



TENDER NO. JOOUST/ONT/051/2020-2021

**PROVISION OF SMALL WORKS: BUILDING OF
SHOW GROUND STAND**

**CLOSING DATE: TUESDAY, 10TH FEBRUARY 2021
AT 11:00 A.M.**

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SECTION I:

INVITATION FOR TENDERS

TENDER REFERENCE: NO. JOOUST/ONT/051/2020-2021

TENDER NAME: PROVISION SMALL WORKS; LAYING OF CABROS ON WALKWAYS BUILDING OF SHOW GROUND STAND

- 1.1 Jaramogi Oginga Odinga University of Science and Technology invites sealed bids from all interested candidates for the **provision of small works; Building of show ground stand.**
- 1.2 Interested eligible candidates may obtain further information from and inspect the tender documents at **Jaramogi Oginga Odinga University of Science and Technology Procurement Office Bondo** during normal office working hours (8.00am-1.00pm, 2.00pm – 5.00pm). Bidders may also view and download the bidding document from website: www.jooust.ac.ke and immediately forward their particulars for records and for the purposes of receiving any further tender clarifications and/or addendums to proc@jooust.ac.ke.
- 1.3 Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings or easily convertible foreign currency and shall remain valid for a period of 120 days from the Closing date of the tender.
- 1.4 Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box at **Tender Box at Ground Floor, Main Campus Reception Jaramogi Oginga Odinga University of Science and Technology** be addressed to:

**The Vice Chancellor,
Jaramogi Oginga Odinga University of Science and Technology
P.O Box 210- 4061
Bondo**

So as to be received on or before **Wednesday 10th February, 2021 at 11.00 AM**

- 1.5 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at **Assembly Hall.**

VICE CHANCELLOR

SECTION II - INSTRUCTIONS TO TENDERERS

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SECTION II – INSTRUCTIONS TO TENDERERS

1. General/Eligibility/Qualifications/Joint venture/Cost of tendering

- 1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful tenderer will be expected to complete the Works by the Intended Completion Date specified in the tender documents.
- 1.2 All tenderers shall provide the Qualification Information, a statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or has 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 the project or being proposed as Project Manager for the 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.
- 1.3 All tenderers shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 1.4 In the event that pre-qualification of potential tenderers has been undertaken, only tenders from pre-qualified tenderers will be considered for award of Contract. These qualified tenderers should submit with their tenders any information updating their original prequalification applications or, alternatively, confirm in their tenders that the originally submitted pre-qualification information remains essentially correct as of the date of tender submission.
- 1.5 Where no pre-qualification of potential tenderers has been done, all tenderers shall include the following information and documents with their tenders , unless otherwise stated:
 - (a) copies of original documents defining the constitution or legal status, place of registration and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer:
 - (b) total monetary value of construction work performed for each of the last five years:
 - (c) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts;
 - (d) Major items of construction equipment proposed to carry out the Contract and an undertaking that they will be available for the Contract.

- (e) Qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.
- (f) reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the past three years;
- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) authority to seek references from the tenderer's bankers;
- (i) information regarding any litigation, current or during the last five years, in which the tenderer is involved, the parties concerned and disputed amount; and
- (j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.

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

- (a) the tender shall include all the information listed in clause 1.5 above for each joint venture partner;
- (b) the tender shall be signed so as to be legally binding on all partners;
- (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- (d) one of the partners will be nominated as being in charge, authorised to incur liabilities, and receive instructions for and on behalf of all partners of the joint venture; and
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

1.7 To qualify for award of the Contract, tenderers shall meet the following minimum qualifying criteria;

- (a) annual volume of construction work of at least 2.5 times the estimated annual cashflow for the Contract;
- (b) experience as main contractor in the construction of at least two works of a nature and complexity equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Works;

(d) a Contract manager with at least five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and

(e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than 4 months of the estimated payment flow under this Contract.

1.8 The figures for each of the partners of a joint venture shall be added together to determine the tenderer's compliance with the minimum qualifying criteria of clause 1.7 (a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 1.7 (a), (b) and (e) for an individual tenderer, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's tender. Subcontractors' experience and resources will not be taken into account in determining the tenderer's compliance with the qualifying criteria, unless otherwise stated.

1.9 Each tenderer shall submit only one tender, either individually or as a partner in a joint venture. A tenderer who submits or participates in more than one tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the tenderer's participation to be disqualified.

1.10 The tenderer shall bear all costs associated with the preparation and submission of his tender, and the Employer will in no case be responsible or liable for those costs.

1.11 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.

1.12 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

1.13 The price to be charged for the tender document shall not exceed Kshs.1,000/=

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

2. Tender Documents

2.1 The complete set of tender documents comprises the documents listed below and any addenda issued in accordance with Clause 2.4.

- (a) These Instructions to Tenderers
- (b) Form of Tender and Qualification Information
- (c) Conditions of Contract
- (d) Appendix to Conditions of Contract
- (e) Specifications
- (f) Drawings
- (g) Bills of Quantities
- (h) Forms of Securities

2.2 The tenderer shall examine all Instructions, Forms to be filled and Specifications in the tender documents. Failure to furnish all information required by the tender documents, or submission of a tender not substantially responsive to the tendering documents in every respect will be at the tenderer's risk and may result in rejection of his tender.

2.3 A prospective tenderer making an inquiry relating to the tender documents may notify the Employer in writing or by cable, telex or facsimile at the address indicated in the letter of invitation to tender. The Employer will only respond to requests for clarification received earlier than seven days prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.

2.4 Before the deadline for submission of tenders, the Employer may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all tenderers. Prospective tenderers shall acknowledge receipt of each addendum in writing to the Employer.

2.5 To give prospective tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders, in accordance with Clause 4.2 here below.

3. Preparation of Tenders

3.1 All documents relating to the tender and any correspondence shall be in English language.

3.2 The tender submitted by the tenderer shall comprise the following:

These Instructions to Tenderers, Form of Tender, Conditions of Contract, Appendix to Conditions of Contract and Specifications;

Tender Security;
Priced Bill of Quantities;
Qualification Information Form and Documents;

Alternative offers where invited; and

- (f) Any other materials required to be completed and submitted by the tenderers.
- 3.3 The tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause relevant to the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the tenderer.
- 3.4 The rates and prices quoted by the tenderer shall only be subject to adjustment during the performance of the Contract if provided for in the Appendix to Conditions of Contract and provisions made in the Conditions of Contract.
- 3.5 The unit rates and prices shall be in Kenya Shillings.
- 3.6 Tenders shall remain valid for a period of ninety (120) days from the date of submission. However in exceptional circumstances, the Employer may request that the tenderers extend the period of validity for a specified additional period. The request and the tenderers' responses shall be made in writing. A tenderer may refuse the request without forfeiting the Tender Security. A tenderer agreeing to the request will not be required or permitted to otherwise modify the tender, but will be required to extend the validity of Tender Security for the period of the extension, and in compliance with Clause 3.7 - 3.11 in all respects.
- 3.7 The tenderer shall furnish, as part of the tender, a Tender Security in the amount and form specified in the appendix to invitation to tenderers. This shall be in the amount not exceeding 2 percent of the tender price
- 3.8 The format of the Tender Security should be in accordance with the form of Tender Security included in Section G - Standard forms or any other form acceptable to the Employer. Tender Security shall be valid for 30 days beyond the validity of the tender.
- 3.9 Any tender not accompanied by an acceptable Tender Security shall be rejected. The Tender Security of a joint venture must define as "Tenderer" all joint venture partners and list them in the following manner: a joint venture consisting of".....", ".....", and ".....".
- 3.10 The Tender Securities of unsuccessful tenderers will be returned within 30 days of the end of the tender validity period specified in Clause 3.6.

- 3.11 The Tender Security of the successful tenderer will be discharged when the tenderer has signed the Contract Agreement and furnished the required Performance Security.
- 3.12 The Tender Security may be forfeited
- (a) if the tenderer withdraws the tender after tender opening during the period of tender validity;
 - (b) if the tenderer does not accept the correction of the tender price, pursuant to Clause 5.7;
 - (c) in the case of a successful tenderer, if the tenderer fails within the specified time limit to
 - (i) sign the Agreement, or
 - (ii) furnish the required Performance Security.
- 3.13 Tenderers shall submit offers that comply with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. Alternatives will not be considered, unless specifically allowed in the invitation to tender. If so allowed, tenderers wishing to offer technical alternatives to the requirements of the tendering documents must also submit a tender that complies with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. In addition to submitting the basic tender, the tenderer shall provide all information necessary for a complete evaluation of the alternative, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated tender conforming to the basic technical requirements shall be considered.
- 3.14 The tenderer shall prepare one original of the documents comprising the tender documents as described in Clause 3.2 of these Instructions to Tenderers, bound with the volume containing the Form of Tender, and clearly marked "ORIGINAL". In addition, the tenderer shall submit copies of the tender, in the number specified in the invitation to tender, and clearly marked as "COPIES". In the event of discrepancy between them, the original shall prevail.
- 3.15 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the tenderer, pursuant to Clause 1.5 (a) or 1.6 (b), as the case may be. All pages of the tender where alterations or additions have been made shall be initialled by the person or persons signing the tender.

- 3.16 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 3.17 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.
- 3.18 The tender security shall be in the form of tender securing declaration.

4. Submission of Tenders

- 4.1 The tenderer shall seal the original and all copies of the tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as **“ORIGINAL”** and **“COPIES”** as appropriate. The inner and outer envelopes shall:
- (a) be addressed to the Employer at the address provided in the invitation to tender;
 - (b) bear the name and identification number of the Contract as defined in the invitation to tender; and
 - (c) provide a warning not to open before the specified time and date for tender opening.
- 4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender. However, the Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with Sub-Clause 2.5 in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline will then be subject to the new deadline.
- 4.3 Any tender received after the deadline prescribed in clause 4.2 will be returned to the tenderer un-opened.
- 4.4 Tenderers may modify or withdraw their tenders by giving notice in writing before the deadline prescribed in clause 4.2. Each tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with clause 3.13 and 4.1, with the outer and inner envelopes additionally marked **“MODIFICATION”** and **“WITHDRAWAL”**, as appropriate. No tender may be modified after the deadline for submission of tenders.
- 4.5 Withdrawal of a tender between the deadline for submission of tenders and the expiration of the period of tender validity specified in the invitation to tender or as extended pursuant to Clause 3.6 may result in the forfeiture of the Tender Security pursuant to Clause 3.11.

- 4.6 Tenderers may only offer discounts to, or otherwise modify the prices of their tenders by submitting tender modifications in accordance with Clause 4.4 or be included in the original tender submission.

5. Tender Opening and Evaluation

- 5.1 The tenders will be opened by the Employer, including modifications made pursuant to Clause 4.4, in the presence of the tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender. Envelopes marked "**WITHDRAWAL**" shall be opened and read out first. Tenderers' and Employer's representatives who are present during the opening shall sign a register evidencing their attendance.
- 5.2 The tenderers' names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as may be considered appropriate, will be announced by the Employer at the opening. Minutes of the tender opening, including the information disclosed to those present will be prepared by the Employer.
- 5.3 Information relating to the examination, clarification, evaluation, and comparison of tenders and recommendations for the award of Contract shall not be disclosed to tenderers or any other persons not officially concerned with such process until the award to the successful tenderer has been announced. Any effort by a tenderer to influence the Employer's officials, processing of tenders or award decisions may result in the rejection of his tender.
- 5.4 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may ask any tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.7.
- 5.5 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender (a) meets the eligibility criteria defined in Clause 1.7;(b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the tendering documents. A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the works; (b) which limits in any substantial way, inconsistent with the tendering documents, the Employer's rights or the tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive

position of other tenderers presenting substantially responsive tenders.

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

5.7 Tenders determined to be substantially responsive will not be checked for any arithmetic errors. Errors will not be corrected as follows:

- (a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.
- (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.
- (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work (i.e. Corrected tender sum less P.C. and Provisional Sums)
- (e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.
- (f) the amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with

concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11.

- 5.8 The Employer will evaluate and compare only the tenders determined to be substantially responsive in accordance with Clause 5.5.
- 5.9 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.
- 5.10 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.
- 5.11 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a non-indigenous sub-contractor.

6. Award of Contract

- 6.1 Subject to Clause 6.2, the award of the Contract will be made to the tenderer whose tender has been determined to be substantially responsive to the tendering documents and who has offered the lowest evaluated tender price, provided that such tenderer has been determined to be (a) eligible in accordance with the provision of Clauses 1.2, and (b) qualified in accordance with the provisions of clause 1.7 and 1.8.
- 6.2 Notwithstanding clause 6.1 above, the Employer reserves the right to accept or reject any tender, and to cancel the tendering process and reject all tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the action.
- 6.3 The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum (hereinafter and in all Contract documents called the "Contract Price") that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time the other tenderers shall be informed that their tenders have not been

successful.

The contract shall be formed on the parties signing the contract.

- 6.4 The Agreement will incorporate all agreements between the Employer and the successful tenderer. Within 7 days of receipt the successful tenderer will sign the Agreement and return it to the Employer.
- 6.5 Within 21 days after receipt of the Letter of Acceptance, the successful tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and specified form 6.6 Failure of the successful tenderer to comply with the requirements of clause 6.5 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.
- 6.7 Upon the furnishing by the successful tenderer of the Performance Security, the Employer will promptly notify the other tenderers that their tenders have been unsuccessful.
- 6.8 Preference where allowed in the evaluation of tenders shall not be allowed for contracts not exceeding one year (12 months)
- 6.9 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 6.10 The parties to the contract shall have it signed within 14 days from the date of notification of contract award unless there is an administrative review request.
- 6.11 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 6.12 Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.
- 6.13 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.
- 6.14 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 6.15 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 6.16 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

7. Corrupt and Fraudulent practices

- 7.1 The procuring entity requires that tenderers observe the highest standards of ethics during procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.
- 7.2 The Procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 7.3 Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public Procurement in Kenya.

APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

1.1.1	The Employer is the procuring entity, Jaramogi Oginga Odinga University of Science and Technology
1.4	The tender is open to firms registered under NCA 7 and above.
3.3	The tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities.
3.5	Price shall be quoted in Kenya shillings.
3.6	Tenders shall remain valid for a period of one twenty (120) days from the date of opening.
3.7	Duly filled signed and stamped Tender securing declaration form.
4.1	The bidder shall provide 1 original copy of the document and 1 other copy and be marked as copy and placed in one envelope. Tender reference and closing date must be quoted on the envelope.
4.2	Deadline for Submission of Tenders Closing Date: Wednesday 10th February 2021 at 11:00am
5.5 – 5.8	Evaluation of the tenders shall be done using the criteria set out in this document.
6.5	The successful bidder shall be expected to provide a performance security of 10% of the contract value.
7.1	Anti-corruption declaration form Jaramogi Oginga Odinga University of Science and Technology will require contractors to fill in the anti-corruption declaration form attached in this document.
SUBMISSION OF BIDS FORMAT	The tenderer shall seal the original and one copy of the tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ ORIGINAL ” and “ COPY ” as appropriate. The inner and outer envelopes shall be addressed to the client at the address provided in the invitation to tender; bear the name and identification number of the Contract as defined in the invitation to tender; and provide a warning not to open before the specified time and date for tender opening.

SECTION III

CONDITIONS OF CONTRACT

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CONDITIONS OF CONTRACT

1. Definitions

1.1 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” is the certificate issued by Project Manager upon correction of defects by the Contractor.

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

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

“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.

“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 Appendix to 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

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

“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.

“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 Appendix to Conditions of Contract.

2. Interpretation

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.

2.2 If sectional completion is specified in the Appendix to 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).

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

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.

3. Language and Law

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

4 Project Manager's Decisions

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.

5 Delegation

5.1 The Project Manager may delegate any of his duties and responsibilities to others after notifying the Contractor.

6 Communications

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

7 Subcontracting

7.1 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.

8 Other Contractors

8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities etc. as listed in the Appendix to 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.

9 Personnel

9.1 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.

10 Works

10.1 The Contractor shall construct and install the Works in accordance with the

Specifications 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.

11 Safety and Temporary Works

- 11.1 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.
- 11.2 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.
- 11.3 The Contractor shall be responsible for the safety of all activities on the Site.

12. Discoveries

- 12.1 Any finding of historical or other interest or of significant value unexpectedly discovered on Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

13. Work Program

- 13.1 Within the time stated in the Appendix to Conditions of Contract, the Contractor shall submit to the Project Manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works. An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining Work, including any changes to the sequence of the activities.

The Contractor shall submit to the Project Manager for approval an updated program at intervals no longer than the period stated in the Appendix to Conditions of Contract. If the Contractor does not submit an updated program within this period, the Project Manager may withhold the amount stated in the said Appendix from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue program has been submitted. The Project Manager's approval of the program shall not alter the Contractor's obligations. The Contractor may revise the program and submit it to the Project

Manager again at any time. A revised program shall show the effect of Variations and Compensation Events.

14. Possession of Site

14.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Appendix to Conditions of Contract, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.

15. Access to Site

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

16. Instructions

16.1 The Contractor shall carry out all instructions of the Project Manager which are in accordance with the Contract.

17. Extension or Acceleration of Completion Date

17.1 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.

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

18. Management Meetings

18.1 A Contract management meeting shall be held monthly 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.

19. Early Warning

19.1 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.

19.2 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.

20. Defects

20.1 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.

20.2 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 Appendix to Conditions of Contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.

20.3 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.

21. Bills Of Quantities

- 21.1 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.
- 21.2 If the final quantity of the Work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the Initial Contract price, the Project Manager shall adjust the rate to allow for the change.
- 21.3 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.

22. Variations

- 22.1 All variations shall be included in updated programs produced by the Contractor.
- 22.2 The Contractor shall provide the Project Manager with a quotation for carrying out the variations when requested to do so. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period as may be stated by the Project Manager and before the Variation is ordered.
- 22.3 If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the variation does not correspond with items in the Bills of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 22.4 If the Contractor's quotation is unreasonable, the Project Manager may order the variation and make a change to the Contract price, which shall be based on the Project Manager's own forecast of the effects of the variation on the Contractor's costs.
- 22.5 If the Project Manager decides that the urgency of varying the Work would prevent a quotation being given and considered without delaying the Work, no quotation shall be given and the variation shall be treated as a Compensation Event.

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

22.7 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.

23. Payment Certificates, Currency of Payments and Advance Payments

23.1 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.

23.2 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.

23.3 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. If the Employer makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the Central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.

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

23.5 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.

23.6 The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Appendix to Conditions of Contract. If the Contractor indicated foreign currencies for payment other than the currencies of the

countries of origin of related goods and services the Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The Employer and the Project Manager shall be notified promptly by the Contractor of any changes in the expected foreign currency requirements of the Contractor during the execution of the Works as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.

23.7 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 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.

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

$$R = \frac{A(x^{11} - x^{10})}{x^{11} - x^{10}}$$

Where:

80 – 20

- R = the amount to be reimbursed
- A = the amount of the advance which has been granted
- X¹¹ = 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^{11} = 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%.

- d) with each reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.

24. Compensation Events

24.1 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.
- 24.2 If a compensation event would cause additional cost or would prevent the Work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 24.3 As soon as information demonstrating the effect of each compensation event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.
- 24.4 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.
- 24.5 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.
- 24.6 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.

25. Price Adjustment

- 25.1 The Project Manager 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.
- 25.2 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, as the case may be.

25.3 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 Appendix to 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.

25.4 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 Appendix to Conditions of Contract.

25.5 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.

25.6 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.

25.7 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.

26. Retention

26.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the Appendix to 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.

27. Liquidated Damages

27.1 The Contractor shall pay liquidated damages to the Employer at the rate stated in the Appendix to 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.

27.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rate specified in Clause 23.30

28. Securities

28.1 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 reputable bank acceptable to the Employer, and denominated in Kenya Shillings. The Performance Security shall be valid until a date 30 days beyond the date of issue of the Certificate of Completion.

29. Dayworks

- 29.1 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.
- 29.2 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.
- 29.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

30. Liability and Insurance

- 30.1 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.
- 30.2 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.

30.3 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 Appendix to 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.

30.4 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.

30.5 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.

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

31. Completion and taking over

31.1 Upon deciding that the Works are complete, the Contractor shall issue a written request to the Project Manager to issue a Certificate of Completion of the Works. The Employer shall take over the Site and the Works within seven [7] days of the Project Manager's issuing a Certificate of Completion.

32. Final Account

32.1 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.

33. Termination

33.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;

- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorised by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
- (c) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.
- (e) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a security, which is required.

33.2 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Clause 33.1 above, the Project Manager shall decide whether the breach is fundamental or not.

33.3 Notwithstanding the above, the Employer may terminate the Contract for convenience.

33.4 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible. The Project Manager shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

34. Payment Upon Termination

- 34.1 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.
- 34.2 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.
- 34.3 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.

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.

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.

Release from Performance

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.

Corrupt gifts and payments of commission

The Contractor shall not;

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.

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.

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 Regulations issued under The Exchequer and Audit Act Cap 412 of the Laws of Kenya.

Settlement of Disputes

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;

Architectural Association of Kenya

Institute of Quantity Surveyors of Kenya

Association of Consulting Engineers of Kenya Chartered

Institute of Arbitrators (Kenya Branch) Institution of

Engineers of Kenya {IEK}

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

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.

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.

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.

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:

The appointment of a replacement Project Manager upon the said person ceasing to act.

Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.

Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.

Any dispute or difference arising in respect of war risks or war damage.

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.

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.

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.

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

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

4.1 Special conditions of contract shall supplement the general conditions of contract, wherever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.

4.2 Special conditions of contract with reference to the general conditions of contract.

General conditions of contract reference	Special conditions of contract
3.7	Performance security shall be 10% of the Contract price
3.12	Payment will be done after completion of works or as stipulated in the contract
3.13	Price adjustments not allowed
3.20	As per the laws of Kenya
3.21	As per the laws of Kenya

PRELIMINARIES AND CONTIGENCY
SECTION VI- SPECIFICATIONS- BILL OF QUANTITIES
PRELIMINARIES

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
A B	Water	Item	1		
C D	Electricity	Item	1		
E F	Security	Item	1		
G H	Storage	Item	1		
	Sign Board	Item	1		
	Insurance	Item	1		
	Contigency	Item	1		
	Plant tools and Equipment	Item	1		

SUBSTRUCTURES - ALL PROVISIONAL

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
	<p>DEMOLITION WORKS</p> <p>ALL ELEMENTS</p> <p><u>The Contractor is advised to visit the site and ascertain the condition of the existing building and the condition of all structures to be demolished including sizes of structural elements and all materials to be recovered before quoting for this item. No claim shall be entertained for description of work appearing hereunder.</u></p>				
A	Carefully demolish existing single storey building including all the footings, walling, roofing, reinforced concrete elements and the likes; cart away all the arising debris; approximate plinth area 220m ²	Item	1		
	<p>All Elements</p> <p>Demolitions works - Carried to Summary</p>			KShs.	

SUBSTRUCTURES - ALL PROVISIONAL

02/1

JANUARY, 2021

ITEM	DESCRIPTION	UNIT	QUANTI	RATE	AMOUNT
	MAIN WORKS				
	ELEMENT 01				
	SUBSTRUCTURES - (ALL PROVISIONAL)				
	Excavation including maintaining and supporting sides and keeping free from water, mud and fallen materials				
A B	To reduce levels, load, wheel deposit and compact where directed on site, average depth of 150mm	SM	220		
C D	For foundations commencing from reduced level, not exceeding 1.5metres deep	CM	76		
F G	For column bases commencing from reduced level, not exceeding 1.5metres deep	CM	11		
	Extra over for excavating in rock "Class I"	CM	4		
H I	Disposal				
	Backfilling around foundations	CM	48		
J	Load and cart away surplus spoil	CM	39		
	Imported Filling				
	Hardcore bed, thickness 300mm	SM	201		
K	Stone dust blinding to hardcore, thickness 50mm	SM	201		
	Anti-Termite treatment				
L M	Chemical anti-termite treatment executed by an approved specialist under a ten-year guarantee to hardcore surfaces, etc.	SM	220		
N	Plain Concrete Class 15				
	50mm Blinding under foundations and bases	SM	65		
	Vibrated reinforced concrete class 25/20mm				
	Foundations and column bases	CM	14		
	Beds, thickness 150mm	SM	220		
	Columns	CM	1		
	c/f				

03/1

JANUARY, 2021

SUBSTRUCTURES - ALL PROVISIONAL

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
					KSHS. CTS.
	Reinforcement	b/f			
	Hot rolled high yield ribbed steel bar reinforcement to B.S 4449				
A B	12mm Diameter bars	KG	94		
C	10mm Diameter bars	KG	336		
	8mm Diameter bars	KG	190		
D	Damp Proof membrane				
	1000 Gauge polythene laid under surface beds	SM	220		
E	Steel mesh fabric reinforcement to B.S. 4483				
	Layer of mesh fabric reinforcement laid in beds or slabs (measured nett - no allowance made for laps) Ref: A 142 weighing at 2.22 Kgs per square metre)	SM	220		
F G	Formwork				
	Sides of columns	SM	7		
	Edges of slabs, etc., girth 75 to 150mm	LM	64		
H	WALLING				
	Natural stone walling in cement mortar (1:4)				
	Walling, thickness 200mm	SM	141		
I	Bituminous felt damp proof courses laid on and including leveling screed of cement mortar				
	In walling, width 200mm	LM	94		
	Element 01				
	Substructures (All Provisional) - Carried to Summary			KShs.	

SUPER-STRUCTURES

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
	ELEMENT 01: R.C SUPERSTRUCTURE				KSHS. CTS.
	Vibrated reinforced concrete class 25/20mm				
A B	Columns	CM	1		
	Beams	CM	8		
	Reinforcement (All Provisional)				
C	Hot rolled high yield ribbed steel bar reinforcement to B.S 4449 (in columns, beams, slabs,Lift walls and staircase)				
	Assorted bars	KG	1,062		
D E	Formwork				
	Sides of columns	SM	23		
	Sides and soffits of beams	SM	103		
	Element 01				
	R.C Superstructure - Carried to Bill Summary			KShs.	

SUPER-STRUCTURES

[illegible]

SUPER-STRUCTURES

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
					KSHS. CTS.
	ELEMENT 03				
	ROOF CONSTRUCTION AND COVERING & RAINWATER GOODS				
	Roof Covering				
A	Supply and fix prepainted Gauge 28 IT5. roofing sheets fixed to timber purlins (Measured separately)with approved bolts. The rate to include fixing bolts.	SM	317		
	Ridge/Hip/Valley Caps				
B	200mm wide	LM	28		
	Sawn cypress; second grade; well seasoned and treated against termites with approved wood preservative ; with and including all jointing and connections (packing piece, bolts etc.) as necessary; in roof				
	The following in trusses and/or independent members				
C D	100 x 50mm Rafters/ valley rafters	LM	212		
E F	100 x 50mm ceiling joists	LM	196		
G I	100 x 50mm king posts	LM	20		
J K	150 x 25mm ridge/hip/valley board	LM	53		
	100 x 50 mm Struts and ties	LM	229		
	50 x 50mm Purlins	LM	257		
L	50 x 50mm ceiling members	LM	1,188		
	100 x 50mm Wall plate; fixed to concrete or masonry with and including approved bolts at 1000mm centres	LM	75		
L	Fascia Board				
	200x25mm Thick One-side wrot fascia and barge board	LM	74		
	Eaves Ceiling				
	Supply and fix T & G ceiling boards (hard type) on the eaves ceiling	SM	44		
	Carried forward				

SUPER-STRUCTURES

<i>ITEM</i>	<i>DESCRIPTION</i>	<i>UNIT</i>	<i>QUANTITY</i>	<i>RATE</i>	<i>AMOUNT</i>
	Brought forward				KSHS. CTS.
A B C D E	Rain Water Goods PVC pipes and fitting as KEY TERRAIN or equal and approv 100 mm Diameter down pipe: with and including swan neck offset and shoes; holder bats at 1500mm centres 100mm Diameter U-shaped gutter including all necessary strapings Extra over for bend Extra over for shoe Painting & Decorations General surfaces	LM LM NO NO SM	21 81 6 6 5		
	Element 03				
	Roof Construction and Covering - Carried to Bill Summary			KShs.	

SUPER-STRUCTURES

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
					KSHS. CTS.
	ELEMENT 03				
	EXTERNAL FINISHES				
	Cement and Sand (1:4) rendering				
A	Fair face rendering to walls and concrete surfaces, finished with a wood float, average thickness 15mm	SM	37		
	Prepare and apply one undercoat and two finishing coats external quality paint as "Permacote" manufactured by CROWN PAINTS or other equal and approved				
B C	Rendered wall & concrete surfaces	SM	37		
	Extra over for keying pointing neat recessed horizontal and flush vertical joints in cement and sand (1:3) mortar one side (Prov.)	SM	150		
	Element 03				
	External Finishes - Carried to Bill Summary			KShs.	

SUPER-STRUCTURES

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
					KSHS. CTS.
	ELEMENT 04: INTERNAL FINISHES				
	Cement and sand (1:4) beds and backings				
A B	Beds to receive red oxide; finished with a wood float and made smooth, average thickness 30mm	SM	216		
	Ditto; 10 x 100mm high skirting.	LM	185		
C	Floor Tiles				
D	SUPPLY & FIX 600x600x10mm Granito Floor Tiles fixed with 2mm spacers including bedding in adhesive and pointing in tinted cement	SM	216		
	Ditto; 10 x 100mm high skirting.	LM	185		
	Wall finishes				
E F	Lime Plaster				
	Walls and Concrete surfaces, thickness 15mm, to receive paint (m.s)	SM	494		
G H	Supply and fix "AMF or any other equal and approved " suspended acoustic performance mineral wool ceiling in SYSTEM C metal suspension system, with 24mm wide visible grille and recessed edges in 600x600x19mm panels	SM	216		
I	Prepare and apply one undercoat and two finishing coats first quality silk vinyl emulsion paint				
	Plastered walls and concrete surfaces	SM	494		
	Backing to tile dados				
	Cement sand mortar 1:3, thickness 15mm	SM	68		
	Wall Tiles				
	SUPPLY & FIX 300x300x10mm Ceramic Wall Tiles fixed with 2mm spacers including bedding in adhesive and pointing in tinted cement	SM	68		
	Element 04				
	Internal Finishes - Carried to Bill Summary			KShs.	

SUPER-STRUCTURES

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
	ELEMENT 06				KSHS. CTS.
	WINDOWS				
	Purpose made steel casement windows manufactured from 25x3mm heavy duty frames incorporating permanent ventilating units and with mosquito gauze including burglar proofing round bar grilles and heavy duty brass window closers, stays, pins e.t.c, fixed to masonry jambs and concrete heads and cill, with mastic pointing all round.				
A B	Window unit overall size 3000 x 1500mm (W01)	NO	6		
C	Window unit overall size 1500 x 1500mm (W02)	NO	4		
D	Window unit overall size 1000 x 1200mm (W03 - Kitchen)	NO	2		
	Window unit overall size 900 x 1050mm (W04 - Washrooms)	NO	4		
	Window cills				
E	Precast concrete (1:2:4) bedded and jointed in cement sand (1:3) mortar as described in:-				
	200 x 75mm weathered and throated window cill with smooth finish on all exposed surfaces	LM	37		
F G	Glazing				
	4mm Clear glass, panes n.e 0.1m2	SM	39		
	Ditto but obscure glass, panes n.e 0.1m2	SM	4		
H	Prepare and apply one undercoat and two finishing coats first quality paint to:				
	Metal surfaces	SM	87		
	Element 06				
	Windows - Carried to Bill Summary			KShs.	

SUPER-STRUCTURES

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
	ELEMENT 07: DOORS				KSHS. CTS.
	Mild steel panel doors				
A	Mild steel panel double door in two equal leaves each leaf comprising 50x50x3mm stiles and transomes, covered with 3mm pressed steel plates both sides and complete with welded T-sections for glazing (m.s) and 75x50x3mm RHS main frame all round built into wall or beam and complete, heavy duty hinges, pull handle and lock plate, including painting (both sides), overall size 2000x2400mm (Ref: Main Entrance Door D01)	NO	2		
B	Ditto, size 1200x2400mm	NO	1		
	Flush doors to B.S.459				
C	45mm Semi-solid core flush door faced both sides with 3mm interior quality plywood for painting and hardwood lipped all round, leaf size 800x2350mm (Ref: Door to Internal Rooms D02)	NO	3		
D	40mm Semi-solid core flush door faced both sides with 3mm interior quality plywood for painting and hardwood lipped all round, leaf size 700x2050mm (Ref: Door to Washrooms D03)	NO	3		
	Wrot Mahogany Frames				
E F	Door frames & transomes; Size 100x50mm	LM	32		
G	Moulded architrave; size 50x50mm	LM	32		
	Quadrant beading; size 25x25mm	LM	32		
	Ironmongery				
	Supply and fix ironmongery as per the specifications of the architect				
H I					
J	Pairs of hinges	PRS	9		
	2 - lever lock	NO	6		
	Door stops	NO	6		
K L	Knot, prime, stop and apply one undercoat and two gloss finishing coat oil paint to woodwork				
	General surfaces	SM	23		
	Surfaces, 100 to 200mm girth	LM	63		
	Element 07				
	Doors - Carried to Bill Summary			KShs.	

SUPER-STRUCTURES

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
					KSHS. CTS.
	ELEMENT 08				
	JOINERY FIXTURES & FITTINGS				
	Plain concrete 1:4:8				
A B	Plinths, thickness 100mm	SM	6		
	Vibrated Reinforced concrete class 20/20mm				
C	Worktops, thickness 75mm	SM	3		
	Steel mesh fabric reinforcement to B.S 4483				
D E	Layer of mesh fabric reinforcement laid in slab or bed (measured nett - no allowance for laps) Ref A98 weighing 1.54Kgs per square metre	SM	3		
F G	Formwork				
	Soffites of slabs	SM	3		
H	Edges of plinths, 75 to 150mm girth	LM	5		
	Edges of worktops, not exceeding 75mm high	LM	7		
I	Boxing to form opening in 75mm slab, size 450x500x75mm	NO	1		
	Solid concrete block walling in cement mortar (Provisional)				
J K	100mm Walling, reinforced as described	SM	1		
	Cement Sand (1:4) paving				
L M	Paving to plinths steel trowelled smooth, thickness 20mm	SM	6		
	Lime Plaster				
	Walls	SM	2		
	Soffits of worktops	SM	3		
	Granito Tile				
	Supply and fix 600x600x10mm polished granito tile to concrete tops fixed with approved adhesive	SM	3		
	Ditto 10mm tile fascia, height 100mm.	LM	7		
	c/f				

SUPER-STRUCTURES

[illegible]

SUPER-STRUCTURES

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
					KSHS. CTS.
	SECTION SUMMARY: SECOND-THIRD FLOOR				
1.0	R.C SUPER-STRUCTURE				
2.0	WALLING				
3.0	EXTERNAL FINISHES				
4.0	INTERNAL FINISHES				
5.0	WINDOWS				
6.0	DOORS				
7.0	JOINERY FITTINGS AND FIXTURES				

ENG SERVICES - ELECTRICAL AND MECHANICAL WORKS

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
					KSHS. CTS.
	SECTION 03				
	ENGINEERING SERVICES				
	ELEMENT 01				
	ELECTRICAL INSTALLATIONS				
A B	Provide for Electrical Installations a Prime Cost sum of Kenya Shillings Three Hundred Thousand		Sum		
C	Allow for profits		%		
	Allow for general attendance on Specialist installing Mains connection, Distribution boards, Power and Lighting installation, Alarm system and lighting conductors		Item		
D	K.P & L.C Charges				
	Provide for K.P & L.C Charges a Provisional Sum of Shillings Fifty Thousand		Sum		
	Builders work in connection with Electrical Installations (All Provisional)				
E F	Cut away for and attend in all trades on the subcontractor installing the following points in a mainly concealed system, including chases, holes and recesses, notching timber, etc., and making good all finishes				
G H					
I	Main switchboards	NO	1		
J K L	Meter Board Panel	NO	1		
M	Power Distribution boards	NO	1		
	Lighting points with associated switches	NO	25		
	Socket outlet points	NO	16		
	Cooker control points	NO	1		
	Television aerial points	NO	1		
	Data points	NO	2		
	Conduit ways in wall and Plaster	LM	44		
	Element 01				
	Electrical Installations - Carried to Summary			KShs.	

<i>ITEM</i>	<i>DESCRIPTION</i>	<i>UNIT</i>	<i>QUANTITY</i>	<i>RATE</i>	<i>AMOUNT</i>
	ELEMENT 02 MECHANICAL INSTALLATIONS Plumbing and Drainage Installations A Provide for Plumbing, Drainage & Sanitary fittings Installations a Prime Cost sum of Three Hundred and Fifty Thousand B C Allow for profits Allow for general attendance on specialist installing mains connection, storage tanks, cold system, sanitary fittings, soil and waste stacks and connections and drain runs Builder's work in connection (Provisional) D Chasing and making good for small pipes in Stone or concrete block walls E F Holes and sleeves for small pipes through Stone or concrete block walls G Ceramic floor tiles Ceramic wall tiles		Sum % Item LM NO NO NO		KSHS.
	Element 02 Mechanical Installations - Carried to Summary			KShs.	

Summaries

[illegible]

PROPOSED ASK KISUMU UNIVERSITY STAND
KISUMU COUNTY

MAIN SUMMARY

<u>SECTION NO.</u> KSHS. CTS.	<u>SECTION NAME</u>	<u>PAGE NO.</u>	<u>AMOUNT</u>
01	MAIN WORKS	PG 03/12	
02	ENGINEERING SERVICES	PG 04/3	
03	PRELIMINARIES & CONTIGENCIES	PG PP/1	
TOTAL CARRIED TO FORM OF TENDER			KSHS. <u> </u>

(SIGNATURE OF EMPLOYER)

(SIGNATURE OF CONTRACTOR)

ADDRESS: _____

ADDRESS: _____

DATE : _____

DATE : _____

PROPOSED ASK KISUMU UNIVERSITY STAND
KISUMU COUNTY

SCHEDULE OF PRIME COST AND PROVISIONAL SUMS
INCLUDED IN THESE BILLS OF QUANTITIES

PRIME COST SUMS

B/Q REF	ITEM	KSHS.	CTS.
	Joinery Fixtures	30,000.00	
	Electrical Installations	300,000.00	
	Plumbing and Drainage Installations	350,000.00	

680,000.00

PROVISIONAL SUMS

Contingencies	150,000.00
---------------	------------

150,000.00

TOTAL PC & PROVISIONAL SUMS 830,000.00

APPENDIX "A"

SECTION VII - STANDARD FORMS

Notes on the Standard Forms:

7.1 Form of Tender and Price Schedule form

These forms must be completed by the tenderer and submitted with the tender documents as specified in the format of submission. It must also be duly signed by duly authorized representative of the tenderer.

7.2 Confidential Business Questionnaire Form

This form must be completed by the tenderer and submitted with tender documents

7.3 Tender Security Form

When required by the tender document the tenderer shall provide the tender security either in the form included therein after or in another format acceptable to the procuring entity.

7.4 Contract Form

The Contract form shall not be completed by the tenderer at the time of submitting the tenderer at the time of submitting the tender. The contract form shall be completed after contract award.

7.5 Performance Security form

The performance security form should not be completed by the tenderer at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the sum provided herein or in another form acceptable to the procuring entity.

7.6 Bank Guarantee for Advance Payment.

When there is an agreement to have Advance payment, this form must be duly completed.

7.7 Manufacturer's Authorization Form

When required by the tender document, this form must be completed and submitted with the tender document. This form will be completed by the manufacturer of the goods where the tender is an agent.

PRICE SCHEDULE FORM

NAME OF TENDERER:

TENDER NUMBER:

TITLE OF TENDER: Provision of small works: Building of show ground stand

NO.	Description of service	TOTAL COST KSHS
1.	Provision of small works: Building of Show ground stand.	

PLEASE NOTE AND COMPLY WITH THE FOLLOWING:

- I. All prices to be inclusive of all taxes.
- II. In case of discrepancy between unit price and total, the unit price shall prevail.

Authorized Official:

Name

Signature, date and official stamp

FORM OF TENDER

Date _____

Tender No. **JARAMOGI OGINGA ODINGA UNIVERSITY OF SCIENCE AND TECHNOLOGY**

To: J.O.O.U.ST

P.O. BOX 210-40601, Bondo

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos.....
[insert numbers] of which is hereby duly acknowledged, we the undersigned, offer to carry out the works for Refurbishment **Provision of small works :Building of show ground stand Jaramogi Oginga Odinga University of Science and Technology - at JOOUST Main Campus – Bondo** as indicated in the said tender documents and bill of quantities for the sum of.....

.....*[total tender amount in words and figures]* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the services in accordance with the services schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the tender guarantee in a sum equivalent to _____ percent of the Contract Price for the due performance of the Contract, in the form prescribed by (Procuring entity).

4. We agree to abide by this Tender for a period of*[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

Dated this _____ day of _____ 2017

[signature]

[In the capacity of]

duly authorized to sign tender for and on behalf of _____

CONTRACT FORM

THIS AGREEMENT made the ____day of _____20____between..... [Name of procurement entity] of[country of Procurement entity](hereinafter called “the Procuring entity”) of the one part and[name of tenderer] of[city and country of tenderer](hereinafter called “the tenderer”) of the other part.

WHEREAS the procuring entity invited tenders for certain materials and spares. Viz.....[brief description of materials and spares] and has accepted a tender by the tenderer for the supply of those materials and spares in the sum of[contract price in words and figures] 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 referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
 - (a) The Tender Form and the Price Schedule submitted by the tenderer; (b) the Schedule of Requirements;
 - (c) the Technical Specifications;
 - (d) the General Conditions of Contract; (e) the Special Conditions of Contract; and
 - (f) the Procuring entity’s Notification of Award.
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the materials and spares and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the materials and spares and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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

Signed, sealed, delivered by _____ the _____ (for the Procuring entity)

Signed, sealed, delivered by _____ the _____ (for the tenderer) in
the presence of _____.

ANTI – CORRUPTION POLICY IN THE PROCUREMENT PROCESS

UNDERTAKING BY BIDDER ON ANTI – CORRUPTION POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME

The governments of Kenya is committed to fighting corruption in all its forms and in all its institutions to ensure that all the government earned revenues are utilized prudently and for the purpose intended with a view to promoting economic development as the country work towards actualizing Vision 2030.

Here at JOOUST and also being one of the government entities mandated under the government to provide quality education and transforming lives, on behalf of the government, we are highly committed to fighting any form of corruption in our organization to ensure that all the monies that the government entrust with us, is optimally and prudently utilized for the benefits of all the people we serve.

The following is a requirement that every Bidder wishing to do business with JOOUST must comply with:

- (1) Each bidder must submit a statement, as part of the tender documents, in the format given and which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the bidding company and, where relevant, of its subsidiary in Kenya. If a tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
- (2) Bidders will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the bidder may cover the subcontractors and consortium partners in its own statement, provided the bidder assumes full responsibility.
- (3) a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
b) Each bidder will make full disclosure in the tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the tender and, if successful, the implementation of the contract.
c) The successful bidder will also make full disclosure [quarterly or semi- annually] of all payments to agents and other third parties during the execution of the contract.
d) Within six months of the completion of the performance of the contract, the successful bidder will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that are sufficient to establish the legitimacy of the payments made.

e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.

(4) Tenders which do not conform to these requirements shall not be considered.

(5) If the successful bidder fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:

a) Cancellation of the contract;

b) Liability for damages to the public authority and/or the unsuccessful competitors in the bidding possibly in the form of a lump sum representing a pre- set percentage of the contract value (liquidated).

(6) Bidders shall make available, as part of their tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.

(7) The Government of Kenya through Ethics and Anti-Corruption Commission has made special arrangements for adequate oversight of the procurement process and the execution of the contract. Those charged with the oversight responsibility will have full access if need be to all documentation submitted by Bidders for this contract, and to which in turn all Bidders and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a bidder may be disclosed to another bidder or to the public).

1. MEMORANDUM (FORMAT)

(Clause 40, 41 and 42 of Kenya Public Procurement and Disposal Act 2005)This company
(*name of company*)

has issued, for the purposes of this tender, a Compliance Program copy attached -which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers'")"

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Bidder: _____

Address: _____

CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2(b) or 2(c) whichever applied to your type 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 addressTel No.Fax Email.....
 Nature of Business.....
 Registration Certificate No.
 Maximum value of business which you can handle at any one time – Kshs.
 Name of your bankers.....
 Branch.....

Part 2 (a) – Sole Proprietor

Your name in full.....Age.....
 Nationality.....Country of Origin.....
 Citizenship details.....

Part 2 (b) – Partnership

Given details of partners as follows

Name	Nationality	Citizenship details	Shares
1.			
2.			
3.			
4.			

Part 2 (c) – Registered Company

Private or Public:
 State the nominal and issued capital of company
 Nominal Kshs..
 Issued Kshs.....
 Given details of all directors as follows

Name	Nationality	Citizenship details	Shares
1.			
2.			
3.			
4.			

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

If a citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration

TENDER SECURITY FORM

Whereas [Name of the tenderer]

(Hereinafter called “the tenderer”) has submitted its tender dated..... [Date of submission of tender] for the provision of

[Name and/or description of the services]

(Hereinafter called “the Tenderer”).....

KNOW ALL PEOPLE by these presents that WE.....

Of.....[*name of bank*] of [*name of country*], having our registered office at [name of procuring entity] (hereinafter called <the procuring entity> in the sum of [*state the amount*] for which payment well and truly to be made to the said procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of _____ 20 _____

THE CONDITIONS of this obligation are:

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
 - (a) Fails or refuses to execute the Contract Form, if required; or
 - (b) Fails or refuses to furnish the performance security, in accordance with the instructions to tenderers;

we undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions. This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

[signature of the bank]

(Amend accordingly if provided by Insurance Company)

PERFORMANCE SECURITY FORM

To:

WHEREAS..... [Name of tenderer]

(Hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. _____ [reference number of the contract] dated _____ 20____ to

Supply.....

[Description services](Hereinafter called “the contract”)

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, 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 tenderer 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 your 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

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

(Amend accordingly if provided by Insurance Company)

BANK GUARANTEE FOR ADVANCE PAYMENT

To.....

[Name of tender].....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the special conditions of contract, which amends the general conditions of contract to provide for advance payment,

.....

[Name and address of tenderer][hereinafter called “the tenderer”] shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said clause of the contract in an amount of

.....

[Amount of guarantee in figures and words].

We, the

[bank or financial institution], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding
[amount of guarantee in figures and words].

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

This guarantee shall remain valid and in full effect from the date of the advance payment received by the tenderer under the Contract until *[date]*.

Yours truly,

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

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

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS)

SIGNED FOR ACCOUNTING OFFICER

SECTION VIII: EVALUATION CRITERIA

Technical Evaluation Form

The tenderer is expected to complete Part 1 and 3 of this form

Part A: General Information

Tenderer Name.....

Postal Address.....

Telephone (Office).....Mobile.....

Physical Address.....

Part B: Evaluation Stages

Stage 1: Mandatory Requirements

Tenderer MUST qualify in all below in order to proceed to the Evaluation Stage 2

1. Must duly fill, sign and stamp the form of tender
2. Must provide a valid Tax Compliance Certificate/Tax Exemption Certificate/VAT/PIN Certificates.(attach copy)
3. Must provide valid business permit.
4. Must provide Certificate of registration/business registration (Attach copy)
5. Must provide bid bond of 2% of the bid amount from a commercial bank valid for 120 days from the date of tender opening.
6. Must duly fill, signed and stamped Confidential Business Questionnaire.
7. Must dully fill,sign and stamp the anticorruption declaration form.
8. For companies that are registered as limited companies, the CR12 must be attached.
9. Must provide the NCA 6 and above certificate in the category of civil works.

The bidder who qualifies in the above stage will proceed to Technical Evaluation stage.

Stage 2: Technical Evaluation

No.	Requirements	Max. Points	Points awarded	Remarks
1.	<u>Personnel (30 points) Attach CV</u> <ul style="list-style-type: none"> ➤ Contract Manager to have at least University Degree in Quantity Surveying/Civil Engineering with at least 3 years' experience (10 points) ➤ Site Managers to have at least Higher National Diploma -Building construction/Engineering with at least 3 years' experience (10 points) ➤ Construction Supervisor to have at least ordinary National Diploma- Building construction/Engineering with at least 3 years' experience (10 points) 	30		
3.	<u>Experience in work of similar nature (Attach Completion certificate of at least one completed or ongoing works of similar works</u> <ul style="list-style-type: none"> ➤ 5 clients and above (20 points) ➤ 4 -5 clients (12 points) ➤ 2-3 clients (6 points) ➤ 2 clients and below (2 points) 	25 20 12 6 2		
4.	<u>Value of Business the Firm can handle on credit-</u> <ul style="list-style-type: none"> ➤ Kshs 10,000,000.00 and above ➤ Kshs.5,000,000.00 – 10,000,000.00 ➤ Kshs.1,000,000 –4,999,999 ➤ Less than Kshs.999,999.00 (Attach copies of LPOs, Contracts, Award letters)	25 25 20 15 10		
5.	<u>Machinery-</u> List and Attach proof of ownership or lease e.g. logbook, lease agreement for all machinery necessary for the works.	20		
	Total	100		

The pass mark is 70% of 100 points .

The bidder who qualifies in the above stage will proceed to Financial Evaluation.

Stage 3: Financial Evaluation

The bidder who qualifies in the above stage will be evaluated financially. The lowest evaluated bidder shall be awarded the tender.

Part C: Declaration (For the Tenderer only)

The Tenderer is expected to indicate whether he/she will/will not be evaluated on the above criteria

Q; Will you accept your bid to be evaluated based on the above criteria and abide by them during the entire period of the tender? (Tick appropriately below):

No:

☐

Yes :

☐

Official Stamp Sign.....

For Official Use Only

(The team Leader of the Evaluation Team will make comments below based on the findings about the Tenderer)

Total marks scored
.....
.....
.....

Accept the firm

Reject the firm

Sign.....Date.....