REPUBLIC OF KENYA

ENERGY & PETROLEUM REGULATORY AUTHORITY

TENDER NAME:

LEASE AND DEVELOPMENT OF STORAGE AND ENFORCEMENT YARDS

TENDER NO:

EPRA/890/0004/2026-27

Procurement Method:

Open Tender

PE Complete Address

EAGLE AFRICA CENTRE LONGONOT RD, UPPERHILL,, KIBRA, NAIROBI, Kenya, 42681, 00100

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SECTION I - INSTRUCTIONS TO TENDERERS (ITT)

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Detail

SECTION I - INSTRUCTIONS TO TENDERERS

A. GENERAL

1. SCOPE OF TENDER

1.1 THE TENDERING DOCUMENT IS FOR THE DELIVERY OF NON-CONSULTING SERVICES, AS SPECIFIED IN SECTION V, PROCURING ENTITY'S REQUIREMENTS. THE NAME, IDENTIFICATION AND NUMBER OF THIS TENDER ARE SPECIFIED IN THE **TDS**.

2. THROUGHOUT THIS TENDERING DOCUMENT:

2.1 THE TERMS:
A) "TERM IN WRITING" MEANS COMMUNICATED IN WRITTEN FORM (E.G., E-MAIL, FAX, INCLUDING IF SPECIFIED IN THE **TDS**, DISTRIBUTED OR RECEIVED THROUGH THE ELECTRONIC-PROCUREMENT SYSTEM USED BY THE PROCURING ENTITY) WITH PROOF OF DISPATCH;

B) IF THE CONTEXTS SO REQUIRES, "SINGULAR" MEANS "PLURAL" AND VICE VERSA; AND

C) "DAY" MEANS CALENDAR DAY, UNLESS OTHERWISE SPECIFIED AS "BUSINESS DAY". A BUSINESS DAY IS ANY DAY THAT IS AN OFFICIAL WORKING DAY OF THE PROCURING ENTITY. IT EXCLUDES THE PROCURING ENTITY'S OFFICIAL PUBLIC HOLIDAYS.

2.2 THE SUCCESSFUL TENDERER WILL BE EXPECTED TO COMPLETE THE PERFORMANCE OF THE SERVICES BY THE INTENDED COMPLETION DATE PROVIDED IN THE **TDS**.

2.3 USE OF ELECTRONIC PROCUREMENT SYSTEM

WHERE APPLICABLE, THE PROCURING ENTITY SHALL USE AN ELECTRONIC-PROCUREMENT SYSTEM TO MANAGE THE TENDERING PROCESS AS SPECIFIED IN THE **TDS**

3. FRAUD AND CORRUPTION

3.1 THE PROCURING ENTITY REQUIRES COMPLIANCE WITH THE PROVISIONS OF SECTION 62 OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015 (THE ACT) ON "DECLARATION NOT TO ENGAGE IN CORRUPTION". THE TENDER SUBMITTED BY A PERSON SHALL INCLUDE A DECLARATION THAT THE PERSON SHALL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE AND A DECLARATION THAT THE PERSON OR HIS OR HER SUB-CONTRACTORS ARE NOT DEBARRED FROM PARTICIPATING IN PUBLIC PROCUREMENT PROCEEDINGS.

3.2 THE PROCURING ENTITY REQUIRES COMPLIANCE WITH THE PROVISIONS OF THE COMPETITION ACT 2010, REGARDING COLLUSIVE PRACTICES IN CONTRACTING. ANY TENDERER FOUND TO HAVE ENGAGED IN COLLUSIVE CONDUCT SHALL BE DISQUALIFIED AND CRIMINAL AND /OR CIVIL SANCTIONS MAY BE IMPOSED. TO THIS EFFECT, TENDERS SHALL BE REQUIRED TO COMPLETE AND SIGN THE "CERTIFICATE OF INDEPENDENT TENDER DETERMINATION" ANNEXED TO THE FORM OF TENDER.

3.3 **UNFAIR COMPETITIVE ADVANTAGE** - FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS TENDER. TO THAT END, THE PROCURING ENTITY SHALL INDICATE IN THE **TDS** AND MAKE AVAILABLE TO ALL THE FIRMS TOGETHER WITH THIS TENDER DOCUMENT ALL INFORMATION THAT WOULD IN THAT RESPECT GIVES SUCH FIRM ANY UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING FIRMS.

3.4 **UNFAIR COMPETITIVE ADVANTAGE**-FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS TENDER. THE PROCURING ENTITY SHALL INDICATE IN THE **TDS** FIRMS (IF ANY) THAT PROVIDED CONSULTING SERVICES FOR THE CONTRACT BEING TENDERED FOR. THE PROCURING ENTITY SHALL CHECK WHETHER THE OWNERS OR CONTROLLERS OF THE TENDERER ARE SAME AS THOSE THAT PROVIDED CONSULTING SERVICES. THE PROCURING ENTITY SHALL, UPON REQUEST, MAKE AVAILABLE TO ANY TENDERER INFORMATION THAT WOULD GIVE SUCH FIRM UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING FIRMS.

4. ELIGIBLE TENDERERS

4.1 A TENDERER MAY BE A FIRM THAT IS A PRIVATE ENTITY, A STATE-OWNED ENTITY OR INSTITUTION SUBJECT TO ITT 4.6, OR ANY COMBINATION OF SUCH ENTITIES IN THE FORM OF A JOINT VENTURE (JV) UNDER AN EXISTING AGREEMENT OR WITH THE INTENT TO ENTER INTO SUCH AN AGREEMENT SUPPORTED BY A FORM OF INTENT. IN THE CASE OF A JOINT VENTURE, ALL MEMBERS SHALL BE JOINTLY AND SEVERALLY LIABLE FOR THE EXECUTION OF THE ENTIRE CONTRACT IN ACCORDANCE WITH THE CONTRACT TERMS. THE JV SHALL NOMINATE A REPRESENTATIVE WHO SHALL HAVE THE AUTHORITY TO CONDUCT ALL BUSINESS FOR AND ON BEHALF OF ANY AND ALL THE MEMBERS OF THE JV DURING THE TENDERING PROCESS AND, IN THE EVENT THE JV IS AWARDED THE CONTRACT, DURING CONTRACT EXECUTION. MEMBERS OF A JOINT VENTURE MAY NOT ALSO MAKE AN INDIVIDUAL TENDER, BE A SUB CONTRACT OR IN A SEPARATE TENDER OR BE PART OF ANOTHER JOINT VENTURE FOR THE PURPOSES OF THE SAME TENDER. THE MAXIMUM NUMBER OF JV MEMBERS TO BE ALLOWED SHALL BE SPECIFIED IN THE **TDS**.

4.2 PUBLIC OFFICERS OF THE PROCURING ENTITY, THEIR SPOUSES, CHILD, PARENTS, BROTHERS OR SISTER. CHILD, PARENT, BROTHER OR SISTER OF A SPOUSE THEIR BUSINESS ASSOCIATES OR AGENTS AND FIRMS/ORGANIZATIONS IN WHICH THEY HAVE A SUBSTANTIAL OR CONTROLLING INTEREST SHALL NOT BE ELIGIBLE TO TENDER OR BE AWARDED A CONTRACT. PUBLIC OFFICERS ARE ALSO NOT ALLOWED TO PARTICIPATE IN ANY PROCUREMENT PROCEEDINGS.

4.3 A TENDERER SHALL NOT HAVE A CONFLICT OF INTEREST. ANY TENDERER FOUND TO HAVE A CONFLICT OF INTEREST SHALL BE DISQUALIFIED. A TENDERER MAY BE CONSIDERED TO HAVE A CONFLICT OF INTEREST FOR THE PURPOSE OF THIS TENDERING PROCESS, IF THE TENDERER:

A DIRECTLY OR INDIRECTLY CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER TENDERER; OR

B RECEIVES OR HAS RECEIVED ANY DIRECT OR INDIRECT SUBSIDY FROM ANOTHER TENDERER; OR

C HAS THE SAME LEGAL REPRESENTATIVE AS ANOTHER TENDERER; OR

D HAS A RELATIONSHIP WITH ANOTHER TENDERER, DIRECTLY OR THROUGH COMMON THIRD PARTIES, THAT PUTS IT IN A POSITION TO INFLUENCE THE TENDER OF ANOTHER TENDERER, OR INFLUENCE THE DECISIONS OF THE PROCURING ENTITY REGARDING THIS TENDERING PROCESS; OR

E ANY OF ITS AFFILIATES PARTICIPATED AS A CONSULTANT IN THE PREPARATION OF THE PROCURING ENTITY'S REQUIREMENTS (INCLUDING ACTIVITIES, SCHEDULES, PERFORMANCE SPECIFICATIONS AND DRAWINGS) FOR THE NON-CONSULTING SERVICES THAT ARE THE SUBJECT OF THE TENDER; OR

F ANY OF ITS AFFILIATES HAS BEEN HIRED (OR IS PROPOSED TO BE HIRED) BY THE PROCURING ENTITY OR PROCURING ENTITY FOR THE CONTRACT IMPLEMENTATION; OR

G WOULD BE PROVIDING GOODS, WORKS, OR NON-CONSULTING SERVICES RESULTING FROM OR DIRECTLY RELATED TO CONSULTING SERVICES FOR THE PREPARATION OR IMPLEMENTATION OF THE PROJECT SPECIFIED IN THE TDS ITT 2. 1 THAT IT PROVIDED OR WERE PROVIDED BY ANY AFFILIATE THAT DIRECTLY OR INDIRECTLY CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THAT FIRM; OR

H HAS A CLOSE BUSINESS OR FAMILY RELATIONSHIP WITH A PROFESSIONAL STAFF OF THE PROCURING ENTITY OR OF THE PROJECT IMPLEMENTING AGENCY, WHO:

(I). ARE DIRECTLY OR IN DIRECTLY INVOLVED IN THE PREPARATION OF THE TENDERING DOCUMENT OR SPECIFICATIONS OF THE CONTRACT, AND/OR THE TENDER EVALUATION PROCESS OF SUCH CONTRACT; OR

(II). WOULD BE INVOLVED IN THE IMPLEMENTATION OR SUPERVISION OF SUCH CONTRACT UNLESS THE CONFLICTS TEEMING FROM SUCH RELATIONSHIP HAS BEEN RESOLVED IN A MANNER ACCEPTABLE TO THE PROCURING ENTITY THROUGHOUT THE PROCUREMENT PROCESS AND EXECUTION OF THE CONTRACT.

4.4 A FIRM THAT IS A TENDERER (EITHER INDIVIDUALLY OR AS A JV MEMBER) SHALL NOT PARTICIPATE IN MORE THAN ONE TENDER, EXCEPT FOR PERMITTED ALTERNATIVE TENDERS. THIS INCLUDES PARTICIPATION AS A SUBCONTRACTOR. SUCH PARTICIPATION SHALL RESULT IN THE DISQUALIFICATION OF ALL TENDERS IN WHICH THE FIRM IS INVOLVED. A FIRM THAT IS NOT A TENDERER OR A JV MEMBER MAY PARTICIPATE AS A SUB-CONTRACTOR IN MORE THAN ONE TENDER.

4.5 A TENDERER MAY HAVE THE NATIONALITY OF ANY COUNTRY, SUBJECT TO THE RESTRICTIONS PURSUANT TO ITT 4 .9. A TENDERER SHALL BE DEEMED TO HAVE THE NATIONALITY OF A COUNTRY IF THE TENDERER IS CONSTITUTED, INCORPORATED OR REGISTERED IN AND OPERATES IN CONFORMITY WITH THE PROVISIONS OF THE LAWS OF THAT COUNTRY, AS EVIDENCED BY ITS ARTICLES OF INCORPORATION (OR EQUIVALENT DOCUMENTS OF CONSTITUTION OR ASSOCIATION) AND ITS REGISTRATION DOCUMENTS, AS THE CASE MAY BE. THIS CRITERION ALSO SHALL APPLY TO THE DETERMINATION OF THE NATIONALITY OF PROPOSED SUBCONTRACTORS OR SUB CONSULTANTS FOR ANY PART OF THE CONTRACT INCLUDING RELATED SERVICES

4.6 A TENDERER THAT HAS BEEN DEBARRED BY PPRA FROM PARTICIPATING IN PUBLIC PROCUREMENT SHALL BE INELIGIBLE TO TENDER OR BE AWARDED A CONTRACT. THE LIST OF DEBARRED FIRMS AND INDIVIDUALS IS AVAILABLE FROM THE PPRA'S WEBSITE WWW.PPRA.GO.KE

4.7 TENDERERS THAT ARE STATE-OWNED ENTERPRISES OR INSTITUTIONS IN KENYA MAY BE ELIGIBLE TO COMPETE AND BE AWARDED A CONTRACT(S) ONLY IF THEY CAN ESTABLISH THAT THEY ARE:

A. A LEGAL PUBLIC ENTITY OF THE STATE GOVERNMENT AND /OR PUBLIC ADMINISTRATION;,

B. FINANCIALLY AUTONOMOUS AND NOT RECEIVING ANY SIGNIFICANT SUBSIDIES OR BUDGET SUPPORT FROM ANY PUBLIC ENTITY OR GOVERNMENT;, AND

C. OPERATING UNDER COMMERCIAL LAW AND VESTED WITH LEGAL RIGHTS AND LIABILITIES SIMILAR TO ANY COMMERCIAL ENTERPRISE TO ENABLE IT COMPETE WITH FIRMS IN THE PRIVATE SECTOR ON AN EQUAL BASIS.

4.8 FIRMS AND INDIVIDUALS MAY BE INELIGIBLE IF (A) AS A MATTER OF LAW OR OFFICIAL REGULATIONS, KENYA PROHIBITS COMMERCIAL RELATIONS WITH THAT COUNTRY, OR (B) BY AN ACT OF COMPLIANCE WITH A DECISION OF THE UNITED NATIONS SECURITY COUNCIL TAKE UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS, KENYA PROHIBITS ANY IMPORT OF GOODS OR CONTRACTING OF WORKS OR SERVICES FROM THAT COUNTRY, OR ANY PAYMENTS TO ANY COUNTRY, PERSON OR ENTITY IN THAT COUNTRY.

4.9 A TENDERER SHALL BE DEEMED TO HAVE THE NATIONALITY OF A COUNTRY IF THE TENDERER IS CONSTITUTED, INCORPORATED OR REGISTERED IN AND OPERATES IN CONFORMITY WITH THE PROVISIONS OF THE LAWS OF THAT COUNTRY, AS EVIDENCED BY ITS ARTICLES OF INCORPORATION (OR EQUIVALENT DOCUMENTS OF CONSTITUTION OR ASSOCIATION) AND ITS REGISTRATION DOCUMENTS, AS THE CASE MAY BE. THIS CRITERION SHALL ALSO APPLY TO THE DETERMINATION OF THE NATIONALITY OF PROPOSED SUBCONTRACTORS OR SUB CONSULTANTS FOR ANY PART OF THE CONTRACT INCLUDING RELATED SERVICES.

4.10 FOREIGN TENDERERS ARE REQUIRED TO SOURCE AT LEAST FORTY (40%) PERCENT OF THEIR CONTRACT INPUTS (IN SUPPLIES, SUBCONTRACTS AND LABOR) FROM NATIONAL SUPPLIERS AND CONTRACTORS. TO THIS END, A FOREIGN TENDERER SHALL PROVIDE IN ITS TENDER DOCUMENTARY EVIDENCE THAT THIS REQUIREMENT IS MET. FOREIGN TENDERERS NOT MEETING THIS CRITERION WILL BE AUTOMATICALLY DISQUALIFIED. INFORMATION REQUIRED TO ENABLE THE PROCURING ENTITY DETERMINE IF THIS CONDITION IS MET SHALL BE PROVIDED IN *"SECTION III-EVALUATION AND QUALIFICATION CRITERIA, ITEM 9".*

4.11 PURSUANT TO THE ELIGIBILITY REQUIREMENTS OF ITT 4.10, A TENDER IS CONSIDERED A FOREIGN TENDERER, IF THE TENDERER IS NOT REGISTERED IN KENYA OR IF THE TENDERER IS REGISTERED IN KENYA AND HAS LESS THAN 51 PERCENT OWNERSHIP BY KENYAN CITIZENS. JVS ARE CONSIDERED AS FOREIGN TENDERERS IF THE INDIVIDUAL MEMBER FIRMS ARE NOT REGISTERED IN KENYA OR IF ARE REGISTERED IN KENYA AND HAVE LESS THAN 51 PERCENT OWNERSHIP BY KENYAN CITIZENS. THE JV SHALL NOT SUB CONTRACT TO FOREIGN FIRMS MORE THAN 10 PERCENT OF THE CONTRACT PRICE, EXCLUDING PROVISIONAL SUMS.

4.12 THE COMPETITION ACT OF KENYA REQUIRES THAT FIRMS WISHING TO TENDER AS JOINT VENTURE UNDERTAKINGS WHICH MAY PREVENT, DISTORT OR LESSEN COMPETITION IN PROVISION OF SERVICES ARE PROHIBITED UNLESS THEY ARE EXEMPT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 25 OF THE COMPETITION ACT, 2010. JVS WILL BE REQUIRED TO SEEK FOR EXEMPTION FROM THE COMPETITION AUTHORITY. EXEMPTION SHALL NOT BE A CONDITION FOR TENDER, BUT IT SHALL BE A CONDITION OF CONTRACT AWARD AND SIGNATURE. A JV TENDERER SHALL BE GIVEN OPPORTUNITY TO SEEK SUCH EXEMPTION AS A CONDITION OF AWARD AND SIGNATURE OF CONTRACT. APPLICATION FOR EXEMPTION FROM THE COMPETITION AUTHORITY OF KENYA MAY BE ACCESSED FROM THE WEBSITE WWW.CAK.GO.KE

4.13 A TENDERER MAY BE CONSIDERED INELIGIBLE IF HE/SHE OFFERS GOODS, WORKS AND PRODUCTION PROCESSES WITH CHARACTERISTICS THAT HAVE BEEN DECLARED BY THE RELEVANT NATIONAL ENVIRONMENTAL PROTECTION AGENCY OR BY OTHER COMPETENT AUTHORITY AS HARMFUL TO HUMAN BEINGS AND TO THE ENVIRONMENT SHALL NOT BE ELIGIBLE FOR PROCUREMENT.

4.14 A TENDERER SHALL ENSURE THEY HAVE FULFILLED THEIR TAX OBLIGATIONS.

4.15 BIDDERS FOR NON-CONSULTING SERVICES (CLEANING, SECURITY, CATERING, LANDSCAPING, MAINTENANCE AND ANY OTHER REGULATED SERVICE) WHICH THE LAW PROVIDES A MINIMUM WAGE RATE MUST FACTOR IN ACCORDANCE WITH THE GAZETTED MINIMUM WAGE RATE AS APPLICABLE. FAILURE TO COMPLY TO THIS REQUIREMENT WILL LEAD TO AUTOMATIC DISQUALIFICATION AT ANY STAGE OF EVALUATION.

5. QUALIFICATION OF THE TENDERER

5.1 ALL TENDERERS SHALL PROVIDE IN SECTION IV, TENDERING FORMS, A PRELIMINARY DESCRIPTION OF THE PROPOSED WORK METHOD AND SCHEDULE, INCLUDING DRAWINGS AND CHARTS, AS NECESSARY.

5.2 IN THE EVENT THAT PRE-QUALIFICATION OF TENDERERS HAS BEEN UNDERTAKEN AS STATED IN ITT 18.3, THE PROVISIONS ON QUALIFICATIONS OF THE SECTION III, EVALUATION AND QUALIFICATION CRITERIA SHALL NOT APPLY.

B. CONTENTS OF TENDERING DOCUMENT

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6. SECTIONS OF TENDERING DOCUMENT

6.1 THE TENDERING DOCUMENT CONSISTS OF PARTS 1, 2, AND 3, WHICH INCLUDE ALL THE SECTIONS INDICATED BELOW AND SHOULD BE READ IN CONJUNCTION WITH ANY ADDENDA ISSUED IN ACCORDANCE WITH ITT 10.

PART 1: TENDERING PROCEDURES

I) SECTION I - INSTRUCTIONS TO TENDERERS (ITT)
II) SECTION II - TENDER DATA SHEET (TDS)
III) SECTION III - EVALUATION AND QUALIFICATION CRITERIA
IV) SECTION IV - TENDERING FORMS

PART 2: PROCURING ENTITY'S REQUIREMENTS

V) SECTION V- ACTIVITY SCHEDULE

PART 3: CONTRACT

VI) SECTION VI - GENERAL CONDITIONS OF CONTRACT (GCC)
VII) SECTION VII - SPECIAL CONDITIONS OF CONTRACT (SCC)
VIII) SECTION VIII - CONTRACT FORMS

6.2 THE INVITATION TO TENDER (ITT) NOTICE OR THE NOTICE TO PRE-QUALIFY TENDERERS, AS THE CASE MAY BE, ISSUED BY THE PROCURING ENTITY IS NOT PART OF THIS TENDERING DOCUMENT.

6.3 UNLESS OBTAINED DIRECTLY FROM THE PROCURING ENTITY, THE PROCURING ENTITY IS NOT RESPONSIBLE FOR THE COMPLETENESS OF THE DOCUMENT, RESPONSES TO REQUESTS FOR CLARIFICATION, THE MINUTES OF THE PRE-TENDER MEETING (IF ANY), OR ADDENDA TO THE TENDERING DOCUMENT IN ACCORDANCE WITH ITT 10. IN CASE OF ANY CONTRADICTION, DOCUMENTS OBTAINED DIRECTLY FROM THE PROCURING ENTITY SHALL PREVAIL.

6.4 THE TENDERER IS EXPECTED TO EXAMINE ALL INSTRUCTIONS, FORMS, TERMS, AND SPECIFICATIONS IN THE TENDERING DOCUMENT AND TO FURNISH WITH ITS TENDER ALL INFORMATION OR DOCUMENTATION AS IS REQUIRED BY THE TENDERING DOCUMENT.

7. SITE VISIT

7.1 THE TENDERER, AT THE TENDERER'S OWN RESPONSIBILITY AND RISK, IS ENCOURAGED TO VISIT AND EXAMINE AND INSPECT THE SITE OF THE REQUIRED SERVICES AND ITS SURROUNDINGS AND OBTAIN ALL INFORMATION THAT MAY BE NECESSARY FOR PREPARING THE TENDER AND ENTERING INTO A CONTRACT FOR THE SERVICES. THE COSTS OF VISITING THE SITE SHALL BE AT THE TENDERER'S OWN EXPENSE.

8. PRE-TENDER MEETING

8.1 THE PROCURING ENTITY SHALL SPECIFY IN THE **TDS** IF A PRE-TENDER MEETING WILL BE HELD, WHEN AND WHERE. THE PROCURING ENTITY SHALL ALSO SPECIFY IN THE **TDS** IF A PRE-ARRANGED PRETENDER SITE VISIT WILL BE HELD AND WHEN. THE TENDERER'S DESIGNATED REPRESENTATIVE IS INVITED TO ATTEND A PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE WORKS. THE PURPOSE OF THE MEETING WILL BE TO CLARIFY ISSUES AND TO ANSWER QUESTIONS ON ANY MATTER THAT MAY BE RAISED AT THAT STAGE.

8.2 THE TENDERER IS REQUESTED TO SUBMIT ANY QUESTIONS IN WRITING, TO REACH THE PROCURING ENTITY NOT LATER THAN THE PERIOD SPECIFIED IN THE **TDS** BEFORE THE PRE-TENDER MEETING.

8.4 THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ANONYMIZED (NO NAMES) MINUTES OF THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE SERVICE AT STATE TENDER PORTAL AND THE WEBSITE SPECIFIED IN THE **TDS**. ANY MODIFICATION TO THE TENDER DOCUMENTS THAT MAY BECOME NECESSARY AS A RESULT OF THE PRE-TENDER MEETING SHALL BE MADE BY THE PROCURING ENTITY EXCLUSIVELY THROUGH THE ISSUE OF AN ADDENDUM PURSUANT TO ITT10 AND NOT THROUGH THE MINUTES OF THE PRE-TENDER MEETING. NONATTENDANCE AT THE PRE-TENDER MEETING WILL NOT BE A CAUSE FOR DISQUALIFICATION OF A TENDERER.

8.3 MINUTES OF THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRE TENDER VISIT OF THE SITE OF THE SERVICE, IF APPLICABLE, INCLUDING THE TEXT OF THE QUESTIONS ASKED BY TENDERERS AND THE RESPONSES GIVEN, TOGETHER WITH ANY RESPONSES PREPARED AFTER THE MEETING, WILL BE TRANSMITTED PROMPTLY TO ALL TENDERERS WHO HAVE ACQUIRED THE TENDER DOCUMENTS IN ACCORDANCE WITH INVITATION TO TENDER. MINUTES SHALL NOT IDENTIFY THE SOURCE OF THE QUESTIONS ASKED.

9. CLARIFICATION OF TENDER DOCUMENTS

9.1 A TENDERER REQUIRING ANY CLARIFICATION OF THE TENDER DOCUMENT SHALL CONTACT THE PROCURING ENTITY IN WRITING AT THE PROCURING ENTITY'S ADDRESS SPECIFIED IN THE **TDS** OR RAISE ITS ENQUIRIES DURING THE PRE-TENDER MEETING AND THE PRE- ARRANGED PRETENDER VISIT OF THE SITE OF THE SERVICE IF PROVIDED FOR IN ACCORDANCE WITH ITT 8.4. THE PROCURING ENTITY WILL RESPOND IN WRITING TO ANY REQUEST FOR CLARIFICATION, PROVIDED THAT SUCH REQUEST IS RECEIVED NO LATER THAN THE PERIOD SPECIFIED IN THE **TDS** PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS. THE PROCURING ENTITY SHALL FORWARD COPIES OF ITS RESPONSE TO ALL TENDERERS WHO HAVE ACQUIRED THE TENDER DOCUMENTS IN ACCORDANCE WITH ITT 6.3, INCLUDING A DESCRIPTION OF THE INQUIRY BUT WITHOUT IDENTIFYING ITS SOURCE. IF SO SPECIFIED IN THE **TDS**, THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ITS RESPONSE AT THE WEBPAGE IDENTIFIED IN THE **TDS** AND THE STATE TENDER PORTAL. SHOULD THE CLARIFICATION RESULT IN CHANGES TO THE ESSENTIAL ELEMENTS OF THE TENDER DOCUMENTS, THE PROCURING ENTITY SHALL AMEND THE TENDER DOCUMENTS APPROPRIATELY FOLLOWING THE PROCEDURE UNDER ITT 8.4.

10. AMENDMENT OF TENDER DOCUMENTS

10.1 AT ANY TIME PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS, THE PROCURING ENTITY MAY AMEND THE TENDERING DOCUMENT BY ISSUING ADDENDA.

10.2 ANY ADDENDUM ISSUED SHALL BE PART OF THE TENDERING DOCUMENT AND SHALL BE COMMUNICATED IN WRITING TO ALL WHO HAVE OBTAINED THE TENDERING DOCUMENT FROM THE PROCURING ENTITY IN ACCORDANCE INVITATION TO TENDER. THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH THE ADDENDUM ON THE PROCURING ENTITY'S WEB PAGE IN ACCORDANCE WITH ITT 8.4.

10.3 TO GIVE PROSPECTIVE TENDERERS REASONABLE TIME IN WHICH TO TAKE AN ADDENDUM INTO ACCOUNT IN PREPARING THEIR TENDERS, THE PROCURING ENTITY SHALL EXTEND, AS NECESSARY, THE DEADLINE FOR SUBMISSION OF TENDERS, IN ACCORDANCE WITH ITT 24.2 BELOW.

C. PREPARATION OF TENDERS

11. COST OF TENDERING

11.1 THE TENDERER SHALL BEAR ALL COSTS ASSOCIATED WITH THE PREPARATION AND SUBMISSION OF ITS TENDER, AND THE PROCURING ENTITY SHALL NOT BE RESPONSIBLE OR LIABLE FOR THOSE COSTS, REGARDLESS OF THE CONDUCT OR OUTCOME OF THE TENDERING PROCESS.

12. LANGUAGE OF TENDER

12.1 THE TENDER AS WELL AS ALL CORRESPONDENCE AND DOCUMENTS RELATING TO THE TENDER EXCHANGED BY THE TENDERER AND THE PROCURING ENTITY SHALL BE WRITTEN IN THE ENGLISH LANGUAGE. SUPPORTING DOCUMENTS AND PRINTED LITERATURE THAT ARE PART OF THE TENDER MAY BE IN ANOTHER LANGUAGE PROVIDED THEY ARE ACCOMPANIED BY AN ACCURATE TRANSLATION OF THE RELEVANT PASSAGES INTO THE ENGLISH LANGUAGE, IN WHICH CASE, FOR PURPOSES OF INTERPRETATION OF THE TENDER, SUCH TRANSLATION SHALL GOVERN.

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13. DOCUMENTS COMPRISING THE TENDER

13.1 THE TENDER SHALL COMPRISE THE FOLLOWING:

A **FORM OF TENDER** PREPARED IN ACCORDANCE WITH ITT 14;

B **PRICE SCHEDULES**: PRICED ACTIVITY SCHEDULE COMPLETED IN ACCORDANCE WITH ITT 14 AND ITT 16;

C **TENDER SECURITY OR TENDER-SECURING DECLARATION** IN ACCORDANCE WITH ITT 21.1;

D **ALTERNATIVE TENDER**: IF PERMISSIBLE IN ACCORDANCE WITH ITT 15;

E **AUTHORIZATION**: WRITTEN CONFIRMATION AUTHORIZING THE SIGNATORY OF THE TENDER TO COMMIT THE TENDERER, IN ACCORDANCE WITH ITT 22.3;

F **QUALIFICATIONS**: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 19 ESTABLISHING THE TENDERER'S QUALIFICATIONS TO PERFORM THE CONTRACT IF ITS TENDER IS ACCEPTED;

G **TENDERER'S ELIGIBILITY**: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 19 ESTABLISHING THE TENDERER'S ELIGIBILITY TO TENDER;

H **CONFORMITY**: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 18, THAT THE SERVICES CONFORM TO THE TENDERING DOCUMENT; AND

I ANY OTHER DOCUMENT REQUIRED IN THE **TDS**.

THE TENDERER SHALL CHRONOLOGICALLY SERIALIZE PAGES OF ALL TENDER DOCUMENTS SUBMITTED.

13.2 IN ADDITION TO THE REQUIREMENTS UNDER ITT 13.1, TENDERS SUBMITTED BY A JV SHALL INCLUDE A COPY OF THE JOINT VENTURE AGREEMENT ENTERED INTO BY ALL MEMBERS. ALTERNATIVELY, A FORM OF INTENT TO EXECUTE A JOINT VENTURE AGREEMENT IN THE EVENT OF A SUCCESSFUL TENDER SHALL BE SIGNED BY ALL MEMBERS AND SUBMITTED WITH THE TENDER, TOGETHER WITH A COPY OF THE PROPOSED AGREEMENT.

13.3 THE TENDERER SHALL FURNISH IN THE FORM OF TENDER INFORMATION ON COMMISSIONS AND GRATUITIES, IF ANY, PAID OR TO BE PAID TO AGENTS OR ANY OTHER PARTY RELATING TO THIS TENDER.

14. FORM OF TENDER AND ACTIVITY SCHEDULE

14.1 THE FORM OF TENDER AND PRICED ACTIVITY SCHEDULE SHALL BE PREPARED USING THE RELEVANT FORMS FURNISHED IN SECTION IV, TENDERING FORMS. THE FORMS MUST BE COMPLETED WITHOUT ANY ALTERATIONS TO THE TEXT, AND NO SUBSTITUTES SHALL BE ACCEPTED EXCEPT AS PROVIDED UNDER ITT 22.3. ALL BLANK SPACES SHALL BE FILLED IN WITH THE INFORMATION REQUESTED.

14.2 THE TENDERER SHALL FURNISH IN THE FORM OF TENDER INFORMATION ON COMMISSIONS AND GRATUITIES, IF ANY, PAID OR TO BE PAID TO AGENTS OR ANY OTHER PARTY RELATING TO THIS TENDER.

15. ALTERNATIVE TENDERS

15.1 UNLESS OTHERWISE INDICATED IN THE **TDS**, ALTERNATIVE TENDERS SHALL NOT BE CONSIDERED. IF ALTERNATIVES ARE PERMITTED, ONLY THE TECHNICAL ALTERNATIVES, IF ANY, OF THE BEST EVALUATED TENDER SHALL BE CONSIDERED BY THE PROCURING ENTITY.

15.2 WHEN ALTERNATIVE TIMES FOR COMPLETION ARE EXPLICITLY INVITED, A STATEMENT TO THAT EFFECT WILL BE INCLUDED IN THE **TDS** AND THE METHOD OF EVALUATING DIFFERENT TIME SCHEDULES WILL BE DESCRIBED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

15.3 WHEN SPECIFIED IN THE TDS, TENDERERS A REEMITTED TO SUBMIT ALTERNATIVE TECHNICAL SOLUTIONS FOR SPECIFIED PARTS OF THE SERVICES, AND SUCH PARTS WILL BE IDENTIFIED IN THE **TDS**, AS WILL THE METHOD FOR THEIR EVALUATING, AND DESCRIBED IN SECTION VII, PROCURING ENTITY'S REQUIREMENTS.

16. TENDER PRICES AND DISCOUNTS

16.1 THE PRICES AND DISCOUNTS (INCLUDING ANY PRICE REDUCTION) QUOTED BY THE TENDERER IN THE FORM OF TENDER AND IN THE ACTIVITY SCHEDULE (S) SHALL CONFORM TO THE REQUIREMENTS SPECIFIED BELOW.

16.2 ALL LOTS (CONTRACTS) AND ITEMS MUST BE LISTED AND PRICED SEPARATELY IN THE ACTIVITY SCHEDULE(S).

16.3 THE CONTRACT SHALL BE FOR THE SERVICES, AS DESCRIBED IN APPENDIX A TO THE CONTRACT AND IN THE SPECIFICATIONS (OR TERMS OF REFERENCE), BASED ON THE PRICED ACTIVITY SCHEDULE, SUB MITTED BY THE TENDERER.

16.4 THE TENDERER SHALL QUOTE ANY DISCOUNTS AND INDICATE THE METHODOLOGY FOR THEIR APPLICATION IN THE PRICE SCHEDULE IN ACCORDANCE WITH ITT 16.1.

16.5 THE TENDERER SHALL FILL IN RATES AND PRICES FOR ALL ITEMS OF THE SERVICES DESCRIBED IN THE IN SPECIFICATIONS (OR TERMS OF REFERENCE), AND LISTED IN THE ACTIVITY SCHEDULE IN SECTION VII, PROCURING ENTITY'S REQUIREMENTS. ITEMS FOR WHICH NO RATE OR PRICE IS ENTERED BY THE TENDERER WILL NOT BE PAID FOR BY THE PROCURING ENTITY WHEN EXECUTED AND SHALL BE DEEMED COVERED BY THE OTHER RATES AND PRICES IN THE ACTIVITY SCHEDULE.

16.6 ALL DUTIES, TAXES, AND OTHER LEVIES PAYABLE BY THE SERVICE PROVIDER UNDER THE CONTRACT, OR FOR ANY OTHER CAUSE, AS OF THE DATE 30 DAYS PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS, SHALL BE INCLUDED IN THE TOTAL TENDER PRICE SUBMITTED BY THE TENDERER.

16.7 IF PROVIDED FOR IN THE **TDS**, THE RATES AND PRICES QUOTED BY THE TENDERER SHALL BE SUBJECT TO ADJUSTMENT DURING THE PERFORMANCE OF THE CONTRACT IN ACCORDANCE WITH AND THE PROVISIONS OF CLAUSE 6.6 OF THE GENERAL CONDITIONS OF CONTRACT AND / OR SPECIAL CONDITIONS OF CONTRACT. THE TENDERER SHALL SUBMIT WITH THE TENDER ALL THE INFORMATION REQUIRED UNDER THE SPECIAL CONDITIONS OF CONTRACT AND OF THE GENERAL CONDITIONS OF CONTRACT.

16.8 FOR THE PURPOSE OF DETERMINING THE REMUNERATION DUE FOR ADDITIONAL SERVICES, A BREAKDOWN OF THE LUMP-SUM PRICE SHALL BE PROVIDED BY THE TENDERER IN THE FORM OF APPENDICES D AND E TO THE CONTRACT.

16.9 THE TENDER PRICE SHALL BE INCLUSIVE OF A CAPACITY BUILDING LEVY OF ZERO POINT ZERO THREE PER CENTUM (0.03%) OF THE TENDER SUM EXCLUSIVE OF ALL APPLICABLE TAXES.

17. CURRENCIES OF TENDER AND PAYMENT

17.1 THE CURRENCY OF THE TENDER AND THE CURRENCY OF PAYMENTS SHALL BE KENYA SHILLINGS.

18. DOCUMENTS ESTABLISHING CONFORMITY OF SERVICES

18.1 TO ESTABLISH THE CONFORMITY OF THE NON-CONSULTING SERVICES TO THE TENDERING DOCUMENT, THE TENDERER SHALL FURNISH AS PART OF ITS TENDER THE DOCUMENTARY EVIDENCE THAT SERVICES PROVIDED CONFORM TO THE TECHNICAL SPECIFICATIONS AND STANDARDS SPECIFIED IN SECTION V, PROCURING ENTITY'S REQUIREMENTS.

18.2 STANDARDS FOR PROVISION OF THE NON-CONSULTING SERVICES ARE INTENDED TO BE DESCRIPTIVE ONLY AND NOT RESTRICTIVE. THE TENDERER MAY OFFER OTHER STANDARDS OF QUALITY PROVIDED THAT IT DEMONSTRATES, TO THE PROCURING ENTITY'S SATISFACTION, THAT THE SUBSTITUTIONS ENSURE SUBSTANTIAL EQUIVALENCE OR ARE SUPERIOR TO THOSE SPECIFIED IN THE SECTION VII, PROCURING ENTITY'S REQUIREMENTS.

18.3 TENDER TO PROVIDE, AS PART OF THE DATA FOR QUALIFICATION, SUCH INFORMATION, INCLUDING DETAILS OF OWNERSHIP, AS SHALL BE REQUIRED TO DETERMINE WHETHER, ACCORDING TO THE CLASSIFICATION ESTABLISHED BY THE PROCURING ENTITY, A SERVICE PROVIDER OR GROUP OF SERVICE PROVIDERS. QUALIFIES FOR A MARGIN OF PREFERENCE. FURTHER THE INFORMATION WILL ENABLE THE PROCURING ENTITY IDENTIFY ANY ACTUAL OR POTENTIAL CONFLICT OF INTEREST IN RELATION TO THE PROCUREMENT AND/OR CONTRACT MANAGEMENT PROCESSES, OR A POSSIBILITY OF COLLUSION BETWEEN TENDERERS, AND THEREBY HELP TO PREVENT ANY CORRUPT INFLUENCE IN RELATION TO THE PROCUREMENT PROCESS OR CONTRACT MANAGEMENT.

18.4 THE PURPOSE OF THE INFORMATION DESCRIBED IN ITT 18.3 ABOVE, OVERRIDES ANY CLAIMS TO CONFIDENTIALITY WHICH A TENDERER MAY HAVE. THERE CAN BE NO CIRCUMSTANCES IN WHICH IT WOULD BE JUSTIFIED FOR A TENDERER TO KEEP INFORMATION RELATING TO ITS OWNERSHIP AND CONTROL CONFIDENTIAL WHERE IT IS TENDERING TO UNDERTAKE PUBLIC SECTOR WORK AND RECEIVE PUBLIC SECTOR FUNDS. THUS, CONFIDENTIALITY WILL NOT BE ACCEPTED BY THE PROCURING ENTITY AS A JUSTIFICATION FOR A TENDERER'S FAILURE TO DISCLOSE, OR FAILURE TO PROVIDE REQUIRED INFORMATION ON ITS OWNERSHIP AND CONTROL.

18.5 THE TENDERER SHALL PROVIDE FURTHER DOCUMENTARY PROOF, INFORMATION OR AUTHORIZATIONS THAT THE PROCURING ENTITY MAY REQUEST IN RELATION TO OWNERSHIP AND CONTROL REGARDING THE INFORMATION PROVIDED BY THE TENDERER UNDER ITT18.3. THE OBLIGATIONS TO REQUIRE THIS INFORMATION SHALL CONTINUE FOR THE DURATION OF THE PROCUREMENT PROCESS AND CONTRACT PERFORMANCE AND AFTER COMPLETION OF THE CONTRACT, IF ANY CHANGE TO THE INFORMATION PREVIOUSLY PROVIDED MAY REVEAL A CONFLICT OF INTEREST IN RELATION TO THE AWARD OR MANAGEMENT OF THE CONTRACT.

18.6 ALL INFORMATION PROVIDED BY THE TENDERER PURSUANT TO THESE REQUIREMENTS MUST BE COMPLETE, CURRENT AND ACCURATE AS AT THE DATE OF PROVISION TO THE PROCURING ENTITY. IN SUBMITTING THE INFORMATION REQUIRED PURSUANT TO THESE REQUIREMENTS, THE TENDERER SHALL WARRANT THAT THE INFORMATION SUBMITTED IS COMPLETE, CURRENT AND ACCURATE AS AT THE DATE OF SUBMISSION TO THE PROCURING ENTITY.

18.7 IF A TENDERER FAILS TO SUBMIT THE INFORMATION REQUIRED BY THESE REQUIREMENTS, ITS TENDERER WILL BE REJECTED. SIMILARLY, IF THE PROCURING ENTITY IS UNABLE, AFTER TAKING REASONABLE STEPS, TO VERIFY TO A REASONABLE DEGREE THE INFORMATION SUBMITTED BY A TENDERER PURSUANT TO THESE REQUIREMENTS, THEN THE TENDER WILL BE REJECTED.

18.8 IF INFORMATION SUBMITTED BY A TENDERER PURSUANT TO THESE REQUIREMENTS, OR OBTAINED BY THE PROCURING ENTITY (WHETHER THROUGH ITS OWN ENQUIRIES, THROUGH NOTIFICATION BY THE PUBLIC OR OTHERWISE), SHOWS ANY CONFLICT OF INTEREST WHICH COULD MATERIALLY AND IMPROPERLY BENEFIT THE TENDERER IN RELATION TO THE PROCUREMENT OR CONTRACT MANAGEMENT PROCESS, THEN:

I) IF THE PROCUREMENT PROCESS IS STILL ON GOING, THE TENDERER WILL BE DISQUALIFIED FROM THE PROCUREMENT PROCESS,

II) IF THE CONTRACT HAS BEEN AWARDED TO THAT TENDERER, THE CONTRACT AWARD WILL BE SET ASIDE, PENDING THE OUTCOME OF (III),

III) THE TENDERER WILL BE REFERRED TO THE RELEVANT LAW ENFORCEMENT AUTHORITIES FOR INVESTIGATION OF WHETHER THE TENDERER OR ANY OTHER PERSONS HAVE COMMITTED ANY CRIMINAL OFFENCE.

18.9 IF A TENDERER SUBMITS INFORMATION PURSUANT TO THESE REQUIREMENTS THAT IS INCOMPLETE, INACCURATE OR OUT-OF-DATE, OR ATTEMPTS TO OBSTRUCT THE VERIFICATION PROCESS, THEN THE CONSEQUENCES UNDER ITT 18.8 WILL ENSUE UNLESS THE TENDERER CAN SHOW TO THE REASONABLE SATISFACTION OF THE PROCURING ENTITY THAT ANY SUCH ACT WAS NOT MATERIAL, OR WAS DUE TO GENUINE ERROR WHICH WAS NOT ATTRIBUTABLE TO THE INTENTIONAL ACT, NEGLIGENCE OR RECKLESSNESS OF THE TENDERER.

19. DOCUMENTS ESTABLISHING THE ELIGIBILITY AND QUALIFICATIONS OF THE TENDERER

19.1 TO ESTABLISH TENDERER'S ELIGIBILITY IN ACCORDANCE WITH ITT4, TENDERERS SHALL COMPLETE THE FORM OF TENDER, INCLUDED IN SECTION IV, TENDERING FORMS.

19.2 THE DOCUMENTARY EVIDENCE OF THE TENDERER'S QUALIFICATION SHALL FORM THE CONTRACT IF ITS TENDER IS ACCEPTED AND IT IS ESTABLISHED TO THE PROCURING ENTITY'S SATISFACTION THAT THE TENDERER MEETS EACH OF THE QUALIFICATION CRITERION SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

19.3 ALL TENDERERS SHALL PROVIDE IN SECTION IV, TENDERING FORMS, A PRELIMINARY DESCRIPTION OF THE PROPOSED METHODOLOGY, WORK PLAN AND SCHEDULE.

19.4 IN THE EVENT THAT PRE-QUALIFICATION OF TENDERERS HAS BEEN UNDERTAKEN, ONLY TENDERS FROM PREQUALIFIED TENDERERS SHALL BE CONSIDERED FOR AWARD OF CONTRACT. THESE QUALIFIED TENDERERS SHOULD SUBMIT WITH THEIR TENDERS ANY INFORMATION UPDATING THEIR ORIGINAL PRE-QUALIFICATION APPLICATIONS OR, ALTERNATIVELY, CONFIRM IN THEIR TENDERS THAT THE ORIGINALLY SUBMITTED PRE-QUALIFICATION INFORMATION REMAINS ESSENTIALLY CORRECT AS OF THE DATE OF TENDER SUBMISSION.

19.5 IF PRE-QUALIFICATION HAS NOT TAKEN PLACE BEFORE TENDERING, THE QUALIFICATION CRITERIA FOR THE TENDERERS ARE SPECIFIED- IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

20. PERIOD OF VALIDITY OF TENDERS.

20.1 TENDERS SHALL REMAIN VALID FOR THE TENDER VALIDITY PERIOD SPECIFIED IN THE **TDS**. THE TENDER VALIDITY PERIOD STARTS FROM THE DATE FIXED FOR THE TENDER SUBMISSION DEADLINE DATE (AS PRESCRIBED BY THE PROCURING ENTITY IN ACCORDANCE WITH ITT 24.1). A TENDER VALID FOR A SHORTER PERIOD SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE.

20.2 EXCEPTIONAL CIRCUMSTANCES, PRIOR TO THE EXPIRATION OF THE TENDER VALIDITY PERIOD, THE PROCURING ENTITY MAY REQUEST TENDERERS TO EXTEND THE PERIOD OF VALIDITY OF THEIR TENDERS. THE REQUEST AND THE RESPONSES SHALL BE MADE IN WRITING. IF A TENDER SECURITY IS REQUESTED IN ACCORDANCE WITH ITT20, IT SHALL ALSO BE EXTENDED FOR A CORRESPONDING PERIOD. A TENDERER MAY REFUSE THE REQUEST WITHOUT FORFEITING ITS TENDER SECURITY. A TENDERER GRANTING THE REQUEST SHALL NOT BE REQUIRED OR PERMITTED TO MODIFY ITS TENDER.

21. TENDER SECURITY

21.1 THE TENDERER SHALL FURNISH AS PART OF ITS TENDER, EITHER A TENDER-SECURING DECLARATION OR A TENDER SECURITY, AS SPECIFIED IN THE **TDS**, IN ORIGINAL FORM (PHYSICAL OR ELECTRONIC) AND, IN THE CASE OF A TENDER SECURITY, IN THE AMOUNT AND CURRENCY SPECIFIED IN THE **TDS**.

21.2 A TENDER SECURING DECLARATION SHALL USE THE FORM INCLUDED IN SECTION IV, TENDERING FORMS.

21.3 IF TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 21.1, FROM A REPUTABLE SOURCE, AND AN ELIGIBLE COUNTRY AND SHALL BE IN ANY OF THE FOLLOWING FORMS AT THE TENDERER'S OPTION:

I) CASH;

II) A BANK GUARANTEE;

III) A GUARANTEE BY AN INSURANCE COMPANY REGISTERED AND LICENSED BY THE INSURANCE REGULATORY AUTHORITY LISTED BY THE AUTHORITY; OR

IV) A GUARANTEE ISSUED BY A FINANCIAL INSTITUTION APPROVED AND LICENSED BY THE CENTRAL BANK OF KENYA,

21.4 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 20.1, ANY TENDER NOT ACCOMPANIED BY A SUBSTANTIALLY RESPONSIVE TENDER SECURITY SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE.

21.5 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 21.1, THE TENDER SECURITY OF UNSUCCESSFUL TENDERERS SHALL BE RETURNED AS PROMPTLY AS POSSIBLE UPON THE SUCCESSFUL TENDERER'S SIGNING THE CONTRACT AND FURNISHING THE PERFORMANCE SECURITY PURSUANT TO ITT 47 THE PROCURING ENTITY SHALL ALSO PROMPTLY RETURN THE TENDER SECURITY TO THE TENDERERS WHERE THE PROCUREMENT PROCEEDINGS ARE TERMINATED, ALL TENDERS ARE DETERMINED TO BE NON-RESPONSIVE OR A BIDDER DECLINES TO EXTEND TENDER VALIDITY PERIOD.

21.6 THE TENDER SECURITY OF THE SUCCESSFUL TENDERER SHALL BE RETURNED WITHIN 14 DAYS AS PROMPTLY AS POSSIBLE ONCE THE SUCCESSFUL TENDERER HAS SIGNED THE CONTRACT.

21.7 THE TENDER SECURITY MAY BE FORFEITED OR THE TENDER-SECURING DECLARATION EXECUTED:
A. IF TENDERER WITHDRAWS ITS TENDER DURING THE PERIOD OF TENDER VALIDITY SPECI FIED BY THE TENDERER IN THE FORM OF TENDER, OR ANY EXTENSION THERETO PROVIDE D BY THE TENDERER; OR A TENDERER WITHDRAW S ITS TENDER DURING THE PERIOD OF TENDER VALIDITY SPECIFIED BY THE TENDERER IN THE FORM OF TENDER, OR ANY EXTENSION THERE TO PROVIDED BY THE TENDERER; OR
B. TENDERER FAILS TO:
C. SIGN THE CONTRACT IN ACCORDANCE WITH ITT 46; OR
D. FURNISH A PERFORMANCE SECURITY IN ACCORDANCE WITH ITT 47

21.8 WHERE TENDER SECURING DECLARATION IS EXECUTED, THE PROCURING ENTITY MAY DECLARE THE TENDERER INELIGIBLE TO BE AWARDED A CONTRACT BY THE PROCURING ENTITY FOR A PERIOD OF NOT EXCEEDING SIX (6) MONTHS AND REPORT THE MATTER TO THE AUTHORITY WITHIN 14 DAYS OF THE SUSPENSION.

21.9 THE TENDER SECURITY OR TENDER-SECURING DECLARATION OF A JV MUST BE IN THE NAME OF THE JV THAT SUBMITS THE TENDER. IF THE JV HAS NOT BEEN LEGALLY CONSTITUTED INTO A LEGALLY ENFORCEABLE JV AT THE TIME OF TENDERING, THE TENDER SECURITY OR TENDER-SECURING DECLARATION SHALL BE IN THE NAMES OF ALL FUTURE MEMBERS AS NAMED IN THE FORM OF INTENT REFERRED TO IN ITT 4.1 AND ITT 13.2.

21.10 A TENDERER SHALL NOT ISSUE A TENDER SECURITY TO GUARANTEE ITSELF.

22. FORMAT AND SIGNING OF TENDER

22.1 THE TENDERER SHALL PREPARE ONE ORIGINAL OF THE DOCUMENTS COMPRISING THE TENDER AS DESCRIBED IN ITT 13, BOUND WITH THE VOLUME CONTAINING THE FORM OF TENDER, AND CLEARLY MARKED "ORIGINAL. "IN ADDITION, THE TENDERER SHALL SUBMIT COPIES OF THE TENDER, IN THE NUMBER SPECIFIED IN THE **TDS**, AND CLEARLY MARKED AS "COPIES". IN THE EVENT OF DISCREPANCY BETWEEN THEM, THE ORIGINAL SHALL PREVAIL. SUBMISSION OF COPIES OF THE TENDER SHALL NOT APPLY FOR ELECTRONIC PROCUREMENT SYSTEM.

22.3 THE ORIGINAL AND ALL COPIES OF THE TENDER SHALL BE TYPED OR WRITTEN IN INDELIBLE INK AND SHALL BE SIGNED BY A PERSON OR PERSONS DULY AUTHORIZED TO SIGN ON BEHALF OF THE TENDERER. THIS AUTHORIZATION SHALL CONSIST OF A WRITTEN CONFIRMATION AS SPECIFIED IN THE **TDS** AND SHALL BE ATTACHED TO THE TENDER. THE NAME AND POSITION HELD BY EACH PERSON SIGNING THE AUTHORIZATION MUST BE TYPED OR PRINTED BELOW THE SIGNATURE. ALL PAGES OF THE TENDER WHERE ENTRIES OR AMENDMENTS HAVE BEEN MADE SHALL BE SIGNED OR INITIALED BY THE PERSON SIGNING THE TENDER.

22.4 IN CASE THE TENDERER IS A JV, THE TENDER SHALL BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE JV ON BEHALF OF THE JV, AND SO AS TO BE LEGALLY BINDING ON ALL THE MEMBERS AS EVIDENCED BY A POWER OF ATTORNEY SIGNED BY THEIR LEGALLY AUTHORIZED REPRESENTATIVES.

22.5 ANY INTER-LINEATION, ERASURES, OR OVERWRITING SHALL BE VALID ONLY IF THEY ARE SIGNED OR INITIALED BY THE PERSON SIGNING THE TENDER.

D. SUBMISSION AND OPENING OF TENDERS

23. SEALING AND MARKING OF TENDERS

23.1 DEPENDING ON THE SIZES OR QUANTITIES OR WEIGHT OF THE TENDER DOCUMENTS, A TENDERER MAY USE AN ENVELOPE, PACKAGE OR CONTAINER. THE TENDERER SHALL DELIVER THE TENDER IN A SINGLE SEALED ENVELOPE, OR IN A SINGLE SEALED PACKAGE, OR IN A SINGLE SEALED CONTAINER BEARING THE NAME AND REFERENCE NUMBER OF THE TENDER, ADDRESSED TO THE PROCURING ENTITY AND A WARNING NOT TO OPEN BEFORE THE TIME AND DATE FOR TENDER OPENING DATE. WITHIN THE SINGLE ENVELOPE, PACKAGE OR CONTAINER, THE TENDERER SHALL PLACE THE FOLLOWING SEPARATE, SEALED ENVELOPES:

A. IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED “ORIGINAL”, ALL DOCUMENTS COMPRISING THE TENDER, AS DESCRIBED IN ITT13; AND

B. IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED “COPIES”, ALL REQUIRED COPIES OF THE TENDER; AND

C. IF ALTERNATIVE TENDERS ARE PERMITTED IN ACCORDANCE WITH ITT15, AND IF RELEVANT:

I. IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED “ORIGINAL–ALTERNATIVE TENDER”, THE ALTERNATIVE TENDER; AND

II. IN THE ENVELOPE OR PACKAGE OR CONTAINER MARKED “COPIES- ALTERNATIVE TENDER”, ALL REQUIRED COPIES OF THE ALTERNATIVE TENDER.

THE INNER ENVELOPES OR PACKAGES OR CONTAINERS SHALL:

A) BEAR THE NAME AND ADDRESS OF THE PROCURING ENTITY.

B) BEAR THE NAME AND ADDRESS OF THE TENDERER; AND

C) BEAR THE NAME AND REFERENCE NUMBER OF THE TENDER.

23.2 IF AN ENVELOPE OR PACKAGE OR CONTAINER IS NOT SEALED AND MARKED AS REQUIRED, THE PROCURING ENTITY WILL ASSUME NO RESPONSIBILITY FOR THE MISPLACEMENT OR PREMATURE OPENING OF THE TENDER.

THE PROVISIONS OF CLAUSE 23 SHALL NOT APPLY TO TENDERS SUBMITTED ELECTRONICALLY.

24. DEADLINE FOR SUBMISSION OF TENDERS

24.1 TENDERS MUST BE RECEIVED BY THE PROCURING ENTITY AT THE ADDRESS AND NO LATER THAN THE DATE AND TIME SPECIFIED IN THE **TDS**. WHEN SO SPECIFIED IN THE **TDS**, TENDERERS SHALL HAVE THE OPTION OF SUBMITTING THEIR TENDERS ELECTRONICALLY. TENDERERS SUBMITTING TENDERS ELECTRONICALLY SHALL FOLLOW THE ELECTRONIC TENDER SUBMISSION PROCEDURES SPECIFIED IN THE **TDS**.

24.2 THE PROCURING ENTITY MAY, AT ITS DISCRETION, EXTEND THE DEADLINE FOR THE SUBMISSION OF TENDERS BY AMENDING THE TENDERING DOCUMENT IN ACCORDANCE WITH ITT9, IN WHICH CASE ALL RIGHTS AND OBLIGATIONS OF THE PROCURING ENTITY AND TENDERERS PREVIOUSLY SUBJECT TO THE DEADLINE SHALL THEREAFTER BE SUBJECT TO THE DEADLINE AS EXTENDED.

25. LATE TENDERS

25.1 THE PROCURING ENTITY SHALL NOT CONSIDER ANY TENDER THAT ARRIVES AFTER THE DEADLINE FOR SUBMISSION OF TENDERS, IN ACCORDANCE WITH ITT 24. ANY TENDER RECEIVED BY THE PROCURING ENTITY AFTER THE DEADLINE FOR SUBMISSION OF TENDERS SHALL BE DECLARED LATE, REJECTED, AND RETURNED UN OPENED TO THE TENDERER.

26. WITHDRAWAL, SUBSTITUTION AND MODIFICATION OF TENDERS

26.1 A TENDERER MAY WITHDRAW, SUBSTITUTE, OR MODIFY ITS TENDER AFTER IT HAS BEEN SUBMITTED BY SENDING A WRITTEN NOTICE, DULY SIGNED BY A N AUTHORIZED REPRESENTATIVE, AND SHALL INCLUDE A COPY OF THE AUTHORIZATION (THE POWER OF ATTORNEY) IN ACCORDANCE WITH ITT 21.3, (EXCEPT THAT WITHDRAWAL NOTICES DO NOT REQUIRE COPIES). THE CORRESPONDING SUBSTITUTION OR MODIFICATION OF THE TENDER MUST ACCOMPANY THE RESPECTIVE WRITTEN NOTICE. ALL NOTICES MUST BE:
A) PREPARED AND SUBMITTED IN ACCORDANCE WITH ITT 21 AND ITT 22 (EXCEPT THAT WITHDRAWAL NOTICES DO NOT REQUIRE COPIES), AND IN ADDITION, THE RESPECTIVE ENVELOPES SHALL BE CLEARLY MARKED “WITHDRAWAL,” “SUBSTITUTION,” OR “MODIFICATION;” AND
B) RECEIVED BY THE PROCURING ENTITY PRIOR TO THE DEADLINE PRESCRIBED FOR SUBMISSION OF TENDERS, IN ACCORDANCE WITH ITT 23.

26.2 TENDERS REQUESTED TO BE WITHDRAWN IN ACCORDANCE WITH ITT 25.1 SHALL BE RETURNED UNOPENED TO THE TENDERERS.

26.3 NO TENDER MAY BE WITHDRAWN, SUBSTITUTED, OR MODIFIED IN THE INTERVAL BETWEEN THE DEADLINE FOR SUBMISSION OF TENDERS AND THE EXPIRATION OF THE PERIOD OF TENDER VALIDITY SPECIFIED BY THE TENDERER ON THE FORM OF TENDER OR ANY EXTENSION THEREOF.

26.4 TENDERERS SHALL BE ALLOWED TO SUBMIT MODIFICATIONS TO BIDS OR PROPOSALS OR WITHDRAW PREVIOUSLY SUBMITTED BIDS OR PROPOSALS ELECTRONICALLY UP TO, BUT NOT AFTER, THE BID SUBMISSION DEADLINE.

27. TENDER OPENING

27.1 EXCEPT AS IN THE CASES SPECIFIED IN ITT 23 AND ITT 25.2, THE PROCURING ENTITY SHALL, AT THE TENDER OPENING, PUBLICLY OPEN AND READ OUT ALL TENDERS RECEIVED BY THE DEADLINE AT THE DATE, TIME AND PLACE SPECIFIED IN THE **TDS** IN THE PRESENCE OF TENDERERS' DESIGNATED REPRESENTATIVES AND ANYONE WHO CHOOSE TO ATTEND. ANY SPECIFIC ELECTRONIC TENDER OPENING PROCEDURES REQUIRED IF ELECTRONIC TENDERING IS PERMITTED IN ACCORDANCE WITH ITT 23.1 SHALL BE AS SPECIFIED IN THE **TDS**.

27.2 ENVELOPES MARKED “WITHDRAWAL” SHALL BE OPENED AND READ OUT AND THE ENVELOPE WITH THE CORRESPONDING TENDER SHALL NOT BE OPENED, BUT RETURNED TO THE TENDERER. IF THE WITHDRAWAL ENVELOPE DOES NOT CONTAIN A COPY OF THE “POWER OF ATTORNEY” CONFIRMING THE SIGNATURE AS A PERSON DULY AUTHORIZED TO SIGN ON BEHALF OF THE TENDERER, THE CORRESPONDING TENDER WILL BE OPENED. NO TENDER WITHDRAWAL SHALL BE PERMITTED UNLESS THE CORRESPONDING WITHDRAWAL NOTICE CONTAINS A VALID AUTHORIZATION TO REQUEST THE WITHDRAWAL AND IS READ OUT AT TENDER OPENING.

27.3 NEXT, ENVELOPES MARKED “SUBSTITUTION” SHALL BE OPENED AND READ OUT AND EXCHANGED WITH THE CORRESPONDING TENDER BEING SUBSTITUTED, AND THE SUBSTITUTED TENDER SHALL NOT BE OPENED, BUT RETURNED TO THE TENDERER. NO TENDER SUBSTITUTION SHALL BE PERMITTED UNLESS THE CORRESPONDING SUBSTITUTION NOTICE CONTAINS A VALID AUTHORIZATION TO REQUEST THE SUBSTITUTION AND IS READ OUT AT TENDER OPENING.

27.4 NEXT, ENVELOPES MARKED “MODIFICATION” SHALL BE OPENED AND READ OUT WITH THE CORRESPONDING TENDER. NO TENDER MODIFICATION SHALL BE PERMITTED UNLESS THE CORRESPONDING MODIFICATION NOTICE CONTAINS A VALID AUTHORIZATION TO REQUEST THE MODIFICATION AND IS READ OUT AT TENDER OPENING.

27.5 NEXT, ALL REMAINING ENVELOPES SHALL BE OPENED ONE AT A TIME, READING OUT: THE NAME OF THE TENDERER AND WHETHER THERE IS A MODIFICATION; THE TOTAL TENDER PRICES, PER LOT (CONTRACT) IF APPLICABLE, INCLUDING ANY DISCOUNTS AND ALTERNATIVE TENDERS; THE PRESENCE OR ABSENCE OF A TENDER SECURITY OR TENDER-SECURING DECLARATION, IF REQUIRED; AND ANY OTHER DETAILS AS THE PROCURING ENTITY MAY CONSIDER APPROPRIATE.

27.6 ONLY TENDERS, ALTERNATIVE TENDERS AND DISCOUNTS THAT ARE OPENED AND READ OUT AT TENDER OPENING SHALL BE CONSIDERED FURTHER. THE FORM OF TENDER AND THE PRICED ACTIVITY SCHEDULE ARE TO BE INITIALED BY REPRESENTATIVES OF THE PROCURING ENTITY ATTENDING TENDER OPENING.

27.7 THE PROCURING ENTITY SHALL NEITHER DISCUSS THE MERITS OF ANY TENDER NOR REJECT ANY TENDER (EXCEPT FOR LATE TENDERS, IN ACCORDANCE WITH ITT25.1).

27.8 THE PROCURING ENTITY SHALL PREPARE A RECORD OF THE TENDER OPENING THAT SHALL INCLUDE, AS A MINIMUM:

A) THE NAME OF THE TENDERER AND WHETHER THERE IS A WITHDRAWAL, SUBSTITUTION, OR MODIFICATION;

B) THE TENDER PRICE, PER LOT (CONTRACT) IF APPLICABLE, INCLUDING ANY DISCOUNTS; AND

C) ANY ALTERNATIVE TENDERS;

D) THE PRESENCE OR ABSENCE OF A TENDER SECURITY OR TENDER-SECURING DECLARATION, IF ONE WAS REQUIRED.

E) NUMBER OF PAGES OF EACH TENDER DOCUMENT SUBMITTED

27.9 THE TENDERERS' REPRESENTATIVES WHO ARE PRESENT SHALL BE REQUESTED TO SIGN THE RECORD. THE OMISSION OF A TENDERER'S SIGNATURE ON THE RECORD SHALL NOT INVALIDATE THE CONTENTS AND EFFECT OF THE RECORD. A COPY OF THE TENDER OPENING REGISTER SHALL BE DISTRIBUTED TO TENDERERS UPON REQUEST.

E. EVALUATION AND COMPARISON OF TENDERS

28. CONFIDENTIALITY

28.1 INFORMATION RELATING TO THE EVALUATION OF TENDERS AND RECOMMENDATION OF CONTRACT AWARD, SHALL NOT BE DISCLOSED TO TENDERERS OR ANY OTHER PERSONS NOT OFFICIALLY CONCERNED WITH THE TENDERING PROCESS UNTIL INFORMATION ON THE INTENTION TO AWARD THE CONTRACT IS TRANSMITTED TO ALL TENDERERS IN ACCORDANCE WITH ITT 42.

28.2 ANY EFFORT BY A TENDERER TO INFLUENCE THE PROCURING ENTITY IN THE EVALUATION OR CONTRACT AWARD DECISIONS MAY RESULT IN THE REJECTION OF ITS TENDER.

28.3 NOTWITHSTANDING ITT 28.2, FROM THE TIME OF TENDER OPENING TO THE TIME OF CONTRACT AWARD, IF ANY TENDERER WISHES TO CONTACT THE PROCURING ENTITY ON ANY MATTER RELATED TO THE TENDERING PROCESS, IT SHOULD DO SO IN WRITING.

29. CLARIFICATION OF TENDERS

29.1 TO ASSIST IN THE EXAMINATION, EVALUATION, AND COMPARISON OF TENDERS, AND QUALIFICATION OF THE TENDERERS, THE PROCURING ENTITY MAY, AT THE PROCURING ENTITY'S DISCRETION, ASK ANY TENDERER FOR CLARIFICATION OF ITS TENDER INCLUDING BREAK DOWNS OF THE PRICES IN THE ACTIVITY SCHEDULE, AND OTHER INFORMATION THAT THE PROCURING ENTITY MAY REQUIRE. ANY CLARIFICATION SUBMITTED BY A TENDERER IN RESPECT TO ITS TENDER AND THAT IS NOT IN RESPONSE TO A REQUEST BY THE PROCURING ENTITY SHALL NOT BE CONSIDERED. THE PROCURING ENTITY'S REQUEST FOR CLARIFICATION AND THE RESPONSE SHALL BE IN WRITING. NO CHANGE, INCLUDING ANY VOLUNTARY INCREASE OR DECREASE, IN THE PRICES OR SUBSTANCE OF THE TENDER SHALL BE SOUGHT, OFFERED, OR PERMITTED, EXCEPT TO CONFIRM THE CORRECTION OF ARITHMETIC ERRORS DISCOVERED BY THE PROCURING ENTITY IN THE EVALUATION OF THE TENDERS, IN ACCORDANCE WITH ITT32.

29.2 IF A TENDERER DOES NOT PROVIDE CLARIFICATIONS OF ITS TENDER BY THE DATE AND TIME SET IN THE PROCURING ENTITY'S REQUEST FOR CLARIFICATION, ITS TENDER MAY BE REJECTED.

30. DEVIATIONS, RESERVATIONS, AND OMISSIONS

30.1 DURING THE EVALUATION OF TENDERS, THE FOLLOWING DEFINITIONS APPLY:

A) “DEVIATION” IS A DEPARTURE FROM THE REQUIREMENTS SPECIFIED IN THE TENDERING DOCUMENT;

B) “RESERVATION” IS THE SETTING OF LIMITING CONDITIONS OR WITHHOLDING FROM COMPLETE ACCEPTANCE OF THE REQUIREMENTS SPECIFIED IN THE TENDERING DOCUMENT; AND

C) “OMISSION” IS THE FAILURE TO SUBMIT PART OR ALL OF THE INFORMATION OR DOCUMENTATION REQUIRED IN THE TENDERING DOCUMENT.

31. DETERMINATION OF RESPONSIVENESS

31.1 THE PROCURING ENTITY'S DETERMINATION OF A TENDER'S RESPONSIVENESS IS TO BE BASED ON THE CONTENTS OF THE TENDER ITSELF, AS DEFINED IN ITT 12.

31.2 A SUBSTANTIALLY RESPONSIVE TENDER IS ONE THAT MEETS THE REQUIREMENTS OF THE TENDERING DOCUMENT WITHOUT MATERIAL DEVIATION, RESERVATION, OR OMISSION. A MATERIAL DEVIATION, RESERVATION, OR OMISSION IS ONE THAT:

A) IF ACCEPTED, WOULD:

I. AFFECT IN ANY SUBSTANTIAL WAY THE SCOPE, QUALITY, OR PERFORMANCE OF THE NON-CONSULTING SERVICES SPECIFIED IN THE CONTRACT; OR

II. LIMIT IN ANY SUBSTANTIAL WAY, INCONSISTENT WITH THE TENDERING DOCUMENT, THE PROCURING ENTITY'S RIGHTS OR THE TENDERER'S OBLIGATIONS UNDER THE CONTRACT; OR

B) IF RECTIFIED, WOULD UNFAIRLY AFFECT THE COMPETITIVE POSITION OF OTHER TENDERERS PRESENTING SUBSTANTIALLY RESPONSIVE TENDERS.

31.3 THE PROCURING ENTITY SHALL EXAMINE THE TECHNICAL ASPECTS OF THE TENDER SUBMITTED IN ACCORDANCE WITH ITT 18 AND ITT 19, IN PARTICULAR, TO CONFIRM THAT ALL REQUIREMENTS OF SECTION VII, PROCURING ENTITY'S REQUIREMENTS HAVE BEEN MET WITHOUT ANY MATERIAL DEVIATION OR RESERVATION, OR OMISSION.

31.4 IF A TENDER IS NOT SUBSTANTIALLY RESPONSIVE TO THE REQUIREMENTS OF TENDERING DOCUMENT, IT SHALL BE REJECTED BY THE PROCURING ENTITY AND SHALL NOT SUBSEQUENTLY BE MADE RESPONSIVE BY CORRECTION OF THE MATERIAL DEVIATION, RESERVATION, OR OMISSION.

31.5 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY MAY WAIVE ANY NON-CONFORMITY IN THE TENDER.

31.6 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY MAY REQUEST THAT THE TENDERER SUBMIT THE NECESSARY INFORMATION OR DOCUMENTATION, WITHIN A REASONABLE PERIOD OF TIME, TO RECTIFY NONMATERIAL NON- CONFORMITIES OR OMISSIONS IN THE TENDER RELATED TO DOCUMENTATION REQUIREMENTS. REQUESTING INFORMATION OR DOCUMENTATION ON SUCH NON-CONFORMITIES SHALL NOT BE RELATED TO ANY ASPECT OF THE PRICE OF THE TENDER. FAILURE OF THE TENDERER TO COMPLY WITH THE REQUEST MAY RESULT IN THE REJECTION OF ITS TENDER.

31.7 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY SHALL RECTIFY QUANTIFIABLE IMMATERIAL NON-CONFORMITIES RELATED TO THE TENDER PRICE.

32. ARITHMETICAL ERRORS

32.1 THE TENDER SUM AS SUBMITTED AND READ OUT DURING THE TENDER OPENING SHALL BE ABSOLUTE AND FINAL AND SHALL NOT BE THE SUBJECT OF CORRECTION, ADJUSTMENT OR AMENDMENT IN ANY WAY BY ANY PERSON OR ENTITY.

32.2 PROVIDED THAT THE TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY SHALL HANDLE ERRORS ON THE FOLLOWING BASIS:

A) ANY ERROR DETECTED IF CONSIDERED A MAJOR DEVIATION THAT AFFECTS THE SUBSTANCE OF THE TENDER, SHALL LEAD TO DISQUALIFICATION OF THE TENDER AS NON-RESPONSIVE.

B) ANY ERRORS IN THE SUBMITTED TENDER ARISING FROM A MISCALCULATION OF UNIT PRICE, QUANTITY, SUBTOTAL AND TOTAL BID PRICE SHALL BE CONSIDERED AS A MAJOR DEVIATION THAT AFFECTS THE SUBSTANCE OF THE TENDER AND SHALL LEAD TO DISQUALIFICATION OF THE TENDER AS NON-RESPONSIVE .AND

C) IF THERE IS A DISCREPANCY BETWEEN WORDS AND FIGURES, THE AMOUNT IN WORDS SHALL PREVAIL

32.3 TENDERERS SHALL BE NOTIFIED OF ANY ERROR DETECTED IN THEIR BID DURING THE NOTIFICATION OF INTENTION TO AWARD.

33. CONVERSION TO SINGLE CURRENCY

33.1 FOR EVALUATION AND COMPARISON PURPOSES, THE CURRENCY(IES) OF THE TENDER SHALL BE CONVERTED INTO A SINGLE CURRENCY AS SPECIFIED IN THE **TDS**.

34. MARGIN OF PREFERENCE AND RESERVATIONS

34.1 A MARGIN OF PREFERENCE ON LOCAL SERVICE PROVIDERS MAY BE ALLOWED IF IT IS DEEMED THAT THE SERVICES REQUIRE PARTICIPATION OF FOREIGN TENDERERS. IF SO ALLOWED, IT WILL BE INDICATED IN THE **TDS**.

34.2 WHERE IT IS INTENDED TO RESERVE THE CONTRACT TO SPECIFIC GROUPS UNDER SMALL AND MEDIUM ENTERPRISES, OR ENTERPRISE OF WOMEN, YOUTH AND /OR PERSONS LIVING WITH DISABILITY, WHO ARE APPROPRIATELY REGISTERED AS SUCH BY THE AUTHORITY TO BE SPECIFIED IN THE **TDS**, A PROCURING ENTITY SHALL ENSURE THAT THE INVITATION TO TENDER SPECIFICALLY INDICATES THAT ONLY BUSINESSES/FIRMS BELONGING TO THE SPECIFIED GROUP ARE ELIGIBLE TO TENDER AS SPECIFIED IN THE **TDS**. OTHERWISE, IF NOT SO STATED, THE INVITATION WILL BE OPEN TO ALL TENDERERS.

35. EVALUATION OF TENDERS

35.1 THE PROCURING ENTITY SHALL USE THE CRITERIA AND METHODOLOGIES LISTED IN THIS ITT AND SECTION III, EVALUATION AND QUALIFICATION CRITERIA. NO OTHER EVALUATION CRITERIA OR METHODOLOGIES SHALL BE PERMITTED. BY APPLYING THE CRITERIA AND METHODOLOGIES, THE PROCURING ENTITY SHALL DETERMINE THE BEST EVALUATED TENDER. THIS IS THE TENDER OF THE TENDERER THAT MEETS THE QUALIFICATION CRITERIA AND WHOSE TENDER HAS BEEN DETERMINED TO BE:

A) IN COMPLIANCE WITH REQUIREMENTS PROVIDED FOR UNDER THE PREVAILING STATUTORY MINIMUM WAGE RATE.

B) SUBSTANTIALLY RESPONSIVE TO THE TECHNICAL REQUIREMENTS IN THE TENDER DOCUMENT; AND

C) THE LOWEST EVALUATED PRICE OR

D) THE TENDER WITH THE LOWEST EVALUATED TOTAL COST OF OWNERSHIP.

35.2 IN EVALUATING THE TENDERS, THE PROCURING ENTITY WILL DETERMINE FOR EACH TENDER THE EVALUATED TENDER COST BY ADJUSTING THE TENDER PRICE AS FOLLOWS:

A) PRICE ADJUSTMENT DUE TO DISCOUNTS OFFERED IN ACCORDANCE WITH ITT 16.4;

B) PRICE ADJUSTMENT DUE TO QUANTIFIABLE IMMATERIAL NON-CONFORMITIES IN ACCORDANCE WITH ITT 31.3;

C) CONVERTING THE AMOUNT RESULTING FROM APPLYING (A) AND (B) ABOVE, IF RELEVANT, TO A SINGLE CURRENCY IN ACCORDANCE WITH ITT33; AND

D) ANY ADDITIONAL EVALUATION FACTORS SPECIFIED IN THE **TDS** AND SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

35.3 THE ESTIMATED EFFECT OF THE PRICE ADJUSTMENT PROVISIONS OF THE CONDITIONS OF CONTRACT, APPLIED OVER THE PERIOD OF EXECUTION OF THE CONTRACT, SHALL NOT BE CONSIDERED IN TENDER EVALUATION.

35.4 WHERE THE TENDER INVOLVES MULTIPLE CONTRACTS OR LOTS, TENDERERS ARE ALLOWED TO TENDER FOR ONE OR MORE LOTS AND THE METHODOLOGY TO DETERMINE THE LOWEST EVALUATED COST OF THE LOT (CONTRACT) AND FOR COMBINATIONS, INCLUDING ANY DISCOUNTS OFFERED IN THE FORM OF TENDER, IS SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA. FOR ONE OR MORE LOTS (CONTRACTS). EACH LOT OR CONTRACT WILL BE EVALUATED IN ACCORDANCE WITH ITT 35.1

35.5. THE METHODOLOGY TO DETERMINE THE LOWEST EVALUATED TENDERER OR TENDERERS BASED ON ONE LOT (CONTRACT) OR BASED ON A COMBINATION OF LOTS (CONTRACTS), WILL BE SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA. IN THE CASE OF MULTIPLE LOTS OR CONTRACTS, PROCURING ENTITY WILL BE WILL BE REQUIRED TO PREPARE THE ELIGIBILITY AND QUALIFICATION CRITERIA FORM FOR EACH LOT.

36. COMPARISON OF TENDERS

36.1 THE PROCURING ENTITY SHALL COMPARE THE EVALUATED COSTS OF ALL SUBSTANTIALLY RESPONSIVE TENDERS ESTABLISHED IN ACCORDANCE WITH ITT 35.2 TO DETERMINE THE TENDER THAT HAS THE LOWEST EVALUATED COST.

37. ABNORMALLY LOW TENDERS AND ABNORMALLY HIGH

ABNORMALLY LOW TENDERS

37.1 AN ABNORMALLY LOW TENDER IS ONE WHERE THE TENDER PRICE, IN COMBINATION WITH OTHER ELEMENTS OF THE TENDER, APPEARS SO LOW THAT IT RAISES MATERIAL CONCERNS AS TO THE CAPABILITY OF THE TENDERER IN REGARDS TO THE TENDERER'S ABILITY TO PERFORM THE CONTRACT FOR THE OFFERED TENDER PRICE.

37.2 IN THE EVENT OF IDENTIFICATION OF A POTENTIALLY ABNORMALLY LOW TENDER, THE PROCURING ENTITY SHALL SEEK WRITTEN CLARIFICATIONS FROM THE TENDERER, INCLUDING DETAILED PRICE ANALYSES OF ITS TENDER PRICE IN RELATION TO THE SUBJECT MATTER OF THE CONTRACT, SCOPE, PROPOSED METHODOLOGY, SCHEDULE, ALLOCATION OF RISKS AND RESPONSIBILITIES AND ANY OTHER REQUIREMENTS OF THE TENDER DOCUMENT.

37.3 AFTER EVALUATION OF THE PRICE ANALYSES, IN THE EVENT THAT THE PROCURING ENTITY DETERMINES THAT THE TENDERER HAS FAILED TO DEMONSTRATE ITS CAPABILITY TO PERFORM THE CONTRACT FOR THE OFFERED TENDER PRICE, THE PROCURING ENTITY SHALL REJECT THE TENDER.

ABNORMALLY HIGH TENDERS

37.4 AN ABNORMALLY HIGH PRICE IS ONE WHERE THE TENDER PRICE, IN COMBINATION WITH OTHER CONSTITUENT ELEMENTS OF THE TENDER, APPEARS UNREASONABLY TOO HIGH TO THE EXTENT THAT THE PROCURING ENTITY IS CONCERNED THAT IT (THE PROCURING ENTITY) MAY NOT BE GETTING VALUE FOR MONEY OR IT MAY BE PAYING TOO HIGH A PRICE FOR THE CONTRACT COMPARED WITH MARKET PRICES OR THAT GENUINE COMPETITION BETWEEN TENDERERS IS COMPROMISED.

37.5 IN CASE OF AN ABNORMALLY HIGH PRICE, THE PROCURING ENTITY SHALL MAKE A SURVEY OF THE MARKET PRICES, CHECK IF THE ESTIMATED COST OF THE CONTRACT IS CORRECT AND REVIEW THE TENDER DOCUMENTS TO CHECK IF HE SPECIFICATIONS, SCOPE OF WORK AND CONDITIONS OF CONTRACT ARE CONTRIBUTORY TO THE ABNORMALLY HIGH TENDERS. THE PROCURING ENTITY MAY ALSO SEEK WRITTEN CLARIFICATION FROM THE TENDERER ON THE REASON FOR THE HIGH TENDER PRICE. THE PROCURING ENTITY SHALL PROCEED AS FOLLOWS:

I) IF THE TENDER PRICE IS ABNORMALLY HIGH BASED ON WRONG ESTIMATED COST OF THE CONTRACT, THE PROCURING ENTITY MAY ACCEPT OR NOT ACCEPT THE TENDER DEPENDING ON THE PROCURING ENTITY'S BUDGET CONSIDERATIONS.

II) IF SPECIFICATIONS, SCOPE OF WORK AND/OR CONDITIONS OF CONTRACT ARE CONTRIBUTORY TO THE ABNORMALLY HIGH TENDER PRICES, THE PROCURING ENTITY SHALL REJECT ALL TENDERS AND MAY RETENDER FOR THE CONTRACT BASED ON REVISED ESTIMATES, SPECIFICATIONS, SCOPE OF WORK AND CONDITIONS OF CONTRACT, AS THE CASE MAYBE.

37.6 IF THE PROCURING ENTITY DETERMINES THAT THE TENDER PRICE IS ABNORMALLY TOO HIGH BECAUSE **GENUINE COMPETITION BETWEEN TENDERERS IS COMPROMISED** *(OFTEN DUE TO COLLUSION, CORRUPTION OR OTHER MANIPULATIONS),* THE PROCURING ENTITY SHALL REJECT ALL TENDERS, RETENDER AND INSTITUTE OR CAUSE COMPETENT GOVERNMENT AGENCIES TO INSTITUTE AN INVESTIGATION ON THE CAUSE OF THE COMPROMISE.

38. UNBALANCED AND/OR FRONT-LOADED TENDERS

38.1 IF IN THE PROCURING ENTITY'S OPINION, THE TENDER THAT IS EVALUATED AS THE LOWEST EVALUATED PRICE IS SERIOUSLY UNBALANCED AND/OR FRONT LOADED, THE PROCURING ENTITY MAY REQUIRE THE TENDERER TO PROVIDE WRITTEN CLARIFICATIONS. CLARIFICATIONS MAY INCLUDE DETAILED PRICE ANALYSES TO DEMONSTRATE THE CONSISTENCY OF THE TENDER PRICES WITH THE SCOPE OF WORKS, PROPOSED METHODOLOGY, SCHEDULE AND ANY OTHER REQUIREMENTS OF THE TENDER DOCUMENT.

38.2 AFTER THE EVALUATION OF THE INFORMATION AND DETAILED PRICE ANALYSES PRESENTED BY THE TENDERER, THE PROCURING ENTITY MAY AS APPROPRIATE:

A) ACCEPT THE TENDER; OR

B) REQUIRE THAT THE TOTAL AMOUNT OF THE PERFORMANCE SECURITY BE INCREASED AT THE EXPENSE OF THE TENDERER TO A LEVEL NOT EXCEEDING 10% OF THE CONTRACT PRICE; OR

C) AGREE ON A PAYMENT MODE THAT ELIMINATES THE INHERENT RISK OF THE PROCURING ENTITY PAYING TOO MUCH FOR UNDELIVERED WORKS; OR

D) REJECT THE TENDER.

39. POST-QUALIFICATION OF THE TENDERER

39.1 THE PROCURING ENTITY SHALL DETERMINE TO ITS SATISFACTION WHETHER THE TENDERER THAT IS SELECTED AS HAVING SUBMITTED THE LOWEST EVALUATED COST AND SUBSTANTIALLY RESPONSIVE TENDER IS ELIGIBLE AND MEETS THE QUALIFYING CRITERIA SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

39.2 THE DETERMINATION SHALL BE BASED UPON VERIFICATION OF THE DOCUMENTARY EVIDENCE OF THE TENDERER'S QUALIFICATIONS SUBMITTED PURSUANT TO ITT 18. THE DETERMINATION SHALL NOT TAKE INTO CONSIDERATION THE QUALIFICATIONS OF OTHER FIRMS SUCH AS THE TENDERER'S SUBSIDIARIES, PARENT ENTITIES, AFFILIATES, SUBCONTRACTORS OR ANY OTHER FIRM(S)DIFFERENT FROM THE TENDERER THAT SUBMITTED THE TENDER.

39.3 AN AFFIRMATIVE DETERMINATION SHALL BE A PREREQUISITE FOR AWARD OF THE CONTRACT TO THE TENDERER. A NEGATIVE DETERMINATION SHALL RESULT IN DISQUALIFICATION OF THE TENDER, IN WHICH EVENT THE PROCURING ENTITY SHALL PROCEED TO THE TENDERER WHO OFFERS A SUBSTANTIALLY RESPONSIVE TENDER WITH THE NEXT LOWEST EVALUATED COST TO MAKE A SIMILAR DETERMINATION OF THAT TENDERER'S QUALIFICATIONS TO PERFORM SATISFACTORILY.

40. PROCURING ENTITY'S RIGHT TO ACCEPT ANY TENDER, AND TO REJECT ANY OR ALL TENDERS

40.1 THE PROCURING ENTITY RESERVES THE RIGHT TO ACCEPT OR REJECT ANY TENDER, AND TO ANNUL THE TENDERING PROCESS AND REJECT ALL TENDERS AT ANY TIME PRIOR TO NOTIFICATION OF WARD, WITHOUT THERE BY INCURRING ANY LIABILITY TO TENDERERS. IN CASE OF TERMINATION, TENDER SECURITIES, SHALL BE PROMPTLY RETURNED TO THE TENDERERS WITHIN FOURTEEN (14) DAYS FROM THE DATE OF TERMINATION.

F. AWARD OF CONTRACT

41. AWARD CRITERIA

41.1 THE PROCURING ENTITY SHALL AWARD THE CONTRACT TO THE SUCCESSFUL TENDERER WHOSE TENDER HAS BEEN DETERMINED TO BE THE LOWEST EVALUATED TENDER.

42. NOTICE OF INTENTION TO ENTER INTO A CONTRACT

42.1 UPON AWARD OF THE CONTRACT AND PRIOR TO THE EXPIRY OF THE TENDER VALIDITY PERIOD THE PROCURING ENTITY SHALL ISSUE A **NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT/**NOTIFICATION OF A WARD TO ALL TENDERERS WHICH SHALL CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION:

A) THE NAME AND ADDRESS OF THE TENDERER SUBMITTING THE SUCCESSFUL TENDER;

B) THE CONTRACT PRICE OF THE SUCCESSFUL TENDER;

C) STATEMENT OF ALL THE REASON(S) THE TENDER OF THE UNSUCCESSFUL TENDERER TO WHOM THE LETTER IS ADDRESSED WAS UNSUCCESSFUL;

D) THE EXPIRY DATE OF THE STAND STILL PERIOD; AND

E) INSTRUCTIONS ON HOW TO REQUEST A DEBRIEFING DURING THE STAND STILL PERIOD;

43. STAND STILL PERIOD

43.1 THE CONTRACT SHALL NOT BE SIGNED EARLIER THAN THE EXPIRY OF A STANDSTILL PERIOD OF 14 DAYS TO ALLOW ANY DISSATISFIED TENDER TO LAUNCH A COMPLAINT.

43.2 THE STANDSTILL PERIOD SHALL COMMENCE WHEN THE PROCURING ENTITY HAS TRANSMITTED TO EACH TENDERER THE NOTIFICATION OF INTENTION TO ENTER IN TO A CONTRACT WITH THE SUCCESSFUL TENDERER.

44. DEBRIEFING BY THE PROCURING ENTITY

44.1 ON RECEIPT OF THE PROCURING ENTITY'S NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT REFERRED TO IN ITT 43, AN UNSUCCESSFUL TENDERER MAY MAKE A WRITTEN REQUEST TO THE PROCURING ENTITY FOR A DEBRIEFING ON SPECIFIC ISSUES OR CONCERNS REGARDING THEIR TENDER. THE PROCURING ENTITY SHALL PROVIDE THE DEBRIEFING WITH IN FIVE DAYS OF RECEIPT OF THE REQUEST.

44.2 DEBRIEFINGS OF UNSUCCESSFUL TENDERERS MAY BE DONE IN WRITING OR VERBALLY. WHERE THE DEBRIEFING IS VERBAL, IT SHOULD BE FOLLOWED UP IN WRITING. THE TENDERER SHALL BEAR ITS OWN COSTS OF ATTENDING SUCH A DEBRIEFING MEETING.

45. LETTER OF AWARD

45.1 PRIOR TO THE EXPIRY OF THE TENDER VALIDITY PERIOD AND UPON EXPIRY OF THE STANDSTILL PERIOD SPECIFIED IN ITT 44.1, , THE PROCURING ENTITY SHALL TRANSMIT THE **LETTER OF AWARD** TO THE SUCCESSFUL TENDERER TO FURNISH . THE PROCURING ENTITY WITH LETTER OF ACCEPTANCE OF THE OFFER, A DULY FILLED BENEFICIAL OWNERSHIP INFORMATION (BOI) FORM AND PERFORMANCE SECURITY (WHERE APPLICABLE)WITHIN 21 DAYS OF THE DATE OF THE LETTER.

46. SIGNING OF CONTRACT

46.1 UPON THE EXPIRY OF THE FOURTEEN DAYS OF THE NOTIFICATION OF INTENTION TO ENTER INTO CONTRACT AND UPON THE PARTIES MEETING THEIR RESPECTIVE STATUTORY REQUIREMENTS, THE PROCURING ENTITY SHALL SEND THE SUCCESSFUL TENDERER THE CONTRACT AGREEMENT.

46.2 WITHIN FOURTEEN (14) DAYS OF RECEIPT OF THE CONTRACT AGREEMENT, THE SUCCESSFUL TENDERER SHALL SIGN, DATE, AND RETURN IT TO THE PROCURING ENTITY.

46.3 THE WRITTEN CONTRACT SHALL BE ENTERED INTO WITHIN THE PERIOD SPECIFIED IN THE NOTIFICATION OF AWARD AND BEFORE EXPIRY OF THE TENDER VALIDITY PERIOD.

47. PERFORMANCE SECURITY

47.1 WITHIN TWENTY-ONE (21) DAYS OF THE RECEIPT OF THE LETTER OF AWARD FROM THE PROCURING ENTITY, THE SUCCESSFUL TENDERER, IF REQUIRED, SHALL FURNISH THE PERFORMANCE SECURITY IN ACCORDANCE WITH THE GCC 3.9, USING FOR THAT PURPOSE THE PERFORMANCE SECURITY FORM INCLUDED IN SECTION VIII, CONTRACT FORMS, OR ANOTHER FORM ACCEPTABLE TO THE PROCURING ENTITY. IF THE PERFORMANCE SECURITY FURNISHED BY THE SUCCESSFUL TENDERER IS IN THE FORM OF A BOND, IT SHALL BE ISSUED BY A BONDING OR INSURANCE COMPANY THAT HAS BEEN DETERMINED TO BE ACCEPTABLE BY THE PROCURING ENTITY. A FOREIGN INSTITUTION PROVIDING A BOND SHALL HAVE A CORRESPONDENT FINANCIAL INSTITUTION LOCATED IN KENYA, UNLESS THE PROCURING ENTITY HAS AGREED IN WRITING THAT A CORRESPONDENT FINANCIAL INSTITUTION IS NOT REQUIRED.

47.2 FAILURE OF THE SUCCESSFUL TENDERER TO SUBMIT THE ABOVE-MENTIONED PERFORMANCE SECURITY OR SIGN THE CONTRACT SHALL CONSTITUTE SUFFICIENT GROUNDS FOR THE ANNULMENT OF THE AWARD AND FORFEITURE OF THE TENDER SECURITY. IN THAT EVENT THE PROCURING ENTITY MAY AWARD THE CONTRACT TO THE TENDERER OFFERING THE NEXT BEST EVALUATED TENDER.

47.3 PERFORMANCE SECURITY SHALL BE REQUIRED FOR A CONTRACT UNLESS OTHERWISE SPECIFIED IN THE **TDS**

48. APPOINTMENT OF ADJUDICATOR

48.1 THE PROCURING ENTITY PROPOSES THE PERSON NAMED IN THE **TDS** TO BE APPOINTED AS ADJUDICATOR UNDER THE CONTRACT, AT THE HOURLY FEE SPECIFIED IN THE TDS, PLUS REIMBURSABLE EXPENSES. IF THE TENDERER DISAGREES WITH THIS PROPOSAL, THE TENDERER SHOULD SO STATE IN HIS TENDER. IF, IN THE LETTER OF ACCEPTANCE, THE PROCURING ENTITY DOES NOT AGREE ON THE APPOINTMENT OF THE ADJUDICATOR, THE PROCURING ENTITY WILL REQUEST THE APPOINTING AUTHORITY DESIGNATED IN THE SPECIAL CONDITIONS OF CONTRACT (SCC) PURSUANT TO CLAUSE 8.7.1 OF THE GENERAL CONDITIONS OF CONTRACT (GCC), TO APPOINT THE ADJUDICATOR.

49. PUBLICATION OF PROCUREMENT CONTRACT

49.1 WITHIN FOURTEEN DAYS AFTER SIGNING THE CONTRACT, THE PROCURING ENTITY SHALL PUBLICIZE THE AWARDED CONTRACT ON THE STATE TENDER PORTAL, ENTITY WEBSITE, ITS NOTICE BOARDS, ; IN MANNER AND FORMAT PRESCRIBED BY THE AUTHORITY. AT THE MINIMUM, THE NOTICE SHALL CONTAIN THE FOLLOWING INFORMATION:

A) NAME AND ADDRESS OF THE PROCURING ENTITY;
B) NAME AND REFERENCE NUMBER OF THE CONTRACT BEING AWARDED, A SUMMARY OF ITS SCOPE AND THE SELECTION METHOD USED;
C) THE NAME OF THE SUCCESSFUL TENDERER, THE FINAL TOTAL CONTRACT PRICE, THE CONTRACT DURATION.
D) DATES OF SIGNATURE, COMMENCEMENT AND COMPLETION OF CONTRACT AND
E) NAMES OF ALL TENDERERS THAT SUBMITTED TENDERS, AND THEIR TENDER PRICES AS READ OUT AT TENDER OPENING.

50. PROCUREMENT RELATED COMPLAINTS AND ADMINISTRATIVE REVIEW

50.1 THE PROCEDURES FOR MAKING A PROCUREMENT-RELATED COMPLAINT ARE AVAILABLE ON THE PPRA WEBSITE AT WWW.PPRA.GO.KE

50.2 A REQUEST FOR ADMINISTRATIVE REVIEW SHALL BE MADE IN THE FORM PROVIDED UNDER CONTRACT FORMS.

SECTION II - TENDER DATA SHEET (TDS)

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Tender Data Sheet (TDS)

	ITT Reference & TDS Detail	Filled By	Value to be Auto Populated in Tender Document
ITT Reference	**1. SCOPE OF TENDER** 1.1 THE TENDERING DOCUMENT IS FOR THE DELIVERY OF NON-CONSULTING SERVICES, AS SPECIFIED IN SECTION V, PROCURING ENTITY'S REQUIREMENTS. THE NAME, IDENTIFICATION AND NUMBER OF THIS TENDER ARE SPECIFIED IN THE **TDS**.	-	-
TDS Detail	THE NAME OF THE PROCURING ENTITY IS:	Auto Populate	ENERGY & PETROLEUM REGULATORY AUTHORITY
TDS Detail	THE REFERENCE NUMBER OF THE TENDER (ITT) IS	Auto Populate	EPRA/890/0004 /2026-27
TDS Detail	THE DESCRIPTION OF THE TENDER IS	Auto Populate	LEASE AND DEVELOPMENT OF STORAGE AND ENFORCEMENT YARDS
TDS Detail	THE NUMBER AND IDENTIFICATION OF LOTS (CONTRACTS) COMPRISING THIS	Manual Input	NOT APPLICABLE
TDS Detail	INVITATION FOR TENDERS IS	Manual Input	LAND OWNERS /APPOINTED AGENTS

ITT Reference	**2. THROUGHOUT THIS TENDERING DOCUMENT:** 2.1 THE TERMS: A) "TERM IN WRITING" MEANS COMMUNICATED IN WRITTEN FORM (E.G., E-MAIL, FAX, INCLUDING IF SPECIFIED IN THE **TDS** , DISTRIBUTED OR RECEIVED THROUGH THE ELECTRONIC- PROCUREMENT SYSTEM USED BY THE PROCURING ENTITY) WITH PROOF OF DISPATCH;	-	-
TDS Detail	**ELECTRONIC –PROCUREMENT SYSTEM** THE PROCURING ENTITY SHALL USE THE FOLLOWING ELECTRONIC-PROCUREMENT SYSTEM TO MANAGE THIS TENDERING PROCESS:	Auto Populate	https://egpkenya.go.ke/login
ITT Reference	2.2 THE SUCCESSFUL TENDERER WILL BE EXPECTED TO COMPLETE THE PERFORMANCE OF THE SERVICES BY THE INTENDED COMPLETION DATE PROVIDED IN THE **TDS**.	-	-
TDS Detail	THE INTENDED COMPLETION DATE IS	Manual Input	LEASE PERIOD IS FIFTEEN YEARS RENEWABLE EVERY FIVE YEARS

ITT Reference	2.3 USE OF ELECTRONIC PROCUREMENT SYSTEM WHERE APPLICABLE, THE PROCURING ENTITY SHALL USE AN ELECTRONIC-PROCUREMENT SYSTEM TO MANAGE THE TENDERING PROCESS AS SPECIFIED IN THE **TDS**	-	-
TDS Detail	THE PROCURING ENTITY SHALL USE THE FOLLOWING ELECTRONIC-PROCUREMENT SYSTEM TO MANAGE THIS TENDERING PROCESS:	Auto Populate	https://egpkenya.go.ke/login
ITT Reference	**3. FRAUD AND CORRUPTION** 3.3 **UNFAIR COMPETITIVE ADVANTAGE** - FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS TENDER. TO THAT END, THE PROCURING ENTITY SHALL INDICATE IN THE **TDS** AND MAKE AVAILABLE TO ALL THE FIRMS TOGETHER WITH THIS TENDER DOCUMENT ALL INFORMATION THAT WOULD IN THAT RESPECT GIVES SUCH FIRM ANY UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING FIRMS.	-	-
TDS Detail	INFORMATION THAT ANY UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING FIRMS IS AS FOLLOWS:	Manual Input	NOT APPLICABLE

ITT Reference	3.4 **UNFAIR COMPETITIVE ADVANTAGE**- FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS TENDER. THE PROCURING ENTITY SHALL INDICATE IN THE **TDS** FIRMS (IF ANY) THAT PROVIDED CONSULTING SERVICES FOR THE CONTRACT BEING TENDERED FOR. THE PROCURING ENTITY SHALL CHECK WHETHER THE OWNERS OR CONTROLLERS OF THE TENDERER ARE SAME AS THOSE THAT PROVIDED CONSULTING SERVICES. THE PROCURING ENTITY SHALL, UPON REQUEST, MAKE AVAILABLE TO ANY TENDERER INFORMATION THAT WOULD GIVE SUCH FIRM UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING FIRMS.	-	-
TDS Detail	THE FIRMS THAT PROVIDED CONSULTING SERVICES	Manual Input	NOT APPLICABLE

ITT Reference	**4. ELIGIBLE TENDERERS** 4.1 A TENDERER MAY BE A FIRM THAT IS A PRIVATE ENTITY, A STATE-OWNED ENTITY OR INSTITUTION SUBJECT TO ITT 4.6, OR ANY COMBINATION OF SUCH ENTITIES IN THE FORM OF A JOINT VENTURE (JV) UNDER AN EXISTING AGREEMENT OR WITH THE INTENT TO ENTER INTO SUCH AN AGREEMENT SUPPORTED BY A FORM OF INTENT. IN THE CASE OF A JOINT VENTURE, ALL MEMBERS SHALL BE JOINTLY AND SEVERALLY LIABLE FOR THE EXECUTION OF THE ENTIRE CONTRACT IN ACCORDANCE WITH THE CONTRACT TERMS. THE JV SHALL NOMINATE A REPRESENTATIVE WHO SHALL HAVE THE AUTHORITY TO CONDUCT ALL BUSINESS FOR AND ON BEHALF OF ANY AND ALL THE MEMBERS OF THE JV DURING THE TENDERING PROCESS AND, IN THE EVENT THE JV IS AWARDED THE CONTRACT, DURING CONTRACT EXECUTION. MEMBERS OF A JOINT VENTURE MAY NOT ALSO MAKE AN INDIVIDUAL TENDER, BE A SUB CONTRACT OR IN A SEPARATE TENDER OR BE PART OF ANOTHER JOINT VENTURE FOR THE PURPOSES OF THE SAME TENDER. THE MAXIMUM NUMBER OF JV MEMBERS TO BE ALLOWED SHALL BE SPECIFIED IN THE **TDS**.	-	-
TDS Detail	MAXIMUM NUMBER OF MEMBERS ALLOWED IN THE JOINT VENTURE (JV) SHALL BE:	Manual Input	NOT APPLICABLE

ITT Reference	**8. PRE-TENDER MEETING** 8.1 THE PROCURING ENTITY SHALL SPECIFY IN THE **TDS** IF A PRE-TENDER MEETING WILL BE HELD, WHEN AND WHERE. THE PROCURING ENTITY SHALL ALSO SPECIFY IN THE **TDS** IF A PRE-ARRANGED PRETENDER SITE VISIT WILL BE HELD AND WHEN. THE TENDERER'S DESIGNATED REPRESENTATIVE IS INVITED TO ATTEND A PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE WORKS. THE PURPOSE OF THE MEETING WILL BE TO CLARIFY ISSUES AND TO ANSWER QUESTIONS ON ANY MATTER THAT MAY BE RAISED AT THAT STAGE.	-	-
TDS Detail	A PRE-TENDER MEETING WILL **BE HELD** ON	Auto Populate	Not Applicable
TDS Detail	A PRE-TENDER MEETING WILL BE HELD AT	Auto Populate	Not Applicable
TDS Detail	(B) A PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE WORKS VISIT WILL BE HELD ON AND AT	Auto Populate	Not Applicable
ITT Reference	8.2 THE TENDERER IS REQUESTED TO SUBMIT ANY QUESTIONS IN WRITING, TO REACH THE PROCURING ENTITY NOT LATER THAN THE PERIOD SPECIFIED IN THE **TDS** BEFORE THE PRE-TENDER MEETING.	-	-
TDS Detail	THE QUESTIONS IN WRITING, TO REACH THE PROCURING ENTITY NOT LATER THAN	Auto Populate	19/11/2026 10:00:00

ITT Reference	8.4 THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ANONYMIZED (NO NAMES) MINUTES OF THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE SERVICE AT STATE TENDER PORTAL AND THE WEBSITE SPECIFIED IN THE **TDS**. ANY MODIFICATION TO THE TENDER DOCUMENTS THAT MAY BECOME NECESSARY AS A RESULT OF THE PRE-TENDER MEETING SHALL BE MADE BY THE PROCURING ENTITY EXCLUSIVELY THROUGH THE ISSUE OF AN ADDENDUM PURSUANT TO ITT10 AND NOT THROUGH THE MINUTES OF THE PRE-TENDER MEETING. NONATTENDANCE AT THE PRE-TENDER MEETING WILL NOT BE A CAUSE FOR DISQUALIFICATION OF A TENDERER.	-	-
TDS Detail	MINUTES OF THE PRE-TENDER MEETING AND THE PRE-ARRANGED PRETENDER VISIT OF THE SITE OF THE WORKS SHALL BE PUBLISHED ON THE WEBSITE	Auto Populate	https://egpkenya.go.ke/login

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ITT Reference	**9. CLARIFICATION OF TENDER DOCUMENTS** 9.1 A TENDERER REQUIRING ANY CLARIFICATION OF THE TENDER DOCUMENT SHALL CONTACT THE PROCURING ENTITY IN WRITING AT THE PROCURING ENTITY'S ADDRESS SPECIFIED IN THE **TDS** OR RAISE ITS ENQUIRIES DURING THE PRE-TENDER MEETING AND THE PRE- ARRANGED PRETENDER VISIT OF THE SITE OF THE SERVICE IF PROVIDED FOR IN ACCORDANCE WITH ITT 8.4. THE PROCURING ENTITY WILL RESPOND IN WRITING TO ANY REQUEST FOR CLARIFICATION, PROVIDED THAT SUCH REQUEST IS RECEIVED NO LATER THAN THE PERIOD SPECIFIED IN THE **TDS** PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS. THE PROCURING ENTITY SHALL FORWARD COPIES OF ITS RESPONSE TO ALL TENDERERS WHO HAVE ACQUIRED THE TENDER DOCUMENTS IN ACCORDANCE WITH ITT 6.3, INCLUDING A DESCRIPTION OF THE INQUIRY BUT WITHOUT IDENTIFYING ITS SOURCE. IF SO SPECIFIED IN THE **TDS**, THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ITS RESPONSE AT THE WEBPAGE IDENTIFIED IN THE **TDS** AND THE STATE TENDER PORTAL. SHOULD THE CLARIFICATION RESULT IN CHANGES TO THE ESSENTIAL ELEMENTS OF THE TENDER DOCUMENTS, THE PROCURING ENTITY SHALL AMEND THE TENDER DOCUMENTS APPROPRIATELY FOLLOWING THE PROCEDURE UNDER ITT 8.4.	-	-

TDS Detail	I) THE TENDERER WILL SUBMIT ANY REQUEST FOR CLARIFICATIONS IN WRITING AT THE ADDRESS _____	Auto Populate	00100
TDS Detail	TO REACH THE PROCURING ENTITY NOT LATER THAN : _____	Manual Input	AS PER TENDER NOTICE
TDS Detail	II) THE PROCURING ENTITY SHALL PUBLISH ITS RESPONSE AT THE WEBSITE : _____	Auto Populate	https://egpkenya.go.ke/login
ITT Reference	**13. DOCUMENTS COMPRISING THE TENDER** I ANY OTHER DOCUMENT REQUIRED IN THE **TDS**.	-	-
TDS Detail	THE TENDERER SHALL SUBMIT THE FOLLOWING ADDITIONAL DOCUMENTS IN ITS TENDER:	Manual Input	NOT APPLICABLE
ITT Reference	**15. ALTERNATIVE TENDERS** 15.1 UNLESS OTHERWISE INDICATED IN THE **TDS**, ALTERNATIVE TENDERS SHALL NOT BE CONSIDERED. IF ALTERNATIVES ARE PERMITTED, ONLY THE TECHNICAL ALTERNATIVES, IF ANY, OF THE BEST EVALUATED TENDER SHALL BE CONSIDERED BY THE PROCURING ENTITY.	-	-
TDS Detail	ALTERNATIVE TENDERS SHALL BE" OR "SHALL NOT BE" CONSIDERED	Manual Input	SHALL NOT BE

ITT Reference	15.2 WHEN ALTERNATIVE TIMES FOR COMPLETION ARE EXPLICITLY INVITED, A STATEMENT TO THAT EFFECT WILL BE INCLUDED IN THE **TDS** AND THE METHOD OF EVALUATING DIFFERENT TIME SCHEDULES WILL BE DESCRIBED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.	-	-
TDS Detail	ALTERNATIVE TIMES FOR COMPLETION PERMITTED.	Manual Input	NOT APPLICABLE
TDS Detail	IF PERMITTED, THE RANGE OF ACCEPTABLE COMPLETION TIME IS:	Manual Input	NOT APPLICABLE
ITT Reference	15.3 WHEN SPECIFIED IN THE TDS, TENDERERS A REEMITTED TO SUBMIT ALTERNATIVE TECHNICAL SOLUTIONS FOR SPECIFIED PARTS OF THE SERVICES, AND SUCH PARTS WILL BE IDENTIFIED IN THE **TDS**, AS WILL THE METHOD FOR THEIR EVALUATING, AND DESCRIBED IN SECTION VII, PROCURING ENTITY'S REQUIREMENTS.	-	-
TDS Detail	ALTERNATIVE TECHNICAL SOLUTIONS SHALL BE PERMITTED FOR THE FOLLOWING PARTS OF THE SERVICES:	Manual Input	NOT APPLICABLE

ITT Reference	**16. TENDER PRICES AND DISCOUNTS** 16.7 IF PROVIDED FOR IN THE **TDS**, THE RATES AND PRICES QUOTED BY THE TENDERER SHALL BE SUBJECT TO ADJUSTMENT DURING THE PERFORMANCE OF THE CONTRACT IN ACCORDANCE WITH AND THE PROVISIONS OF CLAUSE 6.6 OF THE GENERAL CONDITIONS OF CONTRACT AND / OR SPECIAL CONDITIONS OF CONTRACT. THE TENDERER SHALL SUBMIT WITH THE TENDER ALL THE INFORMATION REQUIRED UNDER THE SPECIAL CONDITIONS OF CONTRACT AND OF THE GENERAL CONDITIONS OF CONTRACT.	-	-
TDS Detail	THE PRICES QUOTED BY THE TENDERER _____ [INSERT "SHALL "OR "SHALL NOT"] BE SUBJECT TO ADJUSTMENT DURING THE PERFORMANCE OF THE CONTRACT.	Manual Input	TO BE SPECIFIED IN THE LEASE AGREEMENT
ITT Reference	**20. PERIOD OF VALIDITY OF TENDERS.** 20.1 TENDERS SHALL REMAIN VALID FOR THE TENDER VALIDITY PERIOD SPECIFIED IN THE **TDS**. THE TENDER VALIDITY PERIOD STARTS FROM THE DATE FIXED FOR THE TENDER SUBMISSION DEADLINE DATE (AS PRESCRIBED BY THE PROCURING ENTITY IN ACCORDANCE WITH ITT 24.1). A TENDER VALID FOR A SHORTER PERIOD SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE.	-	-
TDS Detail	THE TENDER VALIDITY PERIOD SHALL BE	Manual Input	AS PER THE TENDER NOTICE

ITT Reference	**21. TENDER SECURITY** 21.1 THE TENDERER SHALL FURNISH AS PART OF ITS TENDER, EITHER A TENDER-SECURING DECLARATION OR A TENDER SECURITY, AS SPECIFIED IN THE **TDS**, IN ORIGINAL FORM (PHYSICAL OR ELECTRONIC) AND, IN THE CASE OF A TENDER SECURITY, IN THE AMOUNT AND CURRENCY SPECIFIED IN THE **TDS**.	-	-
TDS Detail	A TENDER SECURITY ***[INSERT "SHALL BE" OR "SHALL NOT BE"]*** REQUIRED.	Manual Input	SHALL BE
TDS Detail	A TENDER-SECURING DECLARATION ***[INSERT "SHALL BE" OR "SHALL NOT BE"]*** REQUIRED.	Manual Input	SHALL NOT BE
TDS Detail	IF A TENDER SECURITY SHALL BE REQUIRED, THE AMOUNT AND CURRENCY OF THE TENDER SECURITY SHALL BE	Manual Input	KENYA SHILLINGS 100,000

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ITT Reference	**22. FORMAT AND SIGNING OF TENDER** 22.3 THE ORIGINAL AND ALL COPIES OF THE TENDER SHALL BE TYPED OR WRITTEN IN INDELIBLE INK AND SHALL BE SIGNED BY A PERSON OR PERSONS DULY AUTHORIZED TO SIGN ON BEHALF OF THE TENDERER. THIS AUTHORIZATION SHALL CONSIST OF A WRITTEN CONFIRMATION AS SPECIFIED IN THE **TDS** AND SHALL BE ATTACHED TO THE TENDER. THE NAME AND POSITION HELD BY EACH PERSON SIGNING THE AUTHORIZATION MUST BE TYPED OR PRINTED BELOW THE SIGNATURE. ALL PAGES OF THE TENDER WHERE ENTRIES OR AMENDMENTS HAVE BEEN MADE SHALL BE SIGNED OR INITIALED BY THE PERSON SIGNING THE TENDER.	-	-
TDS Detail	THE WRITTEN CONFIRMATION OF AUTHORIZATION TO SIGN ON BEHALF OF THE TENDERER SHALL CONSIST OF:	Manual Input	POWER OF ATTORNEY
ITT Reference	**24. DEADLINE FOR SUBMISSION OF TENDERS** 24.1 TENDERS MUST BE RECEIVED BY THE PROCURING ENTITY AT THE ADDRESS AND NO LATER THAN THE DATE AND TIME SPECIFIED IN THE **TDS**. WHEN SO SPECIFIED IN THE **TDS**, TENDERERS SHALL HAVE THE OPTION OF SUBMITTING THEIR TENDERS ELECTRONICALLY. TENDERERS SUBMITTING TENDERS ELECTRONICALLY SHALL FOLLOW THE ELECTRONIC TENDER SUBMISSION PROCEDURES SPECIFIED IN THE **TDS**.	-	-

TDS Detail	THE DEADLINE FOR TENDER SUBMISSION IS:	Auto Populate	09/12/2026 11:30:00
ITT Reference	**27. TENDER OPENING** 27.1 EXCEPT AS IN THE CASES SPECIFIED IN ITT 23 AND ITT 25.2, THE PROCURING ENTITY SHALL, AT THE TENDER OPENING, PUBLICLY OPEN AND READ OUT ALL TENDERS RECEIVED BY THE DEADLINE AT THE DATE, TIME AND PLACE SPECIFIED IN THE **TDS** IN THE PRESENCE OF TENDERERS' DESIGNATED REPRESENTATIVES AND ANYONE WHO CHOOSE TO ATTEND. ANY SPECIFIC ELECTRONIC TENDER OPENING PROCEDURES REQUIRED IF ELECTRONIC TENDERING IS PERMITTED IN ACCORDANCE WITH ITT 23.1 SHALL BE AS SPECIFIED IN THE **TDS**.	-	-
TDS Detail	THE TENDER OPENING SHALL TAKE PLACE AT:	Auto Populate	09/12/2026 11:35:00
TDS Detail	THE ELECTRONIC TENDER OPENING PROCEDURES SHALL BE:	Manual Input	AS PER ITT
ITT Reference	**33. CONVERSION TO SINGLE CURRENCY** 33.1 FOR EVALUATION AND COMPARISON PURPOSES, THE CURRENCY(IES) OF THE TENDER SHALL BE CONVERTED INTO A SINGLE CURRENCY AS SPECIFIED IN THE **TDS**.	-	-

TDS Detail	THE CURRENCY THAT SHALL BE USED FOR TENDER EVALUATION AND COMPARISON PURPOSES ONLY TO CONVERT AT THE SELLING EXCHANGE RATE ALL TENDER PRICES EXPRESSED IN VARIOUS CURRENCIES INTO A SINGLE CURRENCY IS: THE SOURCE OF EXCHANGE RATE SHALL BE: **THE CENTRAL BANK OF KENYA** (MEAN RATE) THE DATE FOR THE EXCHANGE RATE SHALL BE*:* **THE DEADLINE DATE FOR SUBMISSION OF THE TENDERS.**	Manual Input	NOT APPLICABLE
ITT Reference	**34. MARGIN OF PREFERENCE AND RESERVATIONS** 34.1 A MARGIN OF PREFERENCE ON LOCAL SERVICE PROVIDERS MAY BE ALLOWED IF IT IS DEEMED THAT THE SERVICES REQUIRE PARTICIPATION OF FOREIGN TENDERERS. IF SO ALLOWED, IT WILL BE INDICATED IN THE **TDS**.	-	-
TDS Detail	MARGIN OF PREFERENCE, THE APPLICATION METHODOLOGY SHALL BE DEFINED IN SECTION III- EVALUATION AND QUALIFICATION CRITERIA	Manual Input	NOT APPLICABLE

ITT Reference	34.2 WHERE IT IS INTENDED TO RESERVE THE CONTRACT TO SPECIFIC GROUPS UNDER SMALL AND MEDIUM ENTERPRISES, OR ENTERPRISE OF WOMEN, YOUTH AND /OR PERSONS LIVING WITH DISABILITY, WHO ARE APPROPRIATELY REGISTERED AS SUCH BY THE AUTHORITY TO BE SPECIFIED IN THE **TDS**, A PROCURING ENTITY SHALL ENSURE THAT THE INVITATION TO TENDER SPECIFICALLY INDICATES THAT ONLY BUSINESSES/FIRMS BELONGING TO THE SPECIFIED GROUP ARE ELIGIBLE TO TENDER AS SPECIFIED IN THE **TDS**. OTHERWISE, IF NOT SO STATED, THE INVITATION WILL BE OPEN TO ALL TENDERERS.	-	-
TDS Detail	THE INVITATION TO TENDER IS EXTENDED TO THE FOLLOWING GROUP THAT QUALIFY FOR RESERVATIONS	Manual Input	OPEN
ITT Reference	**35. EVALUATION OF TENDERS** D) ANY ADDITIONAL EVALUATION FACTORS SPECIFIED IN THE **TDS** AND SECTION III, EVALUATION AND QUALIFICATION CRITERIA.	-	-
TDS Detail	ADDITIONAL EVALUATION FACTORS SHALL BE:	Manual Input	NOT APPLICABLE
ITT Reference	**47. PERFORMANCE SECURITY** 47.3 PERFORMANCE SECURITY SHALL BE REQUIRED FOR A CONTRACT UNLESS OTHERWISE SPECIFIED IN THE **TDS**	-	-

TDS Detail	PERFORMANCE SECURITY SHALL BE (REQUIRED)/(NOT REQUIRED)	Manual Input	NOT APPLICABLE
TDS Detail	WHERE REQUIRED THE PERFORMANCE SECURITY SHALL BE _____% OF THE CONTRACT AMOUNT.	Manual Input	NOT APPLICABLE
ITT Reference	**48. APPOINTMENT OF ADJUDICATOR** 48.1 THE PROCURING ENTITY PROPOSES THE PERSON NAMED IN THE **TDS** TO BE APPOINTED AS ADJUDICATOR UNDER THE CONTRACT, AT THE HOURLY FEE SPECIFIED IN THE TDS, PLUS REIMBURSABLE EXPENSES. IF THE TENDERER DISAGREES WITH THIS PROPOSAL, THE TENDERER SHOULD SO STATE IN HIS TENDER. IF, IN THE LETTER OF ACCEPTANCE, THE PROCURING ENTITY DOES NOT AGREE ON THE APPOINTMENT OF THE ADJUDICATOR, THE PROCURING ENTITY WILL REQUEST THE APPOINTING AUTHORITY DESIGNATED IN THE SPECIAL CONDITIONS OF CONTRACT (SCC) PURSUANT TO CLAUSE 8.7.1 OF THE GENERAL CONDITIONS OF CONTRACT (GCC), TO APPOINT THE ADJUDICATOR.	-	-
TDS Detail	THE PERSON NAMED TO BE APPOINTED AS ADJUDICATOR IS	Manual Input	TO BE DETERMINED

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

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Evaluation and Qualification Criteria

Detail

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1. GENERAL PROVISION

1. ALL ITALICIZED TEXT IS FOR USE IN PREPARING THE EVALUATION CRITERIA AND SHALL BE DELETED FROM THE FINAL TENDER DOCUMENT TO BE ISSUED TO TENDERERS.

2. EVALUATION FACTORS NOT APPLICABLE IN THE EVALUATION OF THE SPECIFIC TENDER SHALL ALSO BE DELETED IN THE FINAL TENDER DOCUMENT TO BE ISSUED TO TENDERERS.

Evaluation Type :-

1.1 WHEREVER A TENDERER IS REQUIRED TO STATE A MONETARY AMOUNT, TENDERERS SHOULD INDICATE THE KENYA SHILLING EQUIVALENT USING THE RATE OF EXCHANGE DETERMINED AS FOLLOWS:

A) FOR CONSTRUCTION TURNOVER OR FINANCIAL DATA REQUIRED FOR EACH YEAR-EXCHANGE RATE PREVAILING ON THE LAST DAY OF THE RESPECTIVE CALENDAR YEARS (IN WHICH THE REPORT RELATES) WAS ORIGINALLY ESTABLISHED.

B) VALUE OF SINGLE CONTRACT-EXCHANGE RATE PREVAILING ON THE DATE OF THE CONTRACT SIGNATURE.

C) EXCHANGE RATES SHALL BE TAKEN FROM THE PUBLICLY AVAILABLE SOURCE IDENTIFIED IN THE ITT. ANY ERROR IN DETERMINING THE EXCHANGE RATES IN THE TENDER MAY BE CORRECTED BY THE PROCURING ENTITY.

1.2 THIS SECTION CONTAINS THE CRITERIA THAT THE PROCURING ENTITY SHALL USE TO EVALUATE TENDER AND QUALIFY TENDERERS. NO OTHER FACTORS, METHODS OR CRITERIA SHALL BE USED OTHER THAN SPECIFIED IN THIS TENDER DOCUMENT. THE TENDERER SHALL PROVIDE ALL THE INFORMATION REQUESTED IN THE FORMS INCLUDED IN SECTION IV, TENDERING FORMS. THE PROCURING ENTITY SHOULD USE **THE STANDARD TENDER EVALUATION REPORT FOR GOODS AND WORKS** FOR EVALUATING TENDERS.

1.3 FOR AVOIDANCE OF DOUBT, A TENDERER **SHALL NOT** BE DISQUALIFIED FOR FAILURE TO ATTEND A SITE VISIT

Evaluation Type : -

2. EVALUATION AND CONTRACT AWARD CRITERIA

Evaluation Type :-

2.1 SUCCESSFUL TENDERER

THE PROCURING ENTITY SHALL USE THE CRITERIA AND METHODOLOGIES LISTED IN THIS SECTION TO EVALUATE TENDERS AND ARRIVE AT THE LOWEST EVALUATED TENDER. THE TENDER THAT (I) MEETS THE QUALIFICATION CRITERIA, (II)HAS BEEN DETERMINED TO BE SUBSTANTIALLY RESPONSIVE TO THE TENDER DOCUMENTS, AND(III) IS DETERMINED TO HAVE THE LOWEST EVALUATED TENDER PRICE SHALL BE SELECTED FOR AWARD OF CONTRACT.

Evaluation Type : -

2.2 EVALUATION OF TENDERS

2.2.1 PRELIMINARY EXAMINATION FOR DETERMINATION OF RESPONSIVENESS

THE PROCURING ENTITY WILL START BY EXAMINING ALL TENDERS TO ENSURE THEY MEET IN ALL ASPECTS THE ELIGIBILITY CRITERIA AND OTHER MANDATORY REQUIREMENTS IN THE ITT, AND THAT THE TENDER IS COMPLETE IN ALL ASPECTS IN MEETING THE REQUIREMENTS PROVIDED FOR IN THE PRELIMINARY EVALUATION CRITERIA OUTLINED BELOW. TENDERS THAT DO NOT PASS THE PRELIMINARY EXAMINATION WILL BE CONSIDERED NON-RESPONSIVE AND WILL NOT BE CONSIDERED FURTHER.

MANDATORY REQUIREMENTS

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NO.	DESCRIPTION
1	COPY OF CERTIFICATE OF REGISTRATION/INCORPORATION.
2	A COPY OF CURRENT/VALID TAX COMPLIANCE CERTIFICATE ISSUED BY THE KENYA REVENUE AUTHORITY.
3	COPY OF CR-12 FROM THE REGISTRAR OF COMPANIES (FOR LIMITED COMPANIES) NOT OLDER THAN SIX (6) MONTHS. FOR SOLE PROPRIETORSHIPS AND PARTNERSHIP, ATTACH IDENTIFICATION CARDS (IDS) OF THE OWNERS/PARTNERS
4	DULY **FILLED FORM SD1 SELF DECLARATION** CONFIRMING THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015
5	DULY **FILLED FORM SD2 SELF DECLARATION** CONFIRMING THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE
6	DULY DATED AND STAMPED POWER OF ATTORNEY WITNESSED BY A COMMISSIONER OF OATH & SIGNED BY THE LAND OWNER IF LAND IS NOT OWNED BY BIDDING FIRM. A DECLARATION OF OWNERSHIP IF LAND IS OWNED BY BIDDING FIRM.
7	TENDER SECURITY SHALL BE ATTACHED (ORIGINAL TO BE DROPPED IN THE TENDER BOX) AMOUNTING TO KENYA SHILLINGS ONE HUNDRED THOUSAND ONLY (KSHS.100,000.00) IN FORM OF A BANK GUARANTEE DRAWN BY A BANK LICENSED AND OPERATING IN KENYA OR A GUARANTEE FROM AN INSURANCE COMPANY REGISTERED WITH THE INSURANCE REGULATORY AUTHORITY (IRA) AND LISTED BY THE PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA). THE TENDER SECURITY SHOULD BE VALID FOR A PERIOD OF 30 DAYS BEYOND THE TENDER VALIDITY PERIOD, I.E. 240 DAYS FROM THE DATE OF TENDER OPENING.

Evaluation Type : -

2.2.2 EVALUATION OF TECHNICAL ASPECTS OF THE TENDER

THE PROCURING ENTITY SHALL EVALUATE THE TECHNICAL ASPECTS OF THE TENDER TO DETERMINE COMPLIANCE WITH THE PROCURING ENTITY'S REQUIREMENTS UNDER SECTION V 'ACTIVITY SCHEDULE' AND WHETHER THE TENDERS ARE SUBSTANTIALLY RESPONSIVE TO THE TECHNICAL SPECIFICATIONS AND OTHER REQUIREMENTS.
TENDERS THAT DO NOT PASS THE TECHNICAL EXAMINATION WILL BE DEEMED TO BE NON-RESPONSIVE AND WILL NOT BE CONSIDERED FURTHER.

TECHNICAL REQUIREMENTS

TABLE 1

		SPECIFICATIONS
1.	TITLE REQUIREMENTS	• THE LAND COVERAGE SHOULD MEASURE BETWEEN 1 TO 1.5 ACRES. • THE LAND SHOULD BE LOCATED WITHIN THE METROPOLITAN AREA, EASILY ACCESSIBLE FROM THE MAJOR KENYAN HIGHWAYS PREFERABLY MOMBASA ROAD, WAIYAKI WAY AND THIKA ROAD (FOR NAIROBI), BUSIA KISUMU ROAD, NAIROBI KISUMU ROAD AND KAKAMEGA KISUMU ROAD (FOR KISUMU) AND MUST BE A SAFE DISTANCE AWAY FROM RESIDENTIAL AREAS AND PUBLIC BUILDINGS. • THE LAND MUST HAVE VALID OWNERSHIP DOCUMENTS INCLUDING DULY REGISTERED TITLE DEED. IN THE CASE OF LONG-TERM LAND LEASE, A COPY OF DULY EXECUTED LEASE AGREEMENT IN THE NAME OF THE APPLICANT COMPANY; • THE LAND WITHIN THE SUBJECT LOCATION SHOULD BE HELD UNDER LEASEHOLD TENURE OF NOT LESS THAN 40 YEARS.
1.	CERTIFICATE OF INCOPORATION AND CR 12 (IF COMPANY OWNED), COPY OF ID (IF OWNED BY AN INDIVIDUAL), KRA PIN CERTIFICATE AND VALID TAX COMPLIANT CERTIFICATE	THE LAND OWNER(S) MUST HAVE VALID IDENTIFICATION DOCUMENTS (NATIONAL IDENTIFICATION/PASSPORTS AND KENYA REVENUE AUTHORITY (KRA) CERTIFICATES).
1.	ATTACH ENVIRONMENTAL IMPACT ASSESSMENT (EIA) REPORT	VALID EIA LICENSE FROM NEMA SPECIFICALLY AUTHORIZING DEVELOPMENT OF PETROLEUM/GAS STORAGE DEPOT.
1.	COMPLIANCE CERTIFICATE FROM COUNTY GOVERNMENT	CONFIRMATION OF UPDATED LAND RATES PAYMENT FROM COUNTY GOVERNMENT (COMPLIANCE CERTIFICATE FROM COUNTY GOVERNMENT)
1.	APPROVAL FROM COUNTY GOVERNMENT	THE LAND SHOULD BE COMPLIANT WITH THE COUNTY GOVERNMENT ZONING AND LAND USE REGULATIONS.
1.	SURVEY MAP	BE WELL SERVED WITH ADEQUATE ROADS FOR EASE OF ACCESS.

TABLE 2

	SPECIFICATIONS OF THE YARD
1.	A PERIMETER WALL OF A MINIMUM OF THREE (3) METERS HIGH WITH ELECTRICAL FENCE CAPING.
1.	LEVEL GROUND WITH MURRAM/GRAVEL WITH CABRO COVER.
1.	UNDERGROUND PETROLEUM TANK WITH A CAPACITY OF HOLDING 150,000 LITRES OF DIESEL, 50,000 LITRES OF PETROL AND 50,000 LITRES OF IK. THIS TANK SHOULD HAVE THREE SEPARATE PUMPS.
1.	ADEQUATE, FULLY FITTED GENDER SENSITIVE WASHROOMS.
1.	THE YARD SHOULD HAVE AT LEAST THREE (3) ROOMS/QUARTERS FOR ACCOMMODATION OF GUARDING PERSONNEL.
1.	IT SHOULD HAVE AT LEAST EIGHT (8) CONTAINERS WITH MEASUREMENT OF FORTY-FOOT FOR STORAGE OF PETROLEUM AND GAS EQUIPMENT/PRODUCTS. THE CONTAINERS MUST BE WELL VENTILATED WITH FIRE FIGHTING SYSTEMS.
1.	THE LAND SHOULD HAVE SEPARATE ENTRY AND EXIT GATES WITH SENTRY BOXES.
1.	A CONNECTION TO THE MAIN ELECTRICITY SUPPLY.
1.	FITTED WITH ADEQUATE SOLAR LIGHTING.
1.	A CONNECTION TO MAIN WATER AND SEWER SYSTEMS.
1.	ADEQUATE WATER RESERVOIR/STORAGE OF A MINIMUM OF 10,000 CUBIC METER WATER STORAGE.
1.	FITTED WITH SECURITY SURVEILLANCE SYSTEMS (CCTVS).
1.	A RAISED WATCH TOWER.

Evaluation Type : -

2.2.3 FINANCIAL EVALUATION

UPON COMPLETION OF THE TECHNICAL EVALUATION, THE PROCURING ENTITY SHALL, IN CONSISTENT WITH THE PROVISIONS SET OUT UNDER ITT 35 CONDUCT THE FINANCIAL EVALUATION AND COMPARISON TO DETERMINE THE EVALUATED PRICE OF EACH TENDER, AS OUTLINED BELOW.

THE EVALUATED PRICE FOR EACH BID SHALL BE DETERMINED BY TAKING INTO CONSIDERATION:

(A) THE BID PRICE IN THE TENDER FORM;

(B) ANY MINOR DEVIATION FROM THE REQUIREMENTS ACCEPTED BY A PROCURING ENTITY; AND

(C) ANY MARGIN OF PREFERENCE INDICATED IN THE TENDER DOCUMENT.

Evaluation Type : -

2.2.4 EVALUATION CRITERIA (OTHER FACTORS) (ITT 33.6)

THE PROCURING ENTITY'S EVALUATION CRITERIA MAY TAKE INTO ACCOUNT, IN ADDITION TO THE TENDER PRICE QUOTED IN ACCORDANCE WITH ITT 35.2, ONE OR MORE OF THE FOLLOWING FACTORS AS SPECIFIED IN ITT USING THE FOLLOWING CRITERIA AND METHODOLOGIES:

PRICE EVALUATION: IN ADDITION TO THE CRITERIA LISTED IN ITT 35.2 (A)–(C) THE FOLLOWING CRITERIA SHALL APPLY:

I) **ALTERNATIVE COMPLETION TIMES**, IF PERMITTED UNDER ITT 15.2, WILL BE EVALUATED AS FOLLOWS:.....

II) **ALTERNATIVE TECHNICAL SOLUTIONS** FOR SPECIFIED PARTS OF THE WORKS, IF PERMITTED UNDER ITT 15.3, WILL BE EVALUATED AS FOLLOWS.....

OTHER CRITERIA; IF PERMITTED UNDER ITT 35.2 (D): .....

ALTERNATIVE TENDERS (ITT 15.1)

AN ALTERNATIVE IF PERMITTED UNDER ITT 13.1, WILL BE EVALUATED AS FOLLOWS:

THE PROCURING ENTITY SHALL CONSIDER TENDERS OFFERED FOR ALTERNATIVES AS SPECIFIED IN PART 2- PROCURING ENTITY'S REQUIREMENTS. ONLY THE TECHNICAL ALTERNATIVES, IF ANY, OF THE TENDERER WITH THE BEST EVALUATED TENDER CONFORMING TO THE BASIC TECHNICAL REQUIREMENTS SHALL BE CONSIDERED BY THE PROCURING ENTITY.

Evaluation Type : -

2.3 MULTIPLE CONTRACTS

MULTIPLE CONTRACTS WILL BE PERMITTED IN ACCORDANCE WITH ITT 35.4. TENDERERS ARE EVALUATED ON BASIS OF LOTS AND THE LOWEST EVALUATED TENDERER IDENTIFIED FOR EACH LOT. THE PROCURING ENTITY WILL SELECT ONE OPTION OF THE TWO OPTIONS LISTED BELOW FOR AWARD OF CONTRACTS.

OPTION 1

I) IF A TENDERER WINS ONLY ONE LOT, THE TENDERER WILL BE AWARDED A CONTRACT FOR THAT LOT, PROVIDED THE TENDERER MEETS THE ELIGIBILITY AND QUALIFICATION CRITERIA FOR THAT LOT.

IF A TENDERER WINS MORE THAN ONE LOT, THE TENDER WILL BE AWARDED CONTRACTS FOR ALL WON LOTS, PROVIDED THE TENDERER MEETS THE AGGREGATE ELIGIBILITY AND QUALIFICATION CRITERIA FOR ALL THE WON LOTS. A TENDERER WILL BE AWARDED THE COMBINATION OF LOTS FOR WHICH THE TENDERER QUALIFIES AND THE OTHER LOTS WILL BE CONSIDERED FOR AWARD TO SECOND LOWEST TENDERERS.

OPTION 2

2) THE PROCURING ENTITY WILL CONSIDER ALL POSSIBLE COMBINATIONS OF WON LOTS [CONTRACT(S)] AND DETERMINE THE COMBINATIONS WITH THE LOWEST TOTAL EVALUATED PRICE. TENDERS WILL THEN BE AWARDED TO THE TENDERER(S) OR TENDERERS IN THE COMBINATIONS PROVIDED THE TENDERER MEETS THE AGGREGATE ELIGIBILITY AND QUALIFICATION CRITERIA FOR ALL THE WON LOTS.

THE PROCURING ENTITY SHALL FIRST AWARD THE LOT OR COMBINATION OF LOTS THAT PROVIDE THE BEST ECONOMIC ADVANTAGE TO THE PROCURING ENTITY AND PROCEED SYSTEMATICALLY TO AWARD THE LOT OR COMBINATION OF THE REMAINING LOTS.

Evaluation Type : -

3. MARGIN OF PREFERENCE

Evaluation Type :-

APPLY MARGIN OF PREFERENCE, IF SO ALLOWED TO ALL EVALUATED AND ACCEPTED TENDER AS FOLLOWS.

IF THE TDS SO SPECIFIES, THE PROCURING ENTITY WILL GRANT A MARGIN OF PREFERENCE OF FIFTEEN PERCENT (15%) TO BE LOADED ON EVALUATED PRICES OF FOREIGN TENDERERS, WHERE THE PERCENTAGE OF SHAREHOLDING OF KENYAN CITIZENS IS LESS THAN FIFTY-ONE PERCENT (51%).

3.1 CONTRACTORS APPLYING FOR SUCH PREFERENCE SHALL BE ASKED TO PROVIDE, AS PART OF THE DATA FOR QUALIFICATION, SUCH INFORMATION, INCLUDING DETAILS OF OWNERSHIP, AS SHALL BE REQUIRED TO DETERMINE WHETHER, ACCORDING TO THE CLASSIFICATION ESTABLISHED BY THE PROCURING ENTITY, A PARTICULAR CONTRACTOR OR GROUP OF CONTRACTOR'S QUALIFIES FOR A MARGIN OF PREFERENCE.

3.2 AFTER TENDERS HAVE BEEN RECEIVED AND REVIEWED BY THE PROCURING ENTITY, RESPONSIVE TENDERS SHALL BE ASSESSED TO ASCERTAIN THEIR PERCENTAGE OF SHAREHOLDING OF KENYAN CITIZENS. RESPONSIVE TENDERS SHALL BE CLASSIFIED INTO THE FOLLOWING GROUPS:

I) GROUP A: TENDERS OFFERED BY KENYAN CONTRACTORS AND OTHER TENDERERS WHERE KENYAN CITIZENS HOLD SHARES OF OVER FIFTY ONE PERCENT (51%).

II) GROUP B: TENDERS OFFERED BY FOREIGN CONTRACTORS AND OTHER TENDERERS WHERE KENYAN CITIZENS HOLD SHARES OF LESS THAN FIFTY ONE PERCENT (51%).

3.3 ALL EVALUATED TENDERS IN EACH GROUP SHALL, AS A FIRST EVALUATION STEP, BE COMPARED TO DETERMINE THE LOWEST TENDER, AND THE LOWEST EVALUATED TENDER IN EACH GROUP SHALL BE FURTHER COMPARED WITH EACH OTHER. IF, AS A RESULT OF THIS COMPARISON, A TENDER FROM GROUP A IS THE LOWEST, IT SHALL BE SELECTED FOR THE AWARD. IF A TENDER FROM GROUP B IS THE LOWEST, AN AMOUNT EQUAL TO THE PERCENTAGE INDICATED IN ITEM 3.1 OF THE RESPECTIVE TENDER PRICE, INCLUDING UNCONDITIONAL DISCOUNTS AND EXCLUDING PROVISIONAL SUMS AND THE COST OF DAY WORKS, IF ANY, SHALL BE ADDED TO THE EVALUATED PRICE OFFERED IN EACH ENDER FROM GROUP B. ALL TENDERS SHALL THEN BE COMPARED USING NEW PRICES WITH ADDED PRICES TO GROUP BAND THE LOWEST EVALUATED TENDER FROM GROUP A. IF THE TENDER FROM GROUP A IS STILL THE LOWEST TENDER, IT SHALL BE SELECTED FOR AWARD. IF NOT, THE LOWEST EVALUATED TENDER FROM GROUP B BASED ON THE FIRST EVALUATION PRICE SHALL BE SELECTED.

Evaluation Type : -

4. POST QUALIFICATION AND CONTRACT AWARD (ITT 39), MORE SPECIFICALLY,

Evaluation Type :-

A) IN CASE THE TENDER **WAS SUBJECT TO POST-QUALIFICATION**, THE CONTRACT SHALL BE AWARDED TO THE LOWEST EVALUATED TENDERER, SUBJECT TO CONFIRMATION OF PRE-QUALIFICATION DATA, IF SO REQUIRED.

B) IN CASE THE TENDER **WAS NOT SUBJECT TO POST-QUALIFICATION**, THE TENDER THAT HAS BEEN DETERMINED TO BE THE LOWEST EVALUATED TENDERER SHALL BE CONSIDERED FOR CONTRACT AWARD, SUBJECT TO MEETING EACH OF THE FOLLOWING CONDITIONS.

I) THE TENDERER SHALL DEMONSTRATE THAT IT HAS ACCESS TO, OR HAS AVAILABLE, LIQUID ASSETS, UNENCUMBERED REAL ASSETS, LINES OF CREDIT, AND OTHER FINANCIAL MEANS (INDEPENDENT OF ANY CONTRACTUAL ADVANCE PAYMENT) SUFFICIENT TO MEET THE CONSTRUCTION CASH FLOW OF KENYA SHILLINGS _____.

Evaluation Type : -

II) MINIMUM AVERAGE ANNUAL CONSTRUCTION TURNOVER OF KENYA SHILLINGS _____ , EQUIVALENT CALCULATED AS TOTAL CERTIFIED PAYMENTS RECEIVED FOR CONTRACTS IN PROGRESS AND/OR COMPLETED WITHIN THE LAST _____ YEARS.

Evaluation Type : -

III) AT LEAST _____ OF CONTRACT(S) OF A SIMILAR NATURE EXECUTED WITHIN KENYA, OR THE EAST AFRICAN COMMUNITY OR ABROAD, THAT HAVE BEEN SATISFACTORILY AND SUBSTANTIALLY COMPLETED AS A PRIME CONTRACTOR, OR JOINT VENTURE MEMBER OR SUB-CONTRACTOR EACH OF MINIMUM VALUE KENYA SHILLINGS EQUIVALENT _____

Evaluation Type : -

IV) CONTRACTOR'S REPRESENTATIVE AND KEY PERSONNEL, WHICH ARE SPECIFIED AS _____

Evaluation Type : -

V) CONTRACTORS KEY EQUIPMENT LISTED ON THE TABLE “CONTRACTOR'S EQUIPMENT” BELOW AND MORE SPECIFICALLY LISTED AS [SPECIFY REQUIREMENTS FOR EACH LOT AS APPLICABLE]
_____

Evaluation Type : -

VI) OTHER CONDITIONS DEPENDING ON THEIR SERIOUSNESS:

Evaluation Type : -

A) HISTORY OF NON-PERFORMING CONTRACTS:

TENDERER AND EACH MEMBER OF JV IN CASE THE TENDERER IS A JV, SHALL DEMONSTRATE THAT NON- PERFORMANCE OF A CONTRACT DID NOT OCCUR BECAUSE OF THE DEFAULT OF THE TENDERER, OR THE MEMBER OF A JV IN THE LAST _____ . THE REQUIRED INFORMATION SHALL BE FURNISHED IN THE APPROPRIATE FORM.

Evaluation Type : -

B) PENDING LITIGATION

FINANCIAL POSITION AND PROSPECTIVE LONG-TERM PROFITABILITY OF THE SINGLE TENDERER, AND IN THE CASE THE TENDERER IS A JV, OF EACH MEMBER OF THE JV, SHALL REMAIN SOUND ACCORDING TO CRITERIA ESTABLISHED WITH RESPECT TO FINANCIAL CAPABILITY UNDER PARAGRAPH (I) ABOVE IF ALL PENDING LITIGATION WILL BE RESOLVED AGAINST THE TENDERER. TENDERER SHALL PROVIDE INFORMATION ON PENDING LITIGATIONS IN THE APPROPRIATE FORM.

Evaluation Type : -

C) LITIGATION HISTORY

THERE SHALL BE NO CONSISTENT HISTORY OF COURT/ARBITRAL AWARD DECISIONS AGAINST THE TENDERER, IN THE LAST _____. ALL PARTIES TO THE CONTRACT SHALL FURNISH THE INFORMATION IN THE APPROPRIATE FORM ABOUT ANY LITIGATION OR ARBITRATION RESULTING FROM CONTRACTS COMPLETED OR ONGOING UNDER ITS EXECUTION OVER THE YEAR'S SPECIFIED. A CONSISTENT HISTORY OF AWARDS AGAINST THE TENDERER OR ANY MEMBER OF A JV MAY RESULT IN REJECTION OF THE TENDER.

Evaluation Type : -

1. QUALIFICATION FORM SUMMARY

1	2	3	*4*	*5*
ITEM NO.	QUALIFICATION SUBJECT	QUALIFICATION REQUIREMENT	*DOCUMENT TO BE COMPLETED BY TENDERER*	*FOR PROCURING ENTITY'S USE (QUALIFICATION MET OR NOT MET)*

1	NATIONALITY	NATIONALITY IN ACCORDANCE WITH ITT 3.6	TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM, WITH ATTACHMENTS	
2	TAX OBLIGATIONS FOR KENYAN TENDERERS	HAS PRODUCED A CURRENT TAX CLEARANCE CERTIFICATE OR TAX EXEMPTION CERTIFICATE ISSUED BY KENYA REVENUE AUTHORITY IN ACCORDANCE WITH ITT 3.14.	ATTACHMENT	
3	CONFLICT OF INTEREST	NO CONFLICTS OF INTEREST IN ACCORDANCE WITH ITT 3.3	FORM OF TENDER	
4	PPRA ELIGIBILITY	NOT HAVING BEEN DECLARED INELIGIBLE BY THE PPRA AS DESCRIBED IN ITT 3.7	FORM OF TENDER	
5	STATE- OWNED ENTERPRISE	MEETS CONDITIONS OF ITT 3.8	TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM, WITH ATTACHMENTS	
6	GOODS, EQUIPMENT AND SERVICES TO BE SUPPLIED UNDER THE CONTRACT	TO HAVE THEIR ORIGIN IN ANY COUNTRY THAT IS NOT DETERMINED INELIGIBLE UNDER ITT 4.1	TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM, WITH ATTACHMENTS	
7	HISTORY OF NON-PERFORMING CONTRACTS	NON-PERFORMANCE OF A CONTRACT DID NOT OCCUR AS A RESULT OF CONTRACTOR DEFAULT SINCE 1ST JANUARY [.....*]*.	FORM CON-2	
8	SUSPENSION BASED ON EXECUTION OF TENDER /PROPOSAL SECURING DECLARATION BY THE PROCURING ENTITY	NOT UNDER SUSPENSION BASED ON-EXECUTION OF A TENDER/PROPOSAL SECURING DECLARATION PURSUANT TO ITT 19.9	FORM OF TENDER	
9	PENDING LITIGATION	TENDER'S FINANCIAL POSITION AND PROSPECTIVE LONG-TERM PROFITABILITY STILL SOUND ACCORDING TO CRITERIA ESTABLISHED IN 3.1 AND ASSUMING THAT ALL PENDING LITIGATION WILL NOT BE RESOLVED AGAINST THE TENDERER.	FORM CON – 2	
10	LITIGATION HISTORY	NO CONSISTENT HISTORY OF COURT/ARBITRAL AWARD DECISIONS AGAINST THE TENDERER SINCE 1ST JANUARY *[INSERT YEAR]*.	FORM CON – 2	

1 1	FINANCIAL CAPABILITIES	(I) THE TENDERER SHALL DEMONSTRATE THAT IT HAS ACCESS TO, OR HAS AVAILABLE, LIQUID ASSETS, UNENCUMBERED REAL ASSETS, LINES OF CREDIT, AND OTHER FINANCIAL MEANS (INDEPENDENT OF ANY CONTRACTUAL ADVANCE PAYMENT) SUFFICIENT TO MEET THE CONSTRUCTION CASH FLOW REQUIREMENTS ESTIMATED AS KENYA SHILLINGS *[INSERT AMOUNT]* EQUIVALENT FOR THE SUBJECT CONTRACT(S) NET OF THE TENDERER'S OTHER COMMITMENTS. (II) THE TENDERERS SHALL ALSO DEMONSTRATE, TO THE SATISFACTION OF THE PROCURING ENTITY, THAT IT HAS ADEQUATE SOURCES OF FINANCE TO MEET THE CASH FLOW REQUIREMENTS ON WORKS CURRENTLY IN PROGRESS AND FOR FUTURE CONTRACT COMMITMENTS. (III) THE AUDITED BALANCE SHEETS OR, IF NOT REQUIRED BY THE LAWS OF THE TENDERER'S COUNTRY, OTHER FINANCIAL STATEMENTS ACCEPTABLE TO THE PROCURING ENTITY, FOR THE LAST *[INSERT NUMBER OF YEARS]* YEARS SHALL BE SUBMITTED AND MUST DEMONSTRATE THE CURRENT SOUNDNESS OF THE TENDERER'S FINANCIAL POSITION AND INDICATE ITS PROSPECTIVE LONG-TERM PROFITABILITY.	FORM FIN – 3.1, WITH ATTACHMENTS	

Evaluation Type :-

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MANDATORY EVALUATION REQUIREMENTS

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Mandatory Evaluation Requirement

Evaluation Requirement	Is Document Required from Supplier ?
SELF - DECLARATION FORM - SD 1&2	Yes
COPY OF CERTIFICATE OF REGISTRATION /INCORPORATION OF THE BIDDING FIRM.	Yes
A COPY OF CURRENT/VALID TAX COMPLIANCE CERTIFICATE ISSUED BY THE KENYA REVENUE AUTHORITY OF THE BIDDING FIRM.	Yes
COPY OF CR-12/13 FROM THE REGISTRAR OF COMPANIES OF THE BIDDING FIRM (FOR LIMITED COMPANIES) NOT OLDER THAN SIX (6) MONTHS.	Yes
DULY DATED AND STAMPED POWER OF ATTORNEY WITNESSED BY A COMMISSIONER OF OATH AND SIGNED BY THE LAND OWNER IF LAND IS NOT OWNED BY BIDDING FIRM	Yes
TENDER SECURITY OF KSHS.100,000.00 IN FORM OF A BANK GUARANTEE FROM PPRA APPROVED FINANCIAL INSTITUTION VALID FOR 240 DAYS FROM DATE OF OPENING (ORIGINAL TO BE DROPPED IN THE TENDER BOX	Yes

SECTION IV-TENDERING FORMS

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TENDERERS DECLARATION : FORM OF TENDER

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

Tenderer's Declaration	supplier
A) NO RESERVATIONS: WE HAVE EXAMINED AND HAVE NO RESERVATIONS TO THE TENDERING DOCUMENT INCLUDING ADDENDA ISSUED IN ACCORDANCE WITH INSTRUCTIONS TO TENDERERS (ITT 10));	
B) ELIGIBILITY: WE MEET THE ELIGIBILITY REQUIREMENTS AND HAVE NO CONFLICT OF INTEREST IN ACCORDANCE WITH ITT 4;	
C) TENDER/PROPOSAL-SECURING DECLARATION: WE HAVE NOT BEEN SUSPENDED NOR DECLARED INELIGIBLE BY THE PROCURING ENTITY BASED ON EXECUTION OF A TENDER-SECURING DECLARATION OR PROPOSAL-SECURING DECLARATION IN KENYA IN ACCORDANCE WITH ITT 21	
D) CONFORMITY: WE OFFER TO PROVIDE THE NON-CONSULTING SERVICES IN CONFORMITY WITH THE TENDERING DOCUMENT AND IN ACCORDANCE WITH THE ACTIVITY SCHEDULE SPECIFIED IN SECTION V;	

E) TENDER VALIDITY PERIOD: OUR TENDER SHALL BE VALID FOR THE PERIOD SPECIFIED IN TDS 19.1 (AS AMENDED IF APPLICABLE) FROM THE DATE FIXED FOR THE TENDER SUBMISSION DEADLINE (SPECIFIED IN TDS 23.1 (AS AMENDED IF APPLICABLE), AND IT SHALL REMAIN BINDING UPON US AND MAY BE ACCEPTED AT ANY TIME BEFORE THE EXPIRATION OF THAT PERIOD;	
F) PERFORMANCE SECURITY: IF OUR TENDER IS ACCEPTED, WE COMMIT TO OBTAIN A PERFORMANCE SECURITY IN ACCORDANCE WITH THE TENDER DOCUMENT;	
G) ONE TENDER PER TENDERER: WE ARE NOT SUBMITTING ANY OTHER TENDER(S) AS AN INDIVIDUAL TENDERER, AND WE ARE NOT PARTICIPATING IN ANY OTHER TENDER(S) AS A JOINT VENTURE MEMBER OR AS A SUBCONTRACTOR, AND MEET THE REQUIREMENTS OF ITT4.3, OTHER THAN ALTERNATIVE TENDERS SUBMITTED IN ACCORDANCE WITH ITT14;	

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H) SUSPENSION AND DEBARMENT: WE, ALONG WITH ANY OF OUR SUBCONTRACTORS, SUPPLIERS, CONSULTANTS, MANUFACTURERS, OR SERVICE PROVIDERS FOR ANY PART OF THE CONTRACT, ARE NOT SUBJECT TO AND NOT CONTROLLED BY ANY ENTITY OR INDIVIDUAL THAT IS SUBJECT TO, A TEMPORARY SUSPENSION BY THE PROCURING ENTITY OR A DEBARMENT IMPOSED BY THE PUBLIC PROCUREMENT REGULATORY AUTHORITY BOARD. FURTHER, WE ARE NOT INELIGIBLE UNDER THE KENYA LAWS OR OFFICIAL REGULATIONS OR PURSUANT TO A DECISION OF INTERNATIONAL ORGANIZATIONS TO WHICH KENYA IS A MEMBER;	
I) BINDING CONTRACT: WE UNDERSTAND THAT THIS TENDER, TOGETHER WITH YOUR WRITTEN ACCEPTANCE THEREOF INCLUDED IN YOUR LETTER OF AWARD, SHALL NOT CONSTITUTE A BINDING CONTRACT BETWEEN US, UNTIL A FORMAL CONTRACT IS PREPARED AND EXECUTED;	
J) PROCURING ENTITY NOT BOUND TO ACCEPT: WE UNDERSTAND THAT YOU ARE NOT BOUND TO ACCEPT THE LOWEST EVALUATED COST TENDER, THE BEST EVALUATED TENDER OR ANY OTHER TENDER THAT YOU MAY RECEIVE;	

K) FRAUD AND CORRUPTION: WE HEREBY CERTIFY THAT WE HAVE TAKEN STEPS TO ENSURE THAT NO PERSON ACTING FOR US OR ON OUR BEHALF ENGAGES IN ANY TYPE OF FRAUD AND CORRUPTION. FURTHER, WE CONFIRM THAT WE HAVE READ AND UNDERSTOOD THE FULL CONTENT AND SCOPE OF FRAUD AND CORRUPTION AS INFORMED IN “APPENDIX 1- FRAUD AND CORRUPTION”;	
L) CODE OF ETHICAL CONDUCT: WE HAVE READ AND UNDERSTOOD THE CONTENTS OF THE CODE OF ETHICS FOR PERSONS PARTICIPATING IN PUBLIC PROCUREMENT AND ASSET DISPOSAL AND MY RESPONSIBILITIES UNDER THE CODE AND WE COMMIT TO ABIDE BY THE PROVISIONS OF THE CODE OF ETHICS COPY AVAILABLE FROM WWW.PPRA.GO.KE DURING THE PROCUREMENT PROCESS AND THE EXECUTION OF ANY RESULTING CONTRACT;	

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M) ANTI-COMPETITIVE AND COLLUSIVE PRACTICES: WE HEREBY CERTIFY AND CONFIRM THAT THE TENDER IS GENUINE, NON-COLLUSIVE AND MADE WITH THE INTENTION OF ACCEPTING THE CONTRACT IF AWARDED. WE HAVE ARRIVED AT THE TENDER INDEPENDENTLY WITHOUT CONSULTATION, COMMUNICATION, AGREEMENT OR ARRANGEMENT WITH, ANY COMPETITOR ON BUT NOT LIMITED TO PRICES; METHODS, FACTORS OR FORMULAS USED TO CALCULATE PRICES; THE INTENTION OR DECISION TO SUBMIT, OR NOT TO SUBMIT, A TENDER; OR THE SUBMISSION OF A TENDER WHICH DOES NOT MEET THE SPECIFICATIONS OF THE REQUEST FOR TENDERS EXCEPT AS DISCLOSED IN THE TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE;	
N) BENEFICIAL OWNERSHIP INFORMATION: WE COMMIT TO PROVIDE TO THE PROCURING ENTITY THE BENEFICIAL OWNERSHIP INFORMATION IN CONFORMITY WITH THE BENEFICIAL OWNERSHIP DISCLOSURE FORM UPON RECEIPT OF NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT IN THE EVENT WE ARE THE SUCCESSFUL TENDERER IN THIS SUBJECT PROCUREMENT PROCEEDING; AND	
O) WE, THE TENDERER, HAVE DULY COMPLETED, SIGNED AND STAMPED THE FOLLOWING FORMS AS PART OF OUR TENDER:	
I) TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE	

II) SELF-DECLARATION OF THE TENDERER (FORM SD 1 & SD 2)	
P) TENDER PRICE: THE TOTAL PRICE OF OUR TENDER, INCLUDING ANY DISCOUNTS OFFERED IS:	
Table Footer : -	

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OPTION 1 - IN CASE OF ONE LOT: : FORM OF TENDER

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header :		
TOTAL PRICE IN FIGURES	**TOTAL PRICE IN WORDS**	**CURRENCY**
Table Footer : -		

Sr no.	Formula
1	TOTAL PRICE IN WORDS =TOTAL PRICE IN FIGURES

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OPTION 2 -TENDER PRICE (MULTIPLE LOTS) : FORM OF TENDER

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header :			
LOT NUMBER / DESCRIPTION	**CURRENCY**	**TOTAL PRICE IN FIGURES**	**TOTAL PRICE IN WORDS**
Table Footer :			

Sr no.	Formula
1	TOTAL PRICE IN WORDS=TOTAL PRICE IN FIGURES

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COMMISSIONS, GRATUITIES AND FEES : FORM OF TENDER

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : WE HAVE PAID, OR WILL PAY THE FOLLOWING COMMISSIONS, GRATUITIES, OR FEES WITH RESPECT TO THE TENDERING PROCESS OR IMPLEMENTATION OF THE CONTRACT:			
NAME OF RECIPIENT	**ADDRESS**	**REASON**	**AMOUNT**
Table Footer :			

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STATE OWNED ENTERPRISE OR INSTITUTION : FORM OF TENDER

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : SELECT AS APPROPRIATE	
TYPE OF ENTERPRISE	**TENDERER'S RESPONSE**
OPTION 1 : WE ARE NOT A STATE- OWNED ENTERPRISE OR INSTITUTION	
OPTION 2 : WE ARE A STATE-OWNED ENTERPRISE OR INSTITUTION BUT MEET THE REQUIREMENTS OF ITT 4.6	
Table Footer : -	

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SIGN OFF : FORM OF TENDER

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

STATEMENT	TENDERER'S RESPONSE	NAME	TITLE OR DESIGNATION OF THE PERSON SIGNING	DATE
WE CONFIRM THAT THE INFORMATION GIVE IS CORRECT AND WE UNDERSTAND THAT GIVING FALSE INFORMATION WILL LEAD TO DI SQUALIFICATION				

Table Footer : THE PERSON SIGNING THE TENDER SHALL HAVE THE POWER OF ATTORNEY GIVE BY THE TENDERER. THE POWER OF ATTORNEY SHALL BE ATTACHED WITH THE TENDER SCHEDULE

TENDERER'S DETAILS: : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

TENDERER'S NAME	TENDERER'S ACTUAL OR INTENDED COUNTRY OF REGISTRATION	TENDERER'S YEAR OF REGISTRATION	TENDERER'S LEGAL ADDRESS IN COUNTRY OF REGISTRATION

Table Footer : -

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JV DETAILS : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

JV'S NAME	JV'S ACTUAL OR INTENDED COUNTRY OF REGISTRATION	JV'S YEAR OF REGISTRATION	JV'S LEGAL ADDRESS IN COUNTRY OF REGISTRATION

Table Footer : -

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TENDERER'S/JV MEMBER'S AUTHORIZED REPRESENTATIVE INFORMATION : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

NAME	ADDRESS	TELEPHONE NO.	EMAIL

Table Footer : -

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COPIES OF ORIGINAL DOCUMENTS ATTACHED: : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : TENDERERS ARE REQUIRED TO ATTACH COPIES OF THE FOLLOWING DOCUMENTS

DESCRIPTION	TEDNERER'S RESPONSE
FOR KENYAN TENDERERS A CURRENT TAX CLEARANCE CERTIFICATE OR TAX EXEMPTION CERTIFICATE ISSUED BY THE KENYA REVENUE AUTHORITY IN ACCORDANCE WITH ITT 3.13.	
ARTICLES OF INCORPORATION (OR EQUIVALENT DOCUMENTS OF CONSTITUTION OR ASSOCIATION), AND/OR DOCUMENTS OF REGISTRATION OF THE LEGAL ENTITY NAMED ABOVE, IN ACCORDANCE WITH ITT 3.6.	
IN CASE OF JV, LETTER OF INTENT TO FORM JV OR JV AGREEMENT, IN ACCORDANCE WITH ITT 3.1.	
IN CASE OF STATE-OWNED ENTERPRISE OR INSTITUTION, IN ACCORDANCE WITH ITT 3.1 DOCUMENTS ESTABLISHI (I) LEGAL AND FINANCIAL AUTONOMY NG: (II) OPERATION UNDER COMMERCIAL LAW(III) ESTABLISHING THAT THE TENDERER IS NOT UNDER THE SUPERVISION OF THE PROCURING ENTITY ;	
INCLUDED ARE THE ORGANIZATIONAL CHART AND A LIST OF BOARD OF DIRECTORS	

Table Footer : -

A) SOLE PROPRIETOR DETAILS. : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : GENERAL AND SPECIFIC DETAILS

NAME IN FULL	AGE	NATIONALITY	COUNTRY OF ORIGIN	CITIZENSHIP

Table Footer : -

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B) PARTNERSHIP DETAILS. : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

NAMES OF PARTNERS	NATIONALITY	CITIZENSHIP	PERCENTAGE OF SHARES OWNED

Table Footer : -

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C) REGISTERED COMPANY-COMPANY DETAILS : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

PRIVATE OR PUBLIC COMPANY	NOMINAL CAPITAL KENYA SHILLINGS	STATE ISSUED CAPITAL KENYA SHILLINGS

Table Footer : -

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DETAILS OF DIRECTORS : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

NAME OF DIRECTOR	NATIONALITY	CITIZENSHIP	PERCENTAGE OF SHARES OWNED

Table Footer : -

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DISCLOSURE OF INTEREST- INTEREST OF THE FIRM IN THE PROCURING ENTITY. : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -	
STATEMENT	**TENDERER'S RESPONSE**
IS THERE ANY PERSON(S) IN THE PROCURING ENTITY WHO HAS ANY INTEREST OR RELATIONSHIP IN THIS FIRM	
Table Footer : IF YES, PROVIDE DETAILS IN THE TABLE THAT FOLLOWS.	

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RELATIONS WITH TENDERER IN THE PROCURING ENTITY : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

NAME OF PERSON	DESIGNATION IN THE PROCURING ENTITY	INTEREST OR RELATIONSHIP WITH TENDERER

Table Footer : -

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CONFLICT OF INTEREST DISCLOSURE : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

TYPE OF CONFLICT	DISCLOSURE YES OR NO	IF YES PROVIDE DETAILS OF THE RELATIONSHIP WITH TENDERER. IF NO INDICATE N /A
1. TENDERER IS DIRECTLY OR INDIRECTLY CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER TENDERER.		
2. TENDERER RECEIVES OR HAS RECEIVED ANY DIRECT OR INDIRECT SUBSIDY FROM ANOTHER TENDERER.		
3. TENDERER HAS THE SAME LEGAL REPRESENTATIVE AS ANOTHER TENDERER.		

4. TENDERER HAS A RELATIONSHIP WITH ANOTHER TENDERER, DIRECTLY OR THROUGH COMMON THIRD PARTIES THAT PUTS IT IN A POSITION TO INFLUENCE THE TENDER OF ANOTHER TENDERER, OR INFLUENCE THE DECISIONS OF THE PROCURING ENTITY REGARDING THIS TENDER.		
5. ANY OF THE TENDERER'S AFFILIATES PARTICIPATED AS A CONSULTANT IN THE PREPARATION OF THE DESIGN OR TECHNICAL SPECIFICATIONS OF THE WORKS THAT ARE THE SUBJECT OF THE TENDER.		
6. TENDERER HAS A CLOSE BUSINESS OR FAMILY RELATIONSHIP WITH A STAFF OF THE PROCURING ENTITY.		
7. HAS THE CONFLICT STEMMING FROM SUCH RELATIONSHIP STATED IN ITEM 6 ABOVE BEEN RESOLVED IN A MANNER ACCEPTABLE TO THE PROCURING ENTITY THROUGHOUT THE TENDERING PROCESS AND EXECUTION OF THE CONTRACT		

8. THE TENDERER HAS ENTERED INTO CONSULTATIONS, COMMUNICATIONS, AGREEMENTS OR ARRANGEMENTS WITH ONE OR MORE COMPETITORS REGARDING THIS REQUEST FOR TENDERS AND THE TENDERER DISCLOSES, COMPLETE DETAILS THEREOF, INCLUDING THE NAMES OF THE COMPETITORS AND THE NATURE OF, AND REASONS FOR, SUCH CONSULTATIONS, COMMUNICATIONS, AGREEMENTS OR ARRANGEMENTS.		
Table Footer : -		

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CONFIRMATION AND CERTIFICATION : TENDERERS ELIGIBILITY AND CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Consider for Technical Evaluation : No

Table Header : -

STATEMENT	TENDERER'S RESPONSE	NAME	TITLE OR DESIGNATION	DATE
CONFIRMATION AND CERTIFICATION				

Table Footer : -

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A) LOCAL LABOR : FOREIGN TENDERERS 40 PERCENT RULE

Table Header : PURSUANT TO ITT 4.10, A FOREIGN TENDERER MUST COMPLETE THIS FORM TO DEMONSTRATE THAT THE TENDER FULFILS THIS CONDITION.

ITEM	DESCRIPTION OF WORK ITEM	DESCRIBE LOCATION OF SOURCE	COST IN KENYA. SHILLINGS	COMMENTS, IF ANY

Table Footer :

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B) SUB-CONTRACTS FROM LOCAL SOURCES : FOREIGN TENDERERS 40 PERCENT RULE

Table Header :

DESCRIPTION OF WORK ITEM	DESCRIBE LOCATION OF SOURCE	COST IN KENYA. SHILLINGS	COMMENTS, IF ANY

Table Footer : -

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C) LOCAL MATERIALS : FOREIGN TENDERERS 40 PERCENT RULE

Table Header :

ITEM	DESCRIPTION OF WORK ITEM	DESCRIBE LOCATION OF SOURCE	COST IN KENYA. SHILLINGS	COMMENTS, IF ANY

Table Footer : -

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D) USE OF LOCAL PLANT AND EQUIPMENT : FOREIGN TENDERERS 40 PERCENT RULE

Table Header :

DESCRIPTION OF WORK ITEM	DESCRIBE LOCATION OF SOURCE	COST IN KENYA SHILLINGS	COMMENTS, IF ANY

Table Footer : -

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E) ANY OTHER ITEMS : FOREIGN TENDERERS 40 PERCENT RULE

Table Header : ADD ANY OTHER ITEMS

DESCRIPTION OF WORK ITEM	DESCRIBE LOCATION OF SOURCE	COST IN KENYA SHILLINGS	COMMENTS, IF ANY

Table Footer : -

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TOTAL COST LOCAL CONTENT : FOREIGN TENDERERS 40 PERCENT RULE

Table Header : FOREIGN TENDERERS 40 PERCENT RULE	
TOTAL COST LOCAL CONTENT	**PERCENTAGE OF CONTRACT PRICE**
Table Footer : -	

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EQUIPMENT INFORMATION : FORM EQU- EQUIPMENT

Table Header : THE TENDERER SHALL PROVIDE ADEQUATE INFORMATION TO DEMONSTRATE CLEARLY THAT IT HAS THE CAPABILITY TO MEET THE REQUIREMENTS FOR THE KEY EQUIPMENT LISTED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA. A SEPARATE FORM SHALL BE PREPARED FOR EACH ITEM OF EQUIPMENT LISTED, OR FOR ALTERNATIVE EQUIPMENT PROPOSED BY THE TENDERER.

NAME OF MANUFACTURER	MODEL AND POWER RATING	CAPACITY	YEAR OF MANUFACTURE	CURRENT LOCATION	DETAILS OF CURRENT COMMITMENTS	INDICATE SOURCE OF THE EQUIPMENT (SELECT - COMBO)

Table Footer : -

EQUIPMENT OWNERSHIP : FORM EQU- EQUIPMENT

Table Header : OMIT THE FOLLOWING INFORMATION FOR EQUIPMENT OWNED BY THE TENDERER.

NAME OF OWNER	ADDRESS OF OWNER	TELEPHONE	CONTACT NAME AND TITLE	MOBILE PHONE NUMBER	E-MAIL	AGREEMENTS

Table Footer : -

CONTRACTORS' REPRESENTATIVE AND KEY PERSONNEL : FORM PER-1- CONTRACTORS REPRESENTATIVE AND KEY PERSONNEL

Table Header : TENDERERS SHOULD PROVIDE THE NAMES AND DETAILS OF THE SUITABLY QUALIFIED CONTRACTOR'S RE PRESENTATIVE AND KEY PERSONNEL TO PERFORM THE CONTRACT. THE DATA ON THEIR EXPERIENCE SHOULD BE SUPPLIED USING THE FORM PER-2 BELOW FOR EACH CANDIDATE

TITLE OR POSITION	NAME OF CANDIDATE	DURATION OF APPOINTMENT	TIME COMMITMENT: FOR THIS POSITION:	EXPECTED TIME SCHEDULE FOR THIS POSITION

Table Footer : -

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TENDERER'S COMMITMENT : DECLARATION FOR FORM PER -2

Table Header : I, THE UNDERSIGNED [INSERT EITHER “CONTRACTOR'S REPRESENTATIVE” OR “KEY PERSONNEL” AS APPLICABLE], CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE INFORMATION CONTAINED IN THIS FORM PER-2 CORRECTLY DESCRIBES MYSELF, MY QUALIFICATIONS AND MY EXPERIENCE. I CONFIRM THAT I AM AVAILABLE AS CERTIFIED IN THE FOLLOWING TABLE AND THROUGHOUT THE EXPECTED TIME SCHEDULE FOR THIS POSITION AS PROVIDED IN THE TENDER:

COMMITMENT	PERIOD (START DATE)	PERIOD (END DATE)
COMMITMENT TO DURATION OF CONTRACT: [INSERT PERIOD (START AND END DATES) FOR WHICH THIS CONTRACTOR’S REPRESENTATIVE OR KEY PERSONNEL IS AVAILABLE TO WORK ON THIS CONTRACT]		
TIME COMMITMENT: [INSERT PERIOD (START AND END DATES) FOR WHICH THIS CONTRACTOR’S REPRESENTATIVE OR KEY PERSONNEL IS AVAILABLE TO WORK ON THIS CONTRACT]		

Table Footer : I UNDERSTAND THAT ANY MISREPRESENTATION OR OMISSION IN THIS FORM MAY: A) BE TAKEN INTO CONSIDERATION DURING TENDER EVALUATION; B) RESULT IN MY DISQUALIFICATION FROM PARTICIPATING IN THE TENDER; C) RESULT IN MY DISMISSAL FROM THE CONTRACT.

NAME OF CONTRACTOR'S REPRESENTATIVE OR KEY PERSONNEL : DECLARATION FOR FORM PER -2

Table Header : -

NAME	TITLE	DATE

Table Footer : -

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NON-PERFORMED CONTRACTS IN ACCORDANCE WITH SECTION III EVALUATION AND QUALIFICATION CRITERIA : FORM CON 2 HISTORICAL CONTRACT NON PERFORMANCE PENDING LITIGATION AND LITIGATION HISTORY

Table Header :

STATEMENT	YEAR	TENDERER'S RESPONSE
CONTRACT NON PERFORMANCE DID NOT OCCUR SINCE.....		

Table Footer : IF YES , GIVE DETAILS IN TABLE BELOW

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DETAILS OF NON-PERFORMED CONTRACTS : FORM CON 2 HISTORICAL CONTRACT NON PERFORMANCE PENDING LITIGATION AND LITIGATION HISTORY

Table Header : -

TENDERER'S/JV MEMBER NAME	YEAR	JOINT VENTURE MEMBER NAME	NON-PERFORMED PORTION OF CONTRACT-AMOUNT	CONTRACT NAME	NAME OF PROCURING ENTITY	CONTRACT NUMBER	REASON(S) FOR NON PERFORMANCE	TOTAL CONTRACT AMOUNT	NON-PERFORMED PORTION OF CONTRACT IN PERCENTAGE

Table Footer : -

PENDING LITIGATION, IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : FORM CON 2 HISTORICAL CONTRACT NON PERFORMANCE PENDING LITIGATION AND LITIGATION HISTORY

Table Header :	
STATEMENT	**TENDERER'S RESPONE**
PENDING LITIGATION IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA, SUB-FACTOR (4B (VI)-B.	
Table Footer : IF YES GIVE DETAILS BELOW	

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DETAILS OF PENDING LITIGATION : FORM CON 2 HISTORICAL CONTRACT NON PERFORMANCE PENDING LITIGATION AND LITIGATION HISTORY

Table Header :

JV NAME	YEAR OF LITIGATION AWARD	CONTRACT NAME	CONTRACT NUMBER	NAME OF PROCURING ENTITY:	MATTER IN DISPUTE	PARTY WHO INITIATED THE DISPUTE	REASONS FOR LITIGATION AWARD DECISION	AMOUNT	CURRENCY	KENYA SHILLING EQUIVALENT (EXCHANGE RATE)

Table Footer :

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LITIGATION HISTORY IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : FORM CON 2 HISTORICAL CONTRACT NON PERFORMANCE PENDING LITIGATION AND LITIGATION HISTORY

Table Header : -	
STATEMENT	**TENDERERS RESPONSE**
THERE IS LITIGATION HISTORY IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA	
Table Footer : IF YES, GIVE DETAILS BELOW	

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DETAILS OF LITIGATION HISTORY : FORM CON 2 HISTORICAL CONTRACT NON PERFORMANCE PENDING LITIGATION AND LITIGATION HISTORY

Table Header : -

TENDERER/JV MEMBER NAME	YEAR OF LITIGATION AWARD	OUTCOME AS PERCENTAGE OF NET WORTH	CONTRACT NAME	CONTRACT NUMBER	NAME OF THE PROCURING ENTITY	MATTER IN DISPUTE	PARTY WHO INITIATED THE DISPUTE	REASONS FOR LITIGATION AND AWARD DECISION	AMOUNT

Table Footer : -

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STATEMENT OF FINANCIAL POSITION (INFORMATION FROM BALANCE SHEET) : FORM FIN 3 1 FINANCIAL SITUATION AND PERFORMANCE

Table Header : FINANCIAL DATA

YEAR	TOTAL ASSETS (TA)	TOTAL LIABILITIES (TL)	TOTAL EQUITY/NET WORTH (NW)	CURRENT ASSETS (CA)	CURRENT LIABILITIES (CL)	WORKING CAPITAL (WC)	CURRENCY

Table Footer : *REFER TO ITT 15 FOR THE EXCHANGE RATE

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INFORMATION FROM INCOME STATEMENT : FORM FIN 3 1 FINANCIAL SITUATION AND PERFORMANCE

Table Header : -

YEAR	TOTAL REVENUE (TR)	PROFITS BEFORE TAXES (PBT)	CURRENCY

Table Footer : -

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CASH FLOW INFORMATION : FORM FIN 3 1 FINANCIAL SITUATION AND PERFORMANCE

Table Header : -		
YEAR	CASH FLOW FROM OPERATING ACTIVITIES	CURRENCY
Table Footer : -		

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SOURCES OF FINANCE : FORM FIN 3 1 FINANCIAL SITUATION AND PERFORMANCE

Table Header : SPECIFY SOURCES OF FINANCE TO MEET THE CASH FLOW REQUIREMENTS ON WORKS CURRENTLY IN PROGRESS AND FOR FUTURE CONTRACT COMMITMENTS.

NO.	SOURCE OF FINANCE	AMOUNT (KENYA SHILLING EQUIVALENT)

Table Footer : -

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FINANCIAL DOCUMENTS : FORM FIN 3 1 FINANCIAL SITUATION AND PERFORMANCE

Table Header :

REQUIREMENT	PROCURING ENTITY'S REQUIREMENT	TENDERER'S RESPONSE
THE TENDERER AND ITS PARTIES SHALL PROVIDE COPIES OF FINANCIAL STATEMENTS FOR THE YEARS PURSUANT SECTION III, EVALUATION AND QUALIFICATIONS CRITERIA.	2023, 2024,2025	
ATTACHED ARE COPIES OF FINANCIAL STATEMENTS FOR THE YEARS REQUIRED ABOVE ; AND COMPLYING WITH THE REQUIREMENTS	2023.2024.2025	

Table Footer : THE FINANCIAL STATEMENTS SHALL: A) REFLECT THE FINANCIAL SITUATION OF THE TENDERER OR IN CASE OF JV MEMBER, AND NOT AN AFFILIATED ENTITY (SUCH AS PARENT COMPANY OR GROUP MEMBER). B) BE INDEPENDENTLY AUDITED OR CERTIFIED IN ACCORDANCE WITH LOCAL LEGISLATION. C) BE COMPLETE, INCLUDING ALL NOTES TO THE FINANCIAL STATEMENTS. D) CORRESPOND TO ACCOUNTING PERIODS ALREADY COMPLETED AND AUDITED.

FORM FIN – 3.2: AVERAGE ANNUAL TURNOVER : FORM FIN 3 1 FINANCIAL SITUATION AND PERFORMANCE

Table Header : ANNUAL TURNOVER DATA				
YEAR	**AMOUNT**	**CURRENCY**	**EXCHANGE RATE**	**KENYA SHILLING EQUIVALENT**
Table Footer : AVERAGE ANNUAL TURNOVER [SEE SECTION III, EVALUATION AND QUALIFICATION CRITERIA, SUB-FACTOR 3.2.]				

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FORM FIN–3.3: FINANCIAL RESOURCES : FORM FIN 3 1 FINANCIAL SITUATION AND PERFORMANCE

Table Header : SPECIFY PROPOSED SOURCES OF FINANCING, SUCH AS LIQUID ASSETS, UNENCUMBERED REAL ASSETS, LINES OF CREDIT, AND OTHER FINANCIAL MEANS, NET OF CURRENT COMMITMENTS, AVAILABLE TO MEET THE TOTAL CONSTRUCTION CASH FLOW DEMANDS OF THE SUBJECT CONTRACTOR CONTRACTS AS SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

NO.	SOURCE OF FINANCING	AMOUNT (KENYA SHILLING EQUIVALENT)

Table Footer : -

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FORM FIN–3.4: CURRENT CONTRACT COMMITMENTS / WORKS IN PROGRESS : FORM FIN 3 1 FINANCIAL SITUATION AND PERFORMANCE

Table Header : TENDERERS AND EACH MEMBER TO A JV SHOULD PROVIDE INFORMATION ON THEIR CURRENT COMMITMENTS ON ALL CONTRACTS THAT HAVE BEEN AWARDED, OR FOR WHICH A LETTER OF INTENT OR ACCEPTANCE HAS BEEN RECEIVED, OR FOR CONTRACTS APPROACHING COMPLETION, BUT FOR WHICH AN UNQUALIFIED, FULL COMPLETION CERTIFICATE HAS YET TO BE ISSUED.

NO.	NAME OF CONTRACT	PROCURING ENTITY'S CONTACT ADDRESS, TEL	VALUE OF OUTSTANDING WORK	ESTIMATED COMPLETION DATE	AVERAGE MONTHLY INVOICING OVER LAST SIX MONTHS

Table Footer : -

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GENERAL EXPERIENCE : FORM EXP-4 1 GENERAL EXPERIENCE

Table Header : -

STARTING YEAR	ENDING YEAR	CONTRACT NAME:	BRIEF DESCRIPTION OF THE WORKS PERFORMED BY THE TENDERER:	AMOUNT OF CONTRACT:	NAME OF PROCURING ENTITY:	ADDRESS:	ROLE OF TENDERER

Table Footer : -

SPECIFIC CONTRACT MANAGEMENT EXPERIENCE : FORM EXP 4 2A SPECIFIC CONTRACT MANAGEMENT EXPERIENCE

Table Header : -

SIMILAR CONTRACT NO.	CONTRACT IDENTIFICATION	AWARD DATE	COMPLETION DATE	ROLE IN CONTRACT	TOTAL CONTRACT AMOUNT	IF MEMBER IN A JV OR SUB-CONTRACTOR, SPECIFY PARTICIPATION IN TOTAL CONTRACT AMOUNT	PROCURING ENTITY'S NAME:	ADDRESS:	TELEPHONE NUMBER:	E-MAIL:

Table Footer : -

DESCRIPTION OF THE SIMILARITY IN ACCORDANCE WITH SUB-FACTOR 4.2(A) OF SECTION III: : FORM EXP 4 2A SPECIFIC CONTRACT MANAGEMENT EXPERIENCE

Table Header : CONTRACT SIMILARITY

SIMILAR CONTRACT NO.	AMOUNT	PHYSICAL SIZE OF REQUIRED WORKS ITEMS	COMPLEXITY	METHODS/TECHNOLOGY	CONSTRUCTION RATE FOR KEY ACTIVITIES	OTHER CHARACTERISTICS

Table Footer : -

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EXPERIENCE IN KEY ACTIVITIES : FORM EXP 4 2 B EXPERIENCE IN KEY ACTIVITIES

Table Header : -

KEY ACTIVITY NO.	CONTRACT IDENTIFICATION	AWARD DATE	COMPLETION DATE	ROLE IN CONTRACT	TOTAL CONTRACT AMOUNT

Table Footer : -

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QUANTITY (VOLUME, NUMBER OR RATE OF PRODUCTION, AS APPLICABLE) PERFORMED UNDER THE CONTRACT PER YEAR OR PART OF THE YEAR : FORM EXP 4 2 B EXPERIENCE IN KEY ACTIVITIES

Table Header : -

KEY ACTIVITY NO	YEAR	TOTAL QUANTITY IN THE CONTRACT (I)	PERCENTAGE PARTICIPATION (II)	ACTUAL QUANTITY PERFORMED (I) X (II)	PROCURING ENTITY' S NAME:	ADDRESS	TELEPHONE NUMBER	EMAIL

Table Footer : -

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DESCRIPTION OF THE KEY ACTIVITIES IN ACCORDANCE WITH SUB-FACTOR 4.2(B) OF SECTION III: : FORM EXP 4 2 B EXPERIENCE IN KEY ACTIVITIES

Table Header : -

KEY ACTIVITY NO.	INFORMATION/DESCRIPTION

Table Footer : -

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TABLE 1 - TECHNICAL REQUIREMENTS : TECHNICAL EVALUATION CRITERIA FORM

Technical Evaluation Process : Yes

Consider for Technical Evaluation : Yes

Table Header : -

S/N	Requirements	Specifications	Bidder Response (Yes /No)	Bidder Remarks
1	Title requirements	· The land coverage should measure between 1 to 1.5 acres. •The land should be located within the Metropolitan area, easily accessible from the major Kenyan highways preferably Mombasa Road, Industrial Area, Waiyaki way and Thika road (for Nairobi), Busia Kisumu road, Nairobi Kisumu road and Kakamega Kisumu road (For Kisumu)		

		and Mombasa Mainland, Island and Malindi road (for Mombasa) must be a safe distance away from residential areas and public buildings. •The land must have valid ownership documents including duly registered Title Deed. In the case of long-term land lease, a copy of duly executed lease agreement in the name of the Applicant company; •The land within the subject location should be held under leasehold tenure of not less than 40 years.		

2	Certificate of Incoporation and CR 12 (if company owned), Copy of ID (if owned by an individual), KRA PIN Certificate and Valid Tax Compliant Certificate	The land owner (s) must have valid identification documents (National Identification /Passports and Kenya Revenue Authority (KRA) Certificates).		
3	Attach Environmental Impact Assessment (EIA) report	Valid EIA license from NEMA specifically authorizing development of petroleum/gas storage depot.		
4	Compliance Certificate from County Government	Confirmation of updated land rates payment from County Government (Compliance Certificate from County Government)		
5	Approval from County Government	The land should be compliant with the County Government Zoning and Land Use Regulations.		

6	Survey Map	Be well served with adequate roads for ease of access.		
Table Footer : -				

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TABLE 2 - YARD SPECIFICATIONS : TECHNICAL EVALUATION CRITERIA FORM

Technical Evaluation Process : Yes

Consider for Technical Evaluation : Yes

Table Header : -

SERIAL NO.	Specifications of the yard	Bidder Response (Yes /No)	Bidder Remarks
1.	A perimeter wall of a minimum of three (3) meters high with electrical fence caping.		
2.	Level ground with murram/gravel with Cabro cover.		
3.	Underground petroleum tank with a capacity of holding 150,000 litres of Diesel, 50,000 litres of petrol and 50,000 litres of IK. This tank should have three separate pumps.		
4.	Adequate, fully fitted gender sensitive washrooms.		

5.	The yard should have at least three (3) rooms/quarters for accommodation of guarding personnel.		
6.	It should have at least eight (8) containers with measurement of forty-foot for storage of petroleum and gas equipment/products. The containers must be well ventilated with fire fighting systems.		
7.	The land should have separate entry and exit gates with sentry boxes.		
8.	A connection to the main electricity supply.		
9.	Fitted with adequate solar lighting.		
10.	A connection to main water and sewer systems.		
11.	Adequate water reservoir/storage of a minimum of 10,000 cubic meter water storage.		

12.	Fitted with security surveillance systems (CCTVs).		
13.	A raised watch tower.		
Table Footer : -			

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THE SPECIFICATIONS AND PRICED ACTIVITY SCHEDULES : THE SPECIFICATIONS AND PRICED ACTIVITY SCHEDULES

Table Header : -

1.SERVICE NO	2. UNSPSC ITEM CODE	3. UNSPSC ITEM DESCRIPTION	4. DESCRIPTION OF SERVICES	5.UNIT	6.DELIVERY DATE	7.QUANTITY OR PHYSICAL UNIT	8.UNIT PRICE	9.TOTAL PRICE PER SERVICE EXCLUSIVE OF TAXES AND LEVIES (COL 7*COL.8)	10. CAPACITY BUILDING LEVY (COL.9 * 0.0003)	11. APPLICABLE TAXES	12. TOTAL TENDER PRICE TO BE CARRIED TO THE FORM OF TENDER (COL. 9+COL. 10+COL.11)
1	7818170301	LEASE AND DEVELOPMENT OF ENFORCEMENT AND STORAGE YARD IN MOMBASA	LEASE AND DEVELOPMENT OF ENFORCEMENT AND STORAGE YARD IN MOMBASA	EACH	2027-01-29	1					
2	7818170302	LEASE AND DEVELOPMENT OF ENFORCEMENT AND STORAGE YARD IN NAIROBI	LEASE AND DEVELOPMENT OF ENFORCEMENT AND STORAGE YARD IN NAIROBI	EACH	2027-01-29	1					
3	7818170303	LEASE AND DEVELOPMENT OF ENFORCEMENT AND STORAGE YARD IN NAKURU	LEASE AND DEVELOPMENT OF ENFORCEMENT AND STORAGE YARD IN NAKURU	EACH	2027-01-29	1					

4	7818170304	LEASE AND DEVELOPMENT OF ENFORCEMENT AND STORAGE YARD IN ELDORET	LEASE AND DEVELOPMENT OF ENFORCEMENT AND STORAGE YARD IN ELDORET	EACH	2027-01-29	1					
5	7818170305	LEASE AND DEVELOPMENT OF ENFORCEMENT AND STORAGE YARD IN KISUMU	LEASE AND DEVELOPMENT OF ENFORCEMENT AND STORAGE YARD IN KISUMU	EACH	2027-01-29	1					
Table Footer : NAME OF TENDERER [INSERT COMPLETE NAME OF TENDERER] SIGNATURE OF TENDERER [SIGNATURE OF PERSON SIGNING THE TENDER] DATE [INSERT DATE]											

Sr no.	Formula
1	9.TOTAL PRICE PER SERVICE EXCLUSIVE OF TAXES AND LEVIES (COL 7*COL.8)=7.QUANTITY OR PHYSICAL UNIT*8.UNIT PRICE
2	10. CAPACITY BUILDING LEVY (COL.9 * 0.0003)=9.TOTAL PRICE PER SERVICE EXCLUSIVE OF TAXES AND LEVIES (COL 7*COL.8)*0.0003
3	12. TOTAL TENDER PRICE TO BE CARRIED TO THE FORM OF TENDER (COL.9+COL.10+COL.11)=9.TOTAL PRICE PER SERVICE EXCLUSIVE OF TAXES AND LEVIES (COL 7*COL.8)+10. CAPACITY BUILDING LEVY (COL.9 * 0.0003)+11.APPLICABLE TAXES

SECTION VI - GENERAL CONDITIONS OF CONTRACT (GCC)

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Detail

SECTION VI - GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 DEFINITIONS

UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS WHENEVER USED IN THIS CONTRACT HAVE THE FOLLOWING MEANINGS:

A) THE **ADJUDICATOR** IS THE PERSON APPOINTED JOINTLY BY THE PROCURING ENTITY AND THE SERVICE PROVIDER TO RESOLVE DISPUTES IN THE FIRST INSTANCE, AS PROVIDED FOR IN SUB-CLAUSE8.2 HEREUNDER.

B) "ACTIVITY SCHEDULE" IS THE PRICED AND COMPLETED LIST OF ITEMS OF SERVICES TO BE PERFORMED BY THE SERVICE PROVIDER FORMING PART OF HIS TENDER;

C) "COMPLETION DATE" MEANS THE DATE OF COMPLETION OF THE SERVICES BY THE SERVICE PROVIDER AS CERTIFIED BY THE PROCURING ENTITY

D) "**CONTRACT**" MEANS THE CONTRACT SIGNED BY THE PARTIES, TO WHICH THESE GENERAL CONDITIONS OF CONTRACT (GCC) ARE ATTACHED, TOGETHER WITH ALL THE DOCUMENTS LISTED IN CLAUSE 1 OF SUCH SIGNED CONTRACT;

E) "CONTRACT PRICE" MEANS THE PRICE TO BE PAID FOR THE PERFORMANCE OF THE SERVICES, IN ACCORDANCE WITH CLAUSE 6;

F) **"DAY"** MEANS CALENDAR DAY.

G) "DAY WORKS" MEANS VARIED WORK INPUTS SUBJECT TO PAYMENT ON A TIME BASIS FOR THE SERVICE PROVIDER'S EMPLOYEES AND EQUIPMENT, IN ADDITION TO PAYMENTS FOR ASSOCIATED MATERIALS AND ADMINISTRATION.

H) "**PROCURING ENTITY**" MEANS THE PROCURING ENTITY OR PARTY WHO EMPLOYS THE SERVICE PROVIDER

I) “FOREIGN CURRENCY” MEANS ANY CURRENCY OTHER THAN THE CURRENCY OF KENYA;
J) “GCC” MEANS THESE GENERAL CONDITIONS OF CONTRACT;
K) “GOVERNMENT ”MEANS THE GOVERNMENT OF KENYA;
L) “IN WRITING” MEANS COMMUNICATED IN WRITTEN FORM WITH PROOF OF DISPATCH.
M) “LAWS” MEANS ALL NATIONAL LEGISLATION, STATUTES, ORDINANCES, AND REGULATIO NS AND BY-LAWS OF ANY LEGALLY CONSTITUTED PUBLIC AUTHORITY.
N) “LETTER OF ACCEPTANCE” MEANS THE LETTER OF FORMAL ACCEPTANCE, SIGNED BY T HE SERVICE PROVIDER, INCLUDING ANY ANNEXED MEMORANDA COMPRISING AGREEMENTS BETWEEN AND SIGNED BY BOTH PARTIES.
O) “LOCAL CURRENCY ”MEANS KENYA SHILLING;

P) “MEMBER,” IN CASE THE SERVICE PROVIDER CONSIST OF A JOINT VENTURE OF MORE THAN ONE ENTITY, MEANS ANY OF THESE ENTITIES; “MEMBERS” MEANS ALL THESE ENTITIES, AND “MEMBER IN CHARGE” MEANS THE ENTITY SPECIFIED IN THE SC TO ACT ON THEIR BEHALF IN EXERCISING ALL THE SERVICE PROVIDER' RIGHTS AND OBLIGATIONS TOWARDS THE PROCURING ENTITY UNDER THIS CONTRACT;

Q) “PARTY” MEANS THE PROCURING ENTITY OR THE SERVICE PROVIDER, AS THE CASE MAYBE, AND “PARTIES” MEANS BOTH OF THEM;
R) “PERSONNEL” MEANS PERSONS HIRED BY THE SERVICE PROVIDER OR BY ANY SUBCONTRACTOR AS EMPLOYEES AND ASSIGNED TO THE PERFORMANCE OF THE SERVICES OR ANY PART THERE OF;

S) “**SERVICE PROVIDER**” IS A PERSON OR CORPORATE BODY WHOSE TENDER TO PROVIDE THE SERVICES HAS BEEN ACCEPTED BY THE PROCURING ENTITY;

T) “SERVICE PROVIDER'S TENDER” MEANS THE COMPLETED TENDERING DOCUMENT SUBMITTED BY THE SERVICE PROVIDER TO THE PROCURING ENTITY
U) “SCC” MEANS THE SPECIAL CONDITIONS OF CONTRACT BY WHICH THE GCC MAY BE AMENDED OR SUPPLEMENTED;
V) “SPECIFICATIONS” MEANS THE SPECIFICATIONS OF THE SERVICE INCLUDED IN THE TENDERING DOCUMENT SUBMITTED BY THE SERVICE PROVIDER TO THE PROCURING ENTITY
W) “SERVICES” MEANS THE WORK TO BE PERFORMED BY THE SERVICE PROVIDER PURSUANT TO THIS CONTRACT, AS DESCRIBED IN APPENDIX A; AND IN THE SPECIFICATIONS AND SCHEDULE OF ACTIVITIES INCLUDED IN THE SERVICE PROVIDER'S TENDER.
X) “SUBCONTRACTOR” MEANS ANY ENTITY TO WHICH THE SERVICE PROVIDER SUBCONTRACTS ANY PART OF THE SERVICES IN ACCORDANCE WITH THE PROVISIONS OF SUB-CLAUSES3.5AND4;
Y) “PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)” SHALL MEAN THE GOVERNMENT AGENCY RESPONSIBLE FOR OVERSIGHT OF PUBLIC PROCUREMENT.

Z) “**PROJECT MANAGER**” SHALL THE PERSON APPOINTED BY THE PROCURING ENTITY TO ACT AS THE PROJECT MANAGER FOR THE PURPOSES OF THE CONTRACT AND NAMED IN THE PARTICULAR CONDITIONS OF CONTRACT, OR OTHER PERSON APPOINTED FROM TIME TO TIME BY THE PROCURING ENTITY AND NOTIFIED TO THE CONTRACTOR.
AA) “NOTICE OF DISSATISFACTION” MEANS THE NOTICE GIVEN BY EITHER PARTY TO THE OTHER INDICATING ITS DISSATISFACTION AND INTENTION TO COMMENCE ARBITRATION.

1.2 APPLICABLE LAW
THE CONTRACT SHALL BE INTERPRETED IN ACCORDANCE WITH THE LAWS OF KENYA.

1.3 LANGUAGE
THIS CONTRACT HAS BEEN EXECUTED IN THE ENGLISH LANGUAGE, WHICH SHALL BE THE BINDING AND CONTROLLING LANGUAGE FOR ALL MATTERS RELATING TO THE MEANING OR INTERPRETATION OF THIS CONTRACT.

1.4 NOTICES
ANY NOTICE, REQUEST, OR CONSENT MADE PURSUANT TO THIS CONTRACT SHALL BE IN WRITING AND SHALL BE DEEMED TO HAVE BEEN MADE WHEN DELIVERED IN PERSON TO AN AUTHORIZED REPRESENTATIVE OF THE PARTY TO WHOM THE COMMUNICATION IS ADDRESSED, OR WHEN SENT BY REGISTERED MAIL, HAND DELIVERY, OR EMAIL TO SUCH PARTY AT THE ADDRESS SPECIFIED IN THE **SCC**.

1.5 LOCATION

THE SERVICES SHALL BE PERFORMED AT SUCH LOCATIONS AS ARE SPECIFIED IN APPENDIX A, IN THE SPECIFICATIONS AND, WHERE THE LOCATION OF A PARTICULAR TASK IS NOT SO SPECIFIED, AT SUCH LOCATIONS, WHETHER IN KENYA OR ELSEWHERE, AS THE PROCURING ENTITY MAY APPROVE.

1.6 AUTHORIZED REPRESENTATIVES

ANY ACTION REQUIRED OR PERMITTED TO BE TAKEN, AND ANY DOCUMENT REQUIRED OR PERMITTED TO BE EXECUTED, UNDER THIS CONTRACT BY THE PROCURING ENTITY OR THE SERVICE PROVIDER MAY BE TAKEN OR EXECUTED BY THE OFFICIALS SPECIFIED IN THE **SCC**.

1.7 INSPECTION AND AUDIT BY THE PPRA

PURSUANT TO PARAGRAPH 2.2 E. OF ATTACHMENT 1 TO THE GENERAL CONDITIONS, THE SERVICE PROVIDER SHALL PERMIT AND SHALL CAUSE ITS SUB CONTRACT OR SAND SUB-CONSULTANTS TO PERMIT, PPRA AND/OR PERSONS APPOINTED BY PPRA TO INSPECT THE SITE AND/OR THE ACCOUNTS AND RECORDS RELATING TO THE PROCUREMENT PROCESS, SELECTION AND/OR CONTRACT EXECUTION, AND TO HAVE SUCH ACCOUNTS AND RECORDS AUDITED BY AUDITORS APPOINTED BY PPRA. THE SERVICE PROVIDER'S AND ITS SUBCONTRACTORS' AND SUB-CONSULTANTS' ATTENTION IS DRAWN TO SUB-CLAUSE 3.10 WHICH PROVIDES, INTER ALIA, THAT ACTS INTENDED TO MATERIALLY IMPEDE THE EXERCISE OF PPRA'S INSPECTION AND AUDIT RIGHTS CONSTITUTE A PROHIBITED PRACTICE SUBJECT TO CONTRACT TERMINATION (AS WELL AS TO A DETERMINATION OF INELIGIBILITY PURSUANT TO PPRA'S PREVAILING SANCTIONS PROCEDURES).

1.8 TAXES AND DUTIES

THE SERVICE PROVIDER, SUBCONTRACTORS, AND THEIR PERSONNEL SHALL PAY SUCH TAXES, DUTIES, FEES, AND OTHER IMPOSITIONS AS MAY BE LEVIED UNDER THE APPLICABLE LAW, THE AMOUNT OF WHICH IS DEEMED TO HAVE BEEN INCLUDED IN THE CONTRACT PRICE.

2. COMMENCEMENT, COMPLETION, MODIFICATION, AND TERMINATION OF CONTRACT

2.1 EFFECTIVENESS OF CONTRACT

THIS CONTRACT SHALL COME INTO EFFECT ON THE DATE THE CONTRACT IS SIGNED BY BOTH PARTIES OR SUCH OTHER LATER DATE AS MAYBE STATED IN THE **SCC**.

2.2 COMMENCEMENT OF SERVICES

2.2.1 PROGRAM

BEFORE COMMENCEMENT OF THE SERVICES, THE SERVICE PROVIDER SHALL SUBMIT TO THE PROCURING ENTITY FOR APPROVAL A PROGRAM SHOWING THE GENERAL METHODS, ARRANGEMENTS ORDER AND TIMING FOR ALL ACTIVITIES. THE SERVICES SHALL BE CARRIED OUT IN ACCORDANCE WITH THE APPROVED PROGRAM AS UPDATED.

2.2.2 STARTING DATE

THE SERVICE PROVIDER SHALL START CARRYING OUT THE SERVICES THIRTY (30) DAYS AFTER THE DATE THE CONTRACT BECOMES EFFECTIVE, OR AT SUCH OTHER DATE AS MAY BE SPECIFIED IN THE **SCC**.

2.3 INTENDED COMPLETION DATE

UNLESS TERMINATED EARLIER PURSUANT TO SUB-CLAUSE 2.6, THE SERVICE PROVIDER SHALL COMPLETE THE ACTIVITIES BY THE INTENDED COMPLETION DATE, AS IS SPECIFIED IN THE **SCC**. IF THE SERVICE PROVIDER DOES NOT COMPLETE THE ACTIVITIES BY THE INTENDED COMPLETION DATE, IT SHALL BE LIABLE TO PAY LIQUIDATED DAMAGE AS PER SUB-CLAUSE3.8.IN THIS CASE, THE COMPLETION DATE WILL BE THE DATE OF COMPLETION OF ALL ACTIVITIES.

2.4 MODIFICATION

MODIFICATION OF THE TERMS AND CONDITIONS OF THIS CONTRACT, INCLUDING ANY MODIFICATION OF THE SCOPE OF THE SERVICES OR OF THE CONTRACT PRICE, MAY ONLY BE MADE BY WRITTEN AGREEMENT BETWEEN THE PARTIES.

2.4.1 VALUE ENGINEERING

THE SERVICE PROVIDER MAY PREPARE, AT ITS OWN COST, A VALUE ENGINEERING PROPOSAL AT ANY TIME DURING THE PERFORMANCE OF THE CONTRACT. THE VALUE ENGINEERING PROPOSAL SHALL, AT A MINIMUM, INCLUDE THE FOLLOWING;

A) THE PROPOSED CHANGE(S), AND A DESCRIPTION OF THE DIFFERENCE TO THE EXISTING CONTRACT REQUIREMENTS;

B) A FULL COST/BENEFIT ANALYSIS OF THE PROPOSED CHANGE(S) INCLUDING A DESCRIPTION AND ESTIMATE OF COSTS (INCLUDING LIFE CYCLE COSTS, IF APPLICABLE) THE PROCURING ENTITY MAY INCUR IN IMPLEMENTING THE VALUE ENGINEERING PROPOSAL; AND

C) A DESCRIPTION OF ANY EFFECT(S)OF THE CHANGE ON PERFORMANCE/FUNCTIONALITY.

THE PROCURING ENTITY MAY ACCEPT THE VALUE ENGINEERING PROPOSAL IF THE PROPOSAL DEMONSTRATES BENEFITS THAT:

A) ACCELERATES THE DELIVERY PERIOD; OR

B) REDUCES THE CONTRACT PRICE OR THE LIFECYCLE COSTS TO THE PROCURING ENTITY; OR

C) IMPROVES THE QUALITY, EFFICIENCY, SAFETY OR SUSTAINABILITY OF THE SERVICES; OR

D) YIELDS ANY OTHER BENEFITS TO THE PROCURING ENTITY, WITHOUT COMPROMISING THE NECESSARY FUNCTIONS OF THE FACILITIES.

IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY AND RESULTS IN:

A) A REDUCTION OF THE CONTRACT PRICE; THE AMOUNT TO BE PAID TO THE SERVICE PROVIDER SHALL BE THE PERCENTAGE SPECIFIED IN THE **SCC** OF THE REDUCTION IN THE CONTRACT PRICE; OR

B) AN INCREASE IN THE CONTRACT PRICE; BUT RESULTS IN A REDUCTION IN LIFECYCLE COSTS DUE TO ANY BENEFIT DESCRIBED IN

(A) TO(D)ABOVE, THE AMOUNT TO BE PAID TO THE SERVICE PROVIDER SHALL BE THE FULL INCREASE IN THE CONTRACT PRICE.

2.5 FORCE MAJEURE

2.5.1 DEFINITION

FOR THE PURPOSES OF THIS CONTRACT, "FORCE MAJEURE" MEANS AN EVENT WHICH IS BEYOND THE REASONABLE CONTROL OF A PARTY AND WHICH MAKES A PARTY'S PERFORMANCE OF ITS OBLIGATIONS UNDER THE CONTRACT IMPOSSIBLE OR SO IMPRACTICAL AS TO BE CONSIDERED IMPOSSIBLE UNDER THE CIRCUMSTANCES.

2.5.2 NO BREACH OF CONTRACT

THE FAILURE OF A PARTY TO FULFILL ANY OF ITS OBLIGATIONS UNDER THE CONTRACT SHALL NOT BE CONSIDERED TO BE A BREACH OF, OR DEFAULT UNDER, THIS CONTRACT INSOFAR AS SUCH INABILITY ARISES FROM AN EVENT OF FORCE MAJEURE, PROVIDED THAT THE PARTY AFFECTED BY SUCH AN EVENT (A) HAS TAKEN ALL REASONABLE PRECAUTIONS, DUE CARE AND REASONABLE ALTERNATIVE MEASURES IN ORDER TO CARRY OUT THE TERMS AND CONDITIONS OF THIS CONTRACT, AND(B) HAS INFORMED THE OTHER PARTY AS SOON AS POSSIBLE ABOUT THE OCCURRENCE OF SUCH AN EVENT.

2.5.3 EXTENSION OF TIME

ANY PERIOD WITH IN WHICH A PARTY SHALL, PURSUANT TO THIS CONTRACT, COMPLETE ANY ACTION OR TASK, SHALL BE EXTENDED FOR A PERIOD EQUAL TO THE TIME DURING WHICH SUCH PARTY WAS UNABLE TO PERFORM SUCH ACTION AS A RESULT OF FORCE MAJEURE.

2.5.4 PAYMENTS

DURING THE PERIOD OF THEIR INABILITY TO PERFORM THE SERVICES AS A RESULT OF AN EVENT OF FORCE MAJEURE, THE SERVICE PROVIDER SHALL BE ENTITLED TO CONTINUE TO BE PAID UNDER THE TERMS OF THIS CONTRACT, AS WELL AS TO BE REIMBURSED FOR ADDITIONAL COSTS REASONABLY AND NECESSARILY INCURRED BY THEM DURING SUCH PERIOD FOR THE PURPOSES OF THE SERVICES AND IN REACTIVATING THE SERVICE AFTER THE END OF SUCH PERIOD.

2.6 TERMINATION

2.6.1 BY THE PROCURING ENTITY

THE PROCURING ENTITY MAY TERMINATE THIS CONTRACT, BY NOT LESS THAN THIRTY (30) DAYS' WRITTEN NOTICE OF TERMINATION TO THE SERVICE PROVIDER, TO BE GIVEN AFTER THE OCCURRENCE OF ANY OF THE EVENTS SPECIFIED IN PARAGRAPHS(A)THROUGH (D) OF THIS SUB-CLAUSE 2.6.1:

A) IF THE SERVICE PROVIDER DOES NOT REMEDY A FAILURE IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THE CONTRACT, WITHIN THIRTY (30) DAYS AFTER BEING NOTIFIED OR WITHIN ANY FURTHER PERIOD AS THE PROCURING ENTITY MAY HAVE SUBSEQUENTLY APPROVED IN WRITING;

B) IF THE SERVICE PROVIDER BECOME INSOLVENT OR BANKRUPT;

C) IF, AS THE RESULT OF FORCE MAJEURE, THE SERVICE PROVIDER IS UNABLE TO PERFORM A MATERIAL PORTION OF THE SERVICES FOR A PERIOD OF NOT LESS THAN SIXTY (60) DAYS; OR

D) IF THE SERVICE PROVIDER, IN THE JUDGMENT OF THE PROCURING ENTITY HAS ENGAGED IN FRAUD AND CORRUPTION, AS DEFINED IN PARAGRAPH2.2A. OF ATTACHMENT1 TO THE GCC, IN COMPETING FOR OR IN EXECUTING THE CONTRACT

2.6.2 BY THE SERVICE PROVIDER

THE SERVICE PROVIDER MAY TERMINATE THIS CONTRACT, BY NOT LESS THAN THIRTY (30) DAYS' WRITTEN NOTICE TO THE PROCURING ENTITY, SUCH NOTICE TO BE GIVEN AFTER THE OCCURRENCE OF ANY OF THE EVENTS SPECIFIED IN PARAGRAPHS (A) AND (B) OF THIS SUB-CLAUSE 2.6.2:

A) IF THE PROCURING ENTITY FAILS TO PAY ANY MONIES DUE TO THE SERVICE PROVIDER PURSUANT TO THIS CONTRACT AND NOT SUBJECT TO DISPUTE PURSUANT TO CLAUSE 7 WITHIN FORTY-FIVE (45) DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE SERVICE PROVIDER THAT SUCH PAYMENT IS OVERDUE; OR

B) IF, AS THE RESULT OF FORCE MAJEURE, THE SERVICE PROVIDER IS UNABLE TO PERFORM A MATERIAL PORTION OF THE SERVICES FOR A PERIOD OF NOT LESS THAN SIXTY (60) DAYS.

2.6.3 PAYMENT UP ON TERMINATION

UPON TERMINATION OF THIS CONTRACT PURSUANT TO SUB-CLAUSES 2.6.1 OR 2.6.2, THE PROCURING ENTITY SHALL MAKE THE FOLLOWING PAYMENTS TO THE SERVICE PROVIDER:

A) REMUNERATION PURSUANT TO CLAUSE 6 FOR SERVICES SATISFACTORILY PERFORMED PRIOR TO THE EFFECTIVE DATE OF TERMINATION;

B) EXCEPT IN THE CASE OF TERMINATION PURSUANT TO PARAGRAPHS (A), (B), (D) OF SUB-CLAUSE 2.6.1, REIMBURSEMENT OF ANY REASONABLE COST INCIDENT TO THE PROMPT AND ORDERLY TERMINATION OF THE CONTRACT, INCLUDING THE COST OF THE RETURN TRAVEL OF THE PERSONNEL.

3. OBLIGATIONS OF THE SERVICE PROVIDER

3.1 GENERAL

THE SERVICE PROVIDER SHALL PERFORM THE SERVICES IN ACCORDANCE WITH THE SPECIFICATIONS AND THE ACTIVITY SCHEDULE, AND CARRY OUT ITS OBLIGATIONS WITH ALL DUE DILIGENCE, EFFICIENCY, AND ECONOMY, IN ACCORDANCE WITH GENERALLY ACCEPTED PROFESSIONAL TECHNIQUES AND PRACTICES, AND SHALL OBSERVE SOUND MANAGEMENT PRACTICES, AND EMPLOY APPROPRIATE ADVANCED TECHNOLOGY AND SAFE METHODS. THE SERVICE PROVIDER SHALL ALWAYS ACT, IN RESPECT OF ANY MATTER RELATING TO THIS CONTRACTOR TO THE SERVICES, AS FAITHFUL ADVISER TO THE PROCURING ENTITY, AND SHALL AT ALL TIMES SUPPORT AND SAFEGUARD THE PROCURING ENTITY'S LEGITIMATE INTERESTS IN ANY DEALINGS WITH SUBCONTRACTORS OR THIRD PARTIES.

3.2 CONFLICT OF INTERESTS

3.2.1 SERVICE PROVIDER NOT TO BENEFIT FROM COMMISSIONS AND DISCOUNTS.

THE REMUNERATION OF THE SERVICE PROVIDER PURSUANT TO CLAUSE 6 SHALL CONSTITUTE THE SERVICE PROVIDER'S SOLE REMUNERATIONINCONNECTIONWITHTHISCONTRACTORTHESERVICES, ANDTHESERVICEPROVIDERSHALLNOTACCEPTFORTHEIR OWN BENEFIT ANY TRADE COMMISSION, DISCOUNT, OR SIMILAR PAYMENT IN CONNECTION WITH ACTIVITIES PURSUANT TO THIS CONTRACTOR TO THE SERVICES OR IN THE DISCHARGE OF THEIR OBLIGATIONS UNDER THE CONTRACT, AND THE SERVICE PROVIDER SHALL USE THEIR BEST EFFORTS TO ENSURE THAT THE PERSONNEL, ANY SUBCONTRACTORS, AND AGENTS OF EITHER OF THEM SIMILARLY SHALL NOT RECEIVE ANY SUCH ADDITIONAL REMUNERATION.

3.2.2 SERVICE PROVIDER AND AFFILIATES NOT TO BE OTHERWISE INTERESTED IN PROJECT

THE SERVICE PROVIDER AGREE THAT, DURING THE TERM OF THIS CONTRACT AND AFTER ITS TERMINATION, THE SERVICE PROVIDER AND ITS AFFILIATES, AS WELL AS ANY SUBCONTRACTOR AND ANY OF ITS AFFILIATES, SHALL BED IS QUALIFIED FROM PROVIDING GOODS, WORKS, OR SERVICES(OTHER THAN THE SERVICES AND ANY CONTINUATION THEREOF) FOR ANY PROJECT RESULTING FROM OR CLOSELY RELATED TO THE SERVICES.

3.2.3 PROHIBITION OF CONFLICTING ACTIVITIES

NEITHER THE SERVICE PROVIDER NOR ITS SUBCONTRACTORS NOR THE PERSONNEL SHALL ENGAGE, EITHER DIRECTLY OR INDIRECTLY, IN ANY OF THE FOLLOWING ACTIVITIES:

A) DURING THE TERM OF THIS CONTRACT, ANY BUSINESS OR PROFESSIONAL ACTIVITIES IN KENYA WHICH WOULD CONFLICT WITH THE ACTIVITIES ASSIGNED TO THEM UNDER THIS CONTRACT;

B) DURING THE TERM OF THIS CONTRACT, NEITHER THE SERVICE PROVIDER NOR THEIR SUBCONTRACTORS SHALL HIRE PUBLIC EMPLOYEES' INACTIVE DUTY OR ON ANY TYPE OF LEAVE, TO PERFORM ANY ACTIVITY UNDER THIS CONTRACT;

C) AFTER THE TERMINATION OF THIS CONTRACT, SUCH OTHER ACTIVITIES AS MAY BE SPECIFIED IN THE **SCC**.

3.3 CONFIDENTIALITY

THE SERVICE PROVIDER, ITS SUBCONTRACTORS, AND THE PERSONNEL OF EITHER OF THEM SHALL NOT, EITHER DURING THE TERM OR WITHIN TWO (2) YEARS AFTER THE EXPIRATION OF THIS CONTRACT, DISCLOSE ANY PROPRIETARY OR CONFIDENTIAL INFORMATION RELATING TO THE PROJECT, THE SERVICES, THIS CONTRACT, OR THE PROCURING ENTITY'S BUSINESS OR OPERATIONS WITHOUT THE PRIOR WRITTEN CONSENT OF THE PROCURING ENTITY.

3.4 THE SERVICE PROVIDER (A) SHALL TAKE OUT AND MAINTAIN, AND SHALL CAUSE ANY SUBCONTRACTORS TO TAKE OUT AND MAINTAIN, AT ITS (OR THE SUB CONTRACTORS', AS THE CASE MAY BE)OWN COST BUT ON TERMS AND CONDITIONS APPROVED BY THE PROCURING ENTITY, INSURANCE AGAINST THE RISKS, AND FOR THE COVERAGE, AS SHALL BE SPECIFIED IN THE **SCC**; AND (B) AT THE PROCURING ENTITY'S REQUEST, SHALL PROVIDE EVIDENCE TO THE PROCURING ENTITY SHOWING THAT SUCH INSURANCE HAS BEEN TAKEN OUT AND MAINTAINED AND THAT THE CURRENT PREMIUMS HAVE BEEN PAID.

3.5 SERVICE PROVIDER'S ACTIONS REQUIRING PROCURING ENTITY'S PRIOR APPROVAL

THE SERVICE PROVIDER SHALL OBTAIN THE PROCURING ENTITY'S PRIOR APPROVAL IN WRITING BEFORE TAKING ANY OF THE FOLLOWING ACTIONS:

A) ENTERING INTO A SUBCONTRACT FOR THE PERFORMANCE OF ANY PART OF THE SERVICES,

B) APPOINTING SUCH MEMBERS OF THE PERSONNEL NOT LISTED BY NAME IN APPENDIX C ("KEY PERSONNEL AND SUBCONTRACTORS"),

C) CHANGING THE PROGRAM OF ACTIVITIES; AND

3.2.3 PROHIBITION OF CONFLICTING ACTIVITIES

NEITHER THE SERVICE PROVIDER NOR ITS SUBCONTRACTORS NOR THE PERSONNEL SHALL ENGAGE, EITHER DIRECTLY OR INDIRECTLY, IN ANY OF THE FOLLOWING ACTIVITIES:

A) DURING THE TERM OF THIS CONTRACT, ANY BUSINESS OR PROFESSIONAL ACTIVITIES IN KENYA WHICH WOULD CONFLICT WITH THE ACTIVITIES ASSIGNED TO THEM UNDER THIS CONTRACT;

B) DURING THE TERM OF THIS CONTRACT, NEITHER THE SERVICE PROVIDER NOR THEIR SUBCONTRACTORS SHALL HIRE PUBLIC EMPLOYEES' INACTIVE DUTY OR ON ANY TYPE OF LEAVE, TO PERFORM ANY ACTIVITY UNDER THIS CONTRACT;

D) ANY OTHER ACTION THAT MAY BE SPECIFIED IN THE **SCC**.

3.6 REPORTING OBLIGATIONS

THE SERVICE PROVIDER SHALL SUBMIT TO THE PROCURING ENTITY THE REPORTS AND DOCUMENTS SPECIFIED IN APPENDIX B IN THE FORM, IN THE NUMBERS, AND WITHIN THE PERIODS SET FORTH IN THE SAID APPENDIX.

3.7 DOCUMENTS PREPARED BY THE SERVICE PROVIDER TO BE THE PROPERTY OF THE PROCURING ENTITY

ALL PLANS, DRAWINGS, SPECIFICATIONS, DESIGNS, REPORTS, AND OTHER DOCUMENTS AND SOFTWARE SUBMITTED BY THE SERVICE PROVIDER IN ACCORDANCE WITH SUB-CLAUSE 3.6 SHALL BECOME AND REMAIN THE PROPERTY OF THE PROCURING ENTITY, AND THE SERVICE PROVIDER SHALL, NOT LATER THAN UPON TERMINATION OR EXPIRATION OF THIS CONTRACT, DELIVER ALL SUCH DOCUMENTS AND SOFTWARE TO THE PROCURING ENTITY, TOGETHER WITH A DETAILED INVENTORY THEREOF. THE SERVICE PROVIDER MAY RETAIN A COPY OF SUCH DOCUMENTS AND SOFTWARE. RESTRICTIONS ABOUT THE FUTURE USE OF THESE DOCUMENTS, IF ANY, SHALL BE SPECIFIED IN THE **SCC**.

3.8 LIQUIDATED DAMAGES

3.8.1 PAYMENTS OF LIQUIDATED DAMAGES

THE SERVICE PROVIDER SHALL PAY LIQUIDATED DAMAGES TO THE PROCURING ENTITY AT THE RATE PER DAY STATED IN THE **SCC** FOR EACH DAY THAT THE COMPLETION DATE IS LATER THAN THE INTENDED COMPLETION DATE. THE TOTAL AMOUNT OF LIQUIDATED DAMAGES SHALL NOT EXCEED THE AMOUNT DEFINED IN THE SCC. THE PROCURING ENTITY MAY DEDUCT LIQUIDATED DAMAGES FROM PAYMENTS DUE TO THE SERVICE PROVIDER. PAYMENT OF LIQUIDATED DAMAGES SHALL NOT AFFECT THE SERVICE PROVIDER'S LIABILITIES.

3.8.2 CORRECTION FOR OVER-PAYMENT

IF THE INTENDED COMPLETION DATE IS EXTENDED AFTER LIQUIDATED DAMAGES HAVE BEEN PAID, THE PROCURING ENTITY SHALL CORRECT ANY OVERPAYMENT OF LIQUIDATED DAMAGES BY THE SERVICE PROVIDER BY ADJUSTING THE NEXT PAYMENT CERTIFICATE. THE SERVICE PROVIDER SHALL BE PAID INTEREST ON THE OVERPAYMENT, CALCULATED FROM THE DATE OF PAYMENT TO THE DATE OF REPAYMENT, AT THE RATES SPECIFIED IN SUB-CLAUSE 6.5.

3.8.3 LACK OF PERFORMANCE PENALTY

IF THE SERVICE PROVIDER HAS NOT CORRECTED A DEFECT WITHIN THE TIME SPECIFIED IN THE PROCURING ENTITY'S NOTICE, A PENALTY FOR LACK OF PERFORMANCE WILL BE PAID BY THE SERVICE PROVIDER. THE AMOUNT TO BE PAID WILL BE CALCULATED AS A PERCENTAGE OF THE COST OF HAVING THE DEFECT CORRECTED, ASSESSED AS DESCRIBED IN SUB-CLAUSE7.2 AND SPECIFIED IN THE **SCC**.

3.9 PERFORMANCE SECURITY

THE SERVICE PROVIDER SHALL PROVIDE THE PERFORMANCE SECURITY TO THE PROCURING ENTITY NO LATER THAN THE DATE SPECIFIED IN THE FORM OF ACCEPTANCE. THE PERFORMANCE SECURITY SHALL BE ISSUED IN AN AMOUNT AND FORM AND BY A BANK OR SURETY ACCEPTABLE TO THE PROCURING ENTITY, AND DENOMINATED IN THE TYPES AND PROPORTIONS OF THE CURRENCIES IN WHICH THE CONTRACT PRICE IS PAYABLE. THE PERFORMANCE SECURITY SHALL BE VALID UNTIL A DATE 28 DAY FROM THE COMPLETION DATE OF THE CONTRACT IN CASE OF A BANK GUARANTEE, AND UNTIL ONE YEAR FROM THE COMPLETION DATE OF THE CONTRACT IN THE CASE OF A PERFORMANCE BOND.

3.10 FRAUD AND CORRUPTION

3.10.1 THE SERVICE PROVIDER SHALL COMPLY WITH THE GOVERNMENT'S ANTI-CORRUPTION LAWS AND ITS PREVAILING SANCTIONS, POLICIES AND PROCEDURES AS SET FORTH IN THE LAWS OF KENYA.

3.10.2 THE SERVICE PROVIDER SHALL DISCLOSE ANY COMMISSIONS OR FEES THAT MAY HAVE BEEN PAID OR ARE TO BE PAID TO AGENTS OR ANY OTHER PARTY WITH RESPECT TO THE TENDERING PROCESS OR IMPLEMENTATION OF THE CONTRACT. THE INFORMATION DISCLOSED MUST INCLUDE AT LEAST THE NAME AND ADDRESS OF THE AGENT OR OTHER PARTY, THE AMOUNT AND CURRENCY, AND THE PURPOSE OF THE COMMISSION, GRATUITY OR FEE.

3.11 SUSTAINABLE PROCUREMENT

THE SERVICE PROVIDER SHALL CONFORM TO THE SUSTAINABLE PROCUREMENT CONTRACTUAL PROVISIONS, IF AND AS SPECIFIED IN THE **SCC**.

4 SERVICE PROVIDER'S PERSONNEL

4.1 DESCRIPTION OF PERSONNEL

THE TITLES, AGREED JOB DESCRIPTIONS, MINIMUM QUALIFICATIONS, AND ESTIMATED PERIODS OF ENGAGEMENT IN THE CARRYING OUT OF THE SERVICES OF THE SERVICE PROVIDER'S KEY PERSONNEL ARE DESCRIBED IN APPENDIX C. THE KEY PERSONNEL AND SUBCONTRACTORS LISTED BY TITLE AS WELL AS BY NAME IN APPENDIX CARE HEREBY APPROVED BY THE PROCURING ENTITY.

4.2 REMOVAL AND/OR REPLACEMENT OF PERSONNEL

A) EXCEPT AS THE PROCURING ENTITY MAY OTHERWISE AGREE, NO CHANGES SHALL BE MADE IN THE KEY PERSONNEL. IF, FOR ANY REASON BEYOND THE REASONABLE CONTROL OF THE SERVICE PROVIDER, IT BECOMES NECESSARY TO REPLACE ANY OF THE KEY PERSONNEL, THE SERVICE PROVIDER SHALL PROVIDE AS A REPLACEMENT A PERSON OF EQUIVALENT OR BETTER QUALIFICATIONS.

B) IF THE PROCURING ENTITY FINDS THAT ANY OF THE PERSONNEL HAVE (I) COMMITTED SERIOUS MISCONDUCT OR HAVE BEEN CHARGED WITH HAVING COMMITTED A CRIMINAL ACTION, OR (II) HAVE REASONABLE CAUSE TO BE DISSATISFIED WITH THE PERFORMANCE OF ANY OF THE PERSONNEL, THEN THE SERVICE PROVIDER SHALL, AT THE PROCURING ENTITY'S WRITTEN REQUEST SPECIFYING THE GROUNDS THEREOF, PROVIDE AS A REPLACEMENT A PERSON WITH QUALIFICATIONS AND EXPERIENCE ACCEPTABLE TO THE PROCURING ENTITY.

C) THE SERVICE PROVIDER SHALL HAVE NO CLAIM FOR ADDITIONAL COSTS ARISING OUT OF OR INCIDENTAL TO ANY REMOVAL AND/OR REPLACEMENT OF PERSONNEL.

5 OBLIGATIONS OF THE PROCURING ENTITY

5.1 ASSISTANCE AND EXEMPTIONS

THE PROCURING ENTITY SHALL USE ITS BEST EFFORTS TO ENSURE THAT THE GOVERNMENT SHALL PROVIDE THE SERVICE PROVIDER SUCH ASSISTANCE AND EXEMPTIONS AS SPECIFIED IN THE **SCC**.

5.2 CHANGE IN THE APPLICABLE LAW

IF, AFTER THE DATE OF THIS CONTRACT, THERE IS ANY CHANGE IN THE APPLICABLE LAW WITH RESPECT TO TAXES AND DUTIES WHICH INCREASES OR DECREASES THE COST OF THE SERVICES RENDERED BY THE SERVICE PROVIDER, THEN THE REMUNERATION AND REIMBURSABLE EXPENSES OTHERWISE PAYABLE TO THE SERVICE PROVIDER UNDER THIS CONTRACT SHALL BE INCREASED OR DECREASED ACCORDINGLY BY AGREEMENT BETWEEN THE PARTIES, AND CORRESPONDING ADJUSTMENTS SHALL BE MADE TO THE AMOUNTS REFERRED TO IN SUB-CLAUSES 6.2(A) OR (B), AS THE CASE MAY BE.

5.3 SERVICES AND FACILITIES

THE PROCURING ENTITY SHALL MAKE AVAILABLE TO THE SERVICE PROVIDER THE SERVICES AND FACILITIES LISTED UNDER APPENDIX F.

6 PAYMENTS TO THE SERVICE PROVIDER

6.1 LUMP-SUM REMUNERATION

THE SERVICE PROVIDER'S REMUNERATION SHALL NOT EXCEED THE CONTRACT PRICE AND SHALL BE A FIXED LUMP-SUM INCLUDING ALL SUBCONTRACTORS' COSTS, AND ALL OTHER COSTS INCURRED BY THE SERVICE PROVIDER IN CARRYING OUT THE SERVICES DESCRIBED IN APPENDIX A. EXCEPT AS PROVIDED IN SUB-CLAUSE 5.2, THE CONTRACT PRICE MAY ONLY BE INCREASED ABOVE THE AMOUNTS STATED IN SUB-CLAUSE 6.2 IF THE PARTIES HAVE AGREED TO ADDITIONAL PAYMENTS IN ACCORDANCE WITH SUB- CLAUSES2.4AND6.3.

6.2 CONTRACT PRICE

A) THE PRICE PAYABLE IS SET FORTH IN THE **SCC**.

B) PRICE MAY BE PAYABLE IN FOREIGN CURRENCY, IF SO ALLOWED IN THIS DOCUMENT.

6.3 PAYMENT FOR ADDITIONAL SERVICES, AND PERFORMANCE INCENTIVE COMPENSATION

6.3.1 FOR THE PURPOSE OF DETERMINING THE REMUNERATION DUE FOR ADDITIONAL SERVICES AS MAY BE AGREED UNDER SUB-CLAUSE 2.4, A BREAKDOWN OF THE LUMP-SUM PRICE IS PROVIDED IN APPENDICES D AND E.

6.3.2 IF THE **SCC** SO SPECIFY, THE SERVICE PROVIDER SHALL BE PAID PERFORMANCE INCENTIVE COMPENSATION ASSET OUT IN THE PERFORMANCE INCENTIVE COMPENSATION APPENDIX.

6.3.3 WHERE THE CONTRACT PRICE IS DIFFERENT FROM THE CORRECTED TENDER PRICE, IN ORDER TO ENSURE THE CONTRACTOR IS NOT PAID LESS OR MORE RELATIVE TO THE CONTRACT PRICE *(WHICH WOULD BE THE TENDER PRICE),* PAYMENT VALUATION CERTIFICATES AND VARIATION ORDERS ON OMISSIONS AND ADDITIONS VALUED BASED ON RATES IN THE SCHEDULE OF RATES IN THE TENDER, WILL BE ADJUSTED BY A **PLUS OR MINUS** PERCENTAGE. THE PERCENTAGE ALREADY WORKED OUT DURING TENDER EVALUATION IS WORKED OUT AS FOLLOWS:*(CORRECTED TENDER PRICE–TENDER PRICE*)/TENDER PRICE X100.

6.4 TERMS AND CONDITIONS OF PAYMENT

PAYMENTS WILL BE MADE TO THE SERVICE PROVIDER ACCORDING TO THE PAYMENT SCHEDULE STATED IN THE **SCC**. UNLESS OTHERWISE STATED IN THE **SCC**, THE ADVANCE PAYMENT (ADVANCE FOR MOBILIZATION, MATERIALS AND SUPPLIES) SHALL BE MADE AGAINST THE PROVISION BY THE SERVICE PROVIDER OF A BANK GUARANTEE FOR THE SAME AMOUNT, AND SHALL BE VALID FOR THE PERIOD STATED IN THE **SCC**. ANY OTHER PAYMENT SHALL BE MADE AFTER THE CONDITIONS LISTED IN THE **SCC** FOR SUCH PAYMENT HAVE BEEN MET, AND THE SERVICE PROVIDER HAVE SUBMITTED AN INVOICE TO THE PROCURING ENTITY SPECIFYING THE AMOUNT DUE.

6.5 INTEREST ON DELAYED PAYMENTS

IF THE PROCURING ENTITY HAS DELAYED PAYMENTS BEYOND THIRTY (30) DAYS AFTER THE DUE DATE STATED IN THE **SCC**, INTEREST SHALL BE PAID TO THE SERVICE PROVIDER FOREACH DAY OF DELAY AT THE RATE STATED IN THE **SCC**.

6.6 PRICE ADJUSTMENT

6.6.1 PRICES SHALL BE ADJUSTED FOR FLUCTUATIONS IN THE COST OF INPUTS ONLY IF PROVIDED FOR IN THE **SCC**. IF SO PROVIDED, THE AMOUNTS CERTIFIED IN EACH PAYMENT CERTIFICATE, AFTER DEDUCTING FOR ADVANCE PAYMENT, SHALL BE ADJUSTED BY APPLYING THE RESPECTIVE PRICE ADJUSTMENT FACT OR TO THE PAYMENT AMOUNTS DUE IN EACH CURRENCY. A SEPARATE FORMULA OF THE TYPE INDICATED BELOW APPLIES TO EACH CONTRACT CURRENCY:

PC EQUALS TO AC + BC LMC / LOC + CC IMC / IOC

WHERE:

PC IS THE ADJUSTMENT FACTOR FOR THE PORTION OF THE CONTRACT PRICE PAYABLE IN A SPECIFIC CURRENCY “C”.

AC, BC AND CC ARE COEFFICIENTS SPECIFIED IN THE **SCC**, REPRESENTING: AC THE NON-ADJUSTABLE PORTION; BC THE ADJUSTABLE PORTION RELATIVE TO LABOR COSTS AND CC THE ADJUSTABLE PORTION FOR OTHER INPUTS, OF THE CONTRACT PRICE PAYABLE IN THAT SPECIFIC CURRENCY “C”; AND

LMC IS THE INDEX PREVAILING AT THE FIRST DAY OF THE MONTH OF THE CORRESPONDING INVOICED ATE AND LOC IS THE INDEX PREVAILING 28 DAYS BEFORE TENDER OPENING FOR LABOR; BOTH IN THE SPECIFIC CURRENCY “C”.

IMC IS THE INDEX PREVAILING AT THE FIRST DAY OF THE MONTH OF THE CORRESPONDING INVOICE DATE AND IOC IS THE INDEX PREVAILING 28 DAYS BEFORE TENDER OPENING FOR OTHER INPUTS PAYABLE; BOTH IN THE SPECIFIC CURRENCY “C”.

IF A PRICE ADJUSTMENT FACTOR IS APPLIED TO PAYMENTS MADE IN A CURRENCY OTHER THAN THE CURRENCY OF THE SOURCE OF THE INDEX FOR A PARTICULAR INDEXED INPUT, A CORRECTION FACTOR ZO/ZN WILL BE APPLIED TO THE RESPECTIVE COMPONENT FACTOR OF PN FOR THE FORMULA OF THE RELEVANT CURRENCY. ZO IS THE NUMBER OF UNITS OF KENYA SHILLINGS OF THE INDEX, EQUIVALENT TO ONE UNIT OF THE CURRENCY PAYMENT ON THE DATE OF THE BASE INDEX, AND ZN IS THE CORRESPONDING NUMBER OF SUCH CURRENCY UNITS ON THE DATE OF THE CURRENT INDEX.

6.6.2 IF THE VALUE OF THE INDEX IS CHANGED AFTER IT HAS BEEN USED IN A CALCULATION, THE CALCULATION SHALL BE CORRECTED AND AN ADJUSTMENT MADE IN THE NEXT PAYMENT CERTIFICATE. THE INDEX VALUE SHALL BE DEEMED TO TAKE ACCOUNT TO FALL CHANGES IN COST DUE TO FLUCTUATIONS IN COSTS.

6.7 DAY WORKS

6.7.1 IF APPLICABLE, THE DAY WORK RATES IN THE SERVICE PROVIDER'S TENDER SHALL BE USED FOR SMALL ADDITIONAL AMOUNTS OF SERVICES ONLY WHEN THE PROCURING ENTITY HAS GIVEN WRITTEN INSTRUCTIONS IN ADVANCE FOR ADDITIONAL SERVICES TO BE PAID IN THAT WAY.

6.7.2 ALL WORK TO BE PAID FOR AS DAY WORKS SHALL BE RECORDED BY THE SERVICE PROVIDER ON FORMS APPROVED BY THE PROCURING ENTITY. EACH COMPLETED FORM SHALL BE VERIFIED AND SIGNED BY THE PROCURING ENTITY REPRESENTATIVE AS INDICATED IN SUB-CLAUSE1.6 WITHIN TWO DAYS OF THE SERVICES BEING PERFORMED.

6.7.3 THE SERVICE PROVIDER SHALL BE PAID FOR DAY WORKS SUBJECT TO OBTAINING SIGNED DAY WORKS FORMS AS INDICATED IN SUB-CLAUSE6.7.2

7 QUALITY CONTROL

7.1 IDENTIFYING DEFECTS

THE PRINCIPLE AND MODALITIES OF INSPECTION OF THE SERVICES BY THE PROCURING ENTITY SHALL BE AS INDICATED IN THE **SCC**. THE PROCURING ENTITY SHALL CHECK THE SERVICE PROVIDER'S PERFORMANCE AND NOTIFY HIM OF ANY DEFECTS THAT ARE FOUND. SUCH CHECKING SHALL NOT AFFECT THE SERVICE PROVIDER'S RESPONSIBILITIES. THE PROCURING ENTITY MAY INSTRUCT THE SERVICE PROVIDER TO SEARCH FOR A DEFECT AND TO UNCOVER AND TEST ANY SERVICE THAT THE PROCURING ENTITY CONSIDERS MAY HAVE A DEFECT. DEFECT LIABILITY PERIOD IS AS DEFINED IN THE **SCC**.

7.2 CORRECTION OF DEFECTS, AND LACK OF PERFORMANCE PENALTY

A) THE PROCURING ENTITY SHALL GIVE NOTICE TO THE SERVICE PROVIDER OF ANY DEFECTS BEFORE THE END OF THE CONTRACT. THE DEFECTS LIABILITY PERIOD SHALL BE EXTENDED FOR AS LONG AS DEFECTS REMAIN TO BE CORRECTED.

B) EVERY TIME NOTICE A DEFECT IS GIVEN, THE SERVICE PROVIDER SHALL CORRECT THE NOTIFIED DEFECT WITHIN THE LENGTH OF TIME SPECIFIED BY THE PROCURING ENTITY'S NOTICE.

C) IF THE SERVICE PROVIDER HAS NOT CORRECTED A DEFECT WITHIN THE TIME SPECIFIED IN THE PROCURING ENTITY'S NOTICE, THE PROCURING ENTITY WILL ASSESS THE COST OF HAVING THE DEFECT CORRECTED, THE SERVICE PROVIDER WILL PAY THIS AMOUNT AND A PENALTY FOR LACK OF PERFORMANCE CALCULATED AS DESCRIBED IN SUB-CLAUSE 3.8.

8 SETTLEMENT OF DISPUTES

8.1 CONTRACTOR'S CLAIMS

8.1.1 IF THE CONTRACTOR CONSIDERS HIMSELF TO BE ENTITLED TO ANY EXTENSION OF THE TIME FOR COMPLETION AND/OR ANY ADDITIONAL PAYMENT, UNDER ANY CLAUSE OF THESE CONDITIONS OR OTHERWISE IN CONNECTION WITH THE CONTRACT, THE CONTRACTOR SHALL GIVE NOTICE TO THE PROJECT MANAGER, DESCRIBING THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM. THE NOTICE SHALL BE GIVEN AS SOON AS PRACTICABLE, AND NOT LATER THAN 28 DAYS AFTER THE CONTRACTOR BECAME AWARE, OR SHOULD HAVE BECOME AWARE, OF THE EVENT OR CIRCUMSTANCE.

8.1.2 IF THE CONTRACTOR FAILS TO GIVE NOTICE OF A CLAIM WITHIN SUCH PERIOD OF 28DAYS, THE TIME FOR COMPLETION SHALL NOT BE EXTENDED, THE CONTRACTOR SHALL NOT BE ENTITLED TO ADDITIONAL PAYMENT, AND THE PROCURING ENTITY SHALL BE DISCHARGED FROM ALL LIABILITY IN CONNECTION WITH THE CLAIM. OTHERWISE, THE FOLLOWING PROVISIONS OF THIS SUB- CLAUSES HALL APPLY.

8.1.3 THE CONTRACTOR SHALL ALSO SUBMIT ANY OTHER NOTICES WHICH ARE REQUIRED BY THE CONTRACT, AND SUPPORTING PARTICULARS FOR THE CLAIM, ALL S RELEVANT TO SUCH EVENT OR CIRCUMSTANCE.

8.1.4 THE CONTRACTOR SHALL KEEP SUCH CONTEMPORARY RECORDS AS MAY BE NECESSARY TO SUBSTANTIATE ANY CLAIM, EITHER ON THE SITE OR AT ANOTHER LOCATION ACCEPTABLE TO THE PROJECT MANAGER. WITHOUT ADMITTING THE PROCURING ENTITY'S LIABILITY, THE PROJECT MANAGER MAY, AFTER RECEIVING ANY NOTICE UNDER THIS SUB-CLAUSE, MONITOR THE RECORD-KEEPING AND /OR INSTRUCT THE CONTRACTOR TO KEEP FURTHER CONTEMPORARY RECORDS. THE CONTRACTOR SHALL PERMIT THE PROJECT MANAGER TO INSPECT ALL THESE RECORDS, AND SHALL (IF INSTRUCTED) SUBMIT COPIES TO THE PROJECT MANAGER.

8.1.5 WITHIN 42 DAYS AFTER THE CONTRACTOR BECAME AWARE (OR SHOULD HAVE BECOME AWARE) OF THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM, OR WITHIN SUCH OTHER PERIOD AS MAY BE PROPOSED BY THE CONTRACTOR AND APPROVED BY THE PROJECT MANAGER, THE CONTRACTOR SHALL SEND TO THE PROJECT MANAGER A FULLY DETAILED CLAIM WHICH INCLUDES FULL SUPPORTING PARTICULARS OF THE BASIS OF THE CLAIM AND OF THE EXTENSION OF TIME AND /OR ADDITIONAL PAYMENT CLAIMED. IF THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM HAS A CONTINUING EFFECT:

8.1.5.1 THIS FULLY DETAILED CLAIM SHALL BE CONSIDERED AS INTERIM;

A) THE CONTRACTOR SHALL SEND FURTHER INTERIM CLAIMS AT MONTHLY INTERVALS, GIVING THE ACCUMULATED DELAY AND /OR AMOUNT CLAIMED, AND SUCH FURTHER PARTICULARS AS THE PROJECT MANAGER MAY REASONABLY REQUIRE; AND

B) THE CONTRACTOR SHALL SEND A FINAL CLAIM WITHIN 28 DAYS AFTER THE END OF THE EFFECTS RESULTING FROM THE EVENT OR CIRCUMSTANCE, OR WITHIN SUCH OTHER PERIOD AS MAY BE PROPOSED BY THE CONTRACTOR AND APPROVED BY THE PROJECT MANAGER.

8.1.6 WITHIN 42 DAYS AFTER RECEIVING A CLAIM OR ANY FURTHER PARTICULARS SUPPORTING A PREVIOUS CLAIM, OR WITHIN SUCH OTHER PERIOD AS MAY BE PROPOSED BY THE PROJECT MANAGER AND APPROVED BY THE CONTRACTOR, THE PROJECT MANAGER SHALL RESPOND WITH APPROVAL, OR WITH DISAPPROVAL AND DETAILED COMMENTS. HE MAY ALSO REQUEST ANY NECESSARY FURTHER PARTICULARS, BUT SHALL NEVERTHELESS GIVE HIS RESPONSE ON THE PRINCIPLES OF THE CLAIM WITHIN THE ABOVE DEFINED TIME PERIOD.

8.1.7 WITHIN THE ABOVE DEFINED PERIOD OF 42 DAYS, THE PROJECT MANAGER SHALL PROCEED IN ACCORDANCE WITH SUB-CLAUSE 3.5[DETERMINATIONS] TO AGREE OR DETERMINE (I) THE EXTENSION (IF ANY) OF THE TIME FOR COMPLETION (BEFORE OR AFTER ITS EXPIRY) IN ACCORDANCE WITH SUB-CLAUSE 8.4 [EXTENSION OF TIME FOR COMPLETION], AND/OR (II) THE ADDITIONAL PAYMENT (IF ANY) TO WHICH THE CONTRACTOR IS ENTITLED UNDER THE CONTRACT.

8.1.8 EACH PAYMENT CERTIFICATE SHALL INCLUDE SUCH ADDITIONAL PAYMENT FOR ANY CLAIM AS HAS BEEN REASONABLY SUBSTANTIATED AS DUE UNDER THE RELEVANT PROVISION OF THE CONTRACT. UNLESS AND UNTIL THE PARTICULARS SUPPLIED ARE SUFFICIENT TO SUBSTANTIATE THE WHOLE OF THE CLAIM, THE CONTRACTOR SHALL ONLY BEEN TITLED TO PAYMENT FOR SUCH PART OF THE CLAIM AS HE HAS BE ENABLE TO SUBSTANTIATE.

8.1.9 IF THE PROJECT MANAGER DOES NOT RESPOND WITHIN THE TIME FRAMED FINED IN THIS CLAUSE, EITHER PARTY MAY CONSIDER THAT THE CLAIM IS REJECTED BY THE PROJECT MANAGER AND ANY OF THE PARTIES MAY REFER TO ARBITRATION IN ACCORDANCE WITH SUB-CLAUSE8.2 [MATTERS THAT MAY BE REFERRED TO ARBITRATION].

8.1.10 THE REQUIREMENTS OF THIS SUB-CLAUSE ARE IN ADDITION TO THOSE OF ANY OTHER SUB-CLAUSE WHICH MAY APPLY TO A CLAIM. IF THE CONTRACT OR FAILS TO COMPLY WITH THIS OR ANOTHER SUB-CLAUSE IN RELATION TO ANY CLAIM, ANY EXTENSION OF TIME AND/OR ADDITIONAL PAYMENT SHALL TAKE ACCOUNT OF THE EXTENT (IF ANY) TO WHICH THE FAILURE HAS PREVENTED OR PREJUDICED PROPER INVESTIGATION OF THE CLAIM, UNLESS THE CLAIM IS EXCLUDED UNDER THE SECOND PARAGRAPH OF THIS SUB- CLAUSE.

8.2 MATTERS THAT MAY BE REFERRED TO ARBITRATION

8.2.1 NOTWITHSTANDING ANYTHING STATED HEREIN THE FOLLOWING MATTERS MAY BE REFERRED TO ARBITRATION BEFORE THE PRACTICAL COMPLETION OF THE SERVICES OR ABANDONMENT OF THE SERVICES OR TERMINATION OF THE CONTRACT BY EITHER PARTY:

A) THE APPOINTMENT OF A REPLACEMENT PROJECT MANAGER UPON THE SAID PERSON CEASING TO ACT.

B) WHETHER OR NOT THE ISSUE OF AN INSTRUCTION BY THE PROJECT MANAGER IS EMPOWERED BY THESE CONDITIONS

C) WHETHERORNOTACERTIFICATEHASBEENIMPROPERLYWITHHELDORISNOTINACCORDANCE WITH THESE CONDITIONS.

D) ANY DISPUTE ARISING IN RESPECT OF WAR RISKS OR WAR DAMAGE.

E) ALL OTHER MATTERS SHALL ONLY BE REFERRED TO ARBITRATION AFTER THE COMPLETION OR ALLEGED COMPLETION OF THE SERVICES OR TERMINATION OR ALLEGED TERMINATION OF THE CONTRACT, UNLESS THE PROCURING ENTITY AND THE CONTRACTOR AGREE OTHERWISE IN WRITING.

8.3 AMICABLE SETTLEMENT

8.3.1 WHERE A NOTICE OF DIS SATISFACTION HAS BEEN GIVEN, BOTH PARTIES SHALL ATTEMPT TO SETTLE THE DISPUTE AMICABLY BEFORE THE COMMENCEMENT OF ARBITRATION. HOWEVER, UNLESS BOTH PARTIES AGREE OTHERWISE, THE PARTY GIVING A NOTICE OF DISSATISFACTION IN ACCORDANCE WITH SUB-CLAUSE 8.1 ABOVE SHOULD MOVE TO COMMENCE ARBITRATION AFTER THE FIFTY-SIXTH DAY FROM THE DAY ON WHICH A NOTICE OF DISSATISFACTION WAS GIVEN, EVEN IF NO ATTEMPT AT AN AMICABLE SETTLEMENT HAS BEEN MADE.

8.4 ARBITRATION

8.4.1 ANY CLAIM OR DISPUTE BETWEEN THE PARTIES ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT NOT SETTLED AMICABLY IN ACCORDANCE WITH SUB-CLAUSE 8.3 SHALL BE FINALLY SETTLED BY ARBITRATION. ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE ARBITRATION LAWS OF KENYA.

8.4.2 THE ARBITRATORS SHALL HAVE FULL POWER TO OPEN UP, REVIEW AND REVISE ANY CERTIFICATE, DETERMINATION, INSTRUCTION, OPINION OR VALUATION OF THE PROJECT MANAGER, RELEVANT TO THE DISPUTE. NOTHING SHALL DISQUALIFY REPRESENTATIVES OF THE PARTIES AND THE PROJECT MANAGER FROM BEING CALLED AS A WITNESS AND GIVING EVIDENCE BEFORE THE ARBITRATORS ON ANY MATTER WHATSOEVER RELEVANT TO THE DISPUTE.

8.4.3 NEITHER PARTY SHALL BE LIMITED IN THE PROCEEDINGS BEFORE THE ARBITRATORS TO THE EVIDENCE, OR TO THE REASONS FOR DISSATISFACTION GIVEN IN ITS NOTICE OF DISSATISFACTION.

8.4.4 ARBITRATION MAY BE COMMENCED PRIOR TO OR AFTER COMPLETION OF THE SERVICES. THE OBLIGATIONS OF THE PARTIES, AND THE PROJECT MANAGER SHALL NOT BE ALTERED BY REASON OF ANY ARBITRATION BEING CONDUCTED DURING THE PROGRESS OF THE SERVICES.

8.4.5 THE TERMS OF THE REMUNERATION OF EACH OR ALL THE MEMBERS OF ARBITRATION SHALL BE MUTUALLY AGREED UPON BY THE PARTIES WHEN AGREEING THE TERMS OF APPOINTMENT. EACH PARTY SHALL BE RESPONSIBLE FOR PAYING ONE-HALF OF THIS REMUNERATION.

8.5 ARBITRATION WITH PROCEEDINGS

8.5.1 IN CASE OF ANY CLAIM OR DISPUTE, SUCH CLAIM OR DISPUTE SHALL BE NOTIFIED IN WRITING BY EITHER PARTY TO THE OTHER WITH A REQUEST TO SUBMIT TO ARBITRATION AND TO CONCUR IN THE APPOINTMENT OF AN ARBITRATOR WITHIN THIRTY DAYS OF THE NOTICE. THE DISPUTE SHALL BE REFERRED TO THE ARBITRATION AND FINAL DECISION OF A PERSON TO BE AGREED BETWEEN THE PARTIES. FAILING AGREEMENT TO CONCUR IN THE APPOINTMENT OF AN ARBITRATOR, THE ARBITRATOR SHALL BE APPOINTED, ON THE REQUEST OF THE APPLYING PARTY, BY THE CHAIRMAN OR VICE CHAIRMAN OF ANY OF THE FOLLOWING PROFESSIONAL INSTITUTIONS;

A) LAW SOCIETY OF KENYA OR

B) CHARTERED INSTITUTE OF ARBITRATORS (KENYA BRANCH)

8.5.2 THE INSTITUTION WRITTEN TO FIRST BY THE AGGRIEVED PARTY SHALL TAKE PRECEDENCE OVER ALL OTHER INSTITUTIONS.

8.5.3 THE ARBITRATION MAYBE ON THE CONSTRUCTION OF THIS CONTRACTOR ON ANY MATTER OR THING OF WHAT SO EVER NATURE ARISING THERE UNDER OR IN CONNECTION THERE WITH, INCLUDING ANY MATTER OR THING LEFT BY THIS CONTRACT TO THE DISCRETION OF THE PROJECT MANAGER, OR THE WITHHOLDING BY THE PROJECT MANAGER OF ANY CERTIFICATE TO WHICH THE CONTRACTOR MAY CLAIM TO BEEN TITLED TO OR THE MEASUREMENT AND VALUATION REFERRED TO IN CLAUSE 23.0 OF THESE CONDITIONS, OR THE RIGHTS AND LIABILITIES OF THE PARTIES SUBSEQUENT TO THE TERMINATION OF CONTRACT.

8.5.4 PROVIDED THAT NO ARBITRATION PROCEEDINGS SHALL BE COMMENCED ON ANY CLAIM OR DISPUTE WHERE NOTICE OF A CLAIM OR DISPUTE HAS NOT BEEN GIVEN BY THE APPLYING PARTY WITHIN NINETY DAYS OF THE OCCURRENCE OR DISCOVERY OF THE MATTER OR ISSUE GIVING RISE TO THE DISPUTE.

8.5.5 NOTWITHSTANDING THE ISSUE OF A NOTICE AS STATED ABOVE, THE ARBITRATION OF SUCH A CLAIM OR DISPUTE SHALL NOT COMMENCE UNLESS AN ATTEMPT HAS IN THE FIRST INSTANCE BEEN MADE BY THE PARTIES TO SETTLE SUCH CLAIM OR DISPUTE AMICABLY WITH OR WITHOUT THE ASSISTANCE OF THIRD PARTIES. PROOF OF SUCH ATTEMPT SHALL BE REQUIRED.

8.5.6 THE ARBITRATOR SHALL, WITHOUT PREJUDICE TO THE GENERALITY OF HIS POWERS, HAVE POWERS TO DIRECT SUCH MEASUREMENTS, COMPUTATIONS, TESTS OR VALUATIONS AS MAY IN HIS OPINION BE DESIRABLE IN ORDER TO DETERMINE THE RIGHTS OF THE PARTIES AND ASSESS AND AWARD ANY SUMS WHICH OUGHT TO HAVE BEEN THE SUBJECT OF OR INCLUDED IN ANY CERTIFICATE.

8.5.7 THE ARBITRATOR SHALL, WITHOUT PREJUDICE TO THE GENERALITY OF HIS POWERS, HAVE POWERS TO OPEN UP, REVIEW AND REVISE ANY CERTIFICATE, OPINION, DECISION, REQUIREMENT OR NOTICE AND TO DETERMINE ALL MATTERS IN DISPUTE WHICH SHALL BE SUBMITTED TO HIM IN THE SAME MANNER AS IF NO SUCH CERTIFICATE, OPINION, DECISION REQUIREMENT OR NOTICE HAD BEEN GIVEN.

8.5.8 THE AWARD OF SUCH ARBITRATOR SHALL BE FINAL AND BINDING UPON THE PARTIES.

8.6 FAILURE TO COMPLY WITH ARBITRATOR'S DECISION

8.6.1 IN THE EVENT THAT A PARTY FAILS TO COMPLY WITH A FINAL AND BINDING ARBITRATOR'S DECISION, THEN THE OTHER PARTY MAY, WITHOUT PREJUDICE TO ANY OTHER RIGHTS IT MAY HAVE, REFER THE MATTER TO A COMPETENT COURT OF LAW.

8.7 THE ADJUDICATOR

8.7.1 SHOULD THE ADJUDICATOR RESIGN OR DIE, OR SHOULD THE PROCURING ENTITY AND THE SERVICE PROVIDER AGREE THAT THE ADJUDICATOR IS NOT FUNCTIONING IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT; A NEW ADJUDICATOR WILL BE JOINTLY APPOINTED BY THE PROCURING ENTITY AND THE SERVICE PROVIDER. IN CASE OF DISAGREEMENT BETWEEN THE PROCURING ENTITY AND THE SERVICE PROVIDER, WITHIN 30 DAYS, THE ADJUDICATOR SHALL BE DESIGNATED BY THE APPOINTING AUTHORITY DESIGNATED IN THE **SCC** AT THE REQUEST OF EITHER PARTY, WITHIN 14 DAYS OF RECEIPT OF SUCH REQUEST.

8.7.2 THE ADJUDICATOR SHALL BE PAID BY THE HOUR AT THE RATE SPECIFIED IN THE TDS AND **SCC**, TOGETHER WITH REIMBURSABLE EXPENSES OF THE TYPE'S SPECIFIED IN THE **SCC**, AND THE COST SHALL BE DIVIDED EQUALLY BETWEEN THE PROCURING ENTITY AND THE SERVICE PROVIDER, WHATEVER DECISION IS REACHED BY THE ADJUDICATOR. EITHER PARTY MAY REFER A DECISION OF THE ADJUDICATOR TO AN ARBITRATOR WITHIN28 DAYS OF THE ADJUDICATOR'S WRITTEN DECISION. IF NEITHER PARTY REFERS THE DISPUTE TO ARBITRATION WITHIN THE ABOVE 28 DAYS, THE ADJUDICATOR'S DECISION WILL BE FINAL AND BINDING.

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SECTION VII - SPECIAL CONDITIONS OF CONTRACT (SCC)

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Special Conditions of Contract (SCC)

	GCC Reference & SCC Detail	Filled By	Value to be Auto Populated in Tender Document
GCC Reference	**1. GENERAL PROVISIONS** **1.1 DEFINITIONS** UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS WHENEVER USED IN THIS CONTRACT HAVE THE FOLLOWING MEANINGS: A) THE **ADJUDICATOR** IS THE PERSON APPOINTED JOINTLY BY THE PROCURING ENTITY AND THE SERVICE PROVIDER TO RESOLVE DISPUTES IN THE FIRST INSTANCE, AS PROVIDED FOR IN SUB-CLAUSE8.2 HEREUNDER.	-	-
SCC Detail	THE ADJUDICATOR IS _____	Manual Input	
GCC Reference	D) "**CONTRACT**" MEANS THE CONTRACT SIGNED BY THE PARTIES, TO WHICH THESE GENERAL CONDITIONS OF CONTRACT (GCC) ARE ATTACHED, TOGETHER WITH ALL THE DOCUMENTS LISTED IN CLAUSE 1 OF SUCH SIGNED CONTRACT;	-	-
SCC Detail	THE CONTRACT NAME IS _____.	Auto Populate	LEASE AND DEVELOPMENT OF STORAGE AND ENFORCEMENT YARDS

GCC Reference	H) "**PROCURING ENTITY**" MEANS THE PROCURING ENTITY OR PARTY WHO EMPLOYS THE SERVICE PROVIDER	-	-
SCC Detail	THE PROCURING ENTITY IS _____	Auto Populate	ENERGY & PETROLEUM REGULATORY AUTHORITY
GCC Reference	S) "**SERVICE PROVIDER**" IS A PERSON OR CORPORATE BODY WHOSE TENDER TO PROVIDE THE SERVICES HAS BEEN ACCEPTED BY THE PROCURING ENTITY;	-	-
SCC Detail	THE SERVICE PROVIDER IS _____	Manual Input	
GCC Reference	Z) "**PROJECT MANAGER**" SHALL THE PERSON APPOINTED BY THE PROCURING ENTITY TO ACT AS THE PROJECT MANAGER FOR THE PURPOSES OF THE CONTRACT AND NAMED IN THE PARTICULAR CONDITIONS OF CONTRACT, OR OTHER PERSON APPOINTED FROM TIME TO TIME BY THE PROCURING ENTITY AND NOTIFIED TO THE CONTRACTOR. AA) "NOTICE OF DISSATISFACTION" MEANS THE NOTICE GIVEN BY EITHER PARTY TO THE OTHER INDICATING ITS DISSATISFACTION AND INTENTION TO COMMENCE ARBITRATION.	-	-
SCC Detail	PROJECT MANAGER IS _____	Manual Input	

GCC Reference	**1.4 NOTICES** ANY NOTICE, REQUEST, OR CONSENT MADE PURSUANT TO THIS CONTRACT SHALL BE IN WRITING AND SHALL BE DEEMED TO HAVE BEEN MADE WHEN DELIVERED IN PERSON TO AN AUTHORIZED REPRESENTATIVE OF THE PARTY TO WHOM THE COMMUNICATION IS ADDRESSED, OR WHEN SENT BY REGISTERED MAIL, HAND DELIVERY, OR EMAIL TO SUCH PARTY AT THE ADDRESS SPECIFIED IN THE **SCC**.	-	-
SCC Detail	THE ADDRESSES ARE: PROCURING ENTITY:	Auto Populate	ENERGY & PETROLEUM REGULATORY AUTHORITY
GCC Reference	**1.6 AUTHORIZED REPRESENTATIVES** ANY ACTION REQUIRED OR PERMITTED TO BE TAKEN, AND ANY DOCUMENT REQUIRED OR PERMITTED TO BE EXECUTED, UNDER THIS CONTRACT BY THE PROCURING ENTITY OR THE SERVICE PROVIDER MAY BE TAKEN OR EXECUTED BY THE OFFICIALS SPECIFIED IN THE **SCC**.	-	-
SCC Detail	THE AUTHORIZED REPRESENTATIVE FOR THE PROCURING ENTITY IS:	Manual Input	
SCC Detail	THE AUTHORIZED REPRESENTATIVE FOR THE SERVICE PROVIDER IS:	Manual Input	

GCC Reference	**2. COMMENCEMENT, COMPLETION, MODIFICATION, AND TERMINATION OF CONTRACT** **2.1 EFFECTIVENESS OF CONTRACT** THIS CONTRACT SHALL COME INTO EFFECT ON THE DATE THE CONTRACT IS SIGNED BY BOTH PARTIES OR SUCH OTHER LATER DATE AS MAYBE STATED IN THE **SCC**.	-	-
SCC Detail	THE DATE ON WHICH THIS CONTRACT SHALL COME INTO EFFECT IS	Manual Input	
GCC Reference	**2.2.2 STARTING DATE** THE SERVICE PROVIDER SHALL START CARRYING OUT THE SERVICES THIRTY (30) DAYS AFTER THE DATE THE CONTRACT BECOMES EFFECTIVE, OR AT SUCH OTHER DATE AS MAY BE SPECIFIED IN THE **SCC**.	-	-
SCC Detail	THE STARTING DATE FOR THE COMMENCEMENT OF SERVICES IS	Manual Input	
GCC Reference	**2.3 INTENDED COMPLETION DATE** UNLESS TERMINATED EARLIER PURSUANT TO SUB-CLAUSE 2.6, THE SERVICE PROVIDER SHALL COMPLETE THE ACTIVITIES BY THE INTENDED COMPLETION DATE, AS IS SPECIFIED IN THE **SCC**. IF THE SERVICE PROVIDER DOES NOT COMPLETE THE ACTIVITIES BY THE INTENDED COMPLETION DATE, IT SHALL BE LIABLE TO PAY LIQUIDATED DAMAGE AS PER SUB-CLAUSE3.8.IN THIS CASE, THE COMPLETION DATE WILL BE THE DATE OF COMPLETION OF ALL ACTIVITIES.	-	-

SCC Detail	THE INTENDED COMPLETION DATE IS	Manual Input	
GCC Reference	**2.4.1 VALUE ENGINEERING** THE SERVICE PROVIDER MAY PREPARE, AT ITS OWN COST, A VALUE ENGINEERING PROPOSAL AT ANY TIME DURING THE PERFORMANCE OF THE CONTRACT. THE VALUE ENGINEERING PROPOSAL SHALL, AT A MINIMUM, INCLUDE THE FOLLOWING; A) THE PROPOSED CHANGE(S), AND A DESCRIPTION OF THE DIFFERENCE TO THE EXISTING CONTRACT REQUIREMENTS; B) A FULL COST/BENEFIT ANALYSIS OF THE PROPOSED CHANGE(S) INCLUDING A DESCRIPTION AND ESTIMATE OF COSTS (INCLUDING LIFE CYCLE COSTS, IF APPLICABLE) THE PROCURING ENTITY MAY INCUR IN IMPLEMENTING THE VALUE ENGINEERING PROPOSAL; AND C) A DESCRIPTION OF ANY EFFECT(S)OF THE CHANGE ON PERFORMANCE/FUNCTIONALITY. THE PROCURING ENTITY MAY ACCEPT THE VALUE ENGINEERING PROPOSAL IF THE PROPOSAL DEMONSTRATES BENEFITS THAT: A) ACCELERATES THE DELIVERY PERIOD; OR B) REDUCES THE CONTRACT PRICE OR THE LIFECYCLE COSTS TO THE PROCURING ENTITY; OR C) IMPROVES THE QUALITY, EFFICIENCY, SAFETY OR SUSTAINABILITY OF THE SERVICES; OR D) YIELDS ANY OTHER BENEFITS TO THE PROCURING ENTITY, WITHOUT COMPROMISING THE NECESSARY FUNCTIONS OF THE FACILITIES.	-	-

	IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY AND RESULTS IN: A) A REDUCTION OF THE CONTRACT PRICE; THE AMOUNT TO BE PAID TO THE SERVICE PROVIDER SHALL BE THE PERCENTAGE SPECIFIED IN THE **SCC** OF THE REDUCTION IN THE CONTRACT PRICE; OR		
SCC Detail	IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY THE AMOUNT TO BE PAID TO THE SERVICE PROVIDER SHALL BE ___% THE PERCENTAGE IS NORMALLY UP TO 50%) OF THE REDUCTION IN THE CONTRACT PRICE.	Manual Input	

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GCC Reference	**3. OBLIGATIONS OF THE SERVICE PROVIDER** **3.2.3 PROHIBITION OF CONFLICTING ACTIVITIES** NEITHER THE SERVICE PROVIDER NOR ITS SUBCONTRACTORS NOR THE PERSONNEL SHALL ENGAGE, EITHER DIRECTLY OR INDIRECTLY, IN ANY OF THE FOLLOWING ACTIVITIES: A) DURING THE TERM OF THIS CONTRACT, ANY BUSINESS OR PROFESSIONAL ACTIVITIES IN KENYA WHICH WOULD CONFLICT WITH THE ACTIVITIES ASSIGNED TO THEM UNDER THIS CONTRACT; B) DURING THE TERM OF THIS CONTRACT, NEITHER THE SERVICE PROVIDER NOR THEIR SUBCONTRACTORS SHALL HIRE PUBLIC EMPLOYEES' INACTIVE DUTY OR ON ANY TYPE OF LEAVE, TO PERFORM ANY ACTIVITY UNDER THIS CONTRACT; C) AFTER THE TERMINATION OF THIS CONTRACT, SUCH OTHER ACTIVITIES AS MAY BE SPECIFIED IN THE **SCC**.	-	-
SCC Detail	ACTIVITIES PROHIBITED AFTER TERMINATION OF THIS CONTRACT ARE:	Manual Input	

GCC Reference	**3.4 THE SERVICE PROVIDER** (A) SHALL TAKE OUT AND MAINTAIN, AND SHALL CAUSE ANY SUBCONTRACTORS TO TAKE OUT AND MAINTAIN, AT ITS (OR THE SUB CONTRACTORS', AS THE CASE MAY BE)OWN COST BUT ON TERMS AND CONDITIONS APPROVED BY THE PROCURING ENTITY, INSURANCE AGAINST THE RISKS, AND FOR THE COVERAGE, AS SHALL BE SPECIFIED IN THE **SCC** ; AND (B) AT THE PROCURING ENTITY'S REQUEST, SHALL PROVIDE EVIDENCE TO THE PROCURING ENTITY SHOWING THAT SUCH INSURANCE HAS BEEN TAKEN OUT AND MAINTAINED AND THAT THE CURRENT PREMIUMS HAVE BEEN PAID.	-	-
SCC Detail	THE RISKS AND COVERAGE BY INSURANCE SHALL BE: (I) THIRD PARTY MOTOR VEHICLE	Manual Input	
SCC Detail	(II) THIRD PARTY LIABILITY	Manual Input	
SCC Detail	(III) PROCURING ENTITY'S LIABILITY AND WORKERS' COMPENSATION	Manual Input	
SCC Detail	(IV) PROFESSIONAL LIABILITY	Manual Input	
SCC Detail	(V) LOSS OR DAMAGE TO EQUIPMENT AND PROPERTY	Manual Input	

GCC Reference	**3.2.3 PROHIBITION OF CONFLICTING ACTIVITIES** NEITHER THE SERVICE PROVIDER NOR ITS SUBCONTRACTORS NOR THE PERSONNEL SHALL ENGAGE, EITHER DIRECTLY OR INDIRECTLY, IN ANY OF THE FOLLOWING ACTIVITIES: A) DURING THE TERM OF THIS CONTRACT, ANY BUSINESS OR PROFESSIONAL ACTIVITIES IN KENYA WHICH WOULD CONFLICT WITH THE ACTIVITIES ASSIGNED TO THEM UNDER THIS CONTRACT; B) DURING THE TERM OF THIS CONTRACT, NEITHER THE SERVICE PROVIDER NOR THEIR SUBCONTRACTORS SHALL HIRE PUBLIC EMPLOYEES' INACTIVE DUTY OR ON ANY TYPE OF LEAVE, TO PERFORM ANY ACTIVITY UNDER THIS CONTRACT;	-	-
SCC Detail	ACTIVITIES PROHIBITED AFTER TERMINATION OF THIS CONTRACT ARE: _____	Manual Input	
GCC Reference	D) ANY OTHER ACTION THAT MAY BE SPECIFIED IN THE **SCC**.	-	-
SCC Detail	THE OTHER ACTIONS ARE	Manual Input	

GCC Reference	**3.7 DOCUMENTS PREPARED BY THE SERVICE PROVIDER TO BE THE PROPERTY OF THE PROCURING ENTITY** ALL PLANS, DRAWINGS, SPECIFICATIONS, DESIGNS, REPORTS, AND OTHER DOCUMENTS AND SOFTWARE SUBMITTED BY THE SERVICE PROVIDER IN ACCORDANCE WITH SUB-CLAUSE 3.6 SHALL BECOME AND REMAIN THE PROPERTY OF THE PROCURING ENTITY, AND THE SERVICE PROVIDER SHALL, NOT LATER THAN UPON TERMINATION OR EXPIRATION OF THIS CONTRACT, DELIVER ALL SUCH DOCUMENTS AND SOFTWARE TO THE PROCURING ENTITY, TOGETHER WITH A DETAILED INVENTORY THEREOF. THE SERVICE PROVIDER MAY RETAIN A COPY OF SUCH DOCUMENTS AND SOFTWARE. RESTRICTIONS ABOUT THE FUTURE USE OF THESE DOCUMENTS, IF ANY, SHALL BE SPECIFIED IN THE **SCC**.	-	-
SCC Detail	RESTRICTIONS ON THE USE OF DOCUMENTS PREPARED BY THE SERVICE PROVIDER ARE:	Manual Input	

GCC Reference	**3.8 LIQUIDATED DAMAGES** **3.8.1 PAYMENTS OF LIQUIDATED DAMAGES** THE SERVICE PROVIDER SHALL PAY LIQUIDATED DAMAGES TO THE PROCURING ENTITY AT THE RATE PER DAY STATED IN THE **SCC** FOR EACH DAY THAT THE COMPLETION DATE IS LATER THAN THE INTENDED COMPLETION DATE. THE TOTAL AMOUNT OF LIQUIDATED DAMAGES SHALL NOT EXCEED THE AMOUNT DEFINED IN THE SCC. THE PROCURING ENTITY MAY DEDUCT LIQUIDATED DAMAGES FROM PAYMENTS DUE TO THE SERVICE PROVIDER. PAYMENT OF LIQUIDATED DAMAGES SHALL NOT AFFECT THE SERVICE PROVIDER'S LIABILITIES.	-	-
SCC Detail	THE LIQUIDATED DAMAGES RATE PER DAY IS:	Manual Input	
GCC Reference	**3.8.3 LACK OF PERFORMANCE PENALTY** IF THE SERVICE PROVIDER HAS NOT CORRECTED A DEFECT WITHIN THE TIME SPECIFIED IN THE PROCURING ENTITY'S NOTICE, A PENALTY FOR LACK OF PERFORMANCE WILL BE PAID BY THE SERVICE PROVIDER. THE AMOUNT TO BE PAID WILL BE CALCULATED AS A PERCENTAGE OF THE COST OF HAVING THE DEFECT CORRECTED, ASSESSED AS DESCRIBED IN SUB-CLAUSE7.2 AND SPECIFIED IN THE **SCC**.	-	-
SCC Detail	THE PERCENTAGE _____	Manual Input	

GCC Reference	3.11 SUSTAINABLE PROCUREMENT THE SERVICE PROVIDER SHALL CONFORM TO THE SUSTAINABLE PROCUREMENT CONTRACTUAL PROVISIONS, IF AND AS SPECIFIED IN THE **SCC**.	-	-
SCC Detail	THE SUSTAINABLE PROCUREMENT CONTRACTUAL PROVISIONS SHALL BE	Manual Input	
GCC Reference	**5 OBLIGATIONS OF THE PROCURING ENTITY** **5.1 ASSISTANCE AND EXEMPTIONS** THE PROCURING ENTITY SHALL USE ITS BEST EFFORTS TO ENSURE THAT THE GOVERNMENT SHALL PROVIDE THE SERVICE PROVIDER SUCH ASSISTANCE AND EXEMPTIONS AS SPECIFIED IN THE **SCC**.	-	-
SCC Detail	THE ASSISTANCE AND EXEMPTIONS PROVIDED TO THE SERVICE PROVIDER ARE:	Manual Input	
GCC Reference	**6 PAYMENTS TO THE SERVICE PROVIDER** **6.2 CONTRACT PRICE** A) THE PRICE PAYABLE IS SET FORTH IN THE **SCC**.	-	-
SCC Detail	THE AMOUNT IN KENYA SHILLINGS	Manual Input	
GCC Reference	6.3.2 IF THE **SCC** SO SPECIFY, THE SERVICE PROVIDER SHALL BE PAID PERFORMANCE INCENTIVE COMPENSATION ASSET OUT IN THE PERFORMANCE INCENTIVE COMPENSATION APPENDIX.	-	-

SCC Detail	THE PERFORMANCE INCENTIVE PAID TO THE SERVICE PROVIDER SHALL BE:	Manual Input	
GCC Reference	**6.4 TERMS AND CONDITIONS OF PAYMENT** PAYMENTS WILL BE MADE TO THE SERVICE PROVIDER ACCORDING TO THE PAYMENT SCHEDULE STATED IN THE **SCC**. UNLESS OTHERWISE STATED IN THE **SCC**, THE ADVANCE PAYMENT (ADVANCE FOR MOBILIZATION, MATERIALS AND SUPPLIES) SHALL BE MADE AGAINST THE PROVISION BY THE SERVICE PROVIDER OF A BANK GUARANTEE FOR THE SAME AMOUNT, AND SHALL BE VALID FOR THE PERIOD STATED IN THE **SCC**. ANY OTHER PAYMENT SHALL BE MADE AFTER THE CONDITIONS LISTED IN THE **SCC** FOR SUCH PAYMENT HAVE BEEN MET, AND THE SERVICE PROVIDER HAVE SUBMITTED AN INVOICE TO THE PROCURING ENTITY SPECIFYING THE AMOUNT DUE.	-	-

SCC Detail	PAYMENTS SHALL BE MADE ACCORDING TO THE FOLLOWING SCHEDULE: • ADVANCE FOR MOBILIZATION, MATERIALS AND SUPPLIES: _____ PERCENT OF THE CONTRACT PRICE SHALL BE PAID ON THE COMMENCEMENT DATE AGAINST THE SUBMISSION OF A BANK GUARANTEE FOR THE SAME. • THE AMORTIZATION OF THE ADVANCE MENTIONED ABOVE SHALL COMMENCE WHEN THE PROGRESS PAYMENTS HAVE REACHED 25% OF THE CONTRACT PRICE AND BE COMPLETED WHEN THE PROGRESS PAYMENTS HAVE REACHED 75%. • THE BANK GUARANTEE FOR THE ADVANCE PAYMENT SHALL BE RELEASED WHEN THE ADVANCE PAYMENT HAS BEEN FULLY AMORTIZED.	Manual Input	

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SCC Detail	• PROGRESS PAYMENTS IN ACCORDANCE WITH THE MILESTONES ESTABLISHED AS FOLLOWS, SUBJECT TO CERTIFICATION BY THE PROCURING ENTITY, THAT THE SERVICES HAVE BEEN RENDERED SATISFACTORILY, PURSUANT TO THE PERFORMANCE INDICATORS: _____ (INDICATE MILESTONE AND/OR PERCENTAGE) _____ SHOULD THE CERTIFICATION NOT BE PROVIDED OR REFUSED IN WRITING BY THE PROCURING ENTITY WITHIN ONE MONTH OF THE DATE OF THE MILESTONE, OR OF THE DATE OF RECEIPT OF THE CORRESPONDING INVOICE, THE CERTIFICATION WILL BE DEEMED TO HAVE BEEN PROVIDED, AND THE PROGRESS PAYMENT WILL BE RELEASED AT SUCH DATE.	Manual Input	
SCC Detail	_____ (INDICATE MILESTONE AND/OR PERCENTAGE) _____ AND	Manual Input	
SCC Detail	_____ (INDICATE MILESTONE AND/OR PERCENTAGE) _____	Manual Input	
GCC Reference	**6.5 INTEREST ON DELAYED PAYMENTS** IF THE PROCURING ENTITY HAS DELAYED PAYMENTS BEYOND THIRTY (30) DAYS AFTER THE DUE DATE STATED IN THE **SCC**, INTEREST SHALL BE PAID TO THE SERVICE PROVIDER FOREACH DAY OF DELAY AT THE RATE STATED IN THE **SCC**.	-	-

SCC Detail	PAYMENT SHALL BE MADE WITHIN _____ DAYS OF RECEIPT OF THE INVOICE AND THE RELEVANT DOCUMENTS SPECIFIED IN SUB-CLAUSE 6.4,	Manual Input	
SCC Detail	THE INTEREST RATE IS.....	Manual Input	
GCC Reference	**6.6 PRICE ADJUSTMENT** 6.6.1 PRICES SHALL BE ADJUSTED FOR FLUCTUATIONS IN THE COST OF INPUTS ONLY IF PROVIDED FOR IN THE **SCC**. IF SO PROVIDED, THE AMOUNTS CERTIFIED IN EACH PAYMENT CERTIFICATE, AFTER DEDUCTING FOR ADVANCE PAYMENT, SHALL BE ADJUSTED BY APPLYING THE RESPECTIVE PRICE ADJUSTMENT FACT OR TO THE PAYMENT AMOUNTS DUE IN EACH CURRENCY. A SEPARATE FORMULA OF THE TYPE INDICATED BELOW APPLIES TO EACH CONTRACT CURRENCY: **PC EQUALS TO AC + BC LMC / LOC + CC IMC / IOC** WHERE: PC IS THE ADJUSTMENT FACTOR FOR THE PORTION OF THE CONTRACT PRICE PAYABLE IN A SPECIFIC CURRENCY “C”. AC, BC AND CC ARE COEFFICIENTS SPECIFIED IN THE **SCC**, REPRESENTING: AC THE NON-ADJUSTABLE PORTION; BC THE ADJUSTABLE PORTION RELATIVE TO LABOR COSTS AND CC THE ADJUSTABLE PORTION FOR OTHER INPUTS, OF THE CONTRACT PRICE PAYABLE IN THAT SPECIFIC CURRENCY “C”; AND	-	-

	LMC IS THE INDEX PREVAILING AT THE FIRST DAY OF THE MONTH OF THE CORRESPONDING INVOICED ATE AND LOC IS THE INDEX PREVAILING 28 DAYS BEFORE TENDER OPENING FOR LABOR; BOTH IN THE SPECIFIC CURRENCY “C”. IMC IS THE INDEX PREVAILING AT THE FIRST DAY OF THE MONTH OF THE CORRESPONDING INVOICE DATE AND IOC IS THE INDEX PREVAILING 28 DAYS BEFORE TENDER OPENING FOR OTHER INPUTS PAYABLE; BOTH IN THE SPECIFIC CURRENCY “C”. IF A PRICE ADJUSTMENT FACTOR IS APPLIED TO PAYMENTS MADE IN A CURRENCY OTHER THAN THE CURRENCY OF THE SOURCE OF THE INDEX FOR A PARTICULAR INDEXED INPUT, A CORRECTION FACTOR ZO/ZN WILL BE APPLIED TO THE RESPECTIVE COMPONENT FACTOR OF PN FOR THE FORMULA OF THE RELEVANT CURRENCY. ZO IS THE NUMBER OF UNITS OF KENYA SHILLINGS OF THE INDEX, EQUIVALENT TO ONE UNIT OF THE CURRENCY PAYMENT ON THE DATE OF THE BASE INDEX, AND ZN IS THE CORRESPONDING NUMBER OF SUCH CURRENCY UNITS ON THE DATE OF THE CURRENT INDEX.		
SCC Detail	PRICE ADJUSTMENT IN ACCORDANCE WITH SUB-CLAUSE 6.6. IS _____	Manual Input	
SCC Detail	THE COEFFICIENTS FOR ADJUSTMENT OF PRICES ARE:	Manual Input	
SCC Detail	(A) FOR LOCAL CURRENCY: AL IS _____	Manual Input	

SCC Detail	BL IS _____	Manual Input	
SCC Detail	CL IS _____	Manual Input	
SCC Detail	LMC AND LOC ARE THE INDEX FOR LABOR FROM	Manual Input	
SCC Detail	IMC AND IOC ARE THE INDEX FOR	Manual Input	
SCC Detail	FROM	Manual Input	
SCC Detail	(B) FOR FOREIGN CURRENCY AF IS _____	Manual Input	
SCC Detail	BF IS _____	Manual Input	
SCC Detail	CF IS _____	Manual Input	
SCC Detail	LMC AND LOC ARE THE INDEX FOR LABOR FROM	Manual Input	
SCC Detail	IMC AND IOC ARE THE INDEX FOR	Manual Input	
SCC Detail	FROM	Manual Input	

GCC Reference	**7 QUALITY CONTROL** **7.1 IDENTIFYING DEFECTS** THE PRINCIPLE AND MODALITIES OF INSPECTION OF THE SERVICES BY THE PROCURING ENTITY SHALL BE AS INDICATED IN THE **SCC**. THE PROCURING ENTITY SHALL CHECK THE SERVICE PROVIDER'S PERFORMANCE AND NOTIFY HIM OF ANY DEFECTS THAT ARE FOUND. SUCH CHECKING SHALL NOT AFFECT THE SERVICE PROVIDER'S RESPONSIBILITIES. THE PROCURING ENTITY MAY INSTRUCT THE SERVICE PROVIDER TO SEARCH FOR A DEFECT AND TO UNCOVER AND TEST ANY SERVICE THAT THE PROCURING ENTITY CONSIDERS MAY HAVE A DEFECT. DEFECT LIABILITY PERIOD IS AS DEFINED IN THE **SCC**.	-	-
SCC Detail	THE PRINCIPLE AND MODALITIES OF INSPECTION OF THE SERVICES BY THE PROCURING ENTITY ARE AS FOLLOWS:	Manual Input	
SCC Detail	THE DEFECTS LIABILITY PERIOD IS	Manual Input	

GCC Reference	**8 SETTLEMENT OF DISPUTES** **8.7 THE ADJUDICATOR** 8.7.1 SHOULD THE ADJUDICATOR RESIGN OR DIE, OR SHOULD THE PROCURING ENTITY AND THE SERVICE PROVIDER AGREE THAT THE ADJUDICATOR IS NOT FUNCTIONING IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT; A NEW ADJUDICATOR WILL BE JOINTLY APPOINTED BY THE PROCURING ENTITY AND THE SERVICE PROVIDER. IN CASE OF DISAGREEMENT BETWEEN THE PROCURING ENTITY AND THE SERVICE PROVIDER, WITHIN 30 DAYS, THE ADJUDICATOR SHALL BE DESIGNATED BY THE APPOINTING AUTHORITY DESIGNATED IN THE **SCC** AT THE REQUEST OF EITHER PARTY, WITHIN 14 DAYS OF RECEIPT OF SUCH REQUEST.	-	-
SCC Detail	THE DESIGNATED APPOINTING AUTHORITY FOR A NEW ADJUDICATOR IS	Manual Input	

GCC Reference	8.7.2 THE ADJUDICATOR SHALL BE PAID BY THE HOUR AT THE RATE SPECIFIED IN THE TDS AND **SCC**, TOGETHER WITH REIMBURSABLE EXPENSES OF THE TYPE'S SPECIFIED IN THE **SCC** , AND THE COST SHALL BE DIVIDED EQUALLY BETWEEN THE PROCURING ENTITY AND THE SERVICE PROVIDER, WHATEVER DECISION IS REACHED BY THE ADJUDICATOR. EITHER PARTY MAY REFER A DECISION OF THE ADJUDICATOR TO AN ARBITRATOR WITHIN28 DAYS OF THE ADJUDICATOR'S WRITTEN DECISION. IF NEITHER PARTY REFERS THE DISPUTE TO ARBITRATION WITHIN THE ABOVE 28 DAYS, THE ADJUDICATOR'S DECISION WILL BE FINAL AND BINDING.	-	-
SCC Detail	THE ADJUDICATOR IS:	Manual Input	
SCC Detail	WHO WILL BE PAID A RATE PER HOUR OF WORK OF:	Manual Input	
SCC Detail	THE FOLLOWING REIMBURSABLE EXPENSES ARE RECOGNIZED:	Manual Input	