



**TENDER NO. KPPF/PROC/2-A/08/2020**

**REMEDIAL WORKS FOR ONSITE WASTE WATER TREATMENT PLANT AT LORESHO  
RIDGE ESTATE DEVELOPED ON L.R.NO.21080/63 (ORIGINAL NO. 21080/38)**

**(OPEN TENDER)**

**SEPTEMBER 2020**

Stima Plaza Annex, Kolobot Road,  
P.O. Box 1548 - 00600  
Nairobi, Kenya.

TEL NO: 020 5029600

EMAIL: [tenders@kppf.co.ke](mailto:tenders@kppf.co.ke)

**CONSULTANT ENGINEERS**

EPSILON CONSULTING ENGINEERS LTD  
P.O.BOX 50000-00100  
NAIROBI.

**ALL CANDIDATES ARE ADVISED TO READ CAREFULLY THIS TENDER DOCUMENT IN ITS  
ENTIRETY BEFORE MAKING ANY BID**

TABLE OF CONTENTS

SECTION I - INVITATION TO TENDER.....	4
SECTION II - TENDER SUBMISSION CHECKLIST .....	7
ABBREVIATIONS AND ACRONYMS .....	8
SECTION III - INSTRUCTIONS TO TENDERERS (ITT).....	9
3.1 DEFINITIONS .....	9
3.2 ELIGIBLE TENDERERS .....	11
3.3 INELIGIBLE TENDERERS.....	12
3.4 DECLARATIONS OF ELIGIBILITY .....	12
3.5 JOINT VENTURE .....	12
3.6 COST OF TENDERING .....	14
3.7 TIME FOR COMPLETION OF WORKS .....	14
3.8 CONFLICT OF INTEREST.....	14
3.9 ONE TENDER PER TENDERER .....	14
3.10 SITE VISIT AND PRE-BID MEETING .....	15
3.11 CONTENTS OF THE TENDER DOCUMENT .....	15
3.12 CLARIFICATION OF DOCUMENTS .....	16
3.13 AMENDMENT OF DOCUMENTS .....	16
3.14 LANGUAGE OF TENDER .....	17
3.15 DOCUMENTS COMPRISING THE TENDER .....	17
3.16 TENDER FORM .....	18
3.17 TENDER RATES AND PRICES.....	18
3.18 TENDER CURRENCIES.....	18
3.19 TENDERER’S ELIGIBILITY AND QUALIFICATIONS.....	18
3.20 CONFORMITY OF SERVICES TO TENDER DOCUMENTS .....	19
3.21 DEMONSTRATION(S), INSPECTION(S) AND TEST(S) .....	20
3.22 WARRANTY .....	20
3.23 TENDER SECURITY .....	21
3.24 VALIDITY OF TENDERS.....	22
3.25 ALTERNATIVE OFFERS .....	22
3.26 PREPARATION AND SEALING OF THE TENDER .....	22
3.27 DEADLINE FOR SUBMISSION OF TENDERS.....	23
3.28 MODIFICATION AND WITHDRAWAL OF TENDERS.....	23
3.29 OPENING OF TENDERS .....	23
3.30 PROCESS TO BE CONFIDENTIAL .....	23
3.31 CLARIFICATION OF TENDERS AND CONTACTING KPPF .....	24
3.32 PRELIMINARY EVALUATION AND RESPONSIVENESS.....	24
3.33 MINOR DEVIATIONS, ERRORS OR OVERSIGHTS .....	24
3.34 TECHNICAL EVALUATION AND COMPARISON OF TENDERS .....	25
3.35 FINANCIAL EVALUATION .....	26
3.36 PREFERENCES.....	27
3.37 DEBARMENT OF A TENDERER .....	27
3.38 CONFIRMATION OF QUALIFICATION FOR AWARD .....	27
3.39 AWARD OF CONTRACT .....	28
3.40 TERMINATION OF PROCUREMENT PROCEEDINGS.....	28
3.41 NOTIFICATION OF AWARD .....	28
3.42 SIGNING OF CONTRACT .....	29
3.43 PERFORMANCE SECURITY .....	29
3.44 CORRUPT OR FRAUDULENT PRACTICES .....	30
SECTION IV DESCRIPTION OF WORKS AND LOCATION .....	31
SECTION V BID DATA SHEET (BDS) - APPENDIX TO INSTRUCTIONS TO TENDERERS.....	32

SECTION VI - EVALUATION CRITERIA .....	33
SECTION VII – GENERAL CONDITIONS OF CONTRACT.....	36
7.1 DEFINITIONS .....	37
7.2 INTERPRATATION .....	39
7.3 LANGUAGE AND LAW.....	40
7.4 PROJECT MANAGER’S DECISIONS.....	40
7.5 COMMUNICATIONS .....	40
7.6 SUBCONTRACTING .....	40
7.7 OTHER CONTRACTORS .....	40
7.8 PERSONNEL .....	40
7.9 WORKS.....	41
7.10 SAFETY AND TEMPORARY WORKS.....	41
7.11 WORK PROGRAM.....	41
7.12 POSSESSION OF SITE AND COMMENCEMENT OF WORKS .....	41
7.13 ACCESS TO SITE .....	42
7.14 INSTRUCTIONS.....	42
7.15 EXTENSION OR ACCELERATION OF COMPLETION DATE .....	43
7.16 MANAGEMENT MEETINGS .....	43
7.17 EARLY WARNING .....	43
7.18 DEFECTS .....	44
7.19 BILLS OF QUANTITIES .....	44
7.20 VARIATIONS.....	44
7.21 PAYMENT CERTIFICATES, CURRENCY OF PAYMENTS AND ADVANCE PAYMENTS .....	47
7.22 COMPENSATION EVENTS .....	48
7.23 PRICE ADJUSTMENT .....	50
7.24 RETENTION.....	51
7.25 LIQUIDATED DAMAGES .....	51
7.26 PERFORMANCE SECURITY .....	51
7.27 DAYWORKS.....	52
7.28 LIABILITY AND INSURANCE .....	52
7.29 COMPLETION AND TAKING OVER .....	54
7.30 FINAL ACCOUNT .....	54
7.31 SUSPENSION OF WORKS .....	55
7.32 TERMINATION OF CONTRACT.....	56
7.33 PAYMENT UPON TERMINATION .....	57
7.34 RELEASE FROM PERFORMANCE.....	58
7.35 CORRUPT GIFTS AND PAYMENTS OF COMMISSION.....	58
7.36 SETTLEMENT OF DISPUTES .....	58
7.37 PRICES.....	60
7.38 VARIATION OF CONTRACT.....	60
7.39 ASSIGNMENT .....	60
7.40 NOMINATED SUBCONTRACTORS .....	60
7.41 LIQUIDATED DAMAGES .....	65
7.42 WARRANTY .....	65
7.43 RESOLUTION OF DISPUTES .....	65
7.44 LANGUAGE AND LAW.....	66
7.45 WAIVER.....	66
7.46 FORCE MAJEURE .....	66
SECTION VIII – SPECIAL CONDITIONS OF CONTRACT.....	68
SECTION IX - STANDARD FORMS .....	70
SECTION X - TENDER FORM .....	71
SECTION XI - CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM.....	73
SECTION XII A - TENDER SECURITY FORM – (BANK GUARANTEE).....	76

SECTION XII B - TENDER SECURITY FORM (SACCO SOCIETY, DEPOSIT TAKING MICRO FINANCE INSTITUTIONS, WOMEN ENTERPRISE FUND & YOUTH ENTERPRISE FUND).....	79
SECTION XIII - DECLARATION FORM .....	82
SECTION XIV– DRAFT LETTER OF NOTIFICATION OF AWARD .....	83
SECTION XV – DRAFT LETTER OF NOTIFICATION OF REGRET .....	84
SECTION XVI - CONTRACT AGREEMENT FORM .....	85
SECTION XVII - PERFORMANCE SECURITY FORM (BANK GUARANTEE) .....	90
SECTION XVIII - PREVIOUS EXPERIENCE WITH SIMILAR WORK .....	93
SECTION XIX - BILL OF QUANTITIES .....	94
SECTION XX – DETAILS OF SUBCONTRACTORS .....	97
SECTION XXI- LETTER OF ACCEPTANCE .....	98

## SECTION I - INVITATION TO TENDER

DATE: September 2020

- 1.1 The Kenya Power Pension Fund (KPPF) invites bids from eligible tenderers for **REMEDIAL WORKS FOR ONSITE WASTE WATER TREATMENT PLANT AT LORESHO RIDGE ESTATE DEVELOPED ON L.R.NO.21080/63 (ORIGINAL NO. 21080/38) TENDER NUMBER KPPF/PROC/2-A/08/2020**
- 1.2 Tendering will be conducted through the Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015, the Public Procurement and Disposal Regulations, 2020
- 1.3 Interested firms may obtain further information on the Tenders Documents, from the Fund's website [www.kppf.co.ke](http://www.kppf.co.ke) or the Fund's Office at the following address;

Procurement Officer,

Kenya Power Pension Fund Offices, Stima Plaza Annex, Kolobot Road, Parklands

P.O Box 1548 – 00600

Nairobi, Kenya.

Tel No: 020 5029600

Email: [tenders@kppf.co.ke](mailto:tenders@kppf.co.ke)

- 1.4 Information downloaded from [www.kppf.co.ke](http://www.kppf.co.ke) is FREE OF CHARGE and bidders may register their submissions via email address [tenders@kppf.co.ke](mailto:tenders@kppf.co.ke)
- 1.5 Completed tender documents are to be enclosed in plain sealed envelopes marked with the Tender reference number **"TENDER NO. KPPF/PROC/2-A/08/2020 "** and tender name **"REMEDIAL WORKS FOR ONSITE WASTE WATER TREATMENT PLANT AT LORESHO RIDGE ESTATE DEVELOPED ON L.R.NO.21080/63 (ORIGINAL NO. 21080/38)"** and be deposited in the Tender Box next to the lift lobby located at Stima Plaza Annex, Ground Floor, Kolobot Road, Nairobi, Kenya so as to be received on or before **Thursday, 8<sup>th</sup> October 2020 at 11:30 AM ("the tender Submission Deadline")**.

- 1.6 Any duly sealed tender documents which are **bulky** and cannot fit into the Tender Box shall be received at 4<sup>th</sup> Floor Procurement Department Kenya Power Pension Fund Offices Stima Plaza Annex and sign a register.
- 1.7 Tenders will be opened promptly thereafter.
- 1.8 All tenderers whose tenders will have been received before the closing date and time will be advised of the results of their tender submissions
- 1.9 Prices quoted should be inclusive of all taxes and levies (where applicable) and must be in Kenya Shillings or another currency that is freely convertible in Kenya (for Foreign bidders) and shall remain valid for One Hundred and Eighty (180) days from the Bid Submission Deadline.
- 1.10 **Site Visit**  
Bidders are highly recommended to visit the site at **at Loresho Ridge Estate** Nairobi Kenya which is not mandatory.
- 1.11 The Fund reserves the right to conduct due diligence and, for that purpose, to contact any government or other agency in order to satisfy itself of the eligibility and/or suitability of any Bidder, provided that the foregoing shall not be interpreted to excuse any Bidder from making all disclosures required in the tender documents and the applicable laws.

## **OUR PURPOSE**

To deliver value and quality of life in retirement for our members

## **OUR VISION**

To be the best-in-class occupational pension scheme in the whole of Africa

## **CORE VALUES**

Integrity

Accountability

Courteous

Stewardship

## SECTION II - TENDER SUBMISSION CHECKLIST

Bidders are advised to clearly label their documents according to the tender submission checklist.

No.	Item	Tick Where Provided
1.	Duly completed Tender Form	
2.	Copy of Company or Contractor or Firm's Registration/Incorporation Certificate	
3.	PIN Certificate local companies or its equivalent for foreign companies	
4.	Copy of <b>Valid</b> Tax Compliance Certificate local companies or its equivalent for foreign companies	
5.	Declaration Form	
6.	Confidential Business Questionnaire (CBQ)	
7.	Proposed work duration	
8.	Drawings attached	
9.	Firm Experience, <b>recommendation letters/LPOs/ Completion certificates</b>	
10.	Reference letters from previous clients of the Contractor for similar works.	
11.	<b>Priced Bill of Quantities</b>	
12.	<b>Appendix I - Drawings</b>	
13.	<b>Specifications- General description of material and workmanship</b>	
14.	Any other document or item required by the Tender Document. (The Tenderer shall specify such other documents or items it has submitted)	

### \*NOTES TO TENDERERS

- Valid Tax Compliance Certificate shall be one issued by KRA (Kenya Revenue Authority ) and valid for at least up to the tender closing date. All Tenderers **must** provide a valid Tax Compliance Certificate.



## ABBREVIATIONS AND ACRONYMS

1. BDS Bid Data Sheet
2. BQ Bill of Quantities
3. CC Conditions of Contract
4. ICPAK Institute of Certified Public Accountants of Kenya
5. JV Joint Venture
6. KSh./ KES Kenya Shillings
7. PM Project Manager
8. PPAD 2015 Public Procurement and Asset Disposal Act, 2015
9. PPDR 2006 Public Procurement and Disposal Regulations, 2006
10. PPRA Public Procurement Regulatory Authority
11. VAT Value Added Tax
12. KRA Kenya Revenue Authority
13. LC Letter of Credit
14. TCC Tax Compliance Certificate
15. SCC Special Conditions of Contract

## SECTION III - INSTRUCTIONS TO TENDERERS (ITT)

### 3.1 Definitions

In this tender, unless the context or express provision otherwise requires: -

- a) *Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under.*
- b) *“Date of Tender Document” shall be the **start date** specified on the KPPF tender document.*
- c) *“Day” means calendar day and “month” means calendar month.*
- d) *“KEBS” wherever appearing means the Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits.*
- e) *“PPRA” wherever appearing means The Public Procurement Regulatory Authority or its successor(s) and assign(s) where the context so admits.*
- f) *Reference to “the tender” or the “Tender Document” includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.*
- g) *“The Procuring Entity” means The Kenya Power & Lighting Company Limited Staff Retirement Benefits Scheme or its successor(s) and assign(s) where the context so admits (hereinafter referred to as Kenya Power Pension Fund abbreviated as KPPF).*
- i) *“The Tenderer” means the person(s) submitting its Tender for the supply, installation and commissioning (where applicable) of the goods in response to the Invitation to Tender.*
- j) *Where there are two or more persons included in the expression the “Tenderer”, any act or default or omission by the Tenderer shall be deemed to be an act, default or omission by any one or more of such persons.*
- k) *Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.*
- l) *Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “Tenderer” the covenants, agreements and obligations expressed to be made or performed by the Tenderer shall be deemed to be made or performed by such persons jointly and severally.*

- m) KPPF's "authorized person" shall mean its CEO & Trust Secretary who is designated by the PPAD Act 2015 to exercise such power, authority or discretion as is required under the tender and any contract arising therefrom, or such other KPPF staff delegated with such authority.*
- n) Citizen contractors-means a person/firm wholly owned and controlled by person(s) who are citizens of Kenya.*
- o) Local contractors- a firm shall be qualified as a local contractor if it is registered in Kenya.*

**3.2 Eligible Tenderers**

**3.2.1 This invitation to bid is open to all Bidders**

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

3.2.3 The classification of eligibility shall be in accordance with that maintained by Kenya's National Construction Authority or its successor responsible for the classification of contractors.

3.2.4 Government or government owned institutions in Kenya may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration board or authorities and if they are not a dependent agency of the Government.

3.2.5 Local Tenderers i.e. Kenyan registered companies whose operations are based in Kenya shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya such as the National Construction Authority or the Energy Regulatory Commission.

3.2.6 Tenderers shall provide such evidence of their continued eligibility satisfactory to KPPF as KPPF may reasonably request.

3.2.7 Tenderers (including all members of a joint venture and subcontractors) shall provide a statement that they are not associated, or have not been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for this project or being proposed as Project Manager for this Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to tender.

3.2.8 In addition, a tenderer is eligible to bid for this contract only if the tenderer satisfies the following criteria—

- a) the tenderer has the legal capacity to enter into a contract for procurement or asset disposal;
- b) the tenderer is not insolvent, in receivership, bankrupt or in the process of being wound up;
- c) the tenderer, if a member of a regulated profession, has satisfied all the professional requirements;
- d) the tenderer and his or her sub-contractor, if any, is not debarred;
- e) the tenderer has fulfilled tax obligations;

- f) the tenderer has not been convicted of corrupt or fraudulent practices; and
- g) is not guilty of any serious violation of fair employment laws and practices.

### **3.3 Ineligible Tenderers**

3.3.1 Notwithstanding any other provisions of this tender, the following are not eligible to participate in the tender: -

- a) KPPF's employees, its Board or any of its committee members.
- b) Any Public/State Officer of the Government of the Republic of Kenya (GoK).
- c) Any member of a Board or Committee or any department of GoK.
- d) Any person appointed to any position by the President of Kenya.
- e) Any person appointed to any position by any Cabinet Secretary of GoK.
- f) Any tenderer submitting false, inaccurate or incomplete information about their qualifications.

3.3.2 In addition, the tenderer shall be considered ineligible to bid, where in case of a corporation, private company, partnership or other body, the tenderer, their spouse, child or sub-contractor has substantial or controlling interest and is found to be in contravention of the provisions of section 3.2.7 above.

3.3.3 Despite the provisions of section 3.3.1 and 3.3.2, a tenderer having a substantial or controlling interest shall be eligible to bid where—

- a) such tenderer has declared any conflict of interest; and
- b) performance and price competition for that good, work or service is not available or can only be sourced from that tenderer.

3.3.4 For the purposes of this paragraph, any relative i.e. spouse(s) and child(ren) of any person mentioned in sub-paragraph 3.3.1 is also ineligible to participate in the tender. In addition, a Cabinet Secretary shall include the President, Deputy President or the Attorney General of GoK.

### **3.4 Declarations of Eligibility**

3.4.1 Tenderers shall not be under declarations of ineligibility for corrupt, fraudulent practices and are not amongst persons mentioned in sub-paragraphs 3.3.1 and 3.3.2 above.

3.4.2 Tenderers who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section XIII.

3.4.3 Those that are under the Declaration for corrupt and fraudulent practices whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances.

### **3.5 Joint Venture**

3.5.1 Tenders submitted by a joint venture (JV) of two or more firms (consortium), as partners shall comply with the following requirements: -

- 3.5.2 The Tender Form and in case of a successful tender, the Contract Agreement Form, shall be signed so as to be legally binding on all partners of the joint venture.
- a) One of the partners shall be nominated and authorized as being lead contractor. The authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the partners/directors.
  - b) The Power of Attorney which shall accompany the tender, shall be granted by the authorized signatories of all the partners as follows: -
    - i) for local and citizen contractors, before a Commissioner of Oaths or a Notary Public or Magistrate of the Kenyan Judiciary.
    - ii) for a foreign bidder, before a Notary Public, or the equivalent of a Notary Public, and in this regard the bidder shall provide satisfactory proof of such equivalence.
  - c) The lead contractor shall be authorized to incur liability and receive instructions for and on behalf of any and all the partners of the joint venture and the entire execution of the contract including payment shall be done exclusively with the lead contractor.
- 3.5.3 All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms, and a relevant statement to this effect shall be included in the authorization mentioned in paragraph 3.5.2 (b) above as well as in the Form of Tender and the Contract Agreement Form (in case of the accepted tender).
- 3.5.4 The JV must be in either of the following forms –
- a) A registered JV agreement. The registration may either be: -
    - i) At the Ministry of Transport, Infrastructure, Housing and Urban Development or,
    - ii) At the Office of the Attorney General, or
  - b) A Letter of Intent to enter into a joint venture including a draft JV Agreement indicating at least the part of the Works to be executed by the respective partners.
  - c) The JV agreement should be signed by at least two directors from each company or firm that is a party to the JV
  - d) The JV agreement must be under the company or firm seal
  - e) The Letter of Intent should be signed by at least one director from each company or firm that is a party to the intended joint venture
- 3.5.5 A copy of the agreement entered into, or Letter of Intent by the joint venture partners shall be submitted with the tender.

**3.6 Cost of Tendering**

3.6.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and KPPF will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

**3.7 Time for Completion of Works**

The successful Tenderer will be expected to complete the Works by the required completion period as specified in the Bid data sheet – appendix to instructions.

**3.8 Conflict of Interest**

3.8.1 A Tenderer (*including all members of a joint venture and subcontractors*) shall not have a conflict of interest. A Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this tendering process if they: -

- a) are associated or have been associated in the past directly or indirectly with employees or agents of KPPF or a member of the Board or committee of KPPF
- b) are associated or have been associated in the past directly or indirectly with a firm or company or any of their affiliates which have been engaged by KPPF to provide consulting services for the preparation of the design, specifications, and other documents to be used for the execution, completion and maintenance of the Works under this Invitation to Tender
- c) have controlling shareholders in common with (b) above
- d) receive or have received any direct or indirect subsidy from any of them
- e) have a relationship with each other, either directly or through common third parties, that puts them in a position to have access to information about, or influence on the tender of another Tenderer, or influence the decisions of KPPF regarding this tendering process
- f) submit more than one Tender in this tendering process.

3.8.2 A Tenderer will be considered to have a conflict of interest if they participated as a consultant in the preparation of the design or technical specification of the Works and related services that are the subject of this Tender.

**3.9 One Tender per Tenderer**

3.9.1 A firm or company shall submit only one Tender in the same tendering process, either individually or as a partner in a joint venture.

3.9.2 No firm or company can be a sub-contractor while submitting a Tender individually or as a partner in a joint venture in the same tendering process.

3.9.3 A company or firm, if acting in the capacity of sub-contractor in any Tender may participate in more than one Tender but only in that capacity.

3.9.4 A Tenderer who submits or participates in more than one tender (other than as a sub-contractor or in cases of alternatives that have been permitted or requested) will cause all tenders in which the Tenderer has participated to be disqualified.

**3.10 Site Visit and Pre-Bid Meeting**

3.10.1 The Tenderer, at the Tenderer's own responsibility and risk is advised to visit and examine the site of Works and its surrounding and obtain all information that may be necessary for preparing the tender and entering into a contract for the Works. The cost of visiting the site shall be at the Tenderer's own expense.

3.10.2 KPPF may conduct a site visit and pre-bid meeting. The purpose of the pre-bid meeting shall be to clarify issues and answer any questions that may be raised at that stage.

3.10.3 The Tenderer's designated representative is invited to attend a site visit and pre-bid meeting which if convened will take place at the venue and time stipulated in the BDS/ Appendix to instructions.

3.10.4 The Tenderer is requested as far as possible to submit any questions in writing or by electronic means to reach the KPPF before the pre-bid meeting.

3.10.5 Minutes of the pre-bid meeting including the text of the questions raised and the responses given together with any response prepared after the pre-bid meeting will be transmitted or uploaded on the KPPF Website [www.tenders.co.ke](http://www.tenders.co.ke)

3.10.6 Non-attendance during the site visit or the pre-bid meeting will not be a cause of disqualification of the Tender unless specified to the contrary in the Appendix to instructions.

**3.11 Contents of the Tender Document**

3.11.1 The Tender Document comprises the documents listed below and Addendum (where applicable) issued in accordance with paragraph 3.13 of these Instructions to Tenderers: -

- a. Invitation to Tender
- b. Instructions to Tenderers
- c. Appendix to Instructions to Tenderers
- d. Work description and location
- e. Priced Bill of Quantities
- f. Evaluation Criteria
- g. General Conditions of Contract
- h. Special Conditions of Contract
- i. Tender Form
- j. Confidential Business Questionnaire Form
- k. Tender Security Form



- I. Warranty
- m. Declaration Form
- n. Contract Form
- o. Performance Security Form
- p. Specifications
  - i. General description of material and workmanship
  - ii. Drawings

3.11.2 The Tenderer is expected to examine all instructions, forms, provisions, terms and specifications in the Tender Document. Failure to furnish all information required by the Tender Document or to submit a tender not substantially responsive to the Tender Document in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

3.11.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (*whether they submit a tender or not*) shall treat the details of the documents as "Private and Confidential".

### 3.12 Clarification of Documents

A prospective Tenderer requiring any clarification of the Tender Document may notify the Procurement Officer in writing and ensure receipt is acknowledged at KPPF's Physical address indicated on the Tender Document. KPPF will respond in writing to any request for clarification of the Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KPPF. Written copies of KPPF's response (*including an explanation of the query but without identifying the source of inquiry*) will be published and accessible to all prospective Tenderers on the KPPF's website.

### 3.13 Amendment of Documents

3.13.1 At any time prior to the deadline for submission of Tenders, KPPF, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the tender documents by amendment.

3.13.2 All prospective Tenderers that have received the Tender Documents will be notified of the amendment(s) (*hereinafter referred to or otherwise known as addendum*) via upload on the KPPF Website at [www.kppf.co.ke](http://www.kppf.co.ke) and will be binding on them.

3.13.3 In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, KPPF, at its discretion, may extend the deadline for the submission of Tenders.

**3.14 Language of Tender**

The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the tender, exchanged between the Tenderer and KPPF, shall be written in English language. Any printed literature furnished by the Tenderer written in any other language shall be accompanied by an accurate English translation of the relevant passages, in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English translation shall be on the Tenderer's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the Tenderer's stamp.

**3.15 Documents Comprising the Tender**

The Tender prepared and submitted by the Tenderers shall include but not be limited to all the following components: -

- a) Declaration Form, Tender Form and a Price Schedule completed
- b) Documentary evidence that the Works and any ancillary services thereto to be performed by the Tenderer conform to the tender documents
- c) Technical Proposal in sufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the Works requirements and the completion time. Those details should include the following: -
  - (i.) a statement of work methods and schedule i.e. Methodology
  - (ii.) major items of equipment proposed to carry out the Contract
  - (iii.) an undertaking that the items in c  
(ii) will be available for the execution of the Contract.
- d) Tender Security furnished in accordance with tender requirements
- e) A detailed list of previous clients as prescribed in the BDS for similar Works on tender and their contact addresses including e-mail shall be submitted with the Tender for the purpose of reference, or for evaluation.
- f) Statement of Deviations, if any, from the tender requirements on a separate sheet of paper clearly indicating –
  - (i.) the specific tender document requirement
  - (ii.) the deviation proposed by the Tenderer
  - (iii.) the technical specifications of the deviation
  - (iv.) the design, if any, of the deviation
  - (v.) justification or reason for the deviation
  - (vi.) the Tenderer's cost of that deviation and the Tenderer's estimate of the cost of complying with KPPF's requirement without the deviation.

- g) In case of a tender submitted by a joint venture, either of the following –
  - (i.) the registered joint venture agreement, or,
  - (ii.) a Letter of Intent to enter into a joint venture including a draft JV agreement indicating at least the part of the Works to be executed by the respective partners
- h) *Any information or other materials required to be completed and submitted by Tenderers as specified in the Tender Document.*

### 3.16 **Tender Form**

The Tenderer shall complete and sign the Tender Form and all other documents furnished in the Tender Document, indicating the services to be performed, a brief description of the services, quantity (where applicable), and prices amongst other information required.

### 3.17 **Tender Rates and Prices**

- 3.17.1 The Tenderer shall indicate on the appropriate BQs, the unit rates and prices (where applicable) and total tender price of the Works it proposes to perform under the contract.
- 3.17.2 The Tenderer shall fill in rates and prices for all items of the Works described in the BQs. Items for which no rates or price is entered by the Tenderer will not be paid for by KPPF when executed and shall be deemed covered by other rates and prices in the BQs.
- 3.17.3 Prices and rates indicated on the BQs shall be of all costs for the Works including insurances, duties, Value Added Tax (V.A.T) and other taxes payable. No other basis shall be accepted for evaluation, award or otherwise.
- 3.17.4 BQ rates and prices to be submitted (quoted) by the Tenderer shall remain fixed for the contract duration.

### 3.18 **Tender Currencies**

- 3.18.1 For Works that the Tenderer will provide from within or outside Kenya, the prices shall be quoted in Kenya Shillings, or in another freely convertible currency in Kenya. The currency quoted must be indicated clearly on the Price Schedule of Services.
- 3.18.2 The exchange rate to be used for currency conversion shall be the Central Bank of Kenya selling rate prevailing on the Tender closing date. (Please visit the Central Bank of Kenya website).

### 3.19 **Tenderer's Eligibility and Qualifications**

- 3.19.1 that the Tenderer has the financial capability necessary to perform the contract. The Tenderer shall be required to provide -
  - a) (i.) Audited Financial Statements (Audited Accounts) which must be stamped and signed. The Auditors must be currently registered by ICPAK.
  - b) (ii.) For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified

copies of bank statements covering a period of at least six (6) months prior to the Date of the Tender Document. The copies should be certified by the Bank issuing the statements. The certification should be original.

- c) A valid and current Tax Compliance Certificate (TCC) issued by KRA. The Tenderer is strongly advised to confirm the authenticity of the TCC with KRA's Compliance Department to avoid rejection of its Tender.
- d) evidence of adequacy of working capital for this Contract eg. access to line(s) of credit and availability of other financial resources

3.19.2 that the Tenderer has the technical and management capability necessary to perform the contract. These are as per the Qualification Information Form which includes :-

- i. documents showing certifications, qualifications and experience of key site management and technical personnel proposed for the Contract.
  - ii. employment records including contracts of employment for all key personnel and their certifications
  - iii. The Tenderer's undertaking that the key site management and technical personnel will be available for the contract
  - iv. List and evidence of ownership/lease of contractor's equipment proposed for carrying out the Works
- a) information regarding any litigation or arbitration current or during the last five (5) years, in which the Tenderer is involved, the parties concerned and disputed amount; and
  - b) detailed proposals for subcontracting components of the Works amounting to more than twenty percent (20%) of the Contract Price.
  - c) tenderers confirmation that at least forty percent (40%) of their supplies is sourced from citizen contractors

### 3.20 **Conformity of Services to Tender Documents**

3.20.1 The Tenderer shall furnish, as part of its tender, documents establishing the conformity to the Tender Document of all the Works that the Tenderer proposes to perform under the contract.

3.20.2 The documentary evidence of conformity of the Works to the Tender Document may be in the form of literature, drawings, and data, and shall (where applicable) consist of: -

- a) a detailed description of the essential technical and performance characteristics of the Works whether in catalogues, drawings or otherwise,

- b) a list giving full particulars, including available source and current prices of spare parts, special tools and other incidental apparatus necessary for the proper and continuing performance of the Works for a minimum period of six (6) months following usage of the Works after the official handing over to KPPF, and,
  - c) duly completed BQs' in compliance with KPPF's BQs' requirements or, a Statement of Deviations and exceptions to the provisions of KPPF's BQs'.
- 3.20.3 Tenderer shall note that standards for workmanship, material, and equipment, designated by KPPF in its BQs' are intended to be descriptive only and not restrictive. The Tenderer may adopt higher standards in its Tender, provided that it demonstrates to KPPF's satisfaction that the substitutions ensure substantial equivalence to those designated in the BQs'
- 3.21 Demonstration(s), Inspection(s) and Test(s)**
- 3.21.1 Where required, all Tenderers shall demonstrate ability of performance of the required Works in conformity with the Bills of Quantities and Specifications.
- 3.21.2 KPPF or its representative(s) shall have the right to inspect/ test the Tenderer's capacity, equipment, premises, and to confirm their conformity to the tender requirements. This shall include the quality management system. KPPF's representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection/ test.
- 3.21.3 KPPF shall meet its own costs of the inspection/ test. Where conducted on the premises of the Tenderer(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KPPF.
- 3.21.4 Demonstration, Inspection/ Test Report(s) shall be completed upon conclusion of the inspection/ tests. This Report will be considered at time of evaluation and or award
- 3.22 Warranty**
- 3.22.1 Where required in the Tender, all Tenderers must also provide a Warranty that warrants that any part of the Works that comprises any equipment, the equipment to be provided under the contract are new, unused and or are of the most recent or current specification and incorporate all recent improvements in design and materials unless provided otherwise in the Tender. The Tenderer further warrants that any materials/ equipment to be provided under this contract shall have no defect arising from manufacture, materials or workmanship or from any act or omission of the Tenderer that may develop under normal use of the materials/ equipment provided under the conditions obtaining in Kenya.
- 3.22.2 The Warranty will remain valid for a minimum of six (6) months after the equipment, materials, workmanship or any part thereof as the case may be, have been used or provided or performed as indicated in the contract.

### 3.23 Tender Security

- 3.23.1 The Tenderer shall furnish, as part of its Tender, a tender security for the amount specified in the BDS.
- 3.23.2 The tender security shall be either one of the following: -
- a) An original Bank Guarantee that is strictly in the form and content as prescribed in the Tender Security Form (Bank Guarantee) in the Tender Document.
  - b) An original Guarantee by a deposit taking Microfinance Institution, Sacco Society, Youth Enterprise Development Fund or the Women Enterprise Fund, that is strictly in the form and content as prescribed in the Tender Security Form
- 3.23.3 The tender security is required to protect KPPF against the risk of the Tenderer's conduct which would warrant the security's forfeiture pursuant to paragraph 3.23.10.
- 3.23.4 The Tender Security shall be denominated in Kenya Shillings or in another freely convertible currency in Kenya. A Tender Security in form of a Bank Guarantee should be from a commercial bank of licensed by the Central Bank Kenya.
- 3.23.5 The Tender Security shall be valid for thirty (30) days beyond the validity of the tender.
- 3.23.6 KPPF shall seek authentication of the Tender Security from the issuing bank. It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed five (5) days from the date of KPPF's query. Should there be no conclusive response by the bank within this period, such Tenderer's Tender Security may be deemed as invalid and the bid rejected.
- 3.23.7 Any Tender not secured in accordance with this paragraph will be rejected by KPPF as non-responsive
- 3.23.8 The unsuccessful Tenderer's Tender Security will be released as promptly as possible, in any of the following circumstances: -
- a) *the procurement proceedings are terminated*
  - b) *KPPF determines that none of the submitted Tenders is responsive*
  - c) *a contract for the procurement is entered into.*
- 3.23.9 The successful Tenderer's Tender Security will be released upon the successful Tenderer's signing the contract and furnishing an authentic Performance Security
- 3.23.10 The Tender Security shall be forfeited –
- a) *if the Tenderer withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which the Tenders must remain valid*
  - b) *if the Tenderer fails to enter into a written contract*

- c) if the successful Tenderer fails to furnish the performance security*
- d) if the Tenderer fails to extend the validity of the tender security where KPPF has extended the tender validity period.*

**3.24 Validity of Tenders**

3.24.1 Tenders shall remain valid for One hundred and eighty (180) days after the date of tender opening as specified in the Invitation to Tender or as otherwise may be prescribed by KPPF. A Tender that is valid for a shorter period shall be rejected by KPPF as non-responsive.

3.24.2 In exceptional circumstances, KPPF may extend the Tender validity period. The extension shall be made in writing. The tender security provided shall also be extended. A Tenderer shall not be required nor permitted to modify its tender during the extended period

**3.25 Alternative Offers**

Only main offers shall be considered, as alternative offers are not acceptable.

**3.26 Preparation and Sealing of the Tender**

3.26.1 The Tender shall be typed or written in indelible ink. It shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract.

3.26.2 The authorization may be indicated by a written Power of Attorney granted by the Tenderer to the authorized person before any of the following persons: -

*a) For local Tenderers, a Commissioner of Oaths or a Notary Public or a Magistrate of the Kenyan Judiciary.*

*b) For foreign Tenderers, a Notary Public in the country of the Tenderer.*

In either case above, the Power of Attorney shall accompany the Tender.

3.26.3 All pages of the Tender, including un-amended printed literature, shall be initialed by the person or persons signing the Tender and serially numbered.

3.26.4 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialed by the person or persons signing the Tender.

3.26.5 The Tenderer shall seal the Original and each Copy of the Tender in envelopes or packages, duly marking the envelopes or packages as "ORIGINAL", and "COPY 1 OF TENDER" . The envelopes or packages.

3.26.6 The envelopes or packages shall -

a) be addressed to KPPF at the address given in the Invitation to Tender,

b) bear the tender number and name as per the Invitation to Tender and the words, "DO NOT OPEN BEFORE .... as specified in the Invitation to Tender....."

3.26.7 KPPF will assume no responsibility whatsoever for the Tenderer's failure to comply with or observe the entire contents of this paragraph

3.26.8 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPPF as non-responsive.

**3.27 Deadline for Submission of Tenders**

3.27.1 Tenders must be received by KPPF by the date and time specified in Invitation to tender.

3.27.2 KPPF may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents, in which case all rights and obligations of KPPF and the Tenderer previously subject to the initial deadline, will therefore be subject to the deadline as extended.

**3.28 Modification and Withdrawal of Tenders**

3.28.1 The Tenderer may modify or withdraw its Tender after it has submitted, provided that the modification, including substitution or withdrawal of the Tender is received by KPPF prior to the deadline prescribed for submission of tenders.

3.28.2 No Tender may be modified after the deadline for submission of Tenders.

3.28.3 No Tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period during which the Tender must remain valid except where KPPF extends the initial validity period. Any withdrawal of a Tender during this interval shall result in forfeiture of the Tenderer's Tender Security except where KPPF extends the initial validity period.

**3.29 Opening of Tenders**

3.29.1 KPPF shall open all Tenders promptly at the date and time at the location specified in the Invitation to Tender or as may otherwise be indicated.

3.29.2 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Tender Security and such other details as KPPF, at its discretion, may consider appropriate, will be announced at the opening.

3.29.3 At the Tender opening, tender prices, discounts, and such other details as KPPF, at its discretion, may consider appropriate will be read out.

3.29.4 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

**3.30 Process to be Confidential**

3.30.1 After the opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations arising there-from shall not be disclosed to a Tenderer or other person(s) not officially concerned with such process until conclusion of that process.

3.30.2 Conclusion of that process shall be deemed to have occurred, at the latest, by the date and time KPPF notifies the successful bidder(s). In any event, official disclosure by KPPF of any information upon conclusion of that process may only be to the unsuccessful bidders and may contain only the information permissible by law in summary form.



3.30.3 Any effort by a Tenderer to influence KPPF or any of its staff members in the process of examination, evaluation and comparison of tenders and information or decisions concerning the Tender may result in the disqualification of the Tenderer.

**3.31 Clarification of Tenders and Contacting KPPF**

3.31.1 To assist in the examination, evaluation and comparison of Tenders KPPF may, at its discretion, ask the Tenderer for a clarification of its Tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the Tender shall be sought, offered, or permitted.

3.31.2 The Tenderer is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the Tenderer to provide in writing the clarification or substantiation which should reach KPPF within five (5) days from the date of KPPF's query. Such writing may include by electronic mail, facsimile or postal mail. Should there be no conclusive response within this period, it shall result in the Tenderer's disqualification.

3.31.3 Save as is provided in this paragraph and paragraph 3.28 above, no Tenderer shall contact KPPF on any matter related to its Tender, from the time of the tender opening to the time the successful Tenderer is announced.

3.31.4 Any effort by a Tenderer to influence KPPF in its decisions on tender evaluation, tender comparison, tender recommendation(s) or signing of Agreement shall result in the disqualification of the Tenderer.

**3.32 Preliminary Evaluation and Responsiveness**

3.32.1 Prior to the detailed Technical and Financial evaluation, KPPF will determine the substantial responsiveness of each Tender. For purposes of this tender, a substantially responsive Tender is one that conforms to the requirements of Preliminary Evaluation. KPPF's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.

3.32.2 KPPF will examine the Tenders to determine whether they conform to the set Evaluation Criteria Section VI.

3.32.3 Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KPPF and cannot subsequently be made responsive by the Tenderer by correction of any non-conformity.

**3.33 Minor Deviations, Errors or Oversights**

3.33.1 KPPF may waive any minor deviation in a Tender that does not materially depart from the requirements of the goods and or services set out in the Tender Document.

3.33.2 Such minor deviation -

3.33.2.1 shall be quantified to the extent possible,

- 3.33.2.2 shall be taken into account in the evaluation process, and,
- 3.33.2.3 shall be applied uniformly and consistently to all qualified Tenders duly received by KPPF.

3.33.3 KPPF may waive errors and oversights that can be corrected without affecting the substance of the Tender.

### 3.34 **Technical Evaluation and Comparison of Tenders**

#### 3.34.1

- a) The Tenders submitted will be evaluated in three stages; Preliminary, Technical and Financial. Tenderers will proceed to the Technical Stage only if they qualify in compliance with Preliminary Evaluation. Only technical bids that attain the required minimum will be eligible for financial evaluation as detailed in (c) below.
- b) The criteria to be followed at the Technical Evaluation stage is contained in Evaluation Process, and Bidders are urged to follow the format outlined therein which is critical in determining the responsiveness of the bids.
- c) To be eligible for the Financial Evaluation, bidders must at meet Technical Evaluation stage criteria. A tender shall be rejected at this stage if it fails to achieve the minimum technical requirements.
- d) The Evaluation Committee will determine whether the financial proposals are complete (i.e. whether the tenderer has costed all the items of the corresponding Technical Proposal and correct any computational errors). The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.

3.34.2 Upon completion of the preliminary and technical evaluation, KPPF shall conduct a Financial Evaluation and comparison as set out in Section VI Evaluation Criteria.

3.34.3 Where other currencies are used, KPPF will convert those currencies to the same currency using the selling exchange rate ruling on the date of tender closing provided by the Central Bank of Kenya.

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

3.34.5 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.

3.34.6 The Employer will evaluate and compare only the tenders determined to be substantially responsive in accordance with Section VI.

3.34.7 In evaluating the tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:

- (a) making any correction for errors;
- (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Dayworks where priced competitively.
- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted; and
- (d) making appropriate adjustments to reflect discounts or other price modifications offered

3.34.8 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in tender evaluation.

3.34.9 The tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.

3.34.10 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 20% preferential bias provided that they do not sub-contract work valued at more than 20% of the Contract Price excluding Provisional Sums to a non-indigenous sub-contractor.

### 3.35 Financial Evaluation

3.35.1 The financial evaluation and comparison shall be as set out in the Summary of Evaluation Process. The comparison shall be -

- a) of the rates and prices including all costs as well as duties and taxes payable on all the materials to be used in the execution of the Works.
- b) deviations in Payment Schedule from that specified in the Special Conditions of Contract

3.35.2 Where other currencies are used, KPPF will convert those currencies to the same currency using the selling exchange rate prevailing on the date of tender closing provided by the Central Bank of Kenya.

**3.35.3** if the bid which results in lowest evaluated bid price is seriously unbalanced meaning that has inconsistency pricing of identical items of bills of quantity or has any form of front

loading of rates, shall lead to disqualification of bidder at the detailed financial evaluation and analysis stage

**3.36 Preferences**

3.36.1 In the evaluation of tenders, exclusive preference shall firstly be given to citizen contractors where the amount of the tender as evaluated is below Kshs. 500 Million in respect of works, goods and services.

3.36.2 Where a person is entitled to more than one preference scheme, the scheme with the highest advantage to the person shall be applied.

3.36.3 For purposes of this paragraph the Tenderer shall submit with its Tender, a valid copy of certificate of Confirmation of Directorships and Shareholding issued and signed by either the Registrar of Companies or Registrar of Business Names. KPPF reserves the right to subject the certificate to authentication.

**3.37 Debarment of a Tenderer**

A Tenderer who gives false information in the Tender about its qualification or who refuses to enter into a contract after notification of contract award may be forwarded to PPRA for consideration of debarment from participating in future public procurement.

**3.38 Confirmation of Qualification for Award**

3.38.1 KPPF may confirm to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

3.38.2 The confirmation will take into account the Tenderer's financial, technical, and performance capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, as well as confirmation of such other information as KPPF deems necessary and appropriate. This may include factory, office and other facilities inspection and audits.

3.38.3 Post-qualification will be based on meeting all of the following minimum point scale criteria regarding the tenderer's general and particular experience, personnel and equipment capabilities as well as financial position. The Employer reserves the right to waive minor deviations, if they do not materially affect the capacity of a tenderer to perform the contract. Subcontractor's experience and resources shall not be taken into account in determining the tenderer's compliance with qualifying criteria.

3.38.4 **The Tenderer shall meet the following minimum criteria where applicable: -**

3.38.5 Average annual turnover of Kshs. 50 million for the last three years

- 3.38.6 Successful completion as a prime contractor or sub-contractor in the execution of at least three new construction works of a similar nature and comparable in complexity to the proposed contract within the last five year.
- 3.38.7 Personnel Capabilities; as per tender requirement.
- 3.38.8 Equipment Capabilities. as per tender requirement.
- 3.38.9 Cash flow statement; the Tenderer should demonstrate that he has access to or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means sufficient to meet the construction cash flow.
- 3.38.10 Signed and stamped Audited Financial the last three years should be submitted and must demonstrate the soundness of the Tenderer's financial position, availability of working capital and net worth.
- 3.38.11 Litigation History; the Tenderer should provide accurate information on any litigation or arbitration resulting from contracts complete or under execution by him over the last five years. A consistent history of litigation against the Tenderer may result in failure of the application.
- 3.38.12 Qualification criteria are as provided in the Appendix to instruction to tenderers and Special Conditions of contract.
- 3.38.13 An affirmative confirmation will be a prerequisite for award of the contract to the Tenderer. A negative confirmation will result in rejection of the Tenderer's Tender, in which event KPPF will proceed to the next lowest evaluated responsive tender to make a similar confirmation of that Tenderer's capabilities to perform satisfactorily.
- 3.39 **Award of Contract**
- 3.39.1 KPPF will award the contract to the successful Tenderer whose Tender has been determined to be substantially responsive, compliant with the evaluation criteria and has been determined to be the lowest evaluated tender, and further, where deemed necessary, that the Tenderer is confirmed to be qualified to perform the contract satisfactorily.
- 3.40 **Termination of Procurement Proceedings**
- 3.40.1 KPPF may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 3.40.2 KPPF shall give prompt notice of the termination to the Tenderers, and, on request from any Tenderer, give its reasons for termination within fourteen (14) days of such request.
- 3.41 **Notification of Award**
- 3.41.1 Prior to the expiration of the period of tender validity, KPPF shall notify the successful Tenderer in writing that its Tender has been accepted.
- 3.41.2 The notification of award shall not constitute the formation of the contract until one is finally signed by both parties.

3.41.3 Simultaneously, and without prejudice to the contents of paragraph 3.41, on issuance of Notification of Award to the successful Tenderer, KPPF shall notify each unsuccessful Tenderer.

3.41.4 A notification of the tender outcome does not reduce the validity period for any tender security whether the Tenderer is successful or not, except where such tender security is officially released to the Bank and/or the Tenderer and such Bank discharged of all its obligations by KPPF prior to the expiry of its stated validity period.

### 3.42 **Signing of Contract**

3.42.1 At the same time as KPPF notifies the successful Tenderer that its Tender has been accepted, KPPF will send the Tenderer the Contract Agreement provided in the Tender Document together with any other necessary documents incorporating all agreements between the Parties.

3.42.2 Within fourteen (14) days of the date of notification of award, the successful Tenderer shall only sign the Contract Form and all the documents specified in that Form and return them to KPPF within that period of fourteen (14) days.

3.42.3 KPPF shall sign and date the Contract not earlier than fourteen (14) days from the date of notification of contract award. Further, KPPF shall not sign the contract until and unless the authentic performance security is received.

3.42.4 Failure of the successful Tenderer to sign the Contract, the award shall be annulled and its tender security forfeited in which event KPPF shall notify the next lowest evaluated Tenderer that its Tender has been accepted.

3.42.5 Paragraph 3.41 together with the provisions of this paragraph 3.42 will apply with necessary modifications with respect to the Tenderer notified under sub-paragraph 3.28.

### 3.43 **Performance Security**

3.43.1 Within fourteen (14) days of the date of notification of award from KPPF, the successful Tenderer shall furnish KPPF with a Performance Security which shall be an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.

3.43.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.

3.43.3 The Performance Security shall be the sum of ten percent (10%) of the contract value. It shall be in the currency of the contract price.

3.43.4 KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive

response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.

- 3.43.5 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPPF may notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 3.43.6 Paragraph 3.40, 3.42 together with the provisions of this paragraph will apply with necessary modifications, and as far as circumstances permit, with respect to the Tenderer notified under sub-paragraph 3.41

#### 3.44 **Corrupt or Fraudulent Practices**

- 3.44.1 KPPF requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. When used in the present Regulations, the following terms are defined as follows: -
  - a) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of public official in the procurement process or in contract execution;
  - b) *"Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KPPF, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive KPPF of the benefits of free and open competition.*
- 3.44.2 KPPF will nullify its notification of award if it determines that the Tenderer recommended has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 3.44.3 Further, a Tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

## **SECTION IV DESCRIPTION OF WORKS AND LOCATION**

**REMEDIAL WORKS FOR ONSITE WASTE WATER TREATMENT PLANT AT LORESHO RIDGE ESTATE DEVELOPED ON L.R.NO.21080/63 (ORIGINAL NO. 21080/38) TENDER NUMBER KPPF/PROC/2-A/08/2020**

### **1. LOCATION**

The waste water treatment plant is installed at Loresho Ridge Estate which is situated in New Loresho area and it is in the neighbourhood of Kenya Sugar Board and Lions Eye Clinic in Nairobi county.

### **2. DESCRIPTION OF WORKS**

The works to be carried out under this contract comprise supply, installation, testing and commissioning of the waste water treatment plant. The works are expected to commence immediately after signing of the contract.

The main works involves completion of minor Civil Works. The main items of work are as follows: -

- Effluent quality tests
- Effluent flow (quantity and variability) tests
- Air quality tests
- Remedial works for onsite waste water treatment plant which mainly consist of equipment repair, supply and installation of new equipment that will enhance the quality of waste water discharged to the environment.

The detailed scope of work is as per the attached technical specifications, drawings and Bills of Quantities.



## SECTION V BID DATA SHEET (BDS) - APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement and or amend the provisions of the Instructions to Tenderers *hereinafter abbreviated as ITT*. Wherever there is a conflict between the provisions of the ITT and the Bid Data Sheet, the provisions of the BDS shall prevail over those of the ITT

No.	ITT Reference Clause	Particulars of Appendix
1.	3.2 Eligible Tenderers	OPEN to ALL
2.	3.7 Time for Completion of works	As per accepted tender
3.	3.10 Site Visit	<p>Bidders are highly encouraged to visit the site at Loresho Ridge Estate. Please carry your national ID for purposes of identification when visiting the site.</p> <p><b>*Note:</b>  <b>For access to the property get in touch with the office on 020 5029600</b></p>
4.	3.26 Preparation and Sealing of tender documents	<p>The Tenderer shall prepare two complete sets of its Tender, identifying and clearly marking the "ORIGINAL TENDER" and "COPY 1 OF TENDER" as appropriate. Each set shall be properly bound.</p> <p>The copy shall be a replica of the Original. The copy will be deemed to contain the same information as the Original.</p>
5.	3.29 Opening of Tenders	The tender shall be opened in Kenya Power Pension Fund at Stima Plaza Annex, ground floor, Kolobot Road, Parklands, Nairobi on <b>Thursday 8<sup>th</sup> October 2020 at 11:30 a.m.</b> and bidders are encouraged to attend.
6.	3.42 Award of Contract	Award shall be to the lowest evaluated bidder.
7.	3.43 Performance Bank Guarantee	Performance Bank Guarantee shall be 10% of the contract sum.
8.	3.24 Tender validity	Shall be 180 days
9.	3.23 Tender Security	This is NOT APPLICABLE

## SECTION VI - EVALUATION CRITERIA

Evaluation of duly submitted tenders will be conducted along the following stages: -

**6.1 Part 1 - Preliminary Evaluation Under Paragraph 3.33 of the ITT.** These are mandatory requirements. This shall include confirmation of all of the following:-

1. Submit a Copy Certificate of Incorporation/Registration.
2. Copy of **Valid** Tax Compliance Certificate from the date of tender opening
3. Duly **completed and stamped** Declaration Form
4. Duly **completed** Priced Bill of quantities
5. Duly **signed and stamped** Confidential Business Questionnaire (**attach CR12**)
6. Duly **completed and stamped** Tender form
7. The validity period of the tender shall be **180 days** from the date of tender opening
8. **Valid** Category of Registration with National Construction Authority (NCA) in the relevant trade; (NCA 1,2,3,4,5 and 6). Attach copies of valid certificates and licenses.

Tenders will proceed to the Technical Evaluation Stage only if they qualify in full compliance with Part 1 above requirements , Preliminary Evaluation under Paragraph 3.32.

## 6.2 Part II – Technical Evaluation and Comparison of Tenders Under Paragraph 3.34 of the ITT.

KPPF will do site visits and due diligence exercise as technical evaluation stage, checking the firm's capacity and operation of the treatment plants carried out.

Technical Criteria requirements	Complied / Not complied
<ol style="list-style-type: none"> <li>1. Provide evidence such as completion certificates/LPOs/recommendation letters at least for <b>five</b> projects carried out within the last 10 years.</li> <li>2. KPPF will carry out due diligence and verification of the projects. We will do site visits on at least <b>three</b> projects undertaken and completed as per 1 above and qualify as follows:               <ol style="list-style-type: none"> <li>a. The operation of the waste water treatment plant</li> <li>b. Repairs and maintenance history as explained by the operators/residents</li> <li>c. Quality of water discharged to the environment based on the laboratory results approved by NEMA</li> <li>d. Air quality around the plant (Odour)</li> <li>e. Physical appearance of the treated water (cleanliness, colour, chlorination chambers e.t.c)</li> <li>f. Condition of the equipment and the operation (pumps, blowers, sand pot e.t.c)</li> <li>g. Feedback from the residents on the plant operation</li> <li>h. Plant was undertaken by the bidder</li> </ol> </li> </ol>	

Tenderers will proceed to financial evaluation upon fulfilling ALL the requirements on Part II above (Technical criteria evaluation above).

### **Part III - Financial Evaluation and Comparison of Tenders Under Paragraph 3.35 of the ITT**

All the firms that are technically qualified will be subjected to the financial evaluation. KPPF will evaluate the priced bill of quantities submitted. The successful tenderer shall be the lowest evaluated bidder.

**Note:** The prices quoted in the form of tender shall be inclusive of all other costs and taxes.

**6.3 The Successful Tenderer shall be the lowest evaluated bidder.**

**\*NOTES: -**

1. Total tender value means the Tenderer's total tender price **inclusive of all taxes** for the works it offers to provide.

## SECTION VII – GENERAL CONDITIONS OF CONTRACT

### TABLE OF CONTENTS

7.1	DEFINITIONS .....	37
7.2	INTERPRATATION .....	39
7.3	LANGUAGE AND LAW .....	40
7.4	PROJECT MANAGER’S DECISIONS .....	40
7.5	COMMUNICATIONS .....	40
7.6	SUBCONTRACTING .....	40
7.7	OTHER CONTRACTORS .....	40
7.8	PERSONNEL.....	40
7.9	WORKS .....	41
7.10	SAFETY AND TEMPORARY WORKS .....	41
7.11	WORK PROGRAM.....	41
7.12	POSSESSION OF SITE.....	41
7.13	ACCESS TO SITE .....	41
7.14	INSTRUCTIONS .....	42
7.15	EXTENSION OR ACCELERATION OF COMPLETION DATE.....	43
7.16	MANAGEMENT MEETINGS .....	43
7.17	EARLY WARNING.....	43
7.18	DEFECTS.....	44
7.19	BILLS OF QUANTITIES.....	44
7.20	VARIATIONS .....	44
7.21	PAYMENT CERTIFICATES, CURRENCY OF PAYMENTS AND ADVANCE PAYMENTS .....	47
7.22	COMPENSATION EVENTS .....	48
7.23	PRICE ADJUSTMENT.....	50
7.24	RETENTION.....	51
7.25	LIQUIDATED DAMAGES .....	51
7.26	PERFORMANCE SECURITY .....	51
7.27	DAYWORKS .....	52
7.28	LIABILITY AND INSURANCE .....	52
7.29	COMPLETION AND TAKING OVER .....	54
7.30	FINAL ACCOUNT .....	54
7.31	TERMINATION .....	55
7.32	PAYMENT UPON TERMINATION .....	57
7.33	RELEASE FROM PERFORMANCE .....	58
7.34	CORRUPT GIFTS AND PAYMENTS OF COMMISSION .....	58
7.35	SETTLEMENT OF DISPUTES.....	58
7.36	PRICES .....	60
7.37	VARIATION OF CONTRACT .....	60
7.38	ASSIGNMENT .....	60
7.39	SUBCONTRACTS .....	60
7.40	LIQUIDATED DAMAGES .....	65
7.41	WARRANTY .....	65
7.42	RESOLUTION OF DISPUTES.....	65
7.43	LANGUAGE AND LAW .....	66
7.44	WAIVER .....	66
7.45	FORCE MAJEURE .....	66

The General Conditions of Contract *hereinafter referred abbreviated as the GCC* shall form part of the Conditions of Contract in accordance with the law and KPPF's guidelines, practices, procedures and working circumstances. The provisions in the GCC will apply unless an alternative solution or amendment is made under other parts of the Contract including the Special Conditions of Contract.

## **7.1 Definitions**

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

**"Bill of Quantities"** means the priced and completed Bill of Quantities forming part of the tender.

**"Compensation Events"** are those defined in Clause 24 hereunder.

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

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

**"The Contractor"** refers to the person or corporate body whose tender to carry out the Works has been accepted by the Employer.

**"The Contractor's Tender"** is the completed tendering document submitted by the Contractor to the Employer.

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

**"Days"** are calendar days; **"Months"** are calendar months.

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

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

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

**“Drawings”** include objects/forms with dimensions, designs and other information provided or approved by the Project Manager for the execution of the Contract.

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

**“Employer”**, or the **“Procuring entity”** as defined in the Public Procurement Regulations (i.e. Central or Local Government administration, Universities, Public Institutions and Corporations, etc) is the party who employs the Contractor to carry out the Works.

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

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

**“J.B.C”** is Joint Building Council of Kenya and its successors or assigns.

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

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

**“Project Manager”** is the person named in the Special Conditions of Contract (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract and shall be an “Engineer” registered under Engineers Registration Act Cap 530.

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

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

**“Site possession date”** This is the date the site is fully or partially handed over to the contractor.

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

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

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

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

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

**“The Works”** are what the Contract requires the Contractor to construct, install, and turnover to the Employer, as defined in the Special Conditions of Contract.

## **7.2 Interpretation**

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

7.2.2 If sectional completion is specified in the Special Conditions of Contract, reference in the Conditions of Contract to the Works, the Completion Date and the Intended Completion Date apply to any section of the Works (other than references to the Intended Completion Date for the whole of the Works).

7.2.3 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;

- (1) Agreement,
- (2) Letter of Acceptance,
- (3) Contractor’s Tender,
- (4) Special Conditions of Contract,
- (5) Conditions of Contract,



- (6) Specifications,
- (7) Drawings,
- (8) Bill of Quantities,
- (9) Any other documents listed in the Special Conditions of Contract as forming part of the Contract.

7.2.4 Immediately after the execution of the Contract, the Project Manager shall furnish both the Employer and the Contractor with two copies each of all the Contract documents. Further, as and when necessary the Project Manager shall furnish the Contractor [always with a copy to the Employer] with three [3] copies of such further drawings or details or descriptive schedules as are reasonably necessary either to explain or amplify the Contract drawings or to enable the Contractor to carry out and complete the Works in accordance with these Conditions

### **7.3 Language and Law**

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

### **7.4 Project Manager's Decisions**

7.4.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer

### **7.5 Communications**

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

### **7.6 Subcontracting**

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

### **7.7 Other Contractors**

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

### **7.8 Personnel**

7.8.1 The Contractor shall employ the key personnel named in the Qualification Information, to carry out the functions stated in the said Information or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Qualification Information. If the Project

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

## **7.9 Works**

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

## **7.10 Safety and Temporary works**

7.10.1 The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.

7.10.2 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent Works, shall be subject to prior approval by the Project Manager before they can be used.

7.10.3 The Contractor shall be responsible for the safety of all activities on the Site.

## **7.11 Work program**

7.11.1 The Contractor shall, within the period stated in the Special conditions of contract, submit for the approval of the Project Manager, a programme of Works in such form and detail as the project manager shall reasonably prescribe. Should actual progress not match the programme, the Contractor shall amend the programme accordingly and submit the revisions to the Project manager. In the event that a Contractor fails to submit or amend a programme within a reasonable time after being so instructed by the Project manager, the Employer may withhold half of the amount due to the Contractor in subsequent payment certificates until the default is rectified. Neither Submission of the programme by the contractor nor its approval by the Project Manager shall in any way relieve the contractor from any of his duties and obligations under the contract.

## **7.12 Possession of Site and commencement of works**

7.12.1 Within the period stated in the Special conditions of contract, the Employer, or the project manager on his behalf, shall give possession of site to the Contractor and such access as may be necessary to enable the Contractor to commence and proceed with the Works in accordance with the contract.

On or before the date for commencement stated in the Special conditions of contract, the Contractor shall commence the execution of the Works and shall regularly and diligently proceed with the same and complete on or before the date stated in the Special

conditions of contract as the date for practical completion or such other date as arises by virtue of the extension of time granted under clause 7.15 of these conditions

**7.13 Access to Site**

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

**7.14 Instructions**

7.14.1 The Contractor shall (subject to sub-clauses 7.63.3 and 7.63.4 of this condition) forthwith comply with all instructions issued to him by the Architect in regard to any matter in respect of which the Architect is expressly empowered by these conditions to issue instructions.

7.14.2 If within fourteen days after receipt of a written notice from the project manager requiring compliance with an instruction the Contractor does not comply therewith, then the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instructions. All costs incurred in connection with such employment shall be recoverable from the Contractor by the Employer as a debt or may be deducted by him from any money due or to become due to the Contractor under this contract.

7.14.3 Upon receipt of what purports to be an instruction issued to him by the project manager, the Contractor may request the project manager to specify in writing the provisions of these conditions which empower the issue of the said instruction. The project manager shall comply with any such request, and if the Contractor shall thereafter comply with the said instructions, then the issue of the same shall be deemed for all the purposes of this contract to have been empowered by these conditions.

7.14.4 All instructions issued by the Architect shall be in writing. Any instruction issued orally shall be of no immediate effect, but shall be confirmed in writing by the Contractor to the Architect within seven days. If not dissented from in writing by the Architect within seven days from receipt of the Contractor's confirmation, the oral instruction shall take effect as from the expiration of the latter said seven days. Provided always that;

7.14.4.1 If the Architect shall within seven days of giving such an oral instruction himself confirm the same in writing, then the Contractor shall not be obliged to confirm as aforesaid and the said instruction shall take effect as from the date of the Architect's confirmation.

7.14.4.2 If neither the Contractor nor the Architect shall confirm such an oral nevertheless comply with the same, then the Architect may confirm the same in writing at any time prior to the issue of the final certificate and the said instruction shall thereupon be deemed to have taken effect on the date on which it was issued.

7.14.5 Any instructions given directly by the Employer to the Contractor shall be of no immediate effect but the contractor shall request the project manager for confirmation within seven days, failing to which the Contractor shall confirm the same in writing in the same manner

as is provided for in sub-clause 7.14.4. If confirmed by the Contractor, such instructions shall be deemed to be project manager's instructions.

### **7.15 Extension or Acceleration of Completion Date**

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

7.15.2 No bonus for early completion of the Works shall be paid to the Contractor by the Employer.

### **7.16 Management Meetings**

7.16.1 A Contract management meeting shall be held as per schedule and in any event not less than once a month and attended by the Project Manager and the Contractor. Its business shall be to review the plans for the remaining Work and to deal with matters raised in accordance with the early warning procedure. The Project Manager shall record the minutes of management meetings and provide copies of the same to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

### **7.17 Early Warning**

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

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

### **7.18 Defects**

- 7.18.1 The Project Manager shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a defect and to uncover and test any Work that the Project Manager considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor, However, if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.
- 7.18.2 The Project Manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Special Conditions of Contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.
- 7.18.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Project Manager's notice. If the Contractor has not corrected a defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

### **7.19 Bills Of Quantities**

- 7.19.1 The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rate in the Bills of Quantities for each item.
- 7.19.2 If the final quantity of the Work done differs from the quantity in the Bills of Quantities for the particular item by more than 20 percent and provided the change does not exceed 25 percent of the Initial Contract price, the Employer shall adjust the rate to allow for the change.
- 7.19.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bills of Quantities.

### **7.20 Variations**

- 7.20.1 All variations shall be included in updated programs produced by the Contractor.
- 7.20.2 The term 'variation' as used in these conditions shall mean the alteration or modification of the design, quality or quantity of the Works as shown upon the contract drawings and described by or referred to in the contract bills and specifications and includes:
- 7.20.2.1 The addition, omission or substitution of any item of work.
  - 7.20.2.2 The alteration of the kind or standard of any of the materials or goods to be used in the Works.

- 7.20.2.3** The removal from the site of any work, materials, or goods brought upon the Works by the Contractor for the purposes of the Works other than work, materials, or goods which are not in accordance with the contract.
- 7.20.2.4** The issue of instructions by the project manager in regard to the expenditure of prime cost and provisional sums included in the contract bills and of prime cost sums which arise as a result of instructions issued in regard to the expenditure of provisional sums.
- 7.20.3** The Project manager may issue instructions requiring a variation and he may sanction in writing any variation made by the Contractor otherwise than pursuant to an instruction of the project manager. No variation required by the project manager or subsequently sanctioned by him shall vitiate this contract, provided that no such instructions shall substantially change the scope or object of the contract without the consent of the Employer and the Contractor.
- 7.20.4** If the net value of all variations should equal 10% of the builders work, the project manager shall not issue any further instructions requiring a variation for additional work without the consent of the Employer and the Contractor.
- 7.20.5** All instructions for variations shall be copied to the Employer.
- 7.20.6** All variations required by the project manager or subsequently sanctioned by him in writing and all work executed by the Contractor for which provisional sums are included in the contract bills (other than work for which a tender made under nominated subcontractors, of these conditions has been accepted) shall be assessed by project manager who shall give to the Contractor an opportunity of being present at the time of such assessment and of taking such notes and measurements as the Contractor may require.
- 7.20.7** The valuation of variations and of work executed by the Contractor for which a provisional sum is included in the contract bills (other than work for which a tender has been accepted as aforesaid) unless otherwise agreed, shall be made in accordance with the following rules:
- 7.20.7.1** The prices in the contract bills shall determine the valuation of work of similar character executed under similar conditions as work priced therein.
- 7.20.7.2** The said prices, where work is not of a similar character or executed under similar conditions as aforesaid, shall be the basis of prices for the same so far *as may be* reasonable, failing which a fair valuation thereof shall be made.
- 7.20.7.3** Where work cannot properly be measured and valued, the Contractor shall be allowed day work rates on the prices prevailing when such work is

carried out (unless otherwise provided in the contract bills). The day-work rates will be;

- 7.20.7.3.1** Rates, if any, inserted by the Contractor in the contract bills or in a schedule of rates, or
- 7.20.7.3.2** When no such rates have been inserted, at rates to be agreed between the project manager and the Contractor.
- 7.20.7.3.3** Vouchers specifying the time daily spent upon the work (and if required by the project manager, the workmen's names) the equipment and the materials used shall be delivered for verification to the Quantity Surveyor not later than the end of the week following that in which the work was executed.
- 7.20.7.4** The prices in the contract bills shall determine the valuation of items omitted. Provided that if omissions substantially vary the conditions under which any remaining items of work are carried out, the prices for such remaining items shall be valued as set out in sub-clause 7.20.7.2.
- 7.20.8** Effect shall be given to the measurement and valuation of variations under sub-clause 7.20.7 of this condition in interim certificates and by adjustment of the contract price. Effect shall also be given to the measurement and valuation of work for which a provisional sum is included in the contract bills under the said sub-clause in interim certificates and by adjustment of the contract price in accordance with the conditions of contract.
- 7.20.9** If upon written application being made by the Contractor, the project manager is of the opinion that a variation or the execution by the Contractor of work for which a provisional sum is included in the contract bills (other than work for which a tender made under clause 7.39 of these conditions has been accepted) has involved the Contractor in direct loss and or expense for which he would not be reimbursed by payment in respect of a valuation made in accordance with the rules contained in sub-clause 30.6 of this condition and if the said application is made with supporting details within thirty days of the loss or expense having been incurred, the Quantity Surveyor shall assess the amount of such loss or expense. Any amount so assessed from time to time shall be added to the contract price, and if an interim certificate is issued after the date of assessment the said amount shall be added to the amount which would otherwise be stated as due in such certificate.
- 7.20.10** Should any part of the Works be omitted from the contract and that part is carried out by others, the Contractor shall be entitled to reimbursement of the profit he would have made had he carried out the omitted part. Such loss of profit shall be assessed by the project manager and if an interim certificate is issued after the date of assessment, the said amount shall be added to the amount which would otherwise be stated as due in such a certificate.

**7.20.11** No instructions for variations shall be issued after the practical completion certificate is issued without the consent of the Contractor.

**7.20.12** Where a variation is necessitated by the default or breach of the contract by the Contractor, any additional cost attributable to such a variation shall be borne by the Contractor.

**7.20.13** Except as expressly stated in the contract, the project manager shall have no authority to alter or amend the terms and conditions of the contract or to relieve the Contractor of any of his obligations under the contract.

**7.20.14** Where the project manager, with the consent of the Employer and the Contractor, issues instructions requiring a variation beyond the limit provided in sub-clause 7.20.4, the Employer may require an additional performance bond over and above that provided under clause 7.26. The Contractor shall be reimbursed for the provision of the additional bond pro-rata to the amount priced for the bond in the contract.

**7.20.15** The project manager shall not issue an instruction requiring a variation for additional work exceeding 0.1% of the contract price without the prior approval of the Employer unless otherwise communicated by the Employer to the project manager and to the Contractor.

## **7.21 Payment Certificates, Currency of Payments and Advance Payments**

**7.21.1** The Contractor shall submit to the Project Manager monthly applications for payment giving sufficient details of the Work done and materials on Site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the monthly application and certify the amount to be paid to the Contractor within 14 days. The value of Work executed and payable shall be determined by the Project Manager.

**7.21.2** The value of Work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed; materials delivered on Site, variations and compensation events. Such materials shall become the property of the Employer once the Employer has paid the Contractor for their value. Thereafter, they shall not be removed from Site without the Project Manager's instructions except for use upon the Works.

**7.21.3** Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. The Employer shall not pay interest on late payments.

**7.21.4** Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract, unless evaluated in accordance to variation clause 7.20

**7.21.5** The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings or agreed prior to the execution of the Contract Agreement and indicated therein.

**7.21.6** In the event that an advance payment is granted, the following shall apply:-



- (a) On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of not more than 10% (ten percent) of the original amount of the Contract. The advance shall not be subject to retention money.
- (b) No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.
- (c) Reimbursement of the lump sum advance shall be made by deductions from the Interim payments and where applicable from the balance owing to the Contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the Contract. It shall have been completed by the time 80% of this amount is reached.
- (d) The amount to be repaid by way of successive deductions shall be calculated by means of the formula:

$$R = \frac{A(x^1 - x^{11})}{1.80 - 20}$$

Where:

R = the amount to be reimbursed  
 A = the amount of the advance which has been granted

X<sup>1</sup> = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 20% but not exceed 80%.

X<sup>11</sup> = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80% but not less than 20%.

- (e) With each reimbursement, the counterpart of the directly liable guarantee may be reduced accordingly.

## 7.22 Compensation Events

The following issues shall constitute Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Appendix to Conditions of Contract.
- (b) The Employer modifies the List of Other Contractors, etc., in a way that affects the Work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the Works on time.

- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon the Work, which is then found to have no defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site investigation reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The effects on the Contractor of any of the Employer's risks.
- (j) The Project Manager unreasonably delays issuing a Certificate of Completion.
- (k) Other compensation events described in the Contract or determined by the Project Manager shall apply.

7.22.1 If a compensation event would cause additional cost or would prevent the Work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Employer shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

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

7.22.3 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.

7.22.4 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Special Conditions of Contract.

7.22.5 The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter. Provided always that should the event giving rise to the claim of continuing effect, the Contractor shall submit an interim claim

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

### **7.23 Price Adjustment**

7.23.1 The Employer shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.

7.23.2 The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works. Unless otherwise stated in the Contract, if at any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price by the Employer, as the case may be.

7.23.3 Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manner set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified thereunder;

(i.) The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C.) and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Special Conditions of Contract.

(ii.) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.

(iii.) No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

7.23.4 The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the Works as determined

by the J.B.C. and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Special Conditions of Contract.

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

#### **7.24 Retention**

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

#### **7.25 Liquidated Damages**

- 7.25.1 The Contractor shall pay liquidated damages to the Employer at the rate stated in the Special Conditions of Contract for each day that the actual Completion Date is later than the Intended Completion Date. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not alter the Contractor's liabilities.
- 7.25.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. There shall be no interest paid on the overpayment.

#### **7.26 Performance Security**

- 7.26.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a commercial bank licensed by the Central Bank of Kenya, and denominated in Kenya Shillings. The

Performance Security shall be valid until a date sixty (60) days beyond the Defects Liability Period.

- 7.26.2 The Performance Security shall be either one or a combination of the following:
- (a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
  - (b) For Local bidders, Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC shall be prepaid / borne by the Tenderer. The LC must contain all the mandatory conditions of payment to KPPF as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.
  - (c) For Foreign bidders, Standby Letters of Credit (LC) confirmed by a bank in Kenya. All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid / borne by the Tenderer. The LC must contain all the mandatory conditions of payment to KPPF as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.
- 7.26.3 The successful Tenderer shall furnish a Performance Security being the sum of ten percent (10%) of the contract value.
- 7.26.4 KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed five (5) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.
- 7.26.5 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPPF may notify the next lowest evaluated Tenderer that its Tender has been accepted.

## **7.27 Dayworks**

- 7.27.1 If applicable, the Dayworks rates in the Contractor's tender shall be used for small additional amounts of Work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 7.27.2 All work to be paid for as Dayworks shall be recorded by the Contractor on Forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the Work being done.
- 7.27.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

## **7.28 Liability and Insurance**

- 7.28.1 From the Start Date until the Defects Correction Certificate has been issued, the following are the Employer's risks:

- (a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to;
    - i. use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or
    - ii. negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
  - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in Employer's design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.
- 7.28.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is the Employer's risk except loss or damage due to;
- (a) a defect which existed on or before the Completion Date.
  - (b) an event occurring before the Completion Date, which was not itself the Employer's risk
  - (c) the activities of the Contractor on the Site after the Completion Date, which are Contractor's risks.
- 7.28.3 From the Start Date until the Defects Correction Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risk are Contractor's risks.
- The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Special Conditions of Contract for the following events;
- (a) loss of or damage to the Works, Plant, and Materials;
  - (b) loss of or damage to Equipment;
  - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract, and
  - (d) personal injury or death.
- 7.28.4 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.
- 7.28.5 If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

7.28.6 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager. Both parties shall comply with any conditions of insurance policies.

### **7.29 Completion and taking over**

7.29.1 When in the opinion of the Contractor the whole of the Works are practically complete, he shall give a notice in writing to the project manager to that effect. The notice shall be accompanied by an undertaking to complete any outstanding work within a reasonable time or within such time as the Architect may direct.

7.29.2 Within fourteen days of the issue of such notice, the project manager shall inspect the Works and if in his opinion the Works are practically complete, he shall issue the certificate of practical completion, and the defects liability period shall be deemed to commence on the date of issue of the said certificate. If the Works are not practically complete, he shall specify in writing to the Contractor the work which in his opinion requires to be completed before the certificate can be issued.

7.29.3 The Contractor shall retain possession of the site of the Works up to and including the date of issue of the certificate of practical completion.

7.29.4 Upon the Employer taking possession of the whole or any part of the Works, (hereinafter referred to as the relevant part), the relevant part of the Works taken over shall be at the sole risk of the Employer in every respect as from the date of such taking over.

7.29.5 Should the employer take over the whole or any part of the Works before the issue of a certificate of practical completion, practical completion shall be deemed to have taken place on the date of taking over of the whole or any part of the Works

7.29.6 Any defects, shrinkages or other faults which shall appear within the defects liability period stated in the appendix to these conditions and which are due to materials or workmanship not being in accordance with the contract shall be specified by the architect in a schedule of defects which he shall deliver to the Contractor not later than thirty days after the expiry of the said defects liability period. Within a reasonable time after receipt of such schedule, the defects, shrinkages and other faults therein specified shall be rectified by the contractor and (unless the project manager shall otherwise instruct,) entirely at his own cost.

### **7.30 Final Account**

7.30.1 The Contractor shall issue the Project Manager with a detailed account of the total amount that the Contractor considers payable to him by the Employer under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 30 days a schedule that states the scope of the corrections or

additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate. The Employer shall pay the Contractor the amount due in the Final Certificate within 60 days.

### **7.31 Suspension of works**

7.31.1 ***Suspension of works by Project Manager***, the project manager may issue instructions to postpone the carrying out of any works included in this contract. The project manager may issue instructions to suspend carrying out of any work included in this contract, if;

7.31.1.1:- the contractor fails to comply with project manager instruction requiring the dismissal from the works of any person employed thereon, or

7.31.1.2:- There arises any matters of urgency involving the safety or protection of persons or property, or

7.31.1.3:- The Contractor fails to comply with the contract provisions to insure the Works, or

7.31.1.4:- The Contractor fails to comply with an Architect's instruction in regard to the removal from the site of any work, materials or goods which are not in accordance with the contract, or

7.31.1.5:- The Contractor assigns the contract or sub-lets the whole of the Works without the written consent of the Employer.

7.31.2 Except for suspension under sub-clause 7.31.1.2, all other instructions to suspend shall be accompanied by a seven days notice.

7.31.3 Instructions for postponement or suspension shall be copied to the Employer

7.31.4 The suspension shall not take effect if the matter occasioning the notice is rectified within the period of the notice. Such suspension shall cease immediately the matter occasioning the notice is rectified.

7.31.5 Should the Works be suspended under this clause, the Contractor shall be liable for all expenses arising there from.

7.31.6 ***Suspension of Works by the contractor***, the contractor may suspend the carrying of works, if

7.31.6.1:- He has not received a payment certificate which he applied for in accordance with the contract and the default continues for thirty days after expiry

7.31.6.2:- He has not received payment within the period for honoring certificates provided in these conditions and the default continues for thirty days after expiry of the stated period, or

7.31.6.3:- The Contractor notifies the Architect that it has become impossible to impracticable to procure goods and materials for the Works for reason



- beyond the Contractor's control and the project manager has not given appropriate instructions in accordance with this contract
- 7.31.6.4:- The Delay occurs in the nomination or re-nomination of a sub-contractor or supplier which delay materially affects the progress of the Works, or
- 7.31.6.4:- The Delay occurs in the appointment of a replacement Architect, Quantity Surveyor or Engineer which delay materially affects progress of the works
- 7.31.7 Where the Contractor intends to suspend the carrying out of the Works, he shall give the Employer a seven days notice in writing to that effect, with a copy to the project manager.
- 7.31.8 The Contractor shall not suspend the carrying out of the Works if the matter occasioning the notice is rectified within the period of the notice. Such suspensions shall cease immediately the matter occasioning the notice is rectified.
- 7.31.9 During the period of suspension either under clause 7.31.1.0 or herein the Contractor shall properly protect and secure the Works to the reasonable satisfaction of the Architect.

## **7.32 Termination of contract**

- 7.32.1 KPPF may, without prejudice to any other remedy for breach of contract, by written notice sent to the Contractor, terminate this contract in whole or in part due to any of the following:

-

- a) if the Contractor fails to perform any or all of the services within the period(s) specified in the contract, or within any extension thereof granted by KPPF.*
- b) if the Contractor fails to perform any other obligation(s) under the contract.*
- c) if the Contractor, in the judgment of KPPF has engaged in corrupt or fraudulent practices in competing for or in executing the contract.*
- d) by an act of force majeure.*
- e) if the Contractor becomes insolvent or bankrupt*
- f) if the Contractor has a receiving order issued against it, compounds with its creditors, or an order is made for its winding up (except for the purposes of its amalgamation or reconstruction), or a receiver is appointed over its or any part of its undertaking or assets, or if the Contractor suffers any other analogous action in consequence of debt.*
- g) if the Contractor abandons or repudiates the Contract.*

- 7.32.2 In the event that KPPF terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered or not rendered, and the Contractor shall be liable to KPPF for any excess costs for such

similar services and or any other loss PROVIDED that the Contractor shall not be so liable where the termination is for convenience of KPPF.

- 7.32.3 The Parties may terminate the Contract by reason of an act of force majeure as provided for in the contract.
- 7.32.4 The Contract may automatically terminate by reason of an act of force majeure as provided for in the Contract.

### **7.33 Payment Upon Termination**

- 7.33.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the Work done and materials ordered and delivered to Site up to the date of the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor.
- 7.33.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the Work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor's personnel employed solely on the works, and the Contractor's costs of protecting and securing the works.
- 7.33.3 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on the Site, plant, equipment and temporary works.
- 7.33.4 The Contractor shall, during the execution or after the completion of the Works under this clause remove from the Site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.
- 7.33.5 Until after completion of the Works under this clause the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Project Manager shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract the difference shall be a debt payable to the Employer by

the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

#### **7.34 Release from Performance**

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

#### **7.35 Corrupt gifts and payments of commission**

The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the Employer.
- (b) Enter into this or any other contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.
- (c) Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement and Asset Disposal Act 2015 and Regulations 2006; Anti-Corruption and Economic Crimes Act 2003; Public Finance Management Act Cap 412.

#### **7.36 Settlement Of Disputes**

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

- (a) Architectural Association of Kenya
- (b) Institute of Quantity Surveyors of Kenya

- (c) Association of Consulting Engineers of Kenya
- (d) Chartered Institute of Arbitrators (Kenya Branch)
- (e) Institution of Engineers of Kenya

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

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

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

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

7.36.5 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:

- i. The appointment of a replacement Project Manager upon the said person ceasing to act.
- ii. Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- iii. Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- iv. Any dispute or difference arising in respect of war risks or war damage.

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

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

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

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

### **7.37 Prices**

7.37.1 Subject to clause 7.14 herein below, prices charged by the Contractor for services performed under the contract shall be fixed for the period of the contract with no variations.

7.37.2 A price that is derived by a pre-disclosed incorporation or usage of an internationally accepted standard formula shall not be deemed to be a price variation within the meaning of this clause.

### **7.38 Variation of Contract**

KPPF and the Supplier may vary the contract only in accordance with the following: -

- a) *the quantity variation of services shall not exceed twenty percent (20%) of the original contract quantity.*
- b) *The cumulative value variation shall not exceed twenty five percent (25%) of the original contract value.*
- c) *the quantity variation must be executed within the period of the contract.*

### **7.39 Assignment**

The Contractor shall not assign in whole or in part its obligations to perform under this contract, except with KPPF's prior written consent.

### **7.40 Nominated Subcontractors**

7.40.1 The following provisions shall apply where prime cost sums are included in the contract bills or arise as a result of Architect's instructions given in regard to the expenditure of provisional sums in respect of persons to be nominated by the project manager to supply and fix or install materials or goods or to carry out work.

7.40.2 Such sums shall be expended in favor of such persons as the project manager shall instruct, with the consent of the Employer, and all specialists or others who are nominated by the Architect are hereby declared to be sub-contractors employed by the Contractor, and are referred to in these conditions as 'nominated sub-contractors'

7.40.3 The project manager shall not nominate any person as a sub-contractor against whom the Contractor shall make reasonable objection.

7.40.4 The nominated sub-contractor shall carry out and complete the sub-contract works in every respect to the reasonable satisfaction of the Contractor and of the project manager and in conformity with all the reasonable directions and requirements of the Contractor

7.40.5 The Contractor and the nominated sub-contractor shall enter into a sub-contract agreement which provides (inter alia):-

7.40.5.1:- That the nominated sub-contractor shall observe, perform and comply with all the provisions of this contract on the part of the Contractor to be observed, performed and complied with (other than clause 13.0 of these conditions, if applicable) so far as they relate and apply to the sub-contract works or to any, portion of the same.

7.40.5.2:- That the nominated sub-contractor shall indemnify the Contractor against the same liabilities in respect of the sub-contract works as those for which the Contractor is liable to indemnify the Employer under this contract

7.40.5.3:- That the nominated sub-contractor shall indemnify the Contractor against claims in respect of any negligence, omission or default of such subcontractor, his servants or agents or any misuse by him or them of any scaffolding or other equipment, and shall insure himself against any such claims and produce the policy or policies and receipts in respect of premiums paid as and when required by either the project manager or the Contractor.

7.40.5.4:- The sub-contract works shall be completed within the period or (where they are to be completed in sections) periods therein specified.

7.40.5.5:- That the Contractor shall not without the written consent of the Architect, grant any extension of time for the completion of the sub-contract works or any section thereof, and that the Contractor shall inform the Architect of any representation made by the nominated sub-contractor as to the cause of any delay in the progress or completion of the sub-contract works or any section thereof

7.40.5.6:- That if the nominated sub-contractor shall fail to complete the sub-contract works or (where the sub-contract works are to be completed in sections) any section thereof, within the period therein specified or within any extended time granted by the Contractor with the written consent of the project manager and the project manager certifies in writing to the Contractor that the same ought reasonably so to have been completed, the nominated sub-contractor shall or allow to the Contractor either a sum calculated at the rate therein agreed as liquidated damages for the period during which the said works or any section thereof, as the case may be, shall so remain or have remained incomplete or where no such rate is therein agreed), a sum equivalent to any loss or damage suffered or incurred by the Contractor and caused by the failure of the nominated sub-contractor as aforesaid.

7.40.5.7:- That payment in respect of any work, materials or goods comprised in the sub-contract shall be made within fourteen days after receipt by the Contractor of the sum to which the Contractor shall be entitled by virtue of the Architect's certificates issued under clause 7.21 of these conditions which states as due an amount calculated by including the total value of such work, materials or goods, and shall when due be subject to retention by the Contractor of the sums stated in sub-clause 7.40.5.8 of this condition.

7.40.5.8:- That the Contractor shall retain from the sum directed by the Project manager as having been included in the calculation of the amount stated as due in any

certificate issued under clause 7.21 of these conditions in respect of the total value of work, materials or goods executed or supplied by the nominated subcontractor the percentage of such value named in the appendix to these conditions as percentage of certified value retained up to a total amount not exceeding a sum which bears the same ratio to the sub-contract price as the unreduced sum named in the appendix to these conditions as the limit of retention fund bears to the contract price.

7.40.5.9:- That the Contractor's interest in any sums so retained (by whomsoever held)-shall be fiduciary as trustee for the nominated sub-contractor (but without obligation to invest), and that the nominated sub-contractor's beneficial interest in such sums shall be subject only to the right of the Contractor to have recourse thereto from time to time for payment of any amount which he is entitled under the sub-contract to deduct from any sum due or to become due to the nominated sub-contractor; and that if and when such sums or any part thereof are released to the nominated sub-contractor, they shall be paid in full.

7.40.5.10:- That the Employer, the Architect, Quantity Surveyor, Engineers and other agents of the Employer, shall have a right of access to the workshops and other places of the nominated sub-contractor where work is being prepared as provided for in clause 19.0 of these conditions.

7.40.6 The Architect shall direct the Contractor as to the total value of the work, materials or goods executed or supplied by a nominated sub-contractor included in the calculation of the amount stated as due in any certificate issued under clause 7.21 of these conditions and shall forthwith inform the nominated sub-contractor in writing of the amount of the said total value. The sum representing such total value shall be paid by the Contractor within fourteen days after receipt by the Contractor of the sum to which the Contractor shall be entitled by virtue of the certificate less only.

7.40.6.1:- Any retention money which the Contractor may be entitled to deduct under the terms of the sub-contract, and

7.40.6.2:- Any sum to which the Contractor may be entitled in respect of delay in the completion of the sub-contract works or any section thereof, and

7.40.6.3:- Amounts already paid under previous certificates.

7.40.7 Before issuing any certificate under clause 7.21 of these conditions, the Architect may request the Contractor to furnish to him reasonable proof that all amounts included in the calculation of the amounts stated as due in previous certificates in respect of the total value of the work, materials or goods executed or supplied by any nominated subcontractor have been duly paid and if the Contractor fails to comply with any such request the project manager shall issue a certificate to that effect and thereupon the Employer may himself pay

such amounts to any nominated sub-contractor concerned and deduct the same from any money due or to become due to the Contractor.

- 7.40.8 The Contractor shall not grant to any nominated sub-contractor any extension of the period within which the sub-contract works, or (where the sub-contract works are to be completed in sections) any section thereof is to be completed without the written consent of the project manager. Provided always that the Contractor shall inform the Architect of any representations made by the nominated sub-contractor as to the cause of any delay in the progress or completion of the subcontract works or of any section thereof. The consent of the Architect shall not be unreasonably withheld. Any extension of time granted under this clause shall be copied to the Employer.
- 7.40.9 If any nominated sub-contractor fails to complete the sub-contract works or (where the sub contract works are to be completed in sections) any section thereof within the period specified in the subcontract or within any extended time granted by the Contractor with the written consent of the project manager, then if the same ought reasonably so to have been completed, the Architect shall certify in writing accordingly. Immediately upon issue, the Architect shall send a copy of any such certificate to the nominated sub-contractor and to the Employer
- 7.40.10 If the project manager desires to secure final payment to any nominated sub-contractor before final payment is due to the Contractor, and if such sub-contractor has satisfactorily indemnified the Contractor against any latent defects, then the project manager may in an interim certificate include an amount to cover the said final payment, and the Contractor shall pay to such nominated subcontractor the amount so certified within fourteen days of receipt of the payment. Upon such final payment, the amount named in the appendix to these conditions as limit of retention fund shall be reduced by the sum which bears the same ratio to the said amount as does such sub-contractor's subcontract price to the contract price, and save for latent defects, the Contractor shall be discharged from all liability for the work, materials or goods executed or supplied by such subcontractor under the sub-contract to which the payment relates.
- 7.40.11 Where the Contractor in the ordinary course of his business directly carries out works for which prime cost sums are included in the contract bills and where he has so informed the project managers', the Contractor shall be permitted to tender for the same or any of them but without prejudice to the Employer's right to reject the lowest or any tender.
- 7.40.12 Where a prime cost sum arises under project managers' instructions issued under sub-clause 7.20, of these conditions, it shall be deemed for the purposes of this sub-clause to have been included in the contract bills.
- 7.40.13 It shall be a condition of any tender accepted under sub-clause 31.11 that clause 30.0 of these conditions shall apply in respect of the items of work included in the tender as if the



reference therein to the contract drawings, specifications and the contract bills were references to the equivalent documents included in or referred to in the tender.

- 7.40.14 Where the terms of a contract between the Contractor and a nominated sub-contractor so require or the project manager shall so authorize in writing, the Contractor shall make advance payment to the subcontractor before delivery of the materials or goods, and the Contractor shall be allowed simple interest for the period of such advance payment calculated at the commercial bank lending rate in force at the time of the advance until the value of the said materials or goods is included in a certificate in accordance with clause 7.21.
- 7.40.15 If a nominated sub-contractor terminates the sub-contract or the Contractor terminate the subcontract on the advice of the project manager, the project manager shall make a further nomination of a subcontractor as may be necessary to carry out and complete the work left incomplete by the subcontractor whose employment has been terminated Any additional costs arising there from shall be borne by the Employer. Notwithstanding the above, the project manager may instruct, with the consent of the Contractor, then the incomplete work shall be executed by the Contractor and such instruction shall be deemed to be a variation to the contract.
- 7.40.16 Provided that where a nominated sub-contractor terminates the sub-contract as a result of a default by the Contractor, or the Contractor terminates the sub-contract without the written advice of the project manager, the Contractor shall be liable to the Employer to any additional costs arising there from.
- 7.40.17 Where a nominated sub-contract provides a defects liability period which extend beyond the Contractor's defects liability period, the Contractor's obligations and liabilities in connection with the defects of the nominated sub-contract shall nevertheless terminate at the end of the Contractor's defects liability period. The remaining portion of the nominated sub-contractor's defects liability period shall be subject to a direct agreement between the Employer and the nominated sub-contractor and shall not form part of this agreement
- 7.40.18 Where a sub-contractor is required to give a guarantee or warranty relating to the subcontract works such guarantee or warranty shall be assigned by the sub-contractor to the Employer prior to the issue of the final certificate
- 7.40.19 The employment of a nominated sub-contractor under these conditions shall terminate forthwith upon the termination (for any reason) of the Contractor's employment under the contract
- 7.40.20 Neither the existence nor the exercise of the foregoing powers nor anything else contained in these conditions shall render the Employer in any way liable to any nominated sub-contractor.

7.40.21 In the event that an award is given and the contract is sub-contracted, the responsibility and onus over the contract shall rest on the Contractor who was awarded.

#### **7.41 Liquidated Damages**

Notwithstanding and without prejudice to any other provisions of the contract, if the Contractor fails to perform any or all of the services within the period specified in the contract, KPPF shall, without prejudice to its other remedies under the contract, deduct from the contract prices, liquidated damages sum equivalent to **0.5% of the contract price** per week of delay of the delayed due services up to a maximum of ten percent (10%) of the contract price of the delayed due services.

#### **7.42 Warranty**

7.42.1 Where applicable, the Contractor warrants that the Services provided under the contract are of the highest quality or current specification and incorporate all recent improvements unless provided otherwise in the contract. The Contractor further warrants that any materials/ equipment provided under this contract shall have no defect arising from manufacture, materials or workmanship or from any act or omission of the Contractor that may develop under normal use of the materials/ equipment provided under the conditions obtaining in Kenya.

7.42.2 This warranty will remain valid for the period indicated in the special conditions of contract after the goods, or any portion thereof as the case may be, have been delivered to the final destination indicated in the contract.

7.42.3 KPPF shall promptly notify the Contractor in writing of any claims arising under this Warranty.

7.42.4 Upon receipt of such a notice, the Contractor shall, with all reasonable speed, remedy the defective services without cost to KPPF.

7.42.5 If the Contractor having been notified, fails to remedy the defect(s) within a reasonable period, KPPF may proceed to take such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which KPPF may have against the Contractor under the contract.

#### **7.43 Resolution of Disputes**

7.43.1 KPPF and the Contractor may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.

7.43.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may resort to resolution before a recognized local forum for the resolution of disputes.

#### **7.44 Language and Law**

The language of the contract and the law governing the contract shall be the English language and the laws of Kenya respectively unless otherwise stated.

#### **7.45 Waiver**

Any omission or failure by KPPF to exercise any of its rights or enforce any of the penalties arising from the obligations imposed on the Contractor shall in no way, manner or otherwise howsoever, alter, amend, prejudice, vary, waive or be deemed to alter, amend, prejudice, vary, waive or otherwise whatsoever any of KPPF's powers and rights as expressly provided in and as regards this contract.

#### **7.46 Force Majeure**

7.46.1 Force majeure means any circumstances beyond the control of the parties, including but not limited to:

- a) *war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;*
- b) *ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;*
- c) *rebellion, revolution, insurrection, military or usurped power & civil war;*
- d) *riot, commotion or disorder except where solely restricted to employee's servants or agents of the parties;*
- e) *un-navigable storm or tempest at sea.*

7.46.2 Notwithstanding the provisions of the contract, neither party shall be considered to be in default or in breach of its obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of force majeure which arise after the contract is entered into by the parties.

7.46.3 If either party considers that any circumstances of force majeure are occurring or have occurred which may affect performance of its obligations it shall promptly notify the other party and provide reasonable proof of such circumstances.

7.46.4 Upon the occurrence of any circumstances of force majeure, the Contractor shall endeavour to continue to perform its obligations under the contract so far as is reasonably practicable. The Contractor shall notify KPPF of the steps it proposes to take including any reasonable alternative means for performance, which is not prevented by force majeure. The Contractor shall not take any such steps unless directed so to do by KPPF.

- 7.46.5 If the Contractor incurs additional costs in complying with KPPF's directions under sub clause 7.23.4, then notwithstanding the provisions of the contract, the amount thereof shall be agreed upon with KPPF and added to the contract price.
- 7.46.6 If circumstances of force majeure have occurred and shall continue for a period of twenty-one (21) days then, notwithstanding that the Contractor may by reason thereof have been granted an extension of time for performance of the contract, either party shall be entitled to serve upon the other seven (7) days' notice to terminate the contract. If at the expiry of the period of twenty-eight (28) days, force majeure shall still continue, the contract shall terminate.

## SECTION VIII – SPECIAL CONDITIONS OF CONTRACT

The Special Conditions of Contract *hereinafter abbreviated as SCC* shall form part of the Conditions of Contract. They are made in accordance with the law and KPPF's guidelines, practices, procedures and working circumstances. They shall amend, add to and vary the GCC. The clauses in this section need not therefore, be completed but must be completed by KPPF if any changes to the General Conditions of Contract (GCC) provisions are deemed necessary. Whenever there is a conflict between the GCC and SCC, the provisions of the SCC shall prevail over those in the GCC.

CONDITIONS OF CONTRACT	CLAUSE	REQUIREMENT(S)
Notice to Employer		Employer's address; The Kenya Power Pension Fund, Stima Plaza Annex, Kolobot Road, Parklands, P.O Box 1548 – 00600, <u>Nairobi, Kenya</u>
The Name and identification number of the contract	Section I	REMEDIAL WORKS FOR ONSITE WASTE WATER TREATMENT PLANT AT LORESHO RIDGE ESTATE DEVELOPED ON L.R.NO.21080/63 (ORIGINAL NO. 21080/38) TENDER NUMBER KPPF/PROC/2-A/08/2020
The work consist of	Section IV	Attached find description of works and location – Section IV
Start Date		<b>To be decided by employer</b>
The number of days within which the contractor shall submit a revised program for the Works after delivery of the Letter of Acceptance		<b>14 days</b>
The Site Possession Date		<b>To be decided after award</b>
Minimum amount of Third Party Insurance		<b>KShs. 1,000,000.00 per occurrence, with the number of occurrences unlimited</b>
Defects Liability Period		<b>6 (Six months)</b>
The period between program updates (In days)		<b>14 days</b>

The proportion of payment to be retained (in Percent)		<b>5%</b>
The Price Adjustment Clause (Shall/shall not apply)		<b>Shall not apply</b>
The liquidated damages for the whole of the works in Kshs (per week)		<b>0.5% of the project cost</b>
Maximum Limit of liquidated damages		<b>10% of Contract Value</b>
Performance Security (as a percentage of the Contract Price)		<b>10% of Contract Value</b>
Completion Period for the works (in weeks)		<b>As per Accepted tender and as may be amended during contract performance</b>
The rate of exchange for calculation of foreign currency payments		<b>Not applicable in this tender.</b>
Advance payment (Shall/ Shall not be granted)		<b>Applicable for purchase of machinery and equipment ONLY, subject to submission of Advance Payment Bank Guarantee of the same amount.</b>
Percentage of Retention (of the Interim Payment Certificate)		<b>5% of interim Payment Certificate.</b>
Minimum amount of interim certificates		<b>Kshs. 500,000.00</b>
Time (in days) after which payment is to be made after Interim Payment Certificate signed by Project Manager and date of receipt of Invoice.		<b>30 days</b>
Time after which payment to be made after Final Payment Certificate signed by Project Manager and date of receipt of Invoice.		<b>30 days</b>

## **SECTION IX - STANDARD FORMS**

- (i) Form of Tender
- (ii) Confidential Business Questionnaire
- (iii) Tender Security Form (Bank Guarantee)
- (iv) Tender Security Form (Letter of Credit) – Not applicable for this tender
- (v) Tender Security Form (Sacco Society, Micro Finance, Enterprise Fund)
- (vi) Declaration Form
- (vii) Letter of notification of award
- (viii) Letter of notification of regret
- (ix) Contract Agreement Form
- (x) Performance Security Form (Bank Guarantee)
- (xi) Letter of Acceptance

## SECTION X - TENDER FORM

Date:

Tender No.

To:

The Kenya Power Pension Fund,  
Stima Plaza Annex,  
Kolobot Road, Parklands,  
P.O Box 1548 – 00600,  
Nairobi, Kenya.

Ladies and Gentlemen,

1. Having read, examined and understood the Tender Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned Tenderer, offer construction services of *(the latter two where applicable)* ..... *(insert works description)* in accordance and conformity with the said tender document for the sum of .....*(total tender amount inclusive of all taxes in words and figures)* or such sums as may be ascertained in accordance with the Bill of Quantities attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to deliver, install and commission the goods in accordance with the delivery schedule specified in the Description of works schedule.
3. If our Tender is accepted, we will obtain the performance security of a licensed commercial bank in Kenya in a sum equivalent to ten percent (10%) of the contract price for the due performance of the contract, in the form(s) prescribed by Kenya Power Pension Fund.
- 4.\* We agree to abide by this Tender for a **period of.....days (Tenderer please indicate validity of your tender)** from the date fixed for tender opening as per the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.



5. This Tender, together with your written acceptance thereof and your notification of award, shall not constitute a contract, between us. The contract shall be formed between us when both parties duly sign the written contract.
  
6. We understand that you are not bound to accept any Tender you may receive.

Yours sincerely,

\_\_\_\_\_

Name of Tenderer

\_\_\_\_\_

Signature of duly authorised person signing the Tender

\_\_\_\_\_

Name and Designation of duly authorised person signing the Tender

\_\_\_\_\_

Stamp or Seal of Tenderer

**\*NOTES:**

1. KPPF requires a validity period of at least One hundred and eighty (180) days.
2. This form must be duly signed, stamped and/or sealed.

## SECTION XI - CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

All Tenderers are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c), whichever applies to your type of business. You are advised that it is a serious offence to give false information on this form.

Part 1 – General
Business Name.....
Location of business premises.....
Plot No. ....Street/ Road .....
Postal Address ..... Postal Code .....
Tel No.....
Facsimile.....
Mobile and/ or CDMA No.....
E-mail:.....
Nature of your business .....
Registration Certificate No.....
Maximum value of business which you can handle at any time Kshs.....
Name of your Bankers ..... Branch.....
*Names of Tenderer’s contact person(s) .....

Designation of the Tenderer's contact person(s) .....

Address, Tel, Fax and E-mail of the Tenderer's contact person(s) .....

.....

.....

**Part 2 (a) Sole Proprietor**

Your name in full .....

Nationality ..... Country of origin .....

\*Citizenship details.....

**Part 2 (b) Partnership**

Give details of partners as follows: -

Names	Nationality	*Citizenship Details	Shares
-------	-------------	----------------------	--------

1.....

2.....

3.....

4.....

5.....

**Part 2 (c) Registered Company**

Private or Public .....

State the nominal and issued capital of company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows

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

1.....

2.....
3.....
4.....
5.....
Name of duly authorized person to sign for and on behalf of the Tenderer .....
Designation of the duly authorized person.....
Signature of the duly authorized person.....

**\*NOTES TO THE TENDERERS ON THE QUESTIONNAIRE**

- a. It is compulsory to Attach Copy of CR12 with the confidential business questionnaire form*
- b. The address and contact person of the Tenderer provided above shall at all times be used for purposes of this tender.*
- c. If a Kenyan citizen, please indicate under "Citizenship Details" whether by birth, naturalization or registration. The details on this Form are essential and compulsory for all Tenderers. Failure to provide all the information requested shall lead to the Tenderer's disqualification.*
- d. For foreign Tenderers please give the details of nominal and issued share capital in the currency of the country of origin of the Tenderer.*

**SECTION XII A - TENDER SECURITY FORM – (BANK GUARANTEE)**

**(To Be Submitted on Bank’s Letterhead)**

**Date:**

**To:**

The Kenya Power Pension Fund,  
Stima Plaza Annex,  
Kolobot Road, Parklands,  
P.O Box 1548 – 00600,  
Nairobi, Kenya.

**WHEREAS** ..... (*name of the Tenderer*) (*hereinafter called “the Tenderer”*) has submitted its Tender dated ..... for the supply, installation and commissioning of..... (*please insert KPPF tender no. and name*) (*hereinafter called “the Tender”*);

**KNOW ALL PEOPLE** by these presents that **WE**..... of ..... having our registered office at..... (*hereinafter called “the Bank”*), are bound unto The Kenya Power and Lighting Company Limited (*hereinafter called “KPPF” which expression shall where the context so admits include its successors-in-title and assigns*) in the sum of ..... for which payment, well and truly to be made to the said KPPF, the Bank binds itself, its successors, and assignees by these presents.

We undertake to pay you, upon your first written demand declaring the Tenderer to be in breach of the tender requirements and without cavil or argument, the entire sum of this guarantee being ..... (*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

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

This guarantee is valid until the .....day of.....20.....

EITHER

SEALED with the )  
COMMON SEAL )

of the said BANK )  
this .....day )  
of .....20..... )

\_\_\_\_\_  
BANK SEAL

in the presence of :- )  
 )  
 )  
\_\_\_\_\_ )

and in the presence of:- )  
 )  
\_\_\_\_\_ )

OR

**SIGNED** by the **DULY AUTHORISED**  
**REPRESENTATIVE(S)/ ATTORNEY(S)** of  
the **BANK**

\_\_\_\_\_  
Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the Bank

\_\_\_\_\_  
Signature(s) of the duly authorised person(s)

**NOTES TO TENDERERS AND BANKS**

*1. Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made,*

*the Tender Security shall not be accepted and shall be rejected by KPPF. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.*

*2. It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such Tenderer's Tender Security shall be deemed as invalid and the bid rejected.*

*3. The issuing bank should address its response or communication regarding the bond to KPPF at the following e-mail address – "tenders@kppf.co.ke"*

*4. The Tender validity period is Two hundred Ten (210) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPPF. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

**SECTION XII B - TENDER SECURITY FORM (SACCO SOCIETY, DEPOSIT TAKING MICRO FINANCE INSTITUTIONS, WOMEN ENTERPRISE FUND & YOUTH ENTERPRISE FUND)**

**(To Be Submitted On Institutions Letterhead)**

**Date:**

**To:**

The Kenya Power Pension Fund,  
Stima Plaza Annex,  
Kolobot Road, Parklands,  
P.O Box 1548 – 00600,  
Nairobi, Kenya.

**WHEREAS**.....(hereinafter called “the Contractor”) has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*)and its Tender dated .....(*insert Contractor’s date of Tender taken from the Tender Form*) to supply .....(*description of the Works*) (hereinafter called “the Contract);

**AND WHEREAS** it has been stipulated by you in the said Contract that the Contractor shall furnish you with an Institution’s guarantee by an acceptable Institution for the sum specified therein as security for compliance of the Contractor’s performance obligations in accordance with the Contract;

**AND WHEREAS** we have agreed to give the Contractor a Guarantee;

**THEREFORE WE HEREBY AFFIRM** that we are Guarantors and responsible to you, on behalf of the Contractor, up to a total of..... (*amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the Contractor to be in default under the Contract and without cavil or argument, any sum or sums within the limits of .....

(*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the .....day of.....20....



EITHER

**SEALED** with the )

**COMMON SEAL** )

of the said **INSTITUTION** )

)

this .....day )

)

\_\_\_\_\_  
INSTITUTION SEAL

of .....20.... )

in the presence of :- )

)

\_\_\_\_\_ )

)

and in the presence of:- )

)

\_\_\_\_\_ )

OR

**SIGNED** by the **DULY AUTHORISED**  
**REPRESENTATIVE(S)/ ATTORNEY(S)** of  
the **INSTITUTION**

\_\_\_\_\_  
Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the **Institution**.

\_\_\_\_\_  
Signature(s) of the duly authorised person(s)

**NOTES TO SUPPLIERS AND INSTITUTIONS**

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPPF. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.*

2. *It is the responsibility of the Tenderer to sensitize its issuing institution on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive response by the institution within this period, such Tenderer's Tender Security shall be deemed as invalid and the bid rejected.*

3. *The issuing institution should address its response or communication regarding the Tender Security to KPPF at the following e-mail address – "tenders@kppf.co.ke"*

4. *The Tender validity period is Two hundred and ten (210) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPPF. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

**SECTION XIII - DECLARATION FORM**

Date \_\_\_\_\_

**To:**

The Kenya Power Pension Fund,  
P.O Box 1548 – 00600,  
Stima Plaza Annex, Kolobot Road, Parklands,  
Nairobi,  
KENYA.

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address) \_\_\_\_\_

\_\_\_\_\_ declare the following: -

- a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 of ITT (Eligible Tenderers) of the Instruction to Tenderers.
- d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- e) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

\_\_\_\_\_

Name of Tenderer

\_\_\_\_\_

Signature of duly authorised person signing the Tender

\_\_\_\_\_

Name and Designation of duly authorised person signing the Tender

\_\_\_\_\_

Stamp or Seal of Tenderer

**SECTION XIV– DRAFT LETTER OF NOTIFICATION OF AWARD**

To:

*(Name and full address of the Successful Tenderer) .....*

Dear Sirs/ Madams,

RE: NOTIFICATION OF AWARD OF TENDER NO. ....

We refer to your Tender dated..... and are pleased to inform you that following evaluation, your Tender has been accepted as follows: -

.....  
.....

This notification does not constitute a contract. The formal Contract Agreement, which is enclosed herewith shall be entered into upon expiry of fourteen (14) days from the date hereof pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time or replaced)*.

Kindly sign, and seal the Contract Agreement. Further, initial and stamp on all pages of the documents forming the Contract that are forwarded to you with this letter. Thereafter return the signed and sealed Contract together with the documents to us within fourteen (14) days of the date hereof for our further action.

We take this opportunity to remind you to again note and strictly comply with the provisions as regards the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

**FOR: THE KENYA POWER PENSION FUND**

**CEO & TRUST SECRETARY**

Enclosures

**SECTION XV – DRAFT LETTER OF NOTIFICATION OF REGRET**

**To:** (Name and full address of the Unsuccessful Tenderer) .....

**Date:**

Dear Sirs/ Madams,

**RE:** NOTIFICATION OF REGRET IN RESPECT OF TENDER NO. ....

Pursuant to the provision under section 87(3) of the public procurement and asset disposal Act 2015 to notify you that following evaluation, your Tender is unsuccessful. It is therefore not accepted. The brief reasons are as follows: -

1. ....
2. ....
3. .... etc

he successful bidder was \_\_\_\_\_.

However, this notification does not reduce the validity period of your Tender Security. In this regard, we request you to relook at the provisions regarding the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

You may collect the tender security from our offices only after expiry of twenty-five (25) days from the date hereof

It is expected that by that time KPPF and the successful bidder will have entered into a contract pursuant to the Public Procurement and Asset Disposal Act, 2015 (*or as may be amended from time to time or replaced*). When collecting the Security, you will be required to produce the original or certified copy of this letter.

We thank you for the interest shown in participating in this tender and wish you well in all your future endeavours.

Yours faithfully,

**FOR: THE KENYA POWER PENSION FUND**

**CEO & TRUST SECRETARY**

## SECTION XVI - CONTRACT AGREEMENT FORM

**THIS AGREEMENT** made this.....day of.....20.... **BETWEEN THE KENYA POWER & LIGHTING COMPANY LIMITED STAFF RETIREMENT BENEFITS SCHEME**, a retirement benefits fund licensed by Retirement Benefits Authority situated at Stima Plaza Annex, Kolobot Road, Parklands, Nairobi in the Republic of Kenya and of Post Office Box Number 1548-00600, Nairobi in the Republic aforesaid (*hereinafter referred to as the "KPPF"*) of the one part,

### AND

..... (*Contractor's full name and principal place of business*) a duly registered entity according to the laws of..... (*state country*) and of Post Office Box Number/Physical Address ..... (*full address physical and postal of Contractor*) in the Republic aforesaid, (*hereinafter referred to as the "Contractor"*) of the other part;

**WHEREAS** KPPF invited tenders for certain services, that is to say for Provision of ..... under Tender Number.....

**AND WHEREAS** KPPF has accepted the Tender by the Contractor for the services in the sum of ..... *include any payable taxes, duties and insurance where applicable e.g. Value Added Tax*) (*hereinafter called "the Contract Price"*).

### NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract and the Tender Document.
2. Unless the context or express provision otherwise requires: -
  - a) reference to "this Agreement" includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
  - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.
  - c) words importing the masculine gender only, include the feminine gender

or (as the case may be) the neutral gender.

- d) words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the "*Contractor*" the covenants, agreements obligations expressed to be made or performed by the Contractor shall be deemed to be made or performed by such persons jointly and severally.
- e) where there are two or more persons included in the expression the "*Contractor*" any act default or omission by the Contractor shall be deemed to be an act default or omission by any one or more of such persons.

3. In consideration of the payment to be made by KPPF to the Contractor as hereinbefore mentioned, the Contractor hereby covenants with KPPF to perform and provide the services and remedy any defects thereon in conformity in all respects with the provisions of the Contract.

4. KPPF hereby covenants to pay the Contractor in consideration of the proper performance and provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. The following documents shall constitute the Contract between KPPF and the Contractor and each shall be read and construed as an integral part of the Contract: -

- a. this Contract Agreement
- b. the Special Conditions of Contract as per the Tender Document
- c. the General Conditions of Contract as per the Tender Document
- d. the priced bill of quantities submitted by the Contractor and agreed upon with KPPF.
- e. the Specifications as per KPPF's Tender Document
- f. the Drawings
- g. KPPF's Notification of Award dated.....
- h. the Tender Form signed by the Contractor
- i. the Declaration Form signed by the Contractor/ successful Tenderer

6. In the event of any ambiguity or conflict between the contract documents listed above, the order of precedence shall be the order in which the contract documents are listed in 5 above except where otherwise mutually agreed in writing.

7. The Commencement Date shall be the working day immediately following the fulfilment of all the following: -

- a) Execution of this Contract Agreement by KPPF and the Contractor.
- b) Issuance of the Performance Bond by the Contractor and confirmation of its authenticity by KPPF.
- c) Issuance of the Official Order by KPPF to the Contractor.

8. The period of contract validity shall begin from the Commencement date and end sixty (60) days after the last date of the agreed performance schedule.

Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.

9. It shall be the responsibility of the Contractor to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.

10. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.

11. No failure or delay to exercise any power, right or remedy by KPPF shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.

12. Notwithstanding proper completion of performance or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.

13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be



deemed served two (2) days after such receipt by the courier service for Local Suppliers and five (5) days for Foreign Suppliers.

14. For the purposes of Notices, the address of KPPF shall be CEO & Trust Secretary, Kenya Power Pension Fund Offices, Ground Floor, Stima Plaza Annex, Kolobot Road, Post Office Box Number 1548–00600, Nairobi, Kenya. The address for the Contractor shall be the Contractor's address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

**IN WITNESS**, whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya the day and year first above written.

**SIGNED** for and on behalf  
of **KPPF**

---

Ag.CEO & TRUST SECRETARY

**SEALED** with the **COMMON SEAL**  
of the **CONTRACTOR**  
in the presence of:-

---

DIRECTOR

---

*Affix Contractor's Seal here*

---

DIRECTOR'S FULL NAMES

and in the presence of:-

---

DIRECTOR/ COMPANY SECRETARY

---

DIRECTOR/ COMPANY SECRETARY'S FULL NAMES

**SECTION XVII - PERFORMANCE SECURITY FORM (BANK GUARANTEE)**

**(To Be Submitted on Bank’s Letterhead)**

**Date:**

**To:**

The Kenya Power Pension Fund,  
Stima Plaza Annex,  
Kolobot Road, Parklands,  
P.O Box 1548 – 00600,  
Nairobi, Kenya.

**WHEREAS**..... (hereinafter called “the Supplier”) has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*) and its Tender dated .....(*insert Supplier’s date of Tender taken from the Tender Form*) to supply .....(*description of the goods*) (hereinafter called “the Contract);

**AND WHEREAS** it has been stipulated by you in the said Contract that the Supplier shall furnish you with a bank guarantee by an acceptable bank for the sum specified therein as security for compliance of the Supplier’s performance obligations in accordance with the Contract;

**AND WHEREAS** we have agreed to give the Supplier a guarantee;

**THEREFORE, WE HEREBY AFFIRM** that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total sum of..... (*amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract and without cavil or argument, any sum or sums within the limits of .....

(*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the .....day of.....20....

EITHER

**SEALED** with the )  
**COMMON SEAL** )  
of the said **BANK** )  
)

this .....day )  
)  
of .....20.... )  
in the presence of:- )  
)  
\_\_\_\_\_ )

\_\_\_\_\_  
BANK SEAL

and in the presence of: - )  
)  
\_\_\_\_\_ )

OR

**SIGNED** by the **DULY AUTHORISED**  
**REPRESENTATIVE(S)/ ATTORNEY(S)** of  
the **BANK**

\_\_\_\_\_  
Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the Bank

\_\_\_\_\_  
Signature(s) of the duly authorised person(s)

**NOTES TO SUPPLIERS AND BANKS**

- 1. Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Performance Security Bond (the Bond) to be furnished by the successful Tenderer/ Supplier. If any are made, the Bond may not be accepted and shall be rejected by KPPF. For the avoidance of doubt, such rejection will be treated as non-submission of the Bond where such Bond is required in the tender and Contract.*
- 2. KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed five (5) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security may be deemed as invalid and the Contract nullified.*
- 3. The issuing Bank should address its response or communication regarding the bond to KPPF at the following e-mail address – "tenders@kppf.co.ke"*

**SECTION XVIII - PREVIOUS EXPERIENCE WITH SIMILAR WORK**

**(INFORMATION TO BE PROVIDED BY THE TENDERER)**

Tenderer to provide **documentary proof** of having done works of a similar nature

No.	Description	Year	Customer Name & Contacts	Date of completion	Value of contract
		2019			
		2018			
		2017			
		2016			
		2015			

## **SECTION XIX - BILL OF QUANTITIES**

In addition to the information and documentation in the Tender Document regarding the technical aspects of this tender, all Tenderers shall comply with the following -

The objectives of the Bills of Quantities are;

- a. To provide sufficient information on the quantities of Works to be performed to enable tenders to be prepared efficiently and accurately; and
- b. When a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.

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

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

### **a. Preliminaries.**

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

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

### **b. Work Items**

- i. The items in the Bills of Quantities should be grouped into sections to distinguish between those parts of the Works which by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, or phasing of the Works, or considerations

of cost. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities.

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

Unit	Abbreviation	Unit	Abbreviation
cubic meter	M3 or cu m	millimeter	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m <sup>2</sup> or sq m
lump sum	sum	square millimeter	mm <sup>2</sup> or sq mm
meter	m	week	wk
metric ton (1,000 kg)	t		

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

### **c. Day work Schedule**

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

- a list of the various classes of labour, and materials for which basic Daywork rates or prices are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Work executed on a Daywork basis; and



- a percentage to be entered by the tenderer against each basic Daywork Subtotal amount for labour, materials and plant representing the Contractor's profit, overheads, supervision and other charges.

**d. Provisional Quantities and Sums**

- i. Provision for quantity contingencies in any particular item or class of Work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities, and not by increasing the quantities for that item or class of Work beyond those of the Work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a "Provisional Sum" in the Summary of the Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a "Provisional Sum" in the Summary of the Bill of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.
- ii. Provisional sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialised Works should be included as a section of the main Bills of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name (s) of the specialised firms he proposes to engage to carry out the specialized Works as his approved domestic sub-contractors. Only provisional sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities.

**(e) Summary**

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

**The bill of quantities is as attached;**

**SECTION XX – DETAILS OF SUBCONTRACTORS**

If the Bidder wishes to sublet any portions of the Works under any heading, he must give below details of the subcontractors he intends to employ for each portion.

Failure to comply with this requirement may invalidate the bid.

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

Full name of Subcontractor and address of head office:  
.....  
.....  
.....  
.....

Subcontractor’s experience of similar works carried out in the last 3 years with Contract value:

	<u>Similar Works</u>	<u>Contract Value</u>
1	.....	.....
2	.....	.....
3	.....	.....

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

Full name of sub-contractor and address of head office:  
.....  
.....

Sub-contractor’s experience of similar works carried out in the last 3 years with contract value:

	<u>Similar Works</u>	<u>Contract Value</u>
1	.....	.....
2	.....	.....
3	.....	.....

.....  
[Signature of Bidder) (Date)

**SECTION XXI- LETTER OF ACCEPTANCE**

**[letter-head paper of the Employer]**

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

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

Dear Sir,

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

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

Authorized Signature .....

Name and Title of Signatory .....