certificate or above	O level/ other	
Masons	2	0.5	0.25	
Plumbers / Pipe fitters	2	0.5	0.25	
Plant Operators	1	0.5	0.25	
Other support staff	3	0.5	0.25	
<b>MAX SUB-TOTAL SCORE</b>		<b>2</b>		
<b>MAX TOTAL OF ALL STAFF</b>		<b>10</b>		

**Schedule 3.2 Experience score (10)**

Key staff required	No. required	Maximum score for experience in construction industry – Score per person						Bidder's score
Management		Over 10 years		3-10 years		Up to 3 years		
		Relevant experience	General experience	Relevant experience	General experience	Relevant experience	General Experience	
Project Engineer/manager (Civil, water Eng. or equivalent)	1	3	2	2	1	1	0	
Ass. Engineer (Civil-any building trade)	1	1		0.5		0.5		
Supervisory								
Site agent (Civil or building any trade)	1	3	2	2	1	1	0	
Foreman 1 (Civil or building any trade)	1	1		0.5		0.25		
Ass. Foreman	1	0.5		0.25		0.125		
Surveyor	1	0.5		0.25		0.125		
Artisans								
Masons	2	0.25		0.25		0.125		
Plumbers / Pipe fitters	2	0.25		0.25		0.125		
Plant Operators	1	0.25		0.25		0.125		
Other support staff	3	0.25		0.25		0.125		
MAX SUB-TOTAL SCORE		10						

Note:

1. If number available is less than required prorate for the line, proof of certificates and registration with professional body must be attached.
2. If no experience the line is scored zero. Proof of CV with references must be provided.
3. Total for each bidder for 3.1 and 3.2 transferred to summary sheet.
4. If number available is less than required then prorate for the line, proof of certificates and registration with professional body must be attached.

#### **4.0 EVIDENCE OF FINANCIAL CAPACITY (20)**

##### **Schedule 4.1 Available records score 5**

<b>Financial Record Provided</b>	<b>Maximum score</b>	<b>Bidders Score</b>
Provide audited accounts for 3 years (from 2020)	1	
Provide audited accounts for 2 years (from 2019)	1	
Provide audited accounts for 1 year (from 2018)	1	
Provide bank statements ( 6 months to date )	0.5	
Provide letter of credit (bank/supplier)	1	
Other financial record	0.5	
<b>TOTAL SCORE</b>	<b>5</b>	

##### **Schedule 4.2 amount in record compared to value of work score 15**

<b>Financial capability</b>	<b>Maximum score for financial capacity</b>					<b>Bidders Score</b>
	<b>Equal or over</b>	<b>75% and above</b>	<b>50% and above</b>	<b>25% and above</b>	<b>Less than 25%</b>	
Value of turn over three times the value of tendered work in last two years	5	3.5	2.5	1	0.5	
Value of assets to tendered works	5	3.5	2.5	1	0.5	
Value of credit line available to tendered works value	5	3.5	2.5	1	0.5	
<b>TOTAL SCORE</b>	<b>15</b>					

## **SECTION 5: CONDITIONS OF CONTRACT**

### **TABLE OF CONTENTS**

#### **5.1 PART I - GENERAL CONDITIONS**

#### **5.2 PART II – CONDITIONS OF PARTICULAR APPLICATION**

## 5.0 CONDITIONS OF CONTRACT

The Conditions of Contract for this contract comprise the “General Conditions” and “Particular Conditions”.

### 5.1 GENERAL CONDITIONS

The “General Conditions” are the “Conditions of Contract for works of Civil engineering construction Fourth Edition 1987, reprinted in 1992 with further amendments, prepared by the Federation Internationale des Ingenious Conseils (FIDIC)”.

The “Particular Conditions” are set out in Section 5.2 of this volume and are additional to or amend the General Conditions.

Reference to the “Appendix” in the abovementioned General Conditions for the purpose of this Contract is contained in Section 7.2 in this document hereinafter.

To obtain copies of the General Conditions of Contract please contact:

**Federation Internationale des ingenieurs – Conseils (FIDIC)**  
P O Box 86  
CH 1000 Lausanne 12  
Switzerland  
Tel. :41 21 654 44 11  
Facsimile: + 41 21 653 54 32

The Contractor is deemed to be fully acquainted with and in possession of these FIDIC Conditions of Contract.

## **5.2 CONDITIONS OF PARTICULAR APPLICATION**

The Conditions of Contract Part II – Conditions of Particular Application modify and supplement the corresponding Clauses of the Conditions of Contract Part I – General Conditions. Both shall be read together, with the Conditions of Particular Application prevailing in case of conflict or discrepancy. Clauses of General Conditions not specifically modified and supplemented shall remain in effect.

### **SUBCLAUSE 1.1 – DEFINITIONS**

Amend this sub-clause as follows:

(a) (i) The said “Employer” shall be KENYA RED CROSS SOCIETY represented by Secretary General

(iv) The said “Engineer” shall be the head of WASH at Kenya Red Cross Society.

(b) (i) Insert in line 2 after the Bills Of Quantities”, the following, “the rates entered by the Contractor (whether or not such rate be employed in computation of the Contract Price),”

Amend subparagraph (b) (v) of Sub-Clause 1.1 by adding the following words at the end:

The word “BID” is synonymous with “bid” and the word “Appendix to BID” with “Appendix to Bid” and the word “BID documents” with “bidding documents”.

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

(h) (i) “Materials” means materials and other things intended to form or forming part of the Permanent Works.

### **SUBCLAUSE 2.1 - ENGINEER’S DUTIES AND AUTHORITY.**

With reference to Sub-Clause 2.1 (b), the following shall not apply.

### **SUBCLAUSE 2.2 ENGINEER NOT LIABLE**

Approval, reviews and inspection by the Engineer of any part of the Works does not relieve the Contractor from his sole responsibility and liability for the supply of materials, plant and equipment for construction of the Works and their parts in accordance with the Contract and neither the Engineer's authority to act nor any decision made by him in good faith as provided for under the Contract whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any of their representatives or employees or any other person performing any portion of the Works.

### **SUBCLAUSE 5.1 - LANGUAGE AND LAW**

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

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

### **SUBCLAUSE 5.2 – PRIORITY OF CONTRACT DOCUMENTS**

Delete the documents listed 1-6 and substitute:

- (1) The Contract Agreement (if completed)
- (2) The Letter of Acceptance



- (3) The tender and Appendix to tender
- (4) The particular conditions of contract and appendix to the conditions of contract
- (5) The General Conditions of Contract
- (6) The Special Specifications;
- (7) The Standard Specification for Road and Bridge Construction, 1986;
- (8) The Drawings;
- (9) The priced Bills of Quantities.
- (10) Other documents as listed in the Appendix to form of Bid

If any ambiguity is found in the documents, the Engineer shall issue any necessary clarification or instruction

#### **SUBCLAUSE 6.4 – DELAYED DRAWINGS OR INSTRUCTIONS**

In line 1, add „reasonable“ before „notice“

#### **SUBCLAUSE 10.1 - PERFORMANCE SECURITY**

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

“The Contractor shall provide security for his proper performance of the Contract within 14 days after receipt of the Letter of Acceptance. The Performance Security shall be in the form of a bank guarantee as stipulated by the Employer in the Appendix to Bid. The Performance Security shall be issued by a bank incorporated in Kenya.

The bank guarantee shall be issued either (a) by an established and reputable bank approved by the Employer and located in Kenya or a foreign bank through a Kenya Red Cross Society 36 correspondent established and reputable bank located in Kenya and approved by the Employer or (b) directly by a foreign bank acceptable to the Employer. The performance security shall normally be in the currency or currencies requested for payment by the Contractor a

The Contractor shall notify the Engineer when providing the Performance Security to the Employer.

“Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost, the Contractor, at the Engineer’s written request, shall promptly increase the value of the Performance Security by an equal percentage at no cost to the employer.

#### **SUBCLAUSE 10.2 - VALIDITY OF PERFORMANCE SECURITY**

The Performance Security shall be valid until a date 28 days after the date of issue of the defects liability Completion Certificate. The security shall be returned to the Contractor within 28 days of expiration.

#### **SUBCLAUSE 10.3- CLAIMS UNDER PERFORMANCE SECURITY**

Delete the entire sub-clause 10.3.

#### **SUBCLAUSE 10.4- COST OF PERFORMANCE SECURITY**

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

#### **SUBCLAUSE 11.2 - ACCESS TO DATA**

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

#### **SUBCLAUSE 14.1 PROGRAM TO BE SUBMITTED**

**The time within which the production schedule or program shall be submitted shall be as specified in the Appendix to the Form of Bid in consultation and advice of the client.**

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

The work schedule/program shall be prepared using Primavera Project Planner (P3) or Microsoft Project Office software or a Critical Path Method Network (CPM Network) software and submitted in soft and hard copies. The program shall be revised at three-month intervals and should include a chart of the principle quantities of work forecast for execution monthly.

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

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

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

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

The Employer shall have the right to withhold payment at any time if the Contractor fails to submit the contractual programmes in accordance with sub clause 14.1 above or revise construction programmes due to his negligence, failure or omission.

#### **SUBCLAUSE 14.3- CASH FLOW ESTIMATE**

The time within which the detailed cash flow estimate shall be submitted shall be twenty-eight (14) days after receipt by the Contractor the Order to Commence the Works.

Revised cash flow estimates shall be provided at quarterly intervals. In preparing the estimates, provisions shall be made for Advance Payment, repayment of Advance, retention, payment for services provided by the Employer, and timing implications of Sub-clause 60.10 – Time for Payment.

#### **SUBCLAUSE 14.5- DETAILED PROGRAMME AND MONTHLY PROGRESS REPORT**

This section shall not apply but the supplier may submit to the employer a report of the progress of delivery.

#### **SUBCLAUSE 16.3- QUALIFICATION AND LANGUAGE ABILITY OF SUPERINTENDING STAFF**

The Contractor's superintending staff shall meet the following minimum qualifications shall be as stipulated in the evaluation criteria in appendix B.

#### **SUBCLAUSE 16.4 – EMPLOYMENT OF LOCAL PERSONNEL**

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

#### **SUBCLAUSE 19.1- SAFETY, SECURITY AND PROTECTION OF THE ENVIRONMENT**

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

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

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

The Contractor shall prepare an Environmental Protection and a Health and Safety plan and submit it to the Engineer for approval before commencement of Works. The plan shall detail how to implement Environmental protection measures and Health and Safety measures to be implemented in carrying out the Works. The plan shall include a method statement for carrying out of the Works.

The proposed plan shall be in complete harmony with all Health and Safety measures required in the Contract Documents and the Law. It shall as a minimum, address the issues in the following table:

#### Potential Issues

#### Check

##### Air Quality

- ☐ The Contractor shall ensure that worksite and location of materials stockpiles are properly secured through appropriate measures with the approval of the Engineer.
- ☐ For Asphalt works, the Contractor shall not use old tires for heating purposes.

##### Water Quality

- ☐ The Contractor shall ensure proper drainage of water used in the construction from site.

	<ul style="list-style-type: none"> <li>▪ The Contractor shall minimize soil exposure time during construction.</li> </ul>
Noise and Congestion	<ul style="list-style-type: none"> <li>▪ The Contractor shall minimize chemical usage (lubricants, solvents, petroleum products).</li> <li>▪ When possible, the Contractor shall balance timing of work to prevent high noise emission and road blockages during peak use hours</li> </ul>
Landscape intrusion	<ul style="list-style-type: none"> <li>▪ Preserve existing vegetation where directed by the Engineer.</li> <li>▪ The Contractor shall maintain close supervision of works in areas around other existing services by maintaining accurate and updated maps for the existing utility services.</li> </ul>
Interaction with other existing services.	

Health and Safety	<ul style="list-style-type: none"> <li><input type="checkbox"/> The Contractor shall brief the construction crew on safety guidelines and shall hold as a minimum weekly Health and Safety meetings and notes of the meetings shall be submitted to the Engineer.</li> <li><input type="checkbox"/> It is the Contractors responsibility to maintain the general safety in and around the construction site.</li> <li><input type="checkbox"/> If Asbestos is suspected to be present, the Contractor shall provide masks and gloves for construction crew and site visitors.</li> <li><input type="checkbox"/> The Contractor shall appoint a Safety Officer to supervise the safety issues at the site, who shall be present at all times.</li> <li><input type="checkbox"/> The Contractor shall provide Safety Gear such as helmets, boots, eyeglasses, nose masks, etc (as appropriate depending on the type and nature of the Construction work) for construction crew and site visitors. No workers or any other person shall be allowed on site without the appropriate Safety Gear.</li> </ul> <p>The Contractor shall attempt to minimize noise and environmental pollution as much as possible.</p> <p>The Contractor shall drain flood water and excess water by Pumping to prevent damage to the Works or any Third Party.</p>
Dump Waste Disposal	The Contractor shall ensure proper transport and disposal of dump waste at sites approved by Local Authorities.
Plants preservation	The Contractor shall preserve trees, planted fields and fences in a suitable manner, and shall replant to replace those trees that were damaged or removed, and re-erect fences to their original condition, in accordance with the Engineer's instructions.

The above list is not exhaustive. Additional Safety and Health measures and Environmental Protection Plans may be required from the Contractor depending on actual hazards identified at the site. It is assumed that Contractor has included in its Contract price under General Items for observing the above and any other Environmental, Health and Safety measures.

#### **SUBCLAUSE 20.4 - EMPLOYERS RISKS**

Delete Sub-Clause (h) and substitute with;

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

- (i) could not have reasonably foreseen, or
- (ii) could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures:
  - (A) prevent loss or damage to physical property from occurring by taking appropriate measures or
  - (B) insure against such loss or damage

#### **SUBCLAUSE 21.1 - INSURANCE OF WORKS AND CONTRACTOR'S EQUIPMENT**

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

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

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

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

#### **SUBCLAUSE 21.2 – SCOPE OF COVER**

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

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

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

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

#### **SUBCLAUSE 21.4 - EXCLUSIONS**

Amend Sub-Clause 21.4 to read as follows:

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

#### **SUBCLAUSE 23.2 – MINIMUM AMOUNT OF INSURANCE**

Add the following at the end of this Clause:

“.. with no limits to the number of occurrences”.

#### **SUBCLAUSE 25.1 – EVIDENCE AND TERMS**

Amend Sub-Clause OF INSURANCE 25.1 as follows:

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

Add the following Sub-Clauses 25.6, 25.7

#### **SUBCLAUSE 25.6 – INSURANCE NOTICES**

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

#### **SUBCLAUSE 25.7 – NOTIFICATION TO INSURERS**

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

#### **SUBCLAUSE 28.2 – ROYALTIES**

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

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

#### **SUBCLAUSE 29.1 – INTERFERENCE WITH TRAFFIC**

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

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

Add the following sub-clause 29.2:

#### **SUBCLAUSE 29.2 – REINSTATEMENT AND COMPENSATION FOR DAMAGES TO PERSONS AND PROPERTY**

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

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

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

Add the following Sub-Clause 34.2 to 34.8

#### **SUBCLAUSE 34.2 – CONDITIONS OF EMPLOYMENT OF LABOUR**

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

#### **SUBCLAUSE 34.3 – FAIR WAGES**

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

- (a). The Contractor shall pay rates of wages, observe hours of labour and provide conditions of labour, housing, amenities and facilities not less favourable than those required by the latest Regulation of Wages (Building and Construction Industry) Order as at the time of bid submission, and subsequent amendments thereto, or in any wage scales, hours of work or conditions agreed by the Ministry of Labour or other Government Departments in consultation with the appropriate wage fixing authority and generally recognized by other employees in the district whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- (b). In the absence of any rates of wages, hours or conditions of labour so established the Contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other Employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- (c). Where the absence of established rates of wages, hours and conditions of labour or the dissimilarity of the general circumstances in the trade of industry in which the Contractor is engaged prevent the Contractor from observing rates of wages, hours and conditions of labour ascertained under sub-paragraph (a) and (b) above the Contractor in fixing the rates of wages, hours and conditions of labour of his employees shall be guided by the advice of the Labour Department.
- (d). The Contractor shall recognize the freedom of his employees to be members of trade unions.
- (e). The Contractor shall maintain records in English of the time worked by, and the wages paid to, his employees. The Contractor shall furnish to the Engineer or Employer, if called upon to do so, such particulars of the rates, wages and conditions of labour as the Employer or Engineer may direct.
- (f). The Contractor shall at all times during the continuance of the contract display, for the information of his employees in every factory, workshop or place occupied or used by him for the execution of the Contract, a copy of this clause together with a notice setting out the general rates of wages, hours and conditions of labour of his employees.
- (g). The Contractor shall be responsible for the observance of this clause by sub-Contractors employed in the execution of the works.

#### **SUBCLAUSE 34.4 – BREACH OF FAIR WAGES CLAUSE**

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

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

#### **SUBCLAUSE 34.5 – RECRUITMENT OF UNSKILLED LABOUR**

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

#### **SUBCLAUSE 34.6 – COMPENSATION FOR INJURY**



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

**SUBCLAUSE 34.7 – LABOUR STANDARDS**

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

**SUBCLAUSE 34.8 -EMPLOYMENT OF PERSONS IN THE SERVICE OF OTHERS**

The Contractor shall not recruit his staff and labour from amongst the persons in the services of the Employer or the Engineer; except with the prior written consent of the Employer or the Engineer, as the case may be.

**SUBCLAUSE 34.11- DISORDERLY CONDUCT**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst staff and labour and for the preservation of peace and protection of persons and property in the neighbourhood of the Works against the same.

Add the following Sub-Clause 35.2 and 35.3.

**SUBCLAUSE 35.2 – RECORDS OF SAFETY AND HEALTH**

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

**SUBCLAUSE 35.3 – REPORTING OF ACCIDENTS**

The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means. The Contractor shall also notify the relevant authority whenever the Laws of Kenya require such a report.

**SUBCLAUSE 37.3 –NOTICE FOR INSPECTION AND TESTING**

Change “24” in line 3 to “48”

**SUBCLAUSE 41.1 – COMMENCEMENT OF WORKS**

Amend Sub-Clause 41.1 as follows:

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

For the purposes of this clause, the Works shall be deemed to have commenced when all of the following conditions are satisfied;



- a) The approved competent and authorized agent or representative of the Contractor is resident in the project area and is giving his whole time to the superintendence of the Works.  
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- b) The provision by the Contractor of evidence that all insurances required by the Contract are in force.
- c) The Contractor has an established office in the project area with postal address for receipt of correspondence.
- d) The principal items of constructional plant have been brought to Site and put to work in the execution of the permanent Works.

Possession of Site and Access Thereto

Add the following to this clause 42.4;

The Contractor shall not enter any part of the Site until he has requested and received permission to do so from the Employer or the Engineer. The Contractor shall not use any portion of the Site for any purpose not connected with the Works.

#### **SUBCLAUSE 43.1 – TIME FOR COMPLETION**

Amend Sub-Clause 43.1 as follows:

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

#### **SUBCLAUSE 44.1 – EXTENSION OF TIME FOR COMPLETION**

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

“Neither rains falling between 1st October and 31st December (inclusive) and between 1st January and 15<sup>th</sup> February and between 1st March and 30th May (inclusive) nor floods caused by such rains shall be deemed exceptional weather conditions such as may fairly entitle the Contractor to an extension of time for the completion of the Work”.

#### **SUBCLAUSE 45.1 – RESTRICTION ON WORKING HOURS**

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

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

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

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

#### **SUBCLAUSE 47.2 – REDUCTION OF LIQUIDATED DAMAGES**

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

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

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

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

#### **SUBCLAUSE 51.2 INSTRUCTIONS FOR VARIATIONS**

At the end of the first sentence, after the word “Engineer”, add the words “in writing”.

#### **SUBCLAUSE 52.1 – VALUATION AND VARIATIONS**

Add new Clause 52.2(c)

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

Modification to Clause 52(3)

#### **SUBCLAUSE 52.4 – DAYWORKS**

This section shall not apply.

#### **SUBCLAUSE 54.1 – CONTRACTORS EQUIPMENT, TEMPORARY WORKS AND MATERIALS: EXCLUSIVE USE FOR THE WORKS**

Amend Sub-Clause 54.1 as follows:

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

Delete Sub-Clauses 54.2 and 54.5.

#### **SUBCLAUSE 54.5-CONDITIONS OF HIRE OF CONTRACTOR’S EQUIPMENT**

Add the following paragraph

The Contractor shall, upon request by the Engineer at any time in relation to any item of hired Contractor’s Equipment, forthwith notify the Engineer in writing the name and address of the Owner of the equipment and shall certify that the agreement for the hire thereof contains a provision in accordance with the requirements set forth above.

Quantities 1. Delete sub-clause 55.1 and substitute with the following;

The quality and quantity of the Work included in the Contract Price shall be deemed to be that which is set out in the Contract Bills. The Bills, unless otherwise expressly stated therein, shall be deemed to have been prepared in accordance with the principles of the latest edition of the Civil Engineering

Standard Method of Measurement. Any error in description or in quantity or any omission of items from the Contract Bills or Specifications shall not vitiate this Contract but shall be corrected and deemed to be a variation required by the Engineer. Subject to the foregoing, any error whether arithmetical or not in the computation of the Contract Price shall be deemed to have been accepted by the parties hereto.

The Contract Price shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these Conditions.

#### **SUBCLAUSE 55.2 – OMMISIONS OF QUANTITIES**

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

#### **SUBCLAUSE 56.1– MEASUREMENTS**

Delete sub clause 56.1 and replace with the following: -

The Contractor shall prepare and submit to the Engineer all necessary field notes and other records taken and computations made for the purpose of quantity measurements, of which the forms shall be approved by the Engineer, for the monthly progress payment under clause 60. The measurement of work quantities made by the Contractor shall be verified and certified by the Engineer based on the above-mentioned documents. The Contractor shall furnish all personnel, equipment and materials to make such surveys and computations as necessary to determine the quantities of work performed. Unless otherwise prescribed in the specifications or the drawings, all measurements for payment shall be made by the dimensions, lines and grades as shown on the drawings or by direct survey of which the methods shall be approved by the Engineer. The documents submitted for measurement and payment shall become the property of the Employer and shall be used to the extent necessary to determine the monthly progress payment to be made to the Contractor under the Contract. Direct survey, if done, shall be subject to checking and verification by the Engineer and all errors in the said survey work and related computations as found during such checking shall be immediately corrected by the Contractor.

Add the following Sub-Clause 58.4:

#### **SUBCLAUSE 58.4 – PROVISIONAL ITEMS**

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

#### **CLAUSE 60: – CERTIFICATES AND PAYMENTS**

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

#### **SUBCLAUSE 60.1 – MONTHLY STATEMENT**

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

- the value of the Permanent Work executed up to the end of previous month
- such an amount (not exceeding 75 percent of the value) as the Engineer may consider proper on account of materials for permanent work delivered by the Contractor in the site

- such amount as the Engineer may consider fair and reasonable for any Temporary Works for which separate amounts are provided in the Bill of Quantities
- adjustments under Clause 70
- any amount to be withheld under retention provisions of Sub-clause 60.3
- any other sum to which the Contractor may be entitled under the Contract

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

#### **SUBCLAUSE 60.2 - INTERIM PAYMENT CERTIFICATE**

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

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

Within 30 days after receipt of the Interim Payment Certificate and subject to the Contractor having made such further amendments and corrections as the Engineer may require, the Engineer will forward to the Employer the certified Interim Payment Certificate.

The client will then pay the amounts due within 30 days or receipt of the certified Interim Payment Certificate from the engineer

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

#### **SUBCLAUSE 60.3 – PAYMENT OF RETENTION MONEY**

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

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

The defect liability period will commence on the full functional operation of the water works, i.e on the water filling with water so as to have all defect noticeable from this point forth. A formal communication will be made to the contractor on when such a period will arise and shall be made in all due fairness upon the water system being satisfactorily in service.

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

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

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

Bank Retention Guarantees shall be accepted in lieu of cash retentions.

#### **SUBCLAUSE 60.4– CORRECTION OF CERTIFICATES**

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

Unless otherwise stated in the appendix interest shall not be paid on the overdue amounts

#### **SUBCLAUSE 60.5– STATEMENT AT COMPLETION**

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

- (a) The final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate
- (b) Any further sums which the Contractor considers to be due; and
- (c) An estimate of amounts that the Contractor considers will become due to him under the Contract.

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

#### **SUBCLAUSE 60.6 – FINAL STATEMENT**

Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration a draft final statement with supporting documents showing in detail, in the form approved by the Engineer;

- (a) The final value of all work done in accordance with the Contract
- (b) Any further sums which the Contractor considers to be due to him.

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

#### **SUBCLAUSE 60.7– DISCHARGE**

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment under the Final Payment Certificate

issued pursuant to Sub-Clause 60.8 has been made and the Performance Security referred to in Sub-Clause 10.1 has been returned to the Contractor.

#### **SUBCLAUSE 60.8 – FINAL PAYMENT CERTIFICATE**

Upon acceptance of the Final Statement as given in Sub-Clause 60.6, the Engineer shall prepare a Final Payment Certificate which shall be delivered to the Contractor's authorized agent or representative for his signature. The Final Payment Certificate shall state:

- (a) The final value of all work done in accordance with the Contract;
- (b) After giving credit to the Employer for all amounts previously paid by the Employer, the balance, if any, due from the Employer to the Contractor or the Contractor to the Employer.

Final Certificate shall be issued for any sum due to the Contractor even if such is less than the sum named in the Appendix to the Form of BID.

Unless the Contractor notifies the Engineer of his objection to the Final Payment Certificate within twenty-eight days [28] days of delivery thereof, he shall be deemed to have agreed that he accepts the total Contract Price as set out in the Final Payment Certificate as full settlement for all work done under the Contract including any claims, variations and omissions thereof. However, a Final Certificate of Payment shall not be conclusive:

(a) to the extent that fraud or dishonesty relates to or affects any matter dealt with in the Certificate, or

(b) if any arbitration or court proceedings under the Contract have been commenced by either party before the expiry of 84 days after the issue of the Final Certificate of Payment.

#### **SUBCLAUSE 60.9– CESSATION OF EMPLOYERS LIABILITY**

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

#### **SUBCLAUSE 60.10 – TIME FOR PAYMENT**

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

- (i) In the case of Interim Payment Certificate, within the time stated in the Appendix to Form of Bid, after the Engineer has signed the Interim Payment Certificate.
- (ii) In the case of the Final Payment Certificate pursuant to Sub-clause 60.8, within the time stated in the Appendix to Form of Bid, after the Engineer has signed the Final Payment Certificate.
- (iii) In the event of the failure of the Employer to make payment within the times stated, the Employer shall make payment to the Contractor of simple interest at a rate equal to two percentage points above the average bank lending rates obtained from Central Bank of Kenya. The provisions of this sub-clause are without prejudice to the Contractor's entitlements under Clause 69 or otherwise.

**SUBCLAUSE 60.11 – CURRENCY OF PAYMENT** The Contract Price shall be designated in Kenyan Currency.

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

#### **SUBCLAUSE 60.13 MATERIALS FOR PERMANENT WORKS**

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

- a) receive a credit in the month, in which these materials are brought to site,
- b) be charged a debit in the month in which these materials are incorporated in the permanent works.  
both such credit and debit to be determined by the Engineer in accordance with the following provisions.
- (c) No credit shall be given unless the following conditions shall have been met to the Engineer's satisfaction
  - (i) The materials are in accordance with the specifications for the works
  - (ii) The materials have been delivered to site and are properly stored and protected against loss, damage or deterioration
  - (iii) The Contractors record of the requirements, orders receipts and use of materials are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer
  - (iv) The Contractor has submitted a statement of his cost of acquiring and delivering the materials and plant to the Site, together with such documents as may be required for the purpose of evidencing such cost
  - (v) The origin of the materials and prices are those indicated on the schedules of supplementary information
  - (vi) The materials are to be used within a reasonable time.
- (d) The amount to be credited to the Contractor shall not be more than 75% of the Contractor's reasonable cost of the materials delivered to site, as determined by the Engineer after review of the documents listed in subparagraphs (a)- (iv) above;
- (e) The amount to be debited to the Contractor for any materials incorporated into the works shall be equivalent to the credit previously granted to the Contractor for such materials pursuant to Clause (b) above as determined by the Engineer.

#### **SUB-CLAUSE 67.1 – ENGINEER'S DECISION**

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

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



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

If either the Employer or the Contractor be dissatisfied with the any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the 28th (twenty eighth) after the day on which he received the reference, then either the Employer or the Contractor may, on or before the 28th (twenty eighth) day after the day the day on which he received notice of such decision, or on or before the 28th (twenty eighth) day after the day on which the said period of 28 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence Adjudication, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence Adjudication, as hereinafter provided, as to such dispute; no adjudication in respect thereof may be commenced unless such notice is given.

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

#### **SUBCLAUSE 67.2 – AMICABLE SETTLEMENT**

Delete the entire sub-clause 67.2 and add the following;

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

#### **SUBCLAUSE 67. 3-ARBITRATION**

In the sixth to eight lines, delete the words “shall be finally settled ..... appointed under such Rules” and substitute the following:

shall be finally settled under the provisions of the Arbitration Act, 1995 as amended or any statutory modification or re-enactment thereof for the time being in force.

Add the following paragraph:

Any dispute arising out of this agreement shall be referred to a single mediator to be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators on the application of any party in the event that the parties shall themselves fail to amicably settle within 21 days of the notification of a dispute by either party to the other. If the mediation shall be unsuccessful, within a period of 3 months from the date of notification of a dispute by one party to the other, then the dispute shall be referred to a single arbitrator to be appointed by the Chairman for the time being of the Kenya Chartered Institute of Arbitrators on the application of any party.

In the event that the parties shall themselves fail to on agree the appointment within 21 days of the notification of a dispute by either party to the other such arbitration to be conducted in accordance



with the provisions of the Arbitration Act, 1995 or any statutory modification or re-enactment thereof for the time being in force.

The seat of arbitration is Nairobi, Kenya

The language of Arbitration shall be English

#### **SUBCLAUSE 68.2 – NOTICES TO EMPLOYER AND ENGINEER**

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

- a. The Employer's address is as stated in the Appendix to the Tender:
- b. The Engineer's address is as stated in the Appendix to the Tender:

#### **SUBCLAUSE 68.4 – CORRESPONDENCES**

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

#### **SUB CLAUSE 69 – DEFAULT OF EMPLOYER**

Delete in Sub-Clause 69.1 (a) the words ("28 days") and insert the words "ninety (90) days".

Delete Sub-Clause 69.1 (c)

Delete in Sub-Clause 69.4 line 4 the words "(28 days)" and insert the words "sixty (60) days".

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

In Sub clause 69.4 of General Conditions of Contract Part I, insert at the end -----"The amounts of such costs which shall be added to the Contract Price shall exclude any cost due to idle time for equipment, plant and labour."

#### **CLAUSE 70 – CHANGES IN COST AND LEGISLATION**

Clause 70 is deleted entirely and replaced with the following ;

"All the rates in the contract shall be fixed throughout the contract period and shall not be adjusted or revised whatsoever "

#### **CLAUSE 71 - CURRENCY RESTRICTIONS**

Delete this Clause in its entirety:

#### **CLAUSE 72 – RATES OF EXCHANGE COST**

Delete clause 72 in its entirety and substitute the following:

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

#### **CLAUSE 73 – BRIBERY AND COLLUSION**

Add new Clause 73.1:

"The Contractor shall not:

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

Any breach of this condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf in relation to this or any other contract to which the Kenya Red Cross Society is a party shall entitle the Employer to determine the Contract (See Condition 63 hereof) and/ or to recover from the Contractor the amount or value of any such gift, consideration or commission.

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

#### **CLAUSE 74 - CONTRACT TO BE CONFIDENTIAL**

Add new Clause 74.1:

The Contractor shall treat the details of this Contract as Private and Confidential and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere (save in so far as may be necessary for the purpose thereof) without the previous consent in writing of Kenya Red Cross Society. If any dispute arises as to the necessity of any publication or disclosures for the purposes of this Contract the same shall be referred to the decision of the Engineer mentioned in the said Conditions of Contract whose award shall be final.

Add the following new Clause:

**CLAUSE 75.1 TERMINATION OF CONTRACT FOR EMPLOYER'S CONVENIENCE** The Employer may terminate the Contract at any time for the Employer's convenience after giving 56 days prior notice to the Contractor, with a copy to the Engineer. In the event of such termination, the Contractor:

- (a) shall proceed as provided in Sub-Clause 65.7 hereof; and
- (b) shall be paid by the Employer as provided in Sub-Clause 65.8 hereof.

Add the following new clause:

#### **CLAUSE 76.1-LIABILITY OF CONTRACTOR**

The Contractor or his Subcontractors or assigns shall follow strictly, all relevant labour laws including and not limited to the Employment Act, 2007 and Work Injury Benefits Act, Cap 236 of the Laws of Kenya and the Employer shall be fully indemnified for all claims, damages etc. arising out of any dispute between the Contractor, his Subcontractors or assigns and the labour employed by them.

Add the following new clause:

**CLAUSE 77.1- JOINT AND SEVERAL LIABILITIES**

If the Contractor is a joint venture of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the terms of the Contract and shall designate one of such persons to act as leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.

## **SECTION 6: SCHEDULE OF QUANTITIES**

### **6.1 PREAMBLE TO SCHEDULE OF QUANTITIES**

### **6.2 SCHEDULE OF QUANTITIES**

## **6.1 PREAMBLE TO THE SCHEDULE OF QUANTITIES**

### **6.1.1 General**

The Bills of Quantities forms part of the Contract Documents and must be read and priced in conjunction with all the other documents comprising the Contract Documents.

### **6.1.2 Description of Items in the Schedule**

The short descriptions of the items in the Bills of Quantities are for identification purposes only and are not fully descriptive. Reference must be made to the Standardized Specifications, the Project Specifications and the Particular Specifications, read together with the relevant clauses of the Scope of Work and directives on the drawings, in order to ascertain what ancillary or associated work and activities are to be included in the rates for the operations specified.

### **6.1.3 Quantities Reflected in the Schedule**

The quantities given in the Bills of Quantities are indicative of the materials to be supplied and the work to be done, and will be subject to re-measurement. The Contractor shall obtain the Engineer's detailed instructions for all work before ordering any materials or executing work or making arrangements for it.

The Works as finally completed in accordance with the Contract shall be measured and paid for as scheduled in the Bills of Quantities, and the contract price for the completed contract shall be computed at the relevant unit rates and prices, all in accordance with the General and Special Conditions of Contract, the Specifications and Project Specifications and the Drawings. Unless otherwise stated, items are measured net in accordance with the Drawings, and no allowance has been made for waste.

The validity of the contract will in no way be affected by differences between the quantities in the Bill of Quantities and the quantities finally certified for payment.

### **6.1.4 Pricing of the Bill of Quantities**

The prices and rates to be inserted by the Tenderer in the Bills of Quantities shall be the full inclusive prices to be paid by the Employer for the work described under the several items, and shall include full compensation for all costs and expenses that may be required as well as all overheads, profits, incidentals and the cost of all general risks, liabilities and obligations set forth or implied in the documents on which the Tender is based. Where the Scope of Work requires detailed drawings and designs or other information to be provided, all costs associated therewith are deemed to have been provided for and included in the unit rates and sum amount Tendered such items. Reasonable unit rates and prices shall be entered in the Bills of Quantities as these will be used as a basis for assessment of payment for additional work that may have to be carried out. Each item shall be priced and extended to the "Total" column by the Tenderer, with the exception of the items for which only rates are required, or items, which already have Prime Cost or Provisional Sums, affixed thereto. If the Contractor omits to price any items in the Bill of Quantities, then these items will be considered to have a nil rate or price.

All items for which terminology such as "inclusive" or "not applicable" have been added by the Tenderer will be regarded as having a nil rate which shall be valid irrespective of any change in quantities during the execution of the Contract.

The Tenderer shall fill in rates for all items where the words "rate only" appear in the "Total" column. "Rate Only" items have been included where:

- (a) An alternative item or material is contemplated;
- (b) Variations of specified components in the make-up of a pay item may be expected; and
- (c) no work under the item is foreseen at Tender stage but the possibility that such work may be required is not excluded.

For "Rate Only" items no quantities may be given in the "Quantity" column but the quoted rate shall apply in the event of work under this item being required. The Tenderer shall however note that in terms of the Tender Data the Tenderer may be asked to reconsider any such rates, which the Employer may regard as unbalanced.

All rates and amounts quoted in the Bills of Quantities shall be in Kenyan Shillings and shall include all levies and taxes (other than VAT). VAT shall be added in the summary of the Bills of Quantities.

#### **6.1.5 Provisional Sums**

Where Provisional sums or prime cost sums are provided for items in the Bills of Quantities, payment for the work done under such items will be made in accordance with the provisions of the General Conditions of Contract. The Employer reserves the right, during the execution of the works, to adjust the stated amounts upwards or downwards according to the work actually done under the item, or the item may be omitted altogether, without affecting the validity of the Contract.

The Tenderer shall not under any circumstances whatsoever delete or amend any of the sums inserted in the "Amount" column of the Bills of Quantities and in the Summary of the Bills of Quantities unless ordered or authorized in writing by the Employer before closure of tenders. Unauthorized changes made by the Tenderer to provisional items in the Bills of Quantities, or to the stated provisional percentages and sums in the Summary of the Bills of Quantities, will not be tolerated. 6.1.6 Correction of Entries. Incorrect entries shall not be erased or obliterated with correction fluid but must be crossed out neatly. The correct figures must be entered above or adjacent to the deleted entry, and the alteration must be initialled by the Tenderer.

#### **6.1.7 Arithmetical Errors**

Arithmetical errors found in the Bills of Quantities as a result of faulty multiplication or addition, will be corrected by the Employer at the Tender evaluation stage, as set out in the bid documents.

#### **6.1.8 Payments**

Unless otherwise specified in the Project Specifications, progress payments in Interim Payment Certificates, in respect of "sum" items in the Bills of Quantities shall be by means of interim progress instalments assessed by the Engineer and based on the measure in which the work actually carried out relates to the extent of the work done by the Contractor.

#### **6.1.9 Units of Measurement**

The units of measurement described in the Bills of Quantities are metric units for which the standard international abbreviations are used. Abbreviations used in the Bill of Quantities, including some non-standard abbreviations, are as follows:

Mm	=	millimetre	h	=	hour
M	=	metre	kg	=	kilogram
km	=	kilometre	t	=	ton (1000 kg)
M2	=	square metre	No.	=	number
m2.pass	=	square metre-pass	sum	=	lump sum
ha	=	hectare	MN	=	meganewton
M3	=	cubic metre	MN.m	=	meganewtonmetre
m3.km	=	cubic metre-kilometre	P C sum	=	Prime Cost sum
ℓ	=	litre	Prov sum	=	Provisional sum
kℓ	=	kilolitre	%	=	per cent
Mpa	=	megapascal	pers. Days	=	person days
KW	=	kilowatt			

## 6.2 SCHEDULE OF QUANTITIES

<b><u>GRAND SUMMARY SHEET</u></b>		
<b>BILL NO.</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>
		<b>(KSh)</b>
1	PRELIMINARIES AND GENERALS	
2	RAW WATER MAINLINE	
	<b>GRAND TOTAL</b>	

<b><u>BILL NO.1 - PRELIMINARIES AND GENERAL</u></b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE (ksh)</b>	<b>AMOUNT (Ksh)</b>
<b>1.1</b>	<b>Contractual Requirements</b>				
1.1.2	Allow for insurance of works, plant and materials in accordance with clause 13 (a)	Sum	1		
1.1.3	Allow for the insurance against loss of or damage to equipment in accordance with clause 13 (b)	Sum	1		
1.1.4	Allow for insurance of or damage to people's property in accordance with clause 13 (c)	Sum	1		
1.1.5	Allow for insurance against accident or personal injury or death to workmen and third party in accordance with clause 13 (d)	Sum	1		
	<b>All the provision for insurance will be a reimbursement for servicing the Insurance</b>				



<b>1.2</b>	<b>Surveying Equipment</b>				
1.2.1	Provisional sum for payment of RE's Surveyor and Chainman with acquisition of assorted Survey equipment to be used for the duration of the Contract as per specifications provided by the client	Sum	1	200,000.00	200,000.00
1.2.2	Provisional sum for maintenance of survey equipment	Sum	1	50,000.00	50,000.00
<b>1.3</b>	<b>Testing of Materials</b>				
1.3.1	Provide for concrete tests, as directed by the Resident Engineer	Sum	1	50,000.00	50,000.00
1.3.2	Provide for Sample Testing of Pipes delivered on site. The Engineer will order for the duration of the Contract as per specifications.	Sum	1	50,000.00	50,000.00
<b>1.4</b>	<b>Plant</b>				
1.4.1	Mobilize plant as required for excavation, rock breaking and all other Contractors plant required under the contract.	Sum	1		
<b>1.5</b>	<b>Provisional Sums</b>				
	<b>Other Provisional Sums</b>				
1.5.1	Allow a Provisional Sum to cover mitigation measures arising from the environmental and social impacts including COVID 19 awareness campaign, to be expended as directed by the Engineer	PC	1	100,000.00	100,000.00
1.5.2	Provision for payment demanded by authorities for services.	Sum	1	100,000.00	100,000.00
1.5.3	Add percentage of item for contraction overhead and profit in respect to items Under 1.6.1 and 1.6.2.	%	10%		20,000.00
<b>1.6</b>	<b>Pre-handing over activities</b>				
1.6.1	Operate completed project for 3 months prior to handing over including all costs.	Month	4		
	<b>TOTAL CARRIED OVER TO GRAND</b>				

**SUMMARY SHEET****BILL NO.2 - RAW WATER CONVEYANCE LINE**

ITEM	DESCRIPTION	UNIT	QTY	RATE (ksh)	AMOUNT (Ksh)
<b>2.1</b>	<b>SITE CLEARANCE</b>				
	Includes demolition and removal of natural and artificial articles, objects and abstractions which are above the original surface				
2.1.1	General clearance 1.5m on either side of the centreline of the pipe along the pipeline route as directed and to include cutting and reinstatement of fences	m2	12,000		
	Cut down trees on pipeline route, grub up roots and cart away to tips. Girth measured 1m above ground level (Provisional Quantities)				
2.1.2	Girth 1.0 -2.0	No.	100		
2.1.3	Girth 2.01 -3.5m	No.	100		
<b>2.2</b>	<b>EARTH WORKS</b>				
	Rates for excavation, backfilling in trench shall include for trimming trench bottom and for providing selected bedding and surround materials from the excavations as per the specifications and placing and joining the pipes as directed by the Engineer. Depth of excavation not exceeding 1.5 m unless otherwise specified.				
2.2.1	Excavation and Backfilling in normal material for 315 mm dia uPVC pipes to a depth n.e 1.5 m	m3	600		

2.2.1	Ditto 2.2.1 for 250 mm dia uPVC pipes	m3	2,640		
2.2.1	Ditto 2.2.1 for 250 mm dia steel pipes	m3	1,560		
	E & O for Excavation in hard rock and deep excavation	m3	480		
<b>2.3</b>	<b>AIR VALVES</b>				
<b>2.3.1</b>	<b>VALVE CHAMBERS</b>				
	<b>For 5 No. DAV Chambers at Ch. 4400,5020, 5280, 5920 and 7600 m.</b>				
2.3.1.1	Excavate for, provide all materials and construct complete lockable inspection	No.	5		
<b>2.3.2</b>	<b>VALVE CHAMBER FITTINGS</b>				
	<u><i>Rates for all Pipes and all fittings shall be inclusive of Bolts, Nuts, Washers, Rubber Rings, Gaskets, other jointing materials and any other accessories</i></u>				
	<i>All Air-Valves Shall be of 12mm<sup>2</sup> Orifice</i>				
	<b>FOR 4 NO. DAVs</b>				
2.3.2.1	250 / 250 mm dia V/J stepped couplings	No.	10		
2.3.2.2	250 mm dia, 0.5m long single flanged GI pipe	No.	10		
2.3.2.3	250 x 50 mm dia flanged steel tee	No.	5		
2.3.2.4	50 mm dia, 400 mm Long, double flanged GI pipe	No.	5		
2.3.2.5	50 mm dia gate valve	No.	5		
2.3.2.6	50 mm Dia Flanged Combined Air Valve (PN16)	No.	5		

	<b>SUB-TOTAL CARRIED OVER TO THE NEXT PAGE</b>				
	<b>SUB-TOTAL BROUGHT FORWARD FROM PREVIOUS PAGE</b>				
<b>2.4</b>	<b>WASHOUTS</b>				
<b>2.4.1</b>	<b>VALVE CHAMBERS</b>				
	<b>For 5 No. WO Chambers at Ch. 4780, 5120, 5560, 6500 and 7240m</b>				
2.4.1.1	Excavate for, provide all materials and construct complete lockable inspection valve chamber of internal dimensions 1500 x 1500 x 1200 m. Rates to including thrust blocks, pipe supports as shown in the drawings.	No.	5		
<b>2.4.2</b>	<b>VALVE CHAMBER FITTINGS</b>				
	<u><b>Rates for all Pipes and all fittings shall be inclusive of Bolts, Nuts, Washers, Rubber Rings, Gaskets, other jointing materials and any other accessories.</b></u>				
	<u><b>All Wash Outs Shall be of Level Invert Tee</b></u>				
	<b>FOR 5NO. WO</b>				
2.4.2.1	250 / 250 mm dia V/J stepped couplings	No.	10		
2.4.2.2	250 mm dia, 0.5m long double flanged GI pipe	No.	10		
2.4.2.3	250 x 100 mm dia Level invert scour tee with flanged branch	No.	5		
2.4.2.4	100 mm dia, 0.5m long single flanged GI pipe	No.	5		

2.4.2.5	100 mm dia gate valve (Flanged)	No.	5		
<b>2.5</b>	<b>SECTION VALVES</b>				
<b>2.5.1</b>	<b>VALVE CHAMBERS</b>				
	<b>For 6No. Section Valve and for Kaptebengwet Line Offtake at Ch. 7780m</b>				
2.5.1.1	Excavate for, provide all materials and construct complete lockable inspection valve chamber of internal dimensions 2500 x 1500 x 1200 mm. Rates to including thrust blocks, pipe supports and covers as shown in the drawings.	No.	1		
2.5.1.2	Ditto for 1200 x 1200 x 1200 mm	No.	5		
<b>2.5.2</b>	<b>VALVE CHAMBER FITTINGS</b>				
	<u><b>Rates for all Pipes and all fittings shall be inclusive of Bolts, Nuts, Washers, Rubber Rings, Gaskets, other jointing materials and any other accessories</b></u>				
	<b>For 5No. Section Valves and for Kaptebengwet Line Offtake at Ch. 7780m</b>				
	<b>For 5No. Section Valve Chamber for Kaptebengwet Line Offtake at Ch.6,840m</b>				
2.5.2.1	250 / 250 mm dia V/J stepped couplings	No.	12		
2.5.2.2	250 mm dia, 0.5m long single flanged GI pipe	No.	12		
2.5.2.3	250 x 200 mm dia flanged steel tee	No.	1		
2.5.2.4	200 mm dia, 0.5m long single flanged GI pipe	No.	2		

2.5.2.5	250 mm dia double flanged sluice valve	No.	6		
2.5.2.6	200 mm dia double flanged sluice valve	No.	1		
	<b>SUB-TOTAL CARRIED OVER TO THE NEXT PAGE</b>				
	<b>SUB-TOTAL BROUGHT FORWARD FROM PREVIOUS PAGE</b>				
	<b>For 5No. Section Valve Chamber for Kaptebengwet Line Offtake at Ch.6,840m</b>				
<b>2.6</b>	<b>BENDS</b>				
<b>2.6.1</b>	<b>uPVC Bends</b>				
	<b>Horizontal Bends</b>				
	<b>11.25 Degrees Long Radius uPVC Bends</b>				
2.6.1.1	250 mm dia Bend	No.	10		
	<b>22.5 Degrees Long Radius uPVC Bends</b>				
2.6.1.2	250 mm dia Bend	No.	3		
	<b>45 Degrees Long Radius uPVC Bends</b>				
2.6.1.3	250 mm dia Bend	No.	3		
<b>2.6.2</b>	<b>GI Bends</b>				
	<b>Horizontal Bends</b>				
	<b>11.25 Degrees Long Radius GI Bends</b>				
2.6.2.1	250 mm dia	No.	3		
	<b>22.5 Degrees Long Radius GI Bends</b>				

2.6.2.2	250 mm dia	No.	3		
	<b>45 Degrees Long Radius GI Bends</b>				
2.6.2.3	250 mm dia	No.	3		
	<b>Vertical Bends</b>				
	<b>11.25 Degrees Long Radius uPVC Bends</b>				
2.6.2.4	250 mm dia	No.	4		
	<b>22.5 Degrees Long Radius uPVC Bends</b>				
2.6.2.5	250 mm dia	No.	2		
<b>2.7</b>	<b>RIVER AND GULLY CROSSINGS</b>				
<b>2.7.1</b>	<b>SITE CLEARANCE</b>				
2.7.1.1	To include for all trimming to levels, backfilling with approved selected spoil, compacting, disposal of surplus material and reinstatement for for all crossing thrust blocks, piers and supports.				
	Clear site of all trees (less than 500 mm diameter), bushes, shrubs, etc and	m2	713		
2.7.1.2	Removal of trees of girth greater than 1500 mm (provisional)	No.	15		
<b>2.7.2</b>	<b>EXCAVATION</b>				
	To include for all trimming to levels, backfilling with approved selected spoil, compacting, disposal of surplus material and reinstatement for anchor blocks and pipe encasement concrete				
2.7.2.1	In normal soil to a depth not exceeding 1.0 m.	m3	159		
2.7.2.2	In murram/soft rock to a depth not	m3	47.62		

	exceeding 3 m.				
	<b>SUB-TOTAL CARRIED OVER TO THE NEXT PAGE</b>				
	<b>SUB-TOTAL BROUGHT FORWARD FROM PREVIOUS PAGE</b>				
<b>2.7.3</b>	<b>CONCRETE WORKS</b>				
	Provide and place the following concrete mixes including all form-work.				
2.7.3.1	75 mm thick Concrete class 10/20 for blinding	m2	2		
2.7.3.2	Reinforced Concrete class 25/20 for anchor blocks / pipe supports,Thrust blocks	m3	6		
2.7.3.3	Mass concrete grade 20/20 for pipe encasement	m3	3.6		
<b>2.7.4</b>	<b>REINFORCEMENT</b>				
	Provide support and fix the following reinforcement , including all cutting,bending and support for piers				
2.7.4.1	High yield bars as specified in the drawings	Kgs.	555		
<b>2.7.5</b>	<b>PROTECTION WORKS</b>				
2.7.5.1	Provide all materials, lay and place grouted rip rap (mortared stone pitching) 250mm on sloping sides.	m3	5		
<b>2.8</b>	<b>SETTING OUT, TESTING AND DISINFECTION</b>				



2.8.1	Allow for setting out of pipeline routes as required in Clause 106 of the specification	m	4,000		
2.8.2	Pipeline testing and commissioning for the whole work on this line, including all necessary equipment, materials and works necessary for testing, such as thrust and anchor blocks, transportation and use of water, pipe fitting, disposals of used	m	4,000		
2.8.3	Disinfection of Pipelines: flushing with clear water, filling containing 0.05g/l calcium hypochlorite, left for 24 hours. This includes supply of all necessary equipment materials, chemicals and water, measurement of residual chlorine, all as specified.	m	4,000		
<b>2.9</b>	<b>TRANSPORT FOR PIPES</b>				
2.9.1	Provide for Transport of pipes from Stock pile and string along the pipeline trench as directed by the Engineer. The amount to be claimed only after laying and back filling.	m	4,000		
	<b>SUB-TOTAL</b>				
<b>2.10</b>	<b>CONTINGENCIES</b>				
2.10.1	Add 10% of Sub-Total for Contingencies (Provisional)	%	10%		
	<b>TOTAL CARRIED OVER TO SUMMARY SHEET</b>				

## SECTION 7: SCHEDULE OF DRAWINGS

The table below provides the schedule of drawings for the works.

The Book of drawings as been presented separately as Volume 2: Drawings.

ITEM	DESCRIPTION	DRAWING NO.	NO. OF SHEETS
<b>300</b>	<b>RAW WATER MAIN PIPELINE PROFILE</b>		
301	Proposed Conveyance Pipeline	FNX/CBG/RW/301	4
<b>800</b>	<b>STANDARD DRAWINGS</b>		
801	PIPE TRENCH BEDDING DETAILS	FNX/CBG/SD/801	1
802	STANDARD PIPE JUNCTION FITTINGS DETAILS	FNX/CBG/SD/802	1
803	AIR VALVE DETAILS	FNX/CBG/SD/803	1
804	WASHOUT DETAILS	FNX/CBG/SD/804	1
805	STANDARD ANCHOR BLOCK DETAILS	FNX/CBG/SD/805	1
806	STANDARD INDICATOR MARKER POSTS	FNX/CBG/SD/806	1

## **SECTION 8: SPECIFICATIONS**

The Technical Specifications for the Works has been presented separately as Volume 3.

## **SECTION 9: LETTER OF TENDER AND APPENDIX TO TENDER**

**9.1 FORM OF TENDER AND APPENDIX TO FORM OF TENDER**

**9.2 FORM OF TENDER SECURITY**

**9.3 LETTER OF NOTIFICATION OF AWARD**

**9.4 LETTER OF ACCEPTANCE**

**9.5 FORM OF AGREEMENT**

**FORM OF TENDER**  
(On letterhead of the tenderer)

TO:

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

TENDER NAME:

TENDER NO:

Dear Sir,

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

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

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

duly authorized to sign tenders for and on behalf of  
\_\_\_\_\_ [Name of Tenderer]

of \_\_\_\_\_ [Address of Tenderer]

Witness; Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX TO FORM OF TENDER** (This appendix forms part of the tender)

CONDITIONS OF CONTRACT	CLAUSE	AMOUNT
Tender Security (Bank Guarantee only)		2 per cent of the tender price in the form of unconditional Bank Guarantee from a local reputable bank
Governing Law	5.1	Laws of the republic of Kenya
Language for communication	5.1	English
Amount of Performance Security (Unconditional Bank Guarantee)	10.1	Ten (10%) per cent of Tender Sum in the form of Unconditional Bank Guarantee from a local reputable bank and delivered to the Employer within 14 calendar days after date of notification of tender award.
Program to be submitted	14.1	Not later than 14 days after issuance of Order to Commence
Cash flow estimate to be submitted	14.3	Not later than 14 days after issuance of Order to Commence
Minimum amount of Third Party Insurance	23.2	Kshs 10 million for any one accident or series of accidents arising from the same event (unlimited in aggregate )
Period for submission of Insurances a. Evidence of insurance, b. Relevant policies		14 days 28 days
Period for commencement, from the Engineer's order to commence	41.1	14 calendar days
Time for completion	43.1	6 calendar Months
Amount of liquidated damages	47.1	Kshs. 50,000.00 per day
Limit of liquidated damages	47.1	10% of Contract Value
Defect Liability period	49.1	6 Calendar Months
Advance Payment	60.1(a)	Shall not exceed 10% of the contract price.
Percentage of the invoice value of listed materials	60.2	70% against valid invoiced priced document
Percentage of Retention	60.5	10% of Interim Payment Certificate
Limit of Retention Money	60.5	10 % of Contract Price
Minimum amount of interim certificates	60.2	Ksh. 2,000,000.00
Time within which payment to be made after Interim Payment Certificate signed by Engineer	60.8	30 days
Rate of Interest on unpaid sums	60.10	nil
Appointer of Arbitrator	67(3)	The Chairman -Chartered Institute of Arbitrators – Kenya Chapter
Notice to Employer and Engineer	68.2	The Employer's address is: The Secretary General Kenya Red Cross Society, P. O. Box 40712 - 00100. Nairobi

Name of tenderer.....

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

## FORM OF TENDER SECURITY

WHEREAS ..... (Hereinafter called “the Tenderer”) has submitted his tender dated ..... for the construction of .....

..... (*Name of Contract*)

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

THE CONDITIONS of this obligation are:

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

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

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

\_\_\_\_\_  
[date]

\_\_\_\_\_  
[signature of the Bank]

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

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

## LETTER OF NOTIFICATION OF AWARD

From:

To:

---

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---

---

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

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

---

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

(FULL PARTICULARS) \_\_\_\_\_  
\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER



## LETTER OF ACCEPTANCE

[Letterhead paper of the Employer]

\_\_\_\_\_ [date]

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

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

Dear Sir,

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

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

Authorized Signature .....

Name and Title of Signatory .....

Attachment: Agreement

## FORM OF AGREEMENT

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

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

NOW THIS AGREEMENT WITNESSETH as follows:

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

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

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

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

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

Binding Signature of Employer \_\_\_\_\_

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

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

## PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)

To:

Dear Sir,

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

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

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

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

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

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

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

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

## **SECTION 9: SCHEDULES TO BE COMPLETED**

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## 9.1 TENDER QUESTIONNAIRE

Please fill in block letters.

1. Full names of tenderer

.....

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

.....

3. Telephone number (s) of tenderer

.....

4. Email address of tenderer

.....

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

.....

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

.....

Signature of Tenderer.....

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

## 9.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

### ***Part 1 – General***

Business Name .....

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

Plot No .....Street/Road .....

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

Nature of Business.....

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

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

Name of your bankers.....

Branch.....

### ***Part 2 (a) – Sole Proprietor***

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

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

\*Citizenship details.....

### ***Part 2 (b) – Partnership***

*Give details of partners as follows:*

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

### ***Part 2(c) – Registered Company:***

Private or public.....

State the nominal and issued capital of the Company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows:

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

1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....

**Part 2(d) – Interest in the Firm:**

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

I certify that the information given above is correct.

..... (Title)	..... (Signature)	..... (Date)
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\* Attach proof of citizenship

In the case of a Joint Venture, the following shall be attached:

- Written power of attorney for authorised signatory
- Pro-forma of the joint venture agreement

**Part 2(e) - Registration**

Company Registration No.	
PIN No.	
VAT registration No.	
National Construction Authority Registration Certificate	

In the case of a Joint Venture, provide the above information for each member of the Joint Venture on an attached page.



### 9.3 CERTIFICATE OF AUTHORITY FOR SIGNATORY

#### Notes to Tenderer:

- 1) The signatory for the Tenderer shall confirm his/her authority thereto by attaching a duly signed and dated copy of the relevant resolution of the board of directors/partners.
- 2) In the event that the Tenderer is a joint venture, a certificate is required from each member of the joint venture clearly setting out;
  - Authority for signatory,
  - Undertaking to formally enter into a joint venture contract should an award be made to the joint venture,
  - Name of designated lead member of the intended joint venture, as required by the Tender conditions.

By resolution of the board of directors passed at a meeting held on \_\_\_\_\_

Mr/Ms \_\_\_\_\_, whose signature appears below,  
has been duly authorised to sign all documents in connection with the Tender for the  
Proposed Construction of Access Road To The Ministry Of Energy & Petroleum  
Headquarters At South C, Nairobi , and any contract which may arise there from on  
behalf of (block capitals) \_\_\_\_\_

\_\_\_\_\_  
SIGNED ON BEHALF OF THE COMPANY: .....

IN HIS/HER CAPACITY AS: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE OF SIGNATORY: \_\_\_\_\_

#### WITNESSES:

SIGNATURE .....

SIGNATURE.....

\_\_\_\_\_  
NAME (PRINT)

\_\_\_\_\_  
NAME (PRINT)

#### 9.4 PROPOSED KEY PERSONNEL

DESIGNATION	NAME	NATIONALITY	SUMMARY OF QUALIFICATIONS AND EXPERIENCE
Headquarters:			
Site Office:			

I certify that the above information is correct.

.....

(Title)

.....

(Signature)

.....

(Date)

**9.5 SCHEDULE OF CONTRACTORS EQUIPMENT**

The Tenderer shall state below what Contractor's Equipment will be immediately available for this contract, what Contractor's Equipment will become available by virtue of outstanding orders, and what further Contractor's Equipment will be acquired or hired for the work should he be awarded the contract.

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)			

I hereby certify that notwithstanding the list of plant detailed above, we will provide sufficient, suitable and adequate plant in good working order for the successful completion of works

.....  
..... (Signature  
of Contractor)

(Date)

**9.6 SCHEDULE OF COMPLETED PIPE SUPPLY WORKS CARRIED OUT BY THE TENDERER IN THE THREE (3) YEARS**

DESCRIPTION OF WORKS AND CLIENT	TOTAL VALUE OF WORKS (KSHS)	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.

## 9.7 SCHEDULE OF ONGOING PROJECTS AND COMMITMENTS

DESCRIPTION OF WORK AND CLIENT	CONTRACT PERIOD	DATE OF COMME N- CEMEN T	DATE OF COMPLETI ON	TOTAL VALUE OF WORKS (KSHS.)	PERCENT AGE COMPLET ED TO DATE

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

.....

*(Title)*

.....

*(Signature)*

.....

*(Date)*

## 9.8 METHOD STATEMENT AND PRODUCTION/SUPPLY SCHEDULE OR PROGRAMME

The Tenderer must provide method statement of undertaking the various components of work and associated programme of work that will assure safety and satisfactory completion of the Works as is required in the instructions to Tenderers and Conditions of Tender.

### Method Statement

Component of work and Method statement

Component of Work	Method statement of work

If more space is needed, attach extended schedule, contractor may break down the above into sub activities if so required for clarity

### Preliminary programme

The Tenderer shall attach a preliminary programme, reflecting the proposed sequence and tempo of execution of the various activities comprising the work for this contract. The programme shall be in accordance with the information provided in the Schedule of Contractor's equipment, Schedule of estimated monthly expenditure, and with all other aspects of the Tender.

***The programme shall in in the form prescribed in the tender documents (i.e generated using Microsoft Project, Primavera Project Planner (P3) or Critical Path Method (CPM) network soft wares). Program to distinctly show the project critical path)***

SIGNED ON BEHALF OF TENDERER: \_\_\_\_\_

## 9.9 SCHEDULE OF ESTIMATED MONTHLY EXPENDITURE

The Tenderer shall state his estimated value of the work to be completed every month, based on his preliminary programme and his Tendered unit rates, in the table below.

### Cash flow programme based on work program

MONTH	VALUE	MONTH	VALUE
1	Kshs.....		
2	Kshs.....		
3	Kshs.....		
4	Kshs.....		
	.		
		TOTAL: Kshs.....	

SIGNED ON BEHALF OF TENDERER: \_\_\_\_\_

## 9.10 OTHER SUPPLEMENTARY INFORMATION

1. Financial reports for the last five years, balance sheets, profit and loss statements, auditors' reports etc. List them below and attach copies.  
.....  
.....  
.....
2. Evidence of access to financial resources to meet the qualification requirements. Cash in hand, lines of credit etc. List below and attach copies of supporting documents  
.....  
.....  
.....
3. Name, address, telephone, telex, fax numbers of the Tenderer's Bankers who may provide reference if contacted by the Employer. (PROVIDE LETTER AUTHORISING THE EMPLOYER TO BE GRANTED REQUISITE INFORMATION WHEN REQUIRED)  
.....  
.....  
.....
4. Information on current litigation in which the Tenderer is involved.

OTHER PARTY (IES)	CAUSE OF DISPUTE	AMOUNT INVOLVED (KSHS)

I certify that the above information is correct.

.....  
*Title*

.....  
*Signature*

.....  
*Date*



## 9.11 SCHEDULE OF MATERIALS

This shall not apply

MATERIAL	UNIT	SUPPLIER	PRICE (KSHS)
Cement	ton		

I certify that the above information is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

The prices inserted above shall be those prevailing 30 days before the submission of Tenders and shall be quoted in Kenya Shillings using the exchange rates specified in the Appendix to Form of Tender. The Contractor shall not change the supplier or manufacturer during the Contract without the approval of the Engineer.

## 9.12 DETAILS OF SUB-CONTRACTORS

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

Failure to comply with this requirement may invalidate the tender.

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

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

.....

.....

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

.....

.....

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

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

.....

.....

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

.....

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

\_\_\_\_\_  
Date

**9.13 CERTIFICATE OF TENDERER'S VISIT TO SITE**

Please provide copy of the same.

**9.14 ENVIRONMENTAL PROTECTION POLICY STATEMENT**

Please provide copy of the same.

**9.15 OCCUPATIONAL HEALTH AND SAFETY POLICY**

Please provide copy of the same.

## 9.16 CERTIFICATE OF CONVERSANCE WITH THE TENDER DOCUMENTS

I/We, the undersigned hereby certify that I/We am/are fully conversant with the General and Special Conditions of Contract, Conditions of Tender, Specifications, Schedules of Quantities and Drawings. I/We declare that I/We am/are satisfied with the description of the work and the explanations furnished by the Engineer, and that I/We fully understand the nature and extent of the work required to be executed, as specified and according to the intent of the Contract. I/We declare that all the equipment offered in my/our Tender comply to the Specifications of these Tender Documents and that the relevant Data Sheets have been completed correctly and in full. I/We have ascertained all factors which may have a bearing on the execution of the works and the costs thereof.

Signed at \_\_\_\_\_ on \_\_\_\_\_ day of 2021

For the Tenderer: \_\_\_\_\_

In the capacity of: \_\_\_\_\_

Signature of Signatory: \_\_\_\_\_

Witnesses:

1. \_\_\_\_\_

2. \_\_\_\_\_

**9.17DECLARATION FORM**

Date \_\_\_\_\_

\_\_\_\_\_  
To \_\_\_\_\_ (*Name and address of Employer*)  
\_\_\_\_\_  
\_\_\_\_\_

The tenderer i.e. (name and address) \_\_\_\_\_  
\_\_\_\_\_ declare the following:

- a) Has not been debarred from participating in public procurement.
  
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

_____	_____	_____
Title	Signature	Date

(To be signed by authorized representative and officially stamped)

**SECTION 10: PRO FORMAS NOT TO BE COMPLETED BY TENDERERS**

**LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_

\_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

(FULL PARTICULARS) \_\_\_\_\_

\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

## LETTER OF ACCEPTANCE

[.....]

\_\_\_\_\_ [date]

To: \_\_\_\_\_

*[name of the Contractor]*

\_\_\_\_\_  
*[address of the Contractor]*

Dear Sir,

This is to notify you that your Tender dated \_\_\_\_\_  
for the execution of \_\_\_\_\_

*[name of the Contract and identification number, as given in the Tender documents]* for the

Contract Price of Kshs. \_\_\_\_\_ *[amount in figures]* [Kenya

Shillings \_\_\_\_\_

\_\_\_\_\_ *(amount in words)* ]

in accordance with the Instructions to Tenderers is hereby accepted.

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

Authorized Signature .....

Name and Title of Signatory .....

Attachment: Agreement

## FORM OF AGREEMENT

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

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

NOW THIS AGREEMENT WITNESSETH as follows:

5. 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.
6. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.
  - (viii) Letter of Acceptance
  - (ix) Form of Tender
  - (x) Conditions of Contract Part I
  - (xi) Conditions of Contract Part II and Appendix to Conditions of Contract
  - (xii) Specifications
  - (xiii) Drawings
  - (xiv) Priced Bills of Quantities
7. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
8. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.



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

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

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

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

Binding Signature of Employer \_\_\_\_\_

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

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

## PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)

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

Dear Sir,

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

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

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

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

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

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

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

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

# **KENYA RED CROSS SOCIETY**

**(KRCS)**

## **Child Protection Policy**

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### **CONTENT**

1. Policy statement
2. Policy aims
3. Values, Principles and Beliefs that Guide the Policy
4. Forms of Child Abuse
5. Responsibilities on Child Protection
6. Good Practice guidelines
7. Reporting of Child Abuse
8. Discipline
9. Historical allegations of abuse
10. Code of Conduct

### **Overview**

The Kenya Red Cross by virtue of being a member of the wider Kenyan Community is obliged to contribute to both the national and international efforts geared towards child protection and institutionalization of the concepts that have been advanced by various stakeholders.

Kenya Red Cross recognizes the seriousness of child abuse and its impact to the overall development of a child. Beyond the suffering that it imposes on the child and the immediate family members, the issue of child abuse and the inherent lack of functional structures to absorb the impact leave children vulnerable. This in return translates to socio-economic impact on the country due to poor development of human capital, declining productivity, school drop outs, child labour, marked increase in street urchins and increase in child mortality among others.

Considering the significant contribution by Kenya Red Cross in identification, registration, tracing and re-unification of unaccompanied minors, there is need to develop the capacity of the Society to rise to the occasion and ensure a holistic approach to child protection in collaboration with other stakeholders.

In light of the above, the KRCS has acknowledged the need for a policy to ensure consistent and equitable approach to child protection.

### **Policy Statement**

Kenya Red Cross has a professional duty to take such steps that, in the circumstances of a humanitarian institution, are reasonable to see that the child is safe from harm while . All children have a right to protection, and the needs of disabled children and others who may be particularly vulnerable must be taken into account. Kenya Red Cross will ensure the safety and protection of all children involved in its activities through adherence to the Child Protection guidelines it has adopted.

### **Policy aims**

The aim of the Child Protection Policy is to promote good practice by:

1. Providing children and young people with appropriate safety and protection whilst in the care of or in contact with Kenya Red Cross staff and volunteers.
2. Allow all staff/volunteers to make informed and confident responses to specific child protection issues.

### **Values, Principles and Beliefs that Guide the Policy**

- ☐ Within the context of this Policy a Child is a child as defined in the Children Act No 8 of 2001 of the Laws of Kenya.
- ☐ The “best interests of the child” as defined in the Children Act are primary.
- ☐ All children, girls and boys, of all abilities and backgrounds have equal rights to safety in all settings and locations.
- ☐ Violence and abuse against children are never acceptable, in any form, location or setting.
- ☐ Violence against children has damaging and often long-lasting repercussions for children, their families and their communities.
- ☐ Children are vulnerable to violence and abuse due to their size, age, physical and psychological maturity, dependence and lack of power. While all children may be vulnerable, in some settings, some children may have a heightened risk of abuse and violence.
- ☐ Children have a right to parental care and to appropriate custody, care and control when parents for any reason are not the legally authorized care givers.
- ☐ Tracing and the restoration of family links for children is vital in situations of war, conflict and displacement.
- ☐ The Fundamental Principles of the Red Cross and Red Crescent Movement forms the cornerstone of this policy. These are:

#### **1. Humanity**

KRCS through its child protection policy seeks to protect life and health of vulnerable children to ensure respect for the human being. In addition, the policy seeks to promote mutual understanding, friendship, co-operation and lasting peace among all Kenyans.

#### **2. Impartiality**

In its interaction with children, KRCS will make not discrimination on basis gender, religion, ethnic background HIV/AIDS status and any other basis. The Society shall endeavour to relieve the suffering of individuals, being guided solely by their needs and giving priority to the most deserving cases.

#### **3. Neutrality**

The Society shall endeavor to reach to all vulnerable children without taking sides in hostilities or engaging at any time in controversies of a political, racial, religious or ideological nature.

#### **4. Independence**

KRCS while auxiliary to the Kenya Government and subject to the Kenyan laws shall always maintain autonomy so as to be able at all times to act in accordance with the principles of the Movement in regards to child protection.

#### **5. Voluntary Service**

KRCS shall not be prompted in any manner by desire for gain in the execution of its child protection policy.

#### **6. Unity**

KRCS will endeavor to implement the child protection policy in all its regions, branches as part of its humanitarian work. The services will be open for all deserving cases. All branches/regions will have equal status and share responsibilities and duties in enhancing the mechanisms for implementation of the child protection policy.

## **7. Universality**

Besides upholding the KRCS principles and values, the policy implementation will be guided by the various national and international statuses on human rights, child protection, confidentiality and compassion for the vulnerable in the society including the children's Act and the African Charter on the Rights of the Child among others.

### **Forms of Child Abuse**

- a) Child sexual abuse, which occurs when a child is used by an older or more powerful child or adult for sexual stimulation or gratification. It can involve contact or non-contact, and includes the development of sexual relationships with children not condoned under international and local law, or using language, gestures or other behaviours that are sexual in nature with children;
- b) Child exploitation, which includes:
  - i) the actual or attempted abuse of a position of authority, differential power or trust in relation to a child, with a view to profiting sexually, monetarily, socially or politically from the use of the child;
  - ii) intentionally viewing, downloading or distributing any sexualized, demeaning or violent images involving children; or
  - iii) taking a photograph or other image of a child or making representations of a child in a way that can reasonably be interpreted as sexualized, demeaning or violent;
  - iv) economic exploitation and performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
- c) Physical abuse of a child, which occurs when a person physically hurts or threatens to hurt a child, or by any means deliberately create a significant risk of physical hurt to a child;
- d) Emotional abuse of a child, which occurs when a person repeatedly or severely attacks a child's self-esteem through use of language, gestures or other behaviour that is degrading, isolating, humiliating, terrorizing, rejecting or corrupting, or that ignores a child's need for basic emotional care, or where a person by any means deliberately creates a significant risk of emotional harm to a child;
- e) Child neglect, which is inattention to the basic necessities of life such as shelter, education, medical care, supervision, safe environments and clothing, and includes acts or omissions that deny a child basic necessities that are the responsibility and within the capacity of the Red Cross to provide in any given situation.

### **Responsibilities on Child Protection**

As a mutually shared responsibility, all Kenya Red Cross staff, volunteers and other partners, contractors and sub-contractors acknowledge to meet their responsibility towards child protection.

The management of Kenya Red Cross has a duty to allocate adequate resources and ensure that systems are functional to conceive set up, promote and implement child protection unit/system.

Active participation is encouraged in building and maintaining an environment that is safe for children. Reporting of violation is a mandatory responsibility of any KRCS staff, volunteer and any other person covered by this policy.

**(a) The Governance**

- Mainstream child protection into the existing governance structures
- Facilitate representation in the standing committees
- Ensure that child protection issues are sufficiently reflected in the overall management plans
- Enhance visibility and disseminate the policy among other stakeholders, partners and contractors.

**(b) Management**

- Ensure that adequate support/resources are committed to implementation of child protection activities and devise means of fundraising, develop performance management targets for the programme among others
- Ensure that CP is included and/or integrated into the existing policies including identifying high risk activities and measures to reduce or remove the risk to children
- Ensure that staff understand the CP policy, have access to IEC materials and understand their responsibilities to child protection.
- Ensure that adequate information on alleged cases of abuse or on protection concerns is channeled to the respective line managers or their subordinates at the Regional/Branch level
- Ensure that the Policy is reviewed, monitored and evaluated periodically in accordance with the management practices at least every five years or earlier if warranted.

**(c) Child Protection Functions**

- Conceive, set up and implement KRCS Policy to protect children within and without emergencies
- Raise awareness on the conceived process among KRCS stakeholders, partners, contractors and sub-contractors and significant others
- Contribute toward building and maintaining a child safe environment within KRCS environment.
- Offer guidance and counsel to KRCS partners and stakeholders, contractors and sub-contractors on child protection issues where appropriate
- Facilitate the management of cases or alleged abuse or suspected protection concerns and availability of in-house capacity to manage CP issues
- Establish partnerships and networks with other relevant national and international stakeholders
- Ensure that M & E tools are in place

**(d) Human Resources**

- Ensure that structures are in place – recruit, induct, supervise and appraise the performance of the HR component with a Child Protection focus, including behavioral event interviewing, verbal referee checks, as well as disclosure of any exploitation offences. In some instances, a Certificate of Good Conduct will be required.
- Ensure that Child Protection is integrated into HR Policy and Procedure Guidelines for consultants, staff, and volunteers (short term and long term)
- Ensure that staff in the Regions/Counties/Branches are aware of their responsibilities through regular training

- Handle discipline issues among staff and volunteers as a consequence of non-adherence to the policy or otherwise

**(e) Regional/County offices**

- Facilitate Regional/County implementation of Child Protection and assist in the identification of focal persons;
- Organize for capacity building for staff and volunteers through Regional/County workshops; and
- Disseminate the Child Protection Policy.

**(f) Supply Chain**

- Ensure contracts for services include reference to adherence to Child Protection Policy.

**Best Practice guidelines**

Kenya Red Cross Staff, Volunteers, Contractors and sub-Contractors (KRCS personnel) shall in the course of their official duties have the following general obligations;

1. KRCS personnel will always act in the best interest of the child. Acting in the best interest of the child means doing what is best for the Child. In this respect KRCS personnel undertake to consider the interest of the child in planning and executing of all duties and responsibilities.
2. KRCS personnel will not discriminate on a child on any basis and in particular but not limited to on the basis of race, gender, colour, religion and ethnicity. KRCS personnel will further ensure that all children, girls and boys, of all abilities and backgrounds have equal rights to safety in all settings and locations.
3. That whenever KRCS personnel obtain as much information as possible on abuse of children, the same will as soon as possible be reported to a superior or higher authorities. However KRCS personnel undertake allegations of child abuse are highly sensitive and they risk irreparable damage to both alleged victim and the alleged offender. In this respect KRCS personnel shall handle it with utmost confidentiality.
4. KRCS personnel undertake to uphold and promote child protection through example. In this respect, staff and volunteers will not behave in any manner that is considered inappropriate in the presence of children. Specifically, KRCS personnel will in the presence of children not dress inappropriately or speak in a vulgar and foul language.
5. Violence and abuse against children are never acceptable, in any form, location or setting. In this respect, KRCS personnel will not engage in or contribute in any way to child abuse as defined in this policy. This includes the obligation of not attempting to exercise physical discipline upon a child.
6. In the course of their duties, if any KRCS personnel discover an inappropriate attraction or attention being shown by a minor, he or she shall maintain clear professional boundaries with the minor and report or refer the minor to another adult.
7. KRCS personnel undertake to avoid touching a child in any manner that could be considered sexual or in some other way inappropriate.
8. KRCS staff and volunteers are not allowed to have sexual relations with children under the age of eighteen years.
9. KRCS personnel will take all reasonable measures to avoid, in the course of their duties to spend time alone with a child in isolation, away from the observation of others, unless specifically authorized by an immediate superior or in circumstances where the safety of the child is at risk and immediate contact is demonstrated to be in the best interests of the child.

10. That any publication or presentation, electronically or otherwise, of a child's personal information, images or location, or exchanging such information through an electronic social networking facility, will only be done where it reasonably supports the needs of the organization and should always be done in a way that does not pose a risk to the safety of the child.

11. Notwithstanding the above, the behaviours of all personnel in their interaction will be guided by provisions of both National and International Law governing rights of the Child.

12. This CP should be read together with the Children Act No. 8 of 2001, Article 53 of the Constitution (Rights of Children), the African Charter on the Rights and Welfare of the Child and the UN Convention on the Rights of the Child.

### **Reporting of Child Abuse**

Any suspicion that a child has been abused by a member of staff, volunteer, partner, contractor or sub contractor should be reported to the Line Manager.

The Line Manager will take such steps as considered necessary to ensure the safety of the child in question and any other child who may be at risk.

The parents or caregivers of the child will be contacted as soon as possible for advice and information.

The Line Manager will make an immediate decision about whether any individual accused of abuse should be temporarily suspended, disengaged or what other action should be taken pending further police and social services inquiries

Irrespective of the findings of the social services or police inquiry, a Disciplinary Committee will be established by the Secretary General and will assess all individual cases to decide whether a member of staff or volunteer can be reinstated and how this can be sensitively handled.

The Disciplinary Committee must reach a decision based upon the available information, which could suggest that on a balance of probability; that is it is more likely than not that the allegation is true or not true.

The welfare of the child should remain of paramount importance throughout.

If the Line Manager is the subject of the suspicion/allegation, the report must be made to the appropriate Manager or in his/her absence to the Secretary General. The manager or the Secretary General will act in the appropriate manner and procedure outlined above.

Every effort should be made to ensure that confidentiality is maintained for all concerned.

Information should be handled and disseminated on a need to know basis only.

### **Discipline**

KRCS personnel who do not fulfill their responsibilities as established by this policy are subject to disciplinary measures, up to and including termination of their employment, volunteer or contractual status with KRCS. As well, they may be subject to criminal proceedings, depending on the circumstances of the incident.

### **Historical allegations of abuse**

Concerns about past incidents of child abuse by KRCS personnel prior to the development of this Policy may be reported. The Organization will take reasonable action to respond in accordance with this Policy, having regard to the circumstances surrounding the allegation, the time frame, and available access to credible information.



## **Child Protection Code of Conduct**

I, \_\_\_\_\_, acknowledge that I have read and understand the Child Protection Policy and agree that in the course of my association with KRCS, I must:

- treat children with respect regardless of race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status
- not use language or behaviour towards children that is inappropriate, harassing, abusive, sexually provocative, demeaning or culturally inappropriate
- not engage children under the age of 18 in any form of sexual intercourse or sexual activity, including paying for sexual services or acts
- wherever possible, ensure that another adult is present when working in the proximity of children
- not invite unaccompanied children into my home, unless they are at immediate risk of injury or in physical danger
- not sleep close to unsupervised children unless absolutely necessary, in which case I must obtain my supervisor's permission, and ensure that another adult is present if possible
- use any computers, mobile phones, video cameras, cameras or social media appropriately, and never to exploit or harass children or access child exploitation material through any medium
- not use physical punishment on children
- not hire children for domestic or other labour which is inappropriate given their age or developmental stage, which interferes with their time available for education and recreational activities, or which places them at significant risk of injury
- comply with all relevant Kenyan and international legislation, including labour laws in relation to child labour
- immediately report concerns or allegations of child exploitation and abuse and policy non-compliance in accordance with appropriate procedures
- immediately disclose all charges, convictions and other outcomes of an offence, which occurred before or occurs during my association with KRCS that relate to child exploitation and abuse.
- State that my name is not listed on any register of the sex offenders list in any court.
- I do not have any criminal matters pending in court, police or other institution.
- I have never been prohibited/suspended from interacting with children.

When photographing or filming a child or using children's images for work-related purposes, I must:

- assess and endeavour to comply with local traditions or restrictions for reproducing personal images before photographing or filming a child
- Obtain informed consent from the child and parent or guardian of the child before photographing or filming a child. As part of this I must explain how the photograph or film will be used
- Ensure photographs, films, videos and DVDs present children in a dignified and respectful manner and not in a vulnerable or submissive manner. Children should be adequately clothed and not in poses that could be seen as sexually suggestive
- ensure images are honest representations of the context and the facts
- Ensure file labels, meta data or text descriptions do not reveal identifying information about a child when sending images electronically or publishing images in any form.
- I understand that the onus is on me, as a person associated with KRCS, to use common sense and avoid actions or behaviours that could be construed as child exploitation and abuse.

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

**Stamp**