



REPUBLIC
OF
KENYA



Poverty Reduction Through Sustainable NRM



Investing in rural people

MINISTRY OF WATER & SANITATION
UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT (UTaNRMP)
PO Box 996-60100 EMBU Tel:068 22 31376 E-mail: info@utanrmp.or.ke utanrmp@gmail.com

TENDER DOCUMENT FOR

**CONSTRUCTION OF 12,000M³ WATER PAN IN MUKURWE-INI TECHNICAL
TRAINING INSTITUTE IN NYERI COUNTY**

TENDER NO MWS/UTaNRMP/TEN/002/2018-19

MARCH, 2019

PROCURING ENTITY

**Project Coordinator
Upper Tana
Natural Resources
Management Project
P.O. Box 996
EMBU.
Email: utanrmp@gmail.com
Tel: 068-2231376**

ENGINEER

**Water Resources Coordinator
Upper Tana
Natural resources
Management Project
P.O. Box 996
EMBU.
Email: utanrmp@gmail.com
Tel: 068-2231376**

TABLE OF CONTENTS

INTRODUCTION.....	4
SECTION I: INVITATION FOR TENDERS	5
SECTION II: INSTRUCTIONS TO TENDERERS (ITT).....	7
SECTION III: TENDER DATA SHEET	35
SECTION IV: GENERAL CONDITIONS OF CONTRACT.....	40
SECTION V: CONTRACT DATA SHEET (CDS)	68
SECTION VI: TECHNICAL SPECIFICATION	72
TECHNICAL SPECIFICATIONS	72
SECTION VII: DRAWINGS.....	73
SECTION VIII: BILL OF QUANTITIES	73
SECTION IX: TENDER FORMS	78
STANDARD FORMS	78
FORM OF INVITATION FOR TENDERS	79
FORM OF TENDER.....	80
LETTER OF ACCEPTANCE.....	81
FORM OF AGREEMENT.....	82
FORM OF TENDER SECURITY	84
PERFORMANCE BANK GUARANTEE	85
PERFORMANCE BOND.....	86
BANK GUARANTEE FOR ADVANCE PAYMENT	88
QUALIFICATION INFORMATION.....	89
TENDER QUESTIONNAIRE.....	92
CONFIDENTIAL BUSINESS QUESTIONNAIRE	93
DETAILS OF SUB-CONTRACTORS.....	94
ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE.....	95
CERTIFICATE OF TENDERER’S OR REPRESENTATIVE’S PRE-TENDER SITE VISIT.....	96
LETTER OF NOTIFICATION OF AWARD	97
ANNEX: DESIGN DRAWINGS.....	99

ABBREVIATIONS AND ACRONYMS

CDS	Contract Data Sheet
GCC	General Conditions of Contract
IFT	Invitation for Tender
ITT	Instruction to Tenderers
PE	Procuring Entity
PM	Project Manager
PPADA 2015	Public Procurement and Asset Disposal Act, 2015
PPDR 2006	Public Procurement and Disposal Regulations, 2006
PPRA	Public Procurement Regulations Authority
STD	Standard Tender Documents
SOR	Statement of Requirements
SP	Service Provider
TDS	Tender Data Sheet
UTaNRMP	Upper Tana Natural Resources Management Project
VAT	Value Added Tax

INTRODUCTION

- 1.1 This standard tender document for procurement of works has been prepared for use by procuring entities in Kenya in the procurement of works (e.g. Buildings, Roads, Bridges, Repairs and Maintenance) which the procuring entity considers to be small and where it is not required to be open tendering.
- 1.2 The following guidelines should be observed when using the document:-
 - (a) Specific details should be furnished in the tender notice and in the special conditions of contract (where applicable). The tender document issued to tenderers should not have blank spaces or options.
 - (b) The instructions to tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through Appendix to instructions to tenderers and special conditions of contract respectively.
- 1.3
 - (a) Information contained in the invitation to tender shall conform to the data and information in the tender documents to enable prospective tenderers to decide whether or not to participate in the tender and shall indicate any important tender requirements
 - I. The invitation to tender shall be as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have been prequalified following a request for prequalification.
- 1.4 The cover of the tender document should be modified to include:-
 - II. Tender number.
 - III. Tender name.
 - IV. Name of procuring entity.

SECTION I: INVITATION FOR TENDERS



REPUBLIC
OF
KENYA



Poverty Reduction Through Sustainable NRM



Investing in rural people

MINISTRY OF WATER AND SANITATION

UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT (UTaNRMP)

P.O. Box 996-60100 EMBU

Tel: 068-2231376

E-mail: utanrmp@gmail.com

1.1 The Upper Tana Natural Resources Management project is an eight year project (2012-2020) funded by Government of Kenya, International Fund for Agricultural Development (IFAD), Spanish Trust Fund and the Local community. Its goal is to “*contribute to reduction of rural poverty in the Upper Tana river catchment*”. This goal is pursued via two **development objectives** namely (i) increased sustainable food production and incomes for poor rural households living in project area; and (ii) sustainable management of natural resources for provision of environmental services.

The Upper Tana Natural Resources Management Project (UTaNRMP) now intends to apply part of the proceeds of this loan to cover eligible payments under the contract for the **CONSTRUCTION OF 12,000M³ WATER PAN IN MUKURWE-INI TECHNICAL TRAINING INSTITUTE IN NYERI COUNTY**. The Project Coordinator, Upper Tana Natural Resources Management Project now invites sealed tenders from eligible qualified bidders who had expressed interest in construction of civil works for **CONSTRUCTION OF 12,000M³ WATER PAN IN MUKURWE-INI TECHNICAL TRAINING INSTITUTE IN NYERI COUNTY**. Interested eligible Bidders may obtain further information and inspect the Bidding Documents at the Office of the **Project Coordinator’s Office. P.O. Box 996-60100 Embu**, from 8:30 am to 4:30 pm Monday to Friday except on public holidays.

1.2 A complete set of Tendering Document(s) in English may be downloaded from the Upper Tana Natural Resources Management Project (UTaNRMP) website (www.utanrmp.or.ke) at no cost by interested Tenderers

1.3 Prices quoted should be net inclusive of all taxes, must be in Kenya shillings and shall remain valid for 90 days from the closing date of tender. Should attach tender security, PIN number and VAT registration. Late tenders will be rejected and returned unopened.

1.4 Completed tender documents are to be enclosed in plain sealed envelopes marked with Tender name and reference number and deposited in the Tender Box at **the Project Coordinator’s Office. P.O. Box 996 -60100 Embu**

Bids in **one original plus two copies** properly filled in and bound must be submitted in plain sealed envelopes and marked “Tender No **MWS/UTaNRMP/TEN/002/2018-19** **CONSTRUCTION OF 12,000M³ WATER PAN IN MUKURWE-INI TECHNICAL TRAINING INSTITUTE IN NYERI COUNTY**” must be delivered to the address below

The Project Coordinator

Upper Tana Natural Resources Management Project

P.O. Box 996-60100

EMBU.

Tel: 068-2231376

at or before 10.a.m on **10th APRIL 2019**

- 1.5 Opening of the tenders will take place immediately thereafter in the **UTaNRMP Documentation Centre at the Project Offices** in the presence of bidders' or their representatives who wish to attend
- 1.6 Late tenders, incomplete tenders, electronic tenders, tenders not received, tenders not opened at the tender opening ceremony shall not be accepted for evaluation irrespective of the circumstances.
- 1.7 Tenders will be opened immediately thereafter in public and in the presence of Tenderers' representatives who choose to attend in the opening at Upper Tana Natural Resources Management Project offices by the officer to be assigned such duties.

The Project Coordinator
Upper Tana Natural Resources Management Project
For Principal Secretary, Ministry of Water and Sanitation

SECTION II: INSTRUCTIONS TO TENDERERS (ITT)

Table of Clauses

A.	Introduction	9
1.	Scope of Tender	9
2.	Source of Funds	9
3.	Eligible Tenderers	9
4.	One Tender per Tenderer	11
5.	Alternative Tenders by Tenderers	11
6.	Cost of Tendering	11
7.	Site Visit and Pre-Tender Meeting	12
B.	Tendering Documents	12
8.	Content of Tendering Documents	12
9.	Clarification of Tendering Documents	13
10.	Amendments of the Tendering Documents	14
C.	Preparation of Tenders	14
11.	Language of Tender	14
12.	Documents Constituting the Tender	14
13.	Documents Establishing Eligibility and Qualifications of the Tenderer	15
1.	15	
14.	Lots Package	16
15.	Form of Tender	17
16.	Tender Prices	17
17.	Tender Currencies	17
18.	Tender Validity Period	18
19.	Tender Security and Tender Securing Declaration	19
20.	Format and Signing of Tender	20
D.	Submission of Tenders	21
21.	Sealing and Marking of Tenders	21
22.	Deadline for Submission of Tenders	22
23.	Late Tenders	22
24.	Modification, Substitution and Withdrawal of Tenders	22
E.	Opening and Evaluation of Tenders	23
25.	Opening of Tenders	23
26.	Confidentiality	25
27.	Clarification of Tenders	25
28.	Preliminary Examination of Tenders	25
29.	Correction of Errors	26
30.	Conversion to Single Currency	27
31.	Comparison of Tenders	27
32.	National Preference	28
33.	Determination of the Lowest Evaluated Tender	28
34.	Post-qualification of Tenderer	28
F.	Award of Contract	29
35.	Criteria of Award	29
36.	Clarifications	29
37.	Procuring Entity's Right to Accept any Tender and to Reject any or all Tenders	30
38.	Procuring Entities Right to Vary Quantities at the Time of Award	30
39.	Notification of Award	30
40.	Signing of Contract	31
41.	Performance Security	31
42.	Advance Payment	32
43.	Adjudicator	32
G.	Review of Procurement Decisions	33
44.	Right to Review	33

45. Time Limit on Review	33
46. Submission of Applications for Review by the Public Procurement Administrative Review Board	33
47. Decision by the Public Procurement Administrative Review Board	34
48. Appeal on the decision of the Review Board.....	34

A. Introduction

- 1. Scope of Tender**
 - 1.1** The Procuring Entity invites Tenders for the construction of works as specified in the **Tender Data Sheet** and Sections VI (Technical Specifications) and VII (Drawings).
 - 1.2** The successful Tenderer will be expected to complete the works by the required completion date specified in the **Tender Data Sheet**.
 - 1.3** The objectives of the works are listed in the **Tender Data Sheet**. These are mandatory requirements. Any subsequent detail is offered to support these objectives and must not be used to dilute their importance.

- 2. Source of Funds**
 - 2.1** The Government of Kenya through Procuring Entity named in the **Tender Data Sheet** has received a loan from the financing institution named in the **Tender Data Sheet** towards the cost of the Project named in the **Tender Data Sheet**. The Government of Kenya intends to apply a part of the proceeds of this loan to payments under the Contract described in the **Tender Data Sheet**.
 - 2.2** Payments will be made directly by the Procuring Entity (or by financing institution specified in the **Tender Data Sheet** upon request of the Procuring Entity to so pay) and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring Entity.

- 3. Eligible Tenderers**
 - 3.1** A Tenderer may be a natural person, private or public company, government-owned institution, subject to sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the **Tender Data Sheet**, all parties shall be jointly and severally liable.
 - 3.2** The Invitation for Tenders is open to all suppliers as defined in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulations, 2006 except as provided hereinafter.
 - 3.3** National Tenderers shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya, such as the Ministry of Public Works or the Energy Regulatory Commission.
 - 3.4** A Tenderer shall not have a conflict of interest. All Tenderers

found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if they:

- a) Are associated or have been associated in the past directly or indirectly with employees or agents of the Procuring Entity or a member of a board or committee of the Procuring Entity;
- b) Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the Procuring Entity to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the works under this Invitation for Tenders;
- c) Have controlling shareholders in common; or
- d) Receive or have received any direct or indirect subsidy from any of them; or
- e) Have the same legal representative for purposes of this Tender; or
- f) Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
- g) Submit more than one Tender in this Tendering process, However, this does not limit the participation of subcontractors in more than one Tender, or as Tenderer and subcontractor simultaneously.

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

3.6 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the Government of Kenya in accordance with GCC sub-Clause 3.2.

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

3.7 Tenderers shall provide such evidence of their continued

eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

- 4. One Tender per Tenderer**
- 4.1** A firm shall submit only one Tender, in the same Tendering process, either individually as a Tenderer or as a partner in a joint venture pursuant to ITT Clause 5.
- 4.2** No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process.
- 4.3** A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity.
- 4.4** A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.
- 5. Alternative Tenders by Tenderers**
- 5.1** Tenderers shall submit offers that comply with the requirements of the Tendering documents, including the basic Tenderer's technical design as indicated in the specifications and Drawings and Bill of Quantities. Alternatives will not be considered, unless specifically allowed for in the **Tender Data Sheet**. If so allowed, sub-Clause 5.2 and 5.3 shall govern.
- 5.2** When alternative times for completion are explicitly invited, a statement to that effect will be included in the **Tender Data Sheet** as will the method of evaluating different times for completion.
- 5.3** If so allowed in the **Tender Data Sheet**, Tenderers wishing to offer technical alternatives to the requirements of the Tendering documents must also submit a Tender that complies with the requirements of the Tendering documents, including the basic technical design as indicated in the specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity.
- 6. Cost of Tendering**
- 6.1** The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

7. Site Visit and Pre-Tender Meeting

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

B. Tendering Documents

8. Content of Tendering Documents

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

Section II	Instructions to Tenderers
Section III	Tender Data Sheet
Section IV	General Conditions of Contract

Section V	Contract Data Sheet
Section VI	Specifications
Section VII	Drawings
Section VIII	Bill of Quantities
Section IX	Forms of Tender
	<ul style="list-style-type: none"> • Form of Tender • Appendix to Tender • Confidential Business Questionnaire • Integrity Declaration • Letter of Acceptance • Form of Contract Agreement
Section X	Forms of Security
	<ul style="list-style-type: none"> • Tender Security Form • Tender Securing Declaration • Performance Bank or Insurance Guarantee • Advance Payment Guarantee
Section XI	Form RB 1 Application to Public Procurement Administrative Review Board

8.2 The number of copies to be completed and returned with the Tender is specified in the **Tender Data Sheet**.

8.3 The Invitation for Tenders (Section I) issued by the Procuring Entity is not part of the Tendering Documents and is included for reference purposes only. In case of discrepancies between the Invitation for Tenders and the Tendering Documents listed in sub-Clause 8.1 above, the said Tendering Documents will take precedence.

8.4 The Procuring Entity is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from the authorized staff of the Procuring Entity.

8.5 The Tenderer is expected to examine all instructions, forms, terms and specifications in the Tendering documents. Failure to furnish all information required by the Tendering Documents or to submit a Tender substantially responsive to the Tendering documents in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

9. Clarification of Tendering Documents

9.1 A prospective Tenderer requiring any clarification of the Tendering documents may notify the Procuring Entity in writing, e-mail or facsimile at the Procuring Entity's address indicated in the **Tender Data Sheet**.

9.2 The Procuring Entity will within the period stated in the

Tender Data Sheet respond in writing to any request for clarification provided that such request is received no later than the period indicated in the **Tender Data Sheet** prior to the deadline for the submission of Tenders prescribed in sub-Clause 22.1.

9.3 Copies of the procuring entity's response will be forwarded to all Purchasers of the Tendering documents, including a description of the inquiry, but without identifying its source.

9.4 Should the Procuring Entity deem it necessary to amend the Tendering documents as a result of a clarification, it shall do so following the procedure under ITT Clause 10.

10. Amendments of the Tendering Documents

10.1 Before the deadline for submission of Tenders, the Procuring Entity may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, modify the Tendering documents by issuing addenda.

10.2 Any addendum issued shall be part of the Tender documents pursuant to sub-Clause 8.1 and shall be communicated in writing, by e-mail or facsimile to all who have obtained the Tendering documents directly from the Procuring Entity.

10.3 In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity at its discretion shall extend, as necessary, the deadline for submission of Tenders, in accordance with sub-Clause 22.2

C. Preparation of Tenders

11. Language of Tender

11.1 The Tender, and all correspondence and documents related to the Tender exchanged by the Tenderer and the Procuring Entity shall be written in the Tender language stipulated in the **Tender Data Sheet**. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the above stated language, in which case, for purposes of interpretation of the Tender, the translation shall prevail.

12. Documents

12.1 The Tender submitted by the Tenderer shall consist

Constituting the Tender

of the following components:

- a) The Form of Tender (in the format indicated in Section IX) completed in accordance with ITT Clause 15, 16 and 17;
- b) Information requested by Instructions to Tenderers ITT sub-Clause 13.2; 13.3 and 13.4;
- c) Tender Security or Tender Securing Declaration in accordance with Instructions to Tenderers ITT Clause 19;
- d) Priced Bill of Quantities;
- e) Qualification Information Form and Documents;
- f) Alternative offers where invited in accordance with Instructions to Tenderers ITT Clause 5;
- g) Written confirmation authorizing the signatory of the Tender to commit the Tenderer in accordance with Instructions to Tenderers ITT sub Clause 19.2; and
- h) And any information or other materials required to be completed and submitted by Tenderers, as specified in the **Tender Data Sheet**.

13. Documents Establishing Eligibility and Qualifications of the Tenderer

- 13.1** Pursuant to ITT Clause 13, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.
- 13.2** In the event that pre-qualification of potential Tenderers has been undertaken, only Tenders from pre-qualified Tenderers will be considered for award of contract. These qualified Tenderers should submit their Tenders with any information updating the original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission. The update or confirmation should be provided in Section IX.
- 13.3** If the Procuring Entity has not undertaken pre-qualification of potential Tenderers, to qualify for award of the contract, Tenderers shall meet the

minimum qualifying criteria specified in the **Tender Data Sheet**:

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

- a) The Tender shall include all the information listed in the **Tender Data Sheet** pursuant to sub-Clause 13.3 above for each joint venture partner;
- b) The Tender shall be signed so as to be legally binding on all partners;
- c) One of the partners will be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
- d) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of a joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
- e) All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms and a statement to this effect shall be included in the authorization mentioned under (c) above as well as in the Tender and in the Agreement (in case of a successful Tender); and
- f) A copy of the joint venture agreement entered into by all partner shall be submitted with the Tender. Alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful Tender shall be signed by all partners and submitted with the Tender, together with a copy of the proposed Agreement.
- g) The Tender Security and Tender Securing Declaration as stated in accordance with ITT Clause 19, and in case of a successful Tender, the Agreement, shall be signed so as to be legally binding on all partners.

14. Lots Package

14.1 When Tendering for more than one contract under

the lots arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being tendered in regard to:

- a) Average annual turnover;
- b) Particular experience including key production rates;
- c) Financial means, etc;
- d) Personnel capabilities; and
- e) Equipment capabilities.

14.2 In case the Tenderer fail to fully meet any of these criteria, it may be qualified only for those lots for which the Tenderer meets the above requirement.

15. Form of Tender **15.1** The Tenderer shall fill the Form of Tender furnished in the Tendering Documents. The Form of Tender must be completed without any alterations to its format and no substitute shall be accepted.

16. Tender Prices **16.1** The Contract shall be for the whole Works, as described in sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Tenderer.

16.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Bill of quantities.

16.3 All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 15 days prior to the deadline for submission of Tenders, shall be included in the rates, prices and total Tender price submitted by the Tenderer.

16.4 The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if provided for in the **Tender Data Sheet** and the provisions of the Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the **Contract Data Sheet**.

17. Tender Currencies **17.1** The unit rates and prices shall be quoted by the Tenderer in the currency as specified in the **Tender**

Data Sheet.

17.2 Tenderers shall indicate details of their expected foreign currency requirements in the Tender, if any. The rates of exchange to be used by the Tenderers in arriving at the local currency equivalent shall be the selling rates for similar transactions established by the authority specified in the **Tender Data Sheet** prevailing on the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Tenderer. In any case, payments will be computed using the rates quoted in the Tender.

17.3 Tenderers may be required by the Procuring Entity to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices and in the Contract Data Sheet are reasonable and responsive to sub-Clause 17.1.

**18. Tender Validity
Period**

18.1 Tenders shall remain valid for the period specified in the **Tender Data Sheet** after the Tender submission deadline prescribed by the Procuring Entity, pursuant to ITT Clause 22. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

18.2 In exceptional circumstances, prior to expiry of the original Tender validity period, the Procuring Entity may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing or by cable. A Tenderer may refuse the request without forfeiting its Tender Security or causing to be executed its Tender Securing declaration. A Tenderer agreeing to the request will not be required or permitted to otherwise modify the Tender, but will be required to extend the validity of its Tender Security or Tender Securing declaration for the period of the extension, and in compliance with ITT Clause 19 in all respects.

18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial Tender validity period, the contract price will be increased by a factor specified in the request for extension. The Tender evaluation shall be based on the Tender price without taking into consideration on the above

correction.

**19. Tender Security
and Tender
Securing
Declaration**

- 19.1** Pursuant to ITT Clause 12, where required in the **Tender Data Sheet**, the Tenderer shall furnish as part of its Tender, a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet** .
A Tender Securing Declaration as specified in the **Tender Data Sheet** in the format provided in section X shall be provided as a mandatory requirement.
- 19.2** The Tender Security or Tender Securing Declaration is required to protect the Procuring Entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to ITT sub-Clause 19.9.
- 19.3** The Tender Security shall be denominated in the currency of the Tender and shall be in one of the following forms:
- a) Cash;
 - b) A Bank Guarantee;
 - c) An Insurance Bond issued by an insurance firm approved by the PPRA located in Kenya;
 - d) An irrevocable letter of credit issued by a reputable bank.
- 19.4** The Tender Security shall be in accordance with the Form of the Tender Security included in Section X or another form approved by the Procuring Entity prior to the Tender submission.
- 19.5** The Tender Security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 19.8 are invoked.
- 19.6** Any Tender not accompanied by a Tender Security in accordance with sub-Clauses 19.1 or 19.3 shall be rejected by the Procuring Entity as non-responsive, pursuant to ITT Clause 28.
- 19.7** The Procuring Entity shall immediately release any Tender Security if:

-
- a) The procuring proceedings are terminated;
 - b) The Procuring Entity determines that none of the submitted Tenders is responsive;
 - c) A contract for the procurement is entered into.

19.8 The Tender Security shall be forfeited and the Tender Securing Declaration executed if the Tenderer:

- a) Withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which Tenders must remain valid;
- b) Rejects a correction of an arithmetic error pursuant to sub-Clause 29.2;
- c) Refuse to enter into a written contract in accordance with ITT Clause 40;
- d) Fails to furnish the Performance Security in accordance with ITT Clause 41.

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

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

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

20. Format and Signing of Tender

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

“COPIES”. In the event of discrepancy between them, the original shall prevail.

- 20.2** The original and all copies of the Tenders shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **Tender Data Sheet** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender, except for un-amended printed literature, shall be initialled by the person or persons signing the Tender.
- 20.3** Any interlineations, erasures, or overwriting shall be valid only if they are initialled by the person or persons signing the Tender.
- 20.4** The Tenderer shall furnish information as described in the Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to contract execution if the Tenderer is awarded the contract

D. Submission of Tenders

21. Sealing and Marking of Tenders

- 21.1** The Tenderer shall seal the original and each copy of the Tender in separate envelopes, duly marking the envelopes as “**ORIGINAL**” and “**COPY**”. The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 21.2** The inner and outer envelopes shall:
- a) Be addressed to the Procuring Entity at the address given in the **Tender Data Sheet**; and
 - b) Bear the Project name indicated in the **Tender Data Sheet**, the Invitation for Tenders (IFB) title and number indicated in the **Tender Data Sheet**, and a statement: “**DO NOT OPEN BEFORE,**” to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to ITT sub-Clause 22.1.
- 21.3** In addition to the identification required in sub-Clause 21.2, the inner envelopes shall also indicate the name

-
- and address of the Tenderer to enable the Tender be returned unopened in case it is declared late, pursuant to sub-Clause 22.1 and for matching purpose under ITT Clause 23
- 21.4** If the outer envelope is not sealed and marked as required by ITT sub clause 21.2, the Procuring Entity shall assume no responsibility for misplacement or premature opening of the Tender.
- 22. Deadline for Submission of Tenders**
- 22.1** Tenders shall be received by the Procuring Entity at the address specified under ITT sub-Clause 21.2 no later than the date and time specified in the **Tender Data Sheet**.
- 22.2** The Procuring Entity may, in exceptional circumstances and at its discretion, extend the deadline for the submission of Tenders by amending the Tendering documents in accordance with ITT Clause 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.
- 22.3** The extension of the deadline for submission of Tenders shall not be made later than the period specified in the **Tender Data Sheet** before the expiry of the original deadline.
- 23. Late Tenders**
- 23.1** The Procuring Entity shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 22.
- 23.2** Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected and returned unopened to the Tenderer
- 24. Modification, Substitution and Withdrawal of Tenders**
- 24.1** A Tenderer may modify or substitute or withdraw its Tender after it has been submitted, provided that written notice of the modification, including substitution or withdrawal of the Tender, is received by the Procuring Entity prior to the deadline prescribed for submission of Tenders prescribed under ITT sub-Clause 22.1.
- 24.2** The Tenderer's modification or substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 20 and 21 with the outer and inner

envelopes additionally marked “**MODIFICATION**” or **SUBSTITUTION** or “**WITHDRAWAL**” as appropriate. The notice may also be sent by electronic mail and facsimile, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders.

- 24.3** No Tender may be withdrawn, replaced or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Tender Form. Withdrawal of a Tender during this interval shall result in the Tenderer’s forfeiture of its Tender Security or execution of Tender Securing Declaration, pursuant to the ITT sub-Clause 19.9.
- 24.4** Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the **Tender Data Sheet** or as extended pursuant to sub-Clause 22.2 shall result in the forfeiture of the Tender Security and execution of Tender Securing Declaration pursuant to ITT sub-Clause 19.9.
- 24.5** Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender modifications in accordance with this Clause, or included in the original Tender submission.

E. Opening and Evaluation of Tenders

25. Opening of Tenders

- 25.1** The Procuring Entity will open all Tenders including modifications, substitution or withdraw notices made pursuant to ITT Clause 24, in public, in the presence of Tenderers or their representatives who choose to attend and other parties with legitimate interest and Tender proceedings, at the place on the date and at time specified in the **Tender Data Sheet**. The Tenderers’ representatives who are present shall sign a register as proof of their attendance.
- 25.2** Envelopes marked “**WITHDRAWAL**” shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 24 shall not be opened but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the “Power of Attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. Subsequently, all envelopes marked “**MODIFICATION**” shall be opened

and the submissions therein read out in appropriate detail. Thereafter all envelopes marked or "**SUBSTITUTION**" opened and the submissions therein read out in appropriate detail.

- 25.3** All other envelopes shall be opened one at a time. The Tenderers' names, the Tender prices, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, the presence or absence of Tender security, and such other details as the appropriate tender opening committee may consider appropriate, will be announced by the Secretary of the Tender Opening Committee at the opening.
- 25.4** Tenders or modifications that are not opened and not read out at Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.
- 25.5** Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any unread information by the sent Tenderer's representative shall indemnify the Procuring Entity against any claim or failure to read out the correct information contained in the Tenderer's Tender.
- 25.6** No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 23.
- 25.7** The Secretary of the appropriate tender opening committee shall prepare minutes of the Tender opening. The record of the Tender opening shall include, as a minimum: the name of the Tenderers and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security or Tender Securing Declaration.
- 25.8** The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and affect the record.
- 25.9** A copy of the minutes of the Tender opening shall be

furnished to individual Tenderers upon request.

- 26. Confidentiality**
- 26.1** Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.
- 26.2** Any effort by a Tenderer to influence the Procuring Entity's processing of Tenders or award decisions may result in the rejection of his Tender.
- 26.3** Notwithstanding sub-Clause 26.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.
- 27. Clarification of Tenders**
- 27.1** To assist in the examination, evaluation, comparison of Tenders and post-qualification of the Tenderer, the Procuring Entity may, at its discretion, ask a Tenderer for clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered.
- 27.2** The request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of Tenders in accordance with ITT Clause 29.
- 27.3** From the time of Tender opening to the time of Contract award if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tender it should do so in writing.
- 28. Preliminary Examination of Tenders**
- 28.1** Prior to the detailed evaluation of Tenders, the Procuring Entity will determine whether:
- a) The Tender has been submitted in the required format;
 - b) Any Tender Security submitted is in the required form, amount and validity period;
 - c) The Tender has been signed by the person lawfully authorized to do so;

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

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

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

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

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

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

29. Correction of Errors

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

-
- a) If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;
 - b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
 - c) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.

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

30. Conversion to Single Currency

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

31. Comparison of Tenders

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

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

Clause 24.5.

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

32. National Preference

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

- a) The funding is 100% from the Government of Kenya or a Kenyan body;
- b) The amounts are below the prescribed threshold of KShs.200 million;

32.2 To qualify for the preference the candidate shall provide evidence of eligibility by:

- a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or
- b) Providing proof of being a “citizen contractor” in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya.

32.3 The Minister of Finance may prescribe additional preference and/or reservation schemes, for example for procurements above these thresholds. If such additional preference schemes apply, details will be given in the **Tender Data Sheet**.

33. Determination of the Lowest Evaluated Tender

33.1 The Tender with the lowest evaluated price from among those which are eligible, compliant and substantially responsive shall be the lowest evaluated Tender.

34. Post-qualification of Tenderer

34.1 If specified in the **Tender Data Sheet**, post-qualification shall be undertaken.

34.2 The Procuring Entity will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in sub-Clause 13.3.

34.3 The determination will take into account the Tenderer's financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to sub-Clause 13.3, as well as such other information as the Procuring Entity deems necessary and appropriate. Factors not included in these Tendering documents shall not be used in the evaluation of the Tenderer's qualifications.

34.4 An affirmative determination will be a prerequisite for award of the contract to the Tenderer. A negative determination will result in rejection of the Tenderer's Tender, in which event the Procuring Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

F. Award of Contract

35. Criteria of Award

35.1 Subject to ITT Clause 35 and 36, the Procuring Entity will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tendering documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:

- a) Eligible in accordance with the provisions of ITT Clause 3;
- b) Is determined to be qualified to perform the Contract satisfactorily;
- c) Successful negotiations have been concluded.

35.2 If, pursuant to sub-Clause 14.1, this Contract is being awarded on a "lot and package" basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderer for award of more than one Contract.

36. Clarifications

36.1 Clarifications may be undertaken with the lowest evaluated Tenderer relating to the following areas:

- a) A minor alteration to the technical details of the statement of requirements;

-
- b) Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the Tendering documents;
 - c) A minor amendment to the Contract Data Sheet;
 - d) Finalizing payment arrangements;
 - e) Mobilization arrangements;
 - f) Agreeing final delivery or work schedule to accommodate any changes required by the Procuring Entity;
 - g) The methodology or staffing; or
 - h) Clarifying details that were not apparent or could not be finalized at the time of Tendering.
- 36.2** Clarifications shall not change the substance of the tender.
- 37. Procuring Entity's Right to Accept any Tender and to Reject any or all Tenders**
- 37.1** Notwithstanding ITT Clause 35, the Procuring Entity reserves the right to accept or reject any Tender, and to cancel the Tendering process and reject all Tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers.
- 37.2** Notice of the rejection of all Tenders shall be given promptly within 14 days to all Contractors that have submitted Tenders.
- 37.3** The Procuring Entity shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds.
- 38. Procuring Entities Right to Vary Quantities at the Time of Award**
- 38.1** The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of goods or related services originally specified in these Tendering documents (schedule of requirements) provided this does not exceed by the percentage indicated in the **Tender Data Sheet**, without any change in unit price or other terms and conditions of the Tender and Tendering documents.
- 39. Notification of Award**
- 39.1** The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to

expiration of the Tender validity period by e-mail or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Contractor in consideration of the provision and maintenance of the Work(s) as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

39.2 The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security in accordance with ITT Clause 41 and signing the Contract in accordance with sub-Clause 40.2

39.3 At the same time as the person submitting the successful Tender is notified, the Procuring Entity will notify each unsuccessful Tenderer, the name of the successful Tenderer and the Contract amount and will discharge the Tender Security and Tender Securing Declaration of the Tenderer pursuant to ITT sub Clause 19.7.

39.4 If, after notification of award, a Tenderer wishes to ascertain the grounds on which it's Tender or application for pre-qualification was unsuccessful, it should address its request to the secretary of the Tender Committee that authorized the award of contract. The secretary of the Tender Committee shall, within fourteen days after a request, provide written reasons as to why the Tender, proposal or application to be pre-qualified was unsuccessful. However, failure to take this opportunity to clarify the grounds for rejection does not affect the Tenderer's right to seek immediate review by the Public Procurement Administrative Review Board under Clause 45.

40. Signing of Contract

40.1 Promptly, and in no case later than 14 days, after notification, Procuring Entity shall send the successful Tenderer the Agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.

40.2 Within the period specified in the notification or Tender Data Sheet but not earlier than fourteen (14) days since notification of award of contract, the successful Tenderer shall sign and date the contract and return it to the Procuring Entity.

41. Performance

41.1 Within thirty (30) days but after 14 days after receipt of

Security

the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the Tender Data Sheet and the Contract Data Sheet, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.

41.2 If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee or Insurance Bond, it shall be issued either:

a) At the Tenderer's option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm through a correspondent bank or insurance firm located in Kenya;

b) With the consent of the Procuring entity, directly by a foreign bank acceptable to the Procuring entity.

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

42. Advance Payment

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

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

43. Adjudicator

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

appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data Sheet at the request of either party.

G. Review of Procurement Decisions

- 44. Right to Review**
- 44.1** A Tenderer who claims to have suffered or risk suffering, loss or damage or injury as a result of breach of a duty imposed on a Procuring Entity or an Approving Authority by the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulations 2006, the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:
- a) The choice of procurement method;
 - b) a decision by the Procuring Entity to reject all Tenders, proposals or quotations;
 - c) Where a contract is signed in accordance to Section 135 of the Public Procurement and Asset Disposal Act,2015;
 - d) Where an appeal is frivolous.
- 45. Time Limit on Review**
- 45.1** The Tenderer shall submit an application for review in the number of copies and pay fees as prescribed by the Public Procurement and Disposal Regulations 2006 within fourteen (14) days of the time the Tenderer became or should have become aware of the circumstances giving rise to the complaint or dispute.
- 46. Submission of Applications for Review by the Public Procurement Administrative Review Board**
- 46.1** Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 at the address shown in the Tender Data Sheet. The secretary to the review board shall immediately after filing of the request, serve a copy thereof on the Procuring Entity or Director-General as the case may be.
- 46.2** The application for administrative review shall be in accordance with the requirements of Regulation 73 of the Public Procurement and Disposals Regulations,2006, including:

-
- a) Reasons for the complaint ,including any alleged breach of the Act or Regulations;
 - b) An explanation of how the provisions of the Act and or Regulation has been breached or omitted, including the dates and name of the responsible public officer, where known;
 - c) Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request;
 - d) Remedies sought;
 - e) Any other information relevant to the complaint.

47. Decision by the Public Procurement Administrative Review Board

47.1 The Administrative Review Board shall within thirty days after receipt of an application for administrative review deliver a written decision which shall indicate:

- a) Annulling anything the Procuring Entity has done in the procurement proceedings, including annulling the procurement proceedings in their entirety;
- b) Giving directions to the Procuring Entity with respect to anything to be done or redone in the procurement proceedings;
- c) Substituting the decision of the Review Board for any decision of the Procuring Entity in the procurement proceedings;
- d) Order the payment of costs as between parties to the review.

47.2 The decision made by the Review Board shall, be final and binding on the parties unless judicial review thereof commences within fourteen (14) days from the date of the Review Board’s decision.

48. Appeal on the decision of the Review Board

48.1 Any party to the review aggrieved by the decision of the Review Board may appeal to the High Court and the decision of the High Court shall be final.

SECTION III: TENDER DATA SHEET

**Tender Data Sheet (TDS)
Instructions to Tenderers Clause Reference**

TDS Reference Number	ITT Clause Number	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
A. Introduction		
1.	1.1	The Procuring Entity is Upper Tana Natural Resources Management Project
2.	1.1	Name of Project is: CONSTRUCTION OF 12,000M³ WATER PAN IN MUKURWE-INI TECHNICAL TRAINING INSTITUTE IN NYERI COUNTY
3.	1.2	The expected completion date of the works is 2 months from date of contract signature
4.	1.3	The Objectives of the Project are to construct a 12,000M ³ water pan and install rain water harvesting gutters in Mukurwe-ini T.T.I in Nyeri County.
5.	2.1	Name of financing institution is IFAD/ GoK Name of the Procuring Entity is Upper Tana Natural Resources Management Project (UTaNRMP) Financial Year 2018-19 Describe works under the contracts CONSTRUCTION OF 12,000M³ WATER PAN IN MUKURWE-INI TECHNICAL TRAINING INSTITUTE IN NYERI COUNTY
6.	2.2	The loan/ credit number is International Fund for Agricultural Development Loan No I-867-KE and Spanish Trust Fund Loan No I-E-8-KE, GoK and Beneficiaries
7	3.1	This Tender is exclusively reserved for national contractors who are currently registered with the National Construction Authority holding a valid annual practicing license. Only Tenderers registered as Civil Engineering or water works contractors in Class NCA 7 and above registered with the National Construction Authority (NCA) are eligible to tender.
8.	5.1 5.3	Alternative Tenders are not allowed in this Tender. No alternative tenders are allowed in this tender
9.	5.2	Alternative time for completion is not applicable
10	7.3	Mandatory Pre-Tender site meeting will take place at Mukurwe-Ini Technical Training Institute in Nyeri County on 2nd April 2019 at 10:00 a.m.
11.	7.5	The minutes of the pre-Tender meeting will be transmitted within five working days

	7.6	Non-attendance at the pre-tender site meeting will result in disqualification
--	------------	---

B. Tendering Documents		
12.	8.2	The number of tender documents to be completed and returned with the Tender are one original and two copies
13.	9.1	Address for clarification of Tendering Document is The Project Coordinator Upper Tana Natural Resources Management Project P.O. Box 996-60100 EMBU. Tel: 068-2231376
14.	9.2	Period to Respond to request for clarification by the Procuring Entity is three (3) days. Period Prior to deadline for submission of Tenders for Tenderers to request clarification is seven days

C. Preparation of Tenders		
15.	11.1	Language of Tender and all correspondence shall be English
15	12.1(h)	Any Addendums issued to the tenderers
16.	13.3	Other information or materials required to be completed and submitted by Tenderers : a) Copies of original documents defining the constitution or legal status, place of registration, and principal, place of business; NCA (water works, road works and building works) certificate and current annual practicing license; written power of attorney authorizing the signatory of the Tender to commit the Tenderer. b) The minimum required annual volume of construction work for the successful Tenderer in any of the last 2 years shall be: Kshs. 10 million. c) Experience as prime contractor in the construction of at least one project of a nature and complexity equivalent to the Works the last 2 years or the period stated in a) above (to comply with this requirement, works cited should be at least 70 percent complete). d) The essential equipment to be made available for the Contract by the successful Tenderer (proposals for timely acquisition or own, lease, hire, etc) shall be: i) Bulldozers

		<ul style="list-style-type: none"> ii) Roller (Sheep-foot roller) iii) mixer iv) Excavators <p>e) A Site Manager with BSC. In civil or water engineering and minimum of 3 years' experience or Diploma in Civil or Water engineering and minimum 5 years' experience in works of an equivalent nature and volume.</p> <p>f) Evidence of adequate working capital for this contract.</p> <p>g) Information regarding litigation, current</p>
17.	13.4	<p>In the case of joint venture each partner shall submit information required under Clause ITT Clause 13.4. In addition the Tenderer shall furnish the following ,</p> <p>A legally binding agreement among all partners of the joint venture, which shows that:</p> <ul style="list-style-type: none"> (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms; (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
18.	16.4	The price shall be fixed
19.	17.1	The currency in which the prices shall be quoted shall be: Kenyan Shilling
20.	17.2 30.2	<p>The authority for establishing the rates of exchange shall be Central Bank of Kenya.</p> <p>The applicable date for exchange rates for tendering and evaluation purposes is 28 days earlier than the final deadline for the submission of tenders.</p>
21.	18.1	The Tender validity period shall be 90 days.
22.	19.1	The amount of Tender Security shall be Kshs 110,000 in form of a bank guarantee from a reputable bank.
23.	20.1	In addition to the original of the Tender document, the Tenderer should submit two copies of the Tender.
24.	20.2	Written confirmation by the directors of the tenderer of

		authorization is power of attorney will form part of the tender submission.
--	--	---

D. Submission of Tenders		
25.	21.2 a)	Tenders shall be submitted to: Tender Box located at the reception of Upper Tana Natural Resources Management Project Offices situated on Embu- Meru road opposite Kangaru DEB Primary School Floor/Room No.: Reception City/Town : Embu
26.	21.2 b)	Project name is construction of 12,000M³ water pan in Mukurweini Technical Training Institute in Nyeri County Tender number <u>MWS/UTaNRMP/TEN/002/2018-19</u> Time and date for submission <u>10:00 a.m. on 10TH APRIL 2019</u>
27.	22.1	The deadline for Tender submission is a) Day <u>Wednesday</u> b) Date <u>10TH APRIL 2019</u> c) Time <u>10:00 a.m</u>
28.	22.3	The extension of the deadline for submission of Tenders shall be made not later than five days before the expiry of the original deadline.
29	24.4	Expiry of Tender validity is 90 days from the date of opening

E. Opening and Evaluation of Tenders		
29.	25.1	The Tender opening shall take place at: UTaNRMP Documentation Centre at the Project Offices City/Town: Embu Date <u>10TH APRIL 2019</u> Time <u>10:00 a.m.</u>
30.	28.1	It is mandatory that bidders serialise with indelible ink each page of their tender documents
31.	29	Award will be at the amount submitted and read out from the form of tender (<i>sec 82 of the PPADA 2015</i>)
31	30.1	The authority for establishing the rates of exchange shall be Central Bank of Kenya. The applicable date for exchange rates for tendering and evaluation purposes is 28 days earlier than the final deadline for the submission of tenders.
31	32.3	No special preferences will be given to any group.
32	34.1	No post-qualification will be undertaken in this tender.
32.	38.1	Percentage for quantities increase or decrease is 15%

F. Award of Contract		
-----------------------------	--	--

33.	41.1	The amount of Performance Security shall be 10% of the contract price
34.	42.1	The Advance Payment shall be NONE.
35.	43.1	The proposed adjudicator for the project is: to be determined and discussed with the successful bidder
G. Review of Procurement Decisions		
37.	46.1	The address for submitting appeals to Administrative Review Board : The Secretary, Public Procurement Administrative Review Board , The Public Procurement Regulation Authority, 10 th Floor ,National Bank House, P.O. Box 58583-00200, NAIROBI, Kenya. Tel: +254 (0) 20 3244000 Email: info@ppoa.go.ke Website: www.ppoa.go.ke

SECTION IV: GENERAL CONDITIONS OF CONTRACT

Table of Clauses

A. General.....	42
1. Definitions.....	42
2. Interpretation.....	44
3. Language, Law, Fraud and Corruption.....	44
4. Confidentiality.....	47
5. Project Manager’s Decisions.....	47
6. Delegation.....	47
7. Communications.....	47
8. Subcontracting.....	47
9. Other Contractors.....	47
10. Personnel.....	47
11. Procuring Entity’s and Contractor’s Risks.....	48
12. Procuring Entity’s Risks.....	48
13. Contractor’s Risks.....	48
14. Insurance.....	48
15. Site Investigation Reports.....	49
16. Queries about the Contract Data Sheet.....	49
17. Contractor to Construct the Works.....	49
18. Commence-ment and Completion.....	49
19. Approval by the Project Manager.....	50
20. Protection of the Environment.....	50
21. Labour Laws.....	50
22. Health and Safety.....	50
23. Discoveries.....	51
24. Possession of the Site.....	51
25. Access to the Site.....	51
26. Instructions, Inspections and Audits.....	51
27. Disputes.....	51
28. Procedure for Disputes.....	51
29. Replacement of Adjudicator.....	52
B. Time Control.....	52
30. Programme.....	53
31. Extension of the Intended Completion Date.....	53
32. Acceleration.....	54
33. Delays Ordered by the Project Manager.....	54
34. Management Meetings.....	54
35. Early Warning.....	54
C. Quality Control.....	54
36. Identifying Defects.....	54
37. Tests.....	55
38. Correction of Defects.....	55
39. Uncorrected Defects.....	55
D. Cost Control.....	55

40. Bill of Quantities.....	55
41. Changes in the Quantities.....	55
42. Variations.....	56
43. Payments for Variations.....	56
44. Cash Flow Forecasts.....	56
45. Payment Certificates.....	56
46. Payments.....	57
47. Compensation Events.....	58
48. Taxes.....	59
49. Currencies.....	59
50. Price Adjustment.....	59
51. Retention.....	62
52. Liquidated Damages.....	62
53. Bonus.....	62
54. Advance Payment.....	63
55. Performance Securities.....	63
56. Dayworks.....	63
57. Cost of Repairs.....	64
E. Finishing the Contract.....	64
58. Completion Certificate.....	64
59. Taking Over.....	64
60. Final Account.....	64
61. Operating and Maintenance Manuals.....	64
62. Termination.....	64
63. Payment upon Termination.....	66
64. Property.....	66
65. Release from Performance.....	66
66. Suspension of Financing.....	67

A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

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

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

Compensation Events are those defined in Clause 47 hereunder.

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

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

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

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

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

Days are calendar days; months are calendar months.

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

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

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

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

Drawings include calculations and other information provided or approved by the Project Manager for the

execution of the Contract.

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

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

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

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

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

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

The **Project Manager** is the person named in the **Contract Data Sheet** (or any other competent person appointed by the Procuring Entity and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract and shall be an "Architect" or a "Quantity Surveyor" registered under the Architects and Quantity Surveyors Act Cap 525 or an "Engineer" registered under Engineers Registration Act Cap 530.

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

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

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

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

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

Temporary Works are works designed, constructed,

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

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

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

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

2. Interpretation

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

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

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

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

3. Language, Law, Fraud and Corruption

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

3.2 The Government requires that Procuring Entities (including beneficiaries of Government funded projects)

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

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

- (i). **“Corruption”** has the meaning assigned to it in the Anti Corruption and Economic Crime Act 2003 and includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;
- (ii). **“Fraudulent Practice”** includes a misrepresentation of fact in order to influence a procurement or disposal process or the execution of a contract to the detriment of the Procuring Entity and includes collusive practices amongst Tenderers prior to or after Tender submission designed to establish Tender prices at artificial non competitive levels and deprive the Procuring Entity of the benefits of free and open competition;
- (iii). **“Collusive Practice”** means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of the Procuring Entity prior to or after Tender submission , designed to establish Tender prices at artificial non competitive levels and to deprive the Procuring Entity of the benefit of free and open competition;
- (iv). **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of any of them to influence improperly the actions of a Procuring Entity;
- (v). **“Obstructive Practice”** means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into

allegations of a corrupt, fraudulent, coercive or collusive practice; and /or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

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

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

In pursuit of the policy defined in sub-Clause 44.1 the Procuring Entity will cancel the portion of the funds allocated to a contract for goods, works, or services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Procuring Entity or Approving Authority or of a beneficiary of the funds during the procurement or the execution of that contract;

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

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

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

-
- 4. Confidentiality** 4.1 The Service Providers, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.
- 5. Project Manager's Decisions** 5.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Procuring Entity and the Contractor in the role representing the Procuring Entity.
- 6. Delegation** 6.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
- 7. Communications** 7.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 8. Subcontracting** 8.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Procuring Entity in writing. Subcontracting shall not alter the Contractor's obligations.
- 9. Other Contractors** 9.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the Schedule of Other Contractors, as referred to in the **Contract Data Sheet**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Procuring Entity may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification
- 10. Personnel** 10.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the **Contract Data Sheet**, who shall be appropriately qualified and registered with the appropriate bodies to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.
- 10.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no

further connection with the work in the Contract.

11. Procuring Entity's and Contractor's Risks

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

12. Procuring Entity's Risks

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

- 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 Procuring Entity 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 Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

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

- (a) A Defect which existed on the Completion Date;
- (b) An event occurring before the Completion Date, which was not itself an Procuring Entity's risk; or
- (c) The activities of the Contractor on the Site after the Completion Date.

13. Contractor's Risks

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

14. Insurance

14.1 The Contractor shall provide, in the joint names of the Procuring Entity and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in

the amounts and deductibles stated in the **Contract Data Sheet** for the following events which are due to the Contractor's risks:

- (a) Loss of or damage to the Works, Plant, and Materials;
- (b) Loss of or damage to Equipment;
- (c) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) Personal injury or death.

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

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

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

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

15. Site Investigation Reports

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

16. Queries about the Contract Data Sheet

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

17. Contractor to Construct the Works

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

18. Commencement and Completion

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

-
- 19. Approval by the Project Manager**
- 19.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 19.2 The Contractor shall be responsible for the design of Temporary Works.
- 19.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 19.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 19.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before their use.
- 20. Protection of the Environment**
- 20.1 The Contractors shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.
- 20.2 The Contractors shall ensure that emissions, surface discharges and effluent from his activities shall not exceed prescribed values in the environmental laws.
- 21. Labour Laws**
- 21.2 The Contractor shall comply with all the relevant labour laws applicable in the Country, including laws relating to workers employment, working hours, health, safety, welfare, and immigration, and shall allow them all their legal rights.
- 21.2 The Contractor shall require his employees to obey all applicable laws, including those concerning safety at work.
- 22. Health and Safety**
- 22.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of his personnel.
- 22.2 The Contractor shall ensure that first aid facilities are available at all times at the site and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- 22.3 The Contractor shall notify the Procuring Entity details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to the property, as the Procuring Entity may

reasonably require.

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

23. Discoveries

23.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Procuring Entity. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

24. Possession of the Site

24.1 The Procuring Entity shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the **Contract Data Sheet**, the Procuring Entity will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.

25. Access to the Site

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

26. Instructions, Inspections and Audits

26.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

26.2 The Contractor shall permit the Kenya Government to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Kenya Government, if so required by the Kenya Government

27. Disputes

27.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.

28. Procedure for Disputes

28.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

28.2 The Adjudicator shall be paid by the hour at the rate specified in the **Tender Data Sheet** and **Contract Data**

Sheet, together with reimbursable expenses of the types specified in the **Contract Data Sheet**, and the cost shall be divided equally between the Procuring Entity and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

28.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the **Contract Data Sheet**.

29. Replacement of Adjudicator

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

B. Time Control

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

-
- 32. Acceleration**
- 32.1 When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.
- 32.2 If the Contractor's priced proposals for acceleration are accepted by the Procuring Entity, they shall be incorporated in the Contract Price and treated as a Variation.
- 33. Delays Ordered by the Project Manager**
- 33.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 34. Management Meetings**
- 34.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 34.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 35. Early Warning**
- 35.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 35.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

- 36. Identifying**
- 36.1 The Project Manager shall check the Contractor's work and

-
- Defects** notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 37. Tests** 37.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 38. Correction of Defects** 38.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the **Contract Data Sheet**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 38.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 38.3 If the Contractor has not corrected a defect within the time specified in the Procuring Entity's notice, a penalty for lack of performance will be paid by the Contractor. The amount to be paid will be calculated as a percentage of the cost of having the defect correct, assessed as described in Clause 39.
- 39. Uncorrected Defects** 39.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

D. Cost Control

- 40. Bill of Quantities** 40.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
- 40.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 41. Changes in the Quantities** 41.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
- 41.2 The Project Manager shall not adjust rates from changes in

quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Procuring Entity.

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

42. Variations

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

43. Payments for Variations

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

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

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

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

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

44. Cash Flow Forecasts

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

45. Payment

45.1 The Contractor shall submit to the Project Manager

Certificates

monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

- 45.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor within twenty eight 28 days of receipt of the certificate from the contractor.
- 45.3 The value of work executed shall be determined by the Project Manager.
- 45.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.
- 45.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 45.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 45.7 The Project Manager shall not be bound to certify any payment, if the net amount, after all retentions and deductions would be less than minimum amount of Interim Payment Certificate stated in the **Contract Data Sheet**.

46. Payments

- 46.1 Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Procuring Entity makes a late payment, the Contractor shall be paid interest on the late payment in the next payment Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made as indicated in the **Contract Data Sheet**.
- 46.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 46.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.
- 46.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Procuring Entity and

shall be deemed covered by other rates and prices in the Contract.

47. Compensation Events

47.1 The following shall be Compensation Events:

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

-
- 47.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 47.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.
- 47.4 The Contractor shall not be entitled to compensation to the extent that the Procuring Entity's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

48. Taxes

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

49. Currencies

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

**50. Price
Adjustment**

- 50.1 The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 45.1, shall be adjusted in respect of the rise or fall in the cost of labour, Contractor's Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause based on the prevailing consumer price index obtained from the Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya.
- 50.2 To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of

this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

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

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

where;

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

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

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

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

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

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

$$F = P_n x P_c$$

where;

The effective value **Pc** of work done which is to be subjected to increase or decrease shall be the difference between:

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

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

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

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

above provision shall apply only to adjustments made after the expiry of such extension of time.

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

51. Retention

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

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

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

52. Liquidated Damages

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

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

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

53. Bonus

53.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the **Contract Data Sheet** for

each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

54. Advance Payment

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

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

54.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

55. Performance Securities

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

56. Dayworks

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

-
- 56.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 56.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.
- 57. Cost of Repairs** 57.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

- 58. Completion Certificate** 58.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.
- 59. Taking Over** 59.1 The Procuring Entity shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.
- 60. Final Account** 60.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- 61. Operating and Maintenance Manuals** 61.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **Contract Data Sheet**.
- 61.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **Contract Data Sheet**, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the **Contract Data Sheet** from payments due to the Contractor.
- 62. Termination** 62.1 The Procuring Entity or the Contractor may terminate the Contract if the other party causes a fundamental breach of

the Contract.

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

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

For the purpose of this paragraph:

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

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practice

among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.

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

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

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

63. Payment upon Termination

63.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the **Contract Data Sheet**. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.

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

64. Property

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

65. Release from Performance

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

any work carried out afterwards to which a commitment was made.

66. Suspension of Financing

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

- (a) The Procuring Entity is obligated to notify the Contractor of such suspension within 7 days of having received the financing agency's suspension notice.
- (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 46.1, the Contractor may immediately issue a 14-day termination notice.

SECTION V: CONTRACT DATA SHEET (CDS)

Contract Data Sheet

Instructions for completing the Contract Data Sheet

CDS Clause	GCC Clause	Description
1	1.1	<p align="center">A. General</p> <p>The Procuring Entity is Upper Tana Natural Resources Management Project.</p> <p>The Adjudicator will be a person/institution to be agreed upon between the client and contractor.</p> <p>The Defects Liability Period is 180 days.</p> <p>The Project Manager is, Water Resources Coordinator, UTaNRMP.</p> <p>The name and identification number of the Contract is CONSTRUCTION OF 12,000M³ WATER PAN IN MUKURWE-INI TECHNICAL TRAINING INSTITUTE IN NYERI COUNTY. <u>MWS/UTaNRMP/TEN/002/2018-19.</u></p> <p>The works consist of construction of 12,000M³ Water Pan in Mukurwe-Ini Technical Training Institute in Nyeri County as per the design, BoQs and drawings</p> <p>The objectives of the contract are construction of 12,000M³ Water Pan in Mukurwe-Ini Technical Training Institute in Nyeri County and which are mandatory requirements that override any detail which may be provided below.</p> <p>The Start Date shall be <i>[Immediately on contract signing]</i>.</p> <p>The Intended Completion Date for the whole of the Works shall be <i>[two months from the date of contract signing]</i>.</p> <p>The following documents also form part of the Contract:</p> <ol style="list-style-type: none"> (1) Agreement; (2) Letter of Acceptance; (3) Contract Data Sheet; (4) Conditions of Contract;

		<p>(5) Technical Specifications;</p> <p>(6) Contractor's Tender;</p> <p>(7) Drawings; and</p> <p>(8) Bill of Quantities/Schedule of Rates</p>
2.	2.2	Indicate whether there is sectional completion: N/A
3.	2.3(9)	List other documents that form part of the contract if any: a) Addendum issued by the project manager N/A.....
4.	3.1	The language of the Contract documents is English The law that applies to the Contract is the Kenyan Law.
5.	9.1	Include the Schedule of Other Contractors, if any. N/A
6.	10.1	Include the Schedule of Key Personnel. Site agent, Clerk of works The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule/ tender document.
7.	14.1	The minimum insurance covers shall be: <ul style="list-style-type: none"> (a) loss of or damage to the Works, Plant, and Materials Kshs. 50,000.00; (b) loss of or damage to Equipment Kshs. 50,000.00; (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract Kshs. 100,000.00; and (d) personal injury or death Kshs. 100,000.00
8.	15.1	Site Investigation Reports available to the Tenderers are: <ul style="list-style-type: none"> a) Cross sectional Drawings b) Topo maps c) Contour maps d) Water intake and draw off drawings
8	16.1	The project manager will clarify all queries in the contract data sheet in writing to all tenderers as addendum to the tender.
9.	22.4	The other measures include: <ul style="list-style-type: none"> a. Minimising the number of migrant workers employed on the project and household in the site camp b. Providing access to voluntary counselling and testing (VCT) c. Providing psychological support and health care including prevention and treatment of opportunistic

		infections for workers infected and affected, as well as their families d. Providing condoms (male and female) to workers
10.	24.1 & 47.1	The Site Possession Date shall be one (1) day after contract signature

11.	28.2	Hourly rate of Fees payable to the Adjudicator to be discussed between the Adjudicator, client and contractor. Types of reimbursable expenses to be paid to the Adjudicator include: a) Transport b) Subsistence Allowance
12.	28.3	Arbitration will take place at an agreed place in accordance with rules and regulations published by the Institute of arbitrators of Kenya
13.	29.1	Appointing Authority for the Adjudicator: Agreed upon between the Client and Contractor

B. Time Control

14.	30.1	The Contractor shall Submit a Programme for the Works within Seven (7) days of delivery of the Letter of Acceptance.
15.	30.3	The period between Programme updates is THIRTY (30) days.
16.	30.3	The amount to be withheld by the Project Manager in the case the contractor does not submit an updated programme will be agreed upon during contract signing.

C. Quality Control

17.	38.1	The Defects Liability Period is 6 months.
------------	-------------	---

D. Cost Control

18.	45.7	Minimum Amount of Interim Payment Certificate will be work done worth Kshs. 2,000,000.00 (i) Advance payment; NONE (ii) First stage (1 st certificate); Work done worth a minimum of Kshs 2 million of the total contract amounts. (iii) Second stage (2 nd certificate); Remaining balance of works of total contract after payment of 1 st certificate less 10% of the total contract amount which will be paid after the defects liability period. (iv) After defects liability period; payment of 10% of the total contract
------------	-------------	--

19.	46.1	The interest rate shall be 1 % above prevailing interest rate for commercial borrowing from the contractors bank
20.	47.1(a)	The Site Possession Date shall be one (1) day after contract signature and effectiveness.
21.	50	The contract is not subject to price adjustment in accordance with Clause 50 of the General Conditions of Contract.
22.	51.1	The amount of retention is 10% of value of works of Interim Payment Certificate’.
		Limit of retention will be 10% of contract price.
23.	52.1	The rate of liquidated damages is 0.1 percent of contract price per day
	52.1 62.2 (g)	The maximum amount of liquidated damages is 5% of Contract Price
24.	53.1	The bonus for early completion is N/A
25.	54.1	The amount of advance payment NONE
		Monthly Recovery of Advance Payment: N/A percent of amount of Interim Payment Certificate.
26.	55.1	The Performance Security shall be 10 percent of the contract price.
		E. Finishing the Contract
27.	61.1	As built drawings shall be supplied by the contractor by completion date Operating manual shall be supplied by the contractor by completion date
28.	61.2	The amount to be withheld by the Project Manager in the case the contractor does not submit as built drawings is 1% The amount to be withheld by the Project Manager in the case the contractor does not submit operating manual is 1%
28	62.2(g)	The contractor stops work for 28 days.
29.	63.1	The percentage to apply to the value of the work not completed, representing the Procuring Entity's additional cost for completing the Works, is 10% above the remaining works.

SECTION VI: TECHNICAL SPECIFICATION
TECHNICAL SPECIFICATIONS

1 General Specifications

1.1 Introduction

These specifications cover the construction of the works as shown on the drawings and listed in the Bills of Quantities and shall be read in conjunction with the contract documents as listed in section 1. Instruction to Tenderers

1.2 Location of the Project

The location of the project is at **Mukurwe-ini Technical Training Institute in Mukurwe-ini sub-County in Nyeri County (S 0° 25' 12.468'' E 36° 56' 51.323'')**

1.3 Precedence of Contract Documents

Should the provision of any clauses be mutually at variance or exclusive, then the following precedence will apply to establish which clause should apply

- ❖ Provision of the standard or special specifications shall take precedence over those of the General Conditions of Contract
- ❖ Details shown in the contract drawings will take precedence over any other specifications
- ❖ Units shown in the Bill of Quantities will take precedence over any other units

In case of further variances, the Engineer can arbitrate. The contractor will be at liberty to claim for any extra over work.

1.4 Standards

In the specifications, Bills of Quantities and Drawings, reference has been made to the relevant British standards. The ISO system will be used for linear, area and volumetric measurements. The ruling of the engineer will give an approval in case there is some variance. The ruling of the engineer will be final.

1.5 Quality of Materials and Workmanship

The materials and workmanship shall be of the best of their respective kinds and shall be subject to the approval of the Engineer.

No materials will be used in the project without the approval of the engineer

1.6 Dimensions

Dimensions indicated in the drawing will be adhered to.

SECTION VII: DRAWINGS

NOTE: 1. The following is the list of the Contract Drawings

1. Topo maps
 2. Cross sectional drawings
 3. Contour maps
 4. Water Intake and draw off drawings
2. The actual Contract Drawings including Site plans are annexed in this document

SECTION VIII: BILL OF QUANTITIES

PREAMBLE TO THE BILL OF QUANTITIES

1. This Bill of Quantities forms part of the Contract Documents and is to be read in conjunction with the Conditions of Contract, and the specifications. Detailed accounts of work and materials are not necessarily included in the item descriptions, and reference must be made to the specifications for this information
2. Items description for the works generally identifies the component of the works, and not the tasks to be carried out by the Contractor. The rate entered shall include for all activities required to achieve the identified component.
3. Each and every item in the Bill of Quantities should be priced. The cost of any item left un-priced shall be deemed recovered by the rates of prices included for other items.
4. Unit rates or prices shall be stated in figures. In cases of discrepancy between the amount derived from the multiplication of the unit rate and the quantity for any item, the unit rate stated shall be binding. Apparent errors in the total, extended amount or addition shall be amended accordingly.
5. The quantities entered in this Bill of Quantity are provisional quantities, provided to enable the Employer to compare tenders on an equal basis, and are not to be considered as final quantities. During the execution of the Works, some quantities may vary from the initially estimated quantities. Rates quoted are assumed to include any variations in quantities.
6. Should the contractor have any doubt about the precise meaning of any item, works or figure, he is to inform the Engineer and obtain the correct meaning before the date of tender.
7. The grand total of prices in the price summary page must be carried forward to the Form of Tender for the TENDER to be deemed valid.

**BILLS OF QUANTITIES FOR CONSTRUCTION OF 12,000M³ WATER PAN AT
MUKURWE-INI TECHNICAL TRAINING INSTITUTE IN NYERI COUNTY
(S 0° 25' 12.468'' E 36° 56' 51.323'')**

BILL OF QUANTITIES

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	TOTAL AMOUNT
BILL 1	PRELIMINARIES AND GENERALS				
1.1	Mobilization of plant ,equipment and personnel to site	LS	LS		
1.2	De-mobilization of plant, equipment and personnel from site	LS	LS		
1.3	Fabricate, sign write, and erect sign board of the UTaNRMP project as directed by the project manager/ representative	LS	1		
1.4	Supervision of the works	LS	LS	300,000	300,000
	SUB-TOTAL				

BILL 2	ROOF WATER COLLECTION (GUTTERING)	UNIT	QUANTITY	RATE	TOTAL AMOUNT
2.1	Supply and deliver and install UPVC PN16 gutters (200mm× 125mm) with their accessories	M	833.8		
2.2	Supply, deliver and install UPVC PN16, 90mm down pipes from building to pan.	M	420		
2.3	Supply , delivery& install 90° UPVC PN16, 90mm bends for connecting gutters	No.	22		
2.5	Supply , deliver & install 15mm GI stand pipe	No.	2		
2.6	Supply ,deliver & install 15mm Pegler-tap and its fittings	No.	2		
2.7	Supply , deliver and install guttering leafs for anchoring and support of gutters and down pipes	No.	1200		
2.8	Supply , deliver and install of guttering union clips stop ends and external angles, for anchoring and support of gutters and down pipes	Lump sum	1		
	SUB-TOTAL				

BILL 3 – EXCAVATION AND EARTHWORKS

ITEM	BILL 3 – EXCAVATION AND EARTHWORKS DESCRIPTION	UNIT	QUANTITY	RATE	TOTAL AMOUNT
3.1	Excavate to remove top soil average 250mm deep and cart away for reuse	m ³	150		
3.2	Excavate in soil to depth not exceeding 4 M for cut-off trench, stack for reuse or cart away as appropriate	m ³	2400		
3.3	Place and compact appropriate material in cut-off trench	m ³	200		
3.4	Excavate approved borrow materials/ soil for embankment	m ³	350		
3.5	Place and compact approved materials in layers of 1 M to form the embankment as shown in the design drawing (slope of 1:2.5 upstream and 1:2 downstream)	m ³	350		
3.6	Place approved hand packed riprap 200mm thick as upstream face for protection.	m ³	120		
3.7	Provide approved grassing to specified embankment slopes and pan crest	SM	180		
3.8	Excavate for seepage drain as specified	m ³	150		
3.9	Excavate spillway in soil to reduced levels as shown in the design drawing.	m ³	20		
3.10	Supply , deliver and install a 1000 gauge plastic sheet of paper for lining purpose	SM	1000		
	SUB-TOTAL				

BILL4: PUMP INSTALLATION, STORAGE TANK AND DELIVERY LINE

ITEM	BILL4: PUMP INSTALLATION,STOAGE TANK INSTALLATION AND DELIVERY LINE DESCRIPTION	UNIT	QUANTITY	RATE	TOTAL AMOUNT
4.10	Supply, deliver and install 50mm Pn 10Upvc pipes for water delivery to tank from pan and distribution.	M	600		
4.20	Supply , deliver and install 50mm Pn 12.5 Upvc drain pipes for water delivery to tank from pan	M	200		
4.30	Supply , deliver and install 50mm Pn 10Upvc drain pipes for water delivery to tank from pan	M	100		
4.4	Supply, deliver and Install a solar driven submersible pump to abstract water 2-6 M ³ /HR. Power 500-3000 watts from the	No.	1		

	pan depth 4 meters and delivery head of 130 meters. (Cost includes all the pump accessories.)				
4.5	Construction of raised concrete 3000mm × 3000mm platform 3 meters high and supply and fix of a plastic water tank (10,000 litres on top)	No.	1		
	SUB-TOTAL				

ITEM	BILL5: FENCING DESCRIPTION	UNIT	QUANTITY	RATE	TOTAL AMOUNT
5.1	Supply , deliver and install 35 No. concrete posts 2.5 meters long	No.	35		
5.2	Supply , deliver and install gauge 12.5 mm barbed wire	Rolls	3		
5.3	Supply , deliver and install gauge 12.5 chain link 2.5 meters high	Rolls	6		
5.4	Supply, deliver& install binding wires	KG	5		
5.5	Supply and deliver a well welded 1M×2.5M framed and fully reinforced man gate.	No.	1		
	SUB-TOTAL				

SUMMARY

BILL No	Description	BQ Amount KSH
1	Preliminaries	
2	Roof Water Collection (Guttering)	
3	Excavation and Earthworks	
4	Pump installation and Raising main storage tank.	
5	Fencing	
	Sub Total-1	
	Add 5% Contingencies	
	Sub Total-2	
	Add 16 % VAT	
	Total estimated cost of construction	

Amount carried to form of tender in Words (Kenya Shillings)

.....

Name of bidder's authorized representative

.....

Signature of bidder's authorized representative

.....

Address

Date

SECTION IX: TENDER FORMS

STANDARD FORMS

List of Standard Forms

- (i) Form of Invitation for Tenders**
- (ii) Form of Tender**
- (iii) Letter of Acceptance**
- (iv) Form of Agreement**
- (v) Form of Tender Security**
- (vi) Performance Bank Guarantee**
- (vii) Performance Bond**
- (viii) Bank Guarantee for Advance Payment**
- (ix) Qualification Information**
- (x) Tender Questionnaire**
- (xi) Confidential Business Questionnaire**
- (xii) Details of Sub-Contractors**
- (xiii) Anti- corruption pledge form**
- (xiv) Letter of notification of award**
- (xv) Certificate of tenderer's or representative's pre-tender site visit**
- (xvi) Request for Review Form**

FORM OF INVITATION FOR TENDERS

_____ [date]

To: _____ [name of Contractor]
_____ [address]

Dear Sirs:

Reference: _____ [Contract Name]

You have been prequalified to tender for the above project.

We hereby invite you and other prequalified tenderers to submit a tender for the execution and completion of the above Contract.

A complete set of tender documents may be purchased by you from _____

_____ [mailing address, cable/telex/facsimile numbers].

Upon payment of a non-refundable fee of Kshs _____

All tenders must be accompanied by _____ number of copies of the same and a tender security in the form and amount specified in the tendering documents, and must be delivered to

_____ [address and location]

at or before _____ (time and date). Tenders will be opened immediately thereafter, in the presence of tenderers' representatives who choose to attend.

Please confirm receipt of this letter immediately in writing by cable/facsimile or telex.

Yours faithfully,

_____ *Authorised Signature*

_____ *Name and Title*

FORM OF TENDER

TO: _____ [Name of Employer) _____ [Date]
_____ [Name of Contract]

Dear Sir,

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

Dated this _____ day of _____ 20_____

Signature _____ in the capacity of _____

duly authorized to sign tenders for and on behalf of
_____ [Name of Tenderer] of
_____ [Address of Tenderer]

Witness; Name _____

Address _____

Signature _____

Date _____

(Amend accordingly if provided by Insurance Company)

FORM OF AGREEMENT

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

WHEREAS THE Employer is desirous that the Contractor executes

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

NOW THIS AGREEMENT WITNESSETH as follows:

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

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

The common Seal of _____

Was hereunto affixed in the presence of _____

Signed Sealed, and Delivered by the said _____

Binding Signature of Employer _____

Binding Signature of Contractor _____

In the presence of (i) Name _____

Address _____

Signature _____

[ii] Name _____

Address _____

Signature _____

FORM OF TENDER SECURITY

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

KNOW ALL PEOPLE by these presents that WE having our registered office at(hereinafter called “the Bank”), are bound unto(hereinafter called “the Employer”) in the sum of Kshs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this Day of20.....

THE CONDITIONS of this obligation are:

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

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

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

[date]

[signature of the Bank]

[witness]

[seal]

PERFORMANCE BANK GUARANTEE

To: _____(Name of Employer) _____(Date)
_____ (Address of Employer)

Dear Sir,

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

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

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

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

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

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

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

SIGNATURE AND SEAL OF THE GUARANTOR _____

Name of Bank _____

Address _____

Date _____

(Amend accordingly if provided by Insurance Company)

PERFORMANCE BOND

By this Bond, We _____ of (or whose registered office is situated at) _____ as Principal (hereinafter called "the Contractor") and _____ of [or whose registered office is situated at] _____ as Surety (hereinafter called "the Surety"), are held and firmly bound unto _____ of [or whose registered office is situated at] _____ as Obligee (hereinafter called "the Employer") in the amount of Kshs. _____ [amount of Bond in figures] Kenya Shillings

_____ [amount of Bond in words], for the payment of which sum well and truly, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a Contract with the Employer dated the _____ day of _____ 20 _____ for the execution of _____ [name of Contract] in accordance with the Contract documents, Specifications and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a tender or tenders from qualified tenderers for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive tenderer, arrange for a Contract between such tenderer and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof.

The term "Balance of the Contract Price", as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor under the

Contract, less the amount properly paid by the Employer to the Contractor; or

- (3) pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____ day of _____ 20_____

SIGNED ON _____ SIGNED ON _____

On behalf of _____ On behalf of _____
[name of Contractor] *[name of Surety]*

By _____ By _____

In the capacity of _____ In the capacity of _____

In the presence of;Name _____ In the presence of;Name _____

Address _____

Address _____

Signature _____

Signature _____

Date _____

Date _____

BANK GUARANTEE FOR ADVANCE PAYMENT

To: _____ [name of Employer] _____ (Date)
_____ [address of Employer]

Gentlemen,

Ref: _____ [name of Contract]

In accordance with the provisions of the Conditions of Contract of the above-mentioned Contract, We, _____ [name and Address of Contractor] (hereinafter called “the Contractor”) shall deposit with _____ [name of Employer] a bank guarantee to guarantee his proper and faithful performance under the said Contract in an amount of Kshs. _____ [amount of Guarantee in figures] Kenya Shillings _____ [amount of Guarantee in words].

We, _____ [bank or financial institution], as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to _____ [name of Employer] on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding Kshs _____ [amount of Guarantee in figures] Kenya Shillings _____ [amount of Guarantee in words], such amount to be reduced periodically by the amounts recovered by you from the proceeds of the Contract.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between _____ [name of Employer] and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until _____ (name of Employer) receives full payment of the same amount from the Contract.

Yours faithfully,

Signature and Seal _____

Name of the Bank or financial institution _____

Address _____

Date _____

Witness: Name: _____

Address: _____

Signature: _____

Date: _____

QUALIFICATION INFORMATION

1. Individual Tenderers or Individual Members of Joint Ventures

1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate);

Place of registration: _____

Principal place of business _____

Power of attorney of signatory of tender _____

1.2 Total annual volume of construction work performed in the last five years

Year	Volume	
	Currency	Value

1.3 Work performed as Main Contractor on works of a similar nature and volume over the last five years. Also list details of work under way or committed, including expected completion date. For completed works attach a completion certificate.

Project name	Name of client and contact person	Type of work performed and year of completion	Value of Contract
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

1.4 Major relevant items of Contractor's Equipment proposed for carrying out the Works. List all information requested below.

Item of Equipment	Description, Make and age (years)	Condition and number available	Owned, leased (from whom?), or to be purchased (from whom?). Attach evidence
_____	_____	_____	
_____ (etc.)	_____	_____	

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data including certified copies of academic and professional certificates. Project manager should possess a bachelor degree in Civil engineering (minimum 5 years of experience) and site agent should have at least a diploma in engineering (minimum 3 years of experience).

Position	Name	Years of experience (general)	Years of experience in proposed position
Project Manager			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
(etc.)			

- 1.6 Financial reports for the last five years: balance sheets, profit and loss statements, auditor's reports, etc. List below and attach copies.

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

- 1.8 Name, address and telephone, telex and facsimile numbers of banks that may provide reference if contacted by the Employer.

- 1.9 Statement of compliance with the requirements of Clause 1.2 of the Instructions to Tenderers.

- 1.10 Proposed program (work method and schedule) for the whole of the Works.

2 Joint Ventures

2.0 The information listed in 1.1 – 2.0 above shall be provided for each partner of the joint venture.

2.0 The information required in 1.11 above shall be provided for the joint venture.

2.1 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture

2.2 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:

-
- a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
 - c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

TENDER QUESTIONNAIRE

Please fill in block letters.

1. Full names of tenderer;
.....
2. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below);
.....
3. Telephone number (s) of tenderer;
.....
4. Telex of tenderer;
.....
5. Name of tenderer's representative to be contacted on matters of the tender during the tender period;
.....
6. Details of tenderer's nominated agent (if any) to receive tender notices. This is essential if the tenderer does not have his registered address in Kenya (name, address, telephone, telex);
.....
.....

Signature of Tenderer

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

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part 1 – General

Business Name

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

Plot No..... Street/Road

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

Nature of Business.....

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

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

Name of your bankers.....

Branch.....

Part 2 (a) – Sole Proprietor

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

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

Citizenship details

Part 2 (b) – Partnership

Give details of partners as follows:

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

5.....

Date Seal/Signature of Candidate.....

DETAILS OF SUB-CONTRACTORS

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

Failure to comply with this requirement may invalidate the tender.

(1) Portion of Works to be sublet:

[i] Full name of Sub-contractor and address of head office:
.....

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

(2) Portion of Works to sublet:

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

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

[Signature of Tenderer)

Date

ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE

I/We/Messrs.....

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

.....

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

I/We

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

Tender/Tender No

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

Authorized Signature.....

Name and Title of Signatory.....

CERTIFICATE OF TENDERER’S OR REPRESENTATIVE’S PRE-TENDER SITE VISIT

1. This is to certify that I (*Name of Tenderer or his Representative*) of the Firm of

.....

(*Name of Firm Tendering*) in the Company of

(*Name of Client’s Representative conducting the Visit*) Visited the Site in Connection with Tender for Construction of 12,000m³ Water Pan in Mukurwe-ini T.T.I- Nyeri County.

2. Having previously studied the Contract Documents, I carefully examined the site, and I have made myself familiar with the local conditions and access roads likely to influence the works and the cost thereof. From the tender document and site visit, my observations are:

- a.
- b.
- c.
- d.

3. I further certify that I am satisfied with the description of the work and the explanations given by the said Representative and that I understand perfectly the work to be done as specified and implied in the execution of the Contract.

Signed: -

Date: -

Name: -
(*Tenderer or Representative*)

Signed: -

Date:-

Name:-
(*Procuring entity Representative conducting the visit*)

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

FORM RB 1

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT

AND

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

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

REQUEST FOR REVIEW

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

- 1.
 - 2.
- etc.

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

- 1.
 - 2.
- etc

SIGNED(Applicant)

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

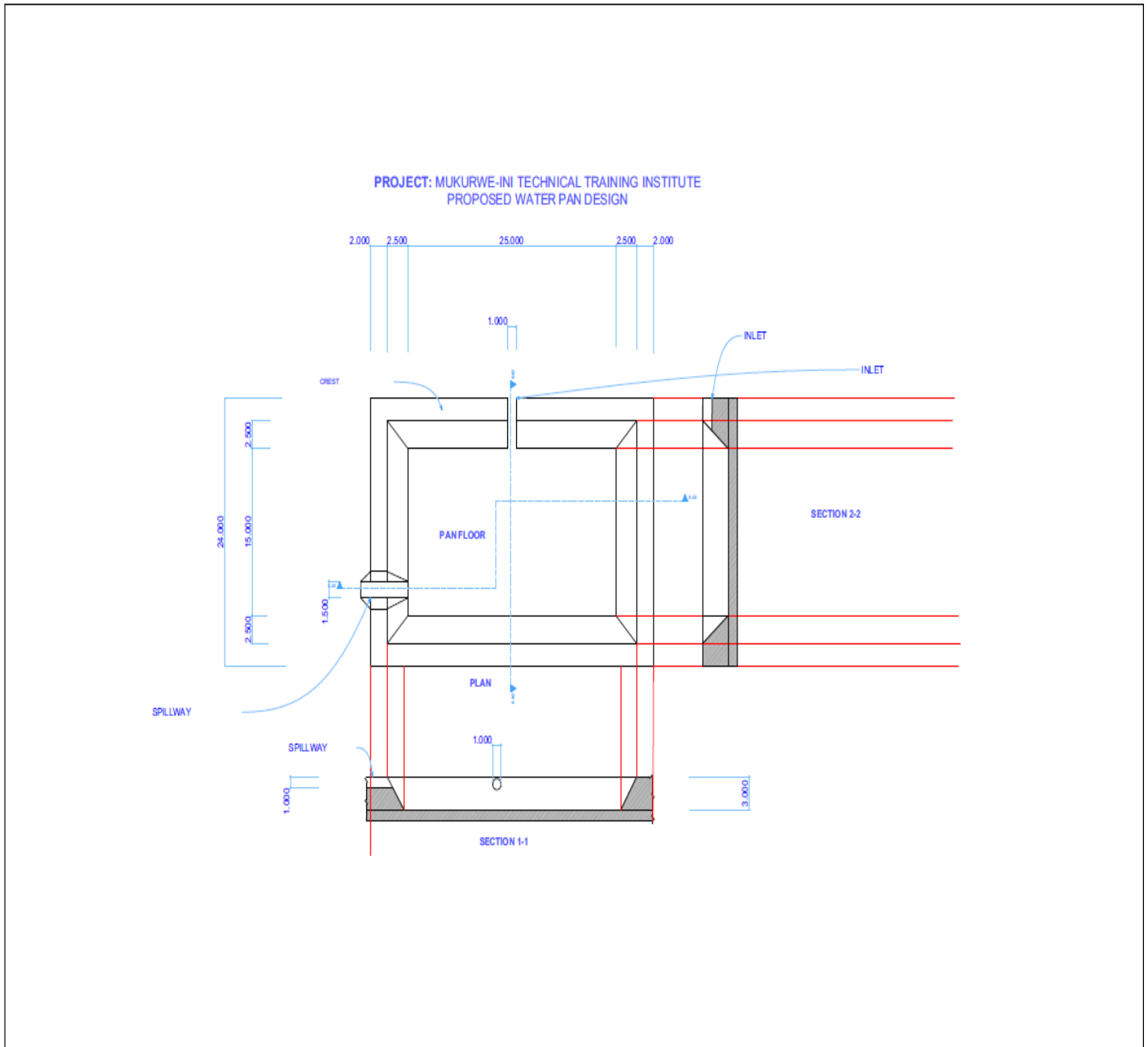
FOR OFFICIAL USE ONLY

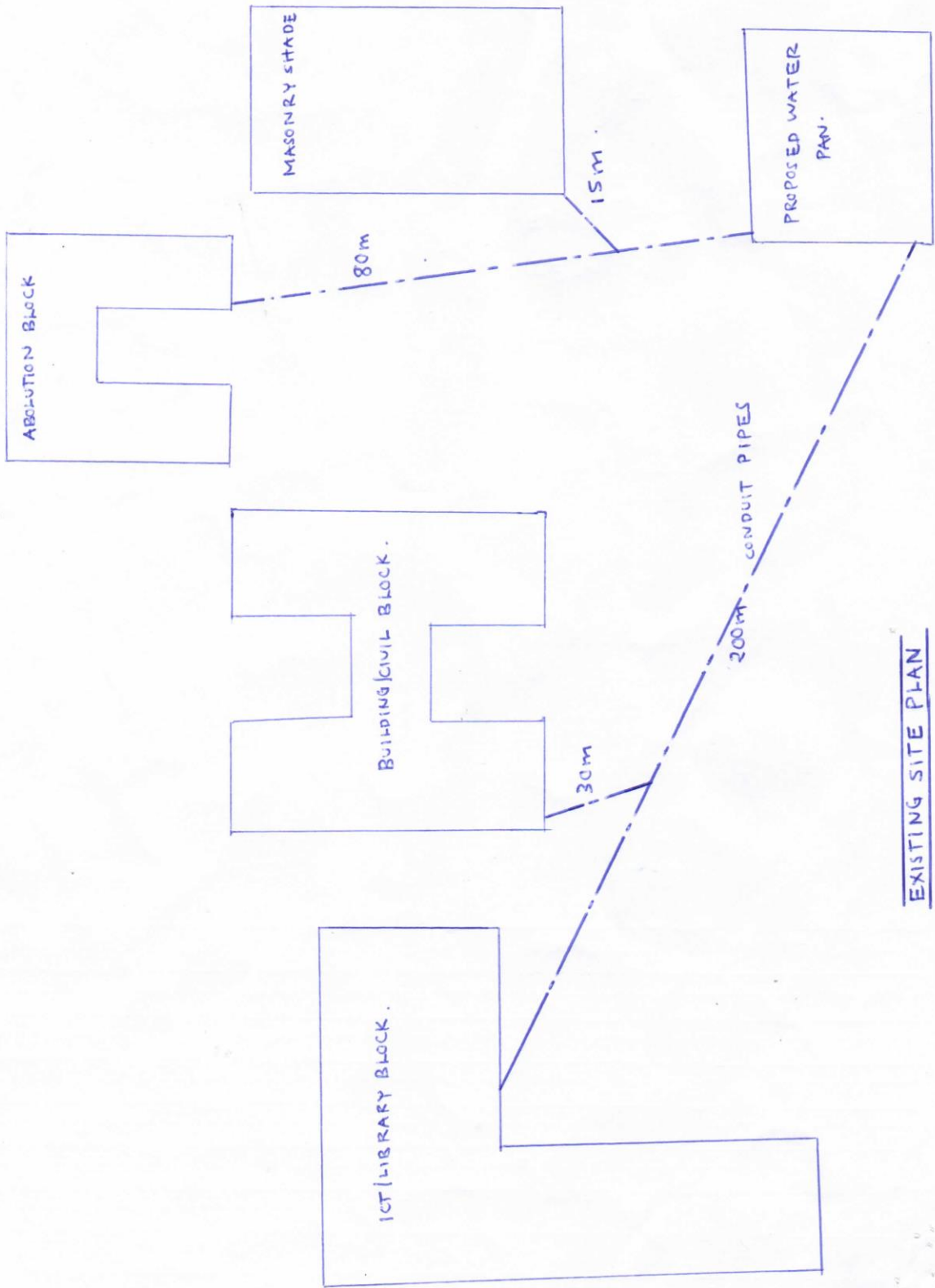
Lodged with the Secretary Public Procurement Administrative Review Board on day of
.....20.....

SIGNED

Board Secretary

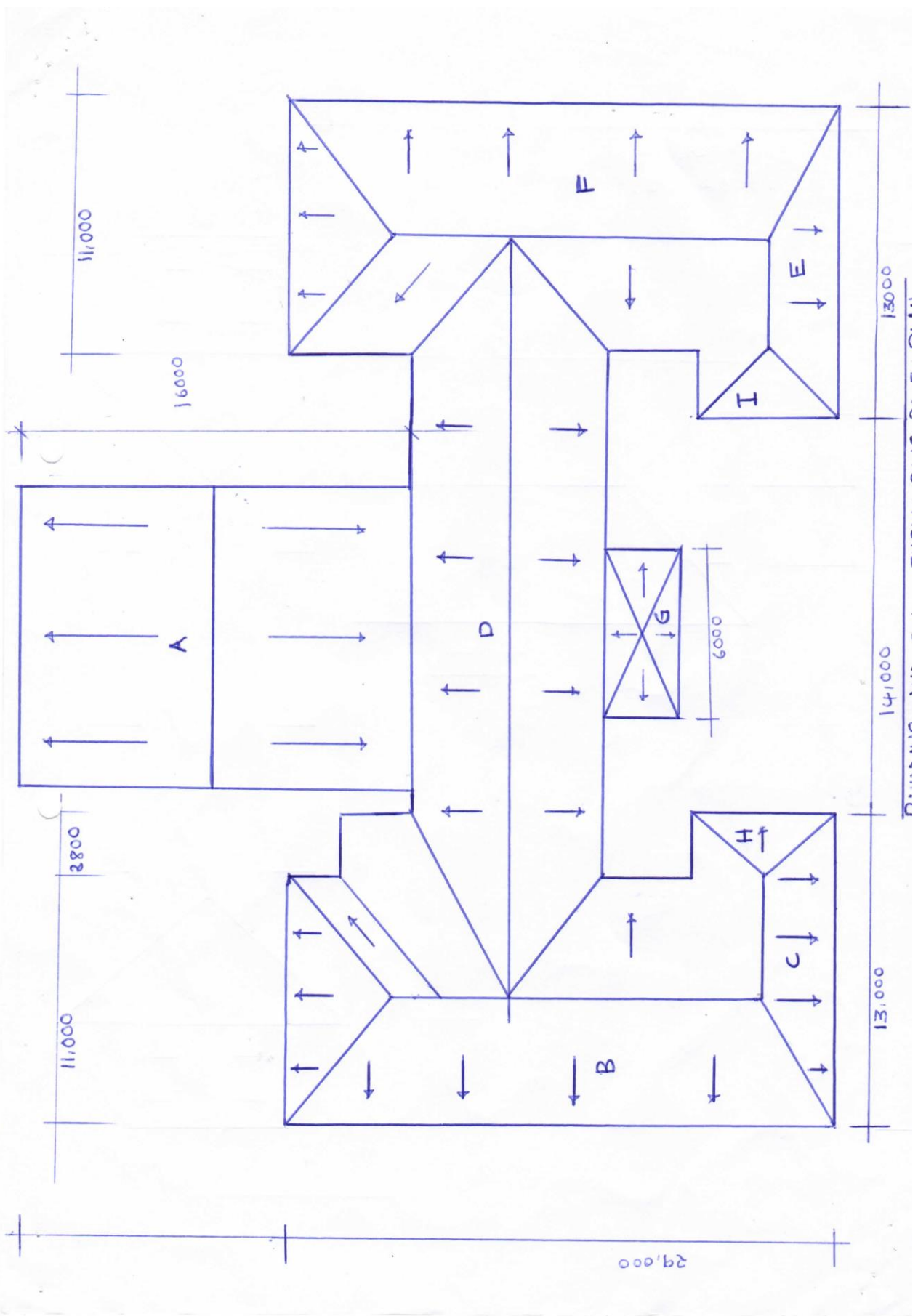
ANNEX DESIGN DRAWINGS





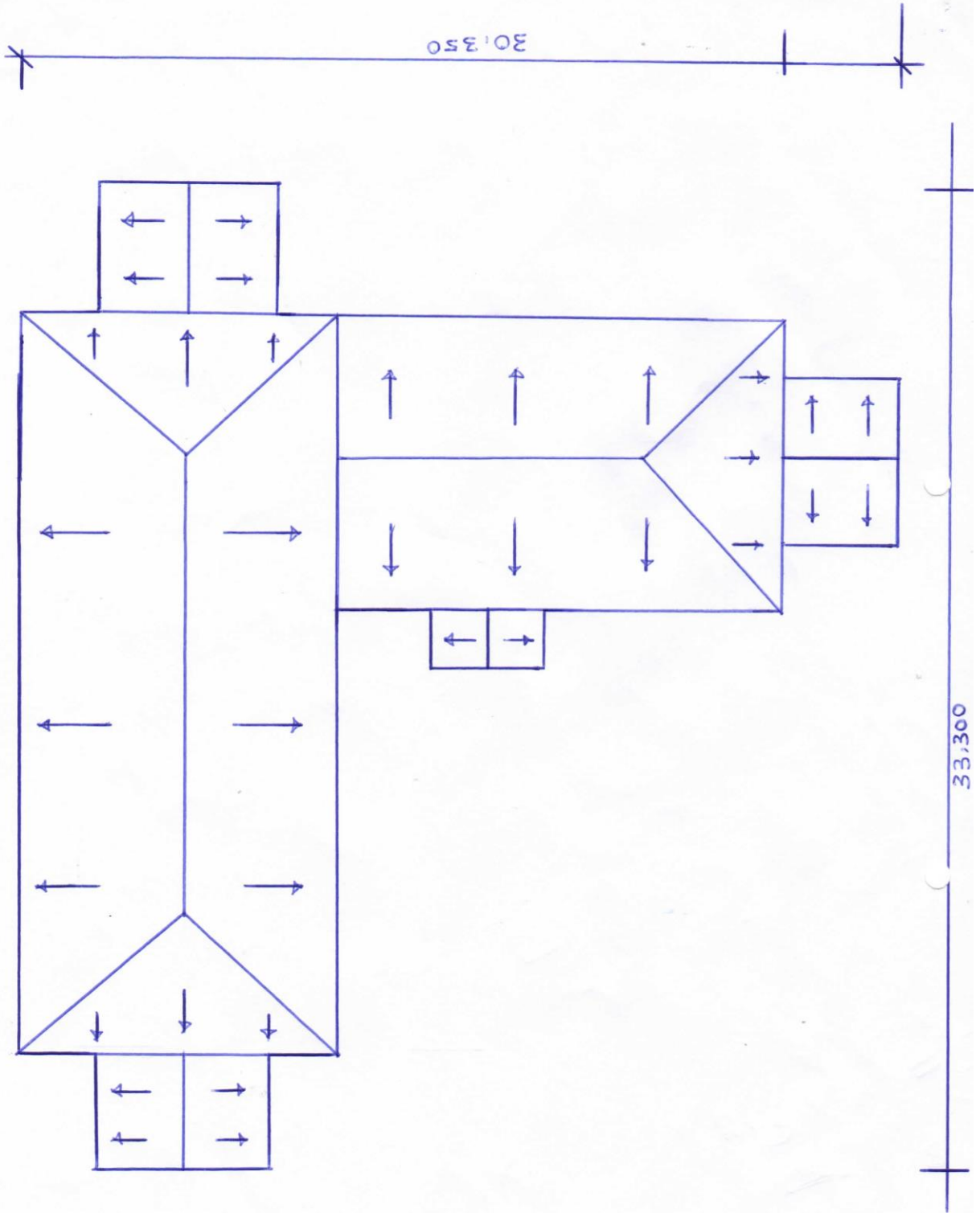
ELECTRICAL BUILDING RAIN WATER GOODS.

Length of Gutters.	350 metres.
Number of downspouts	15.
Length of downspouts.	150 metres.
Height of Building.	10 metres.
Length of conduit underground pipes.	10 metres
ROOF AREA (m ²).	TOTAL AREA
$= \text{AREA 1 (LxW)}$ $= 6.995 \times 5$ $= 34.975 \text{ m}^2$ $\text{AREA 2} = 4 \times 14.125$ $= 56.5 \text{ m}^2$ $\text{AREA 3} = 20 \times 18.425$ $= 368.5 \text{ m}^2$ $\text{AREA 4} = 20 \times 18.425$ $= 368.5 \text{ m}^2$ $\text{AREA 5} = 6.865 \times 5$ $= 34.325 \text{ m}^2$ $\text{AREA 6} = 4 \times 8$ $= 32 \text{ m}^2$ $\text{AREA 7} = 3.9 \times 13.22$ $= 51.558 \text{ m}^2$ $\text{AREA 8} = 84 \text{ m}^2$ $\text{AREA 9} = 7 \times 13$ $= 91 \text{ m}^2$	Σ of all sections. $= \underline{\underline{1121.358 \text{ m}^2}}$



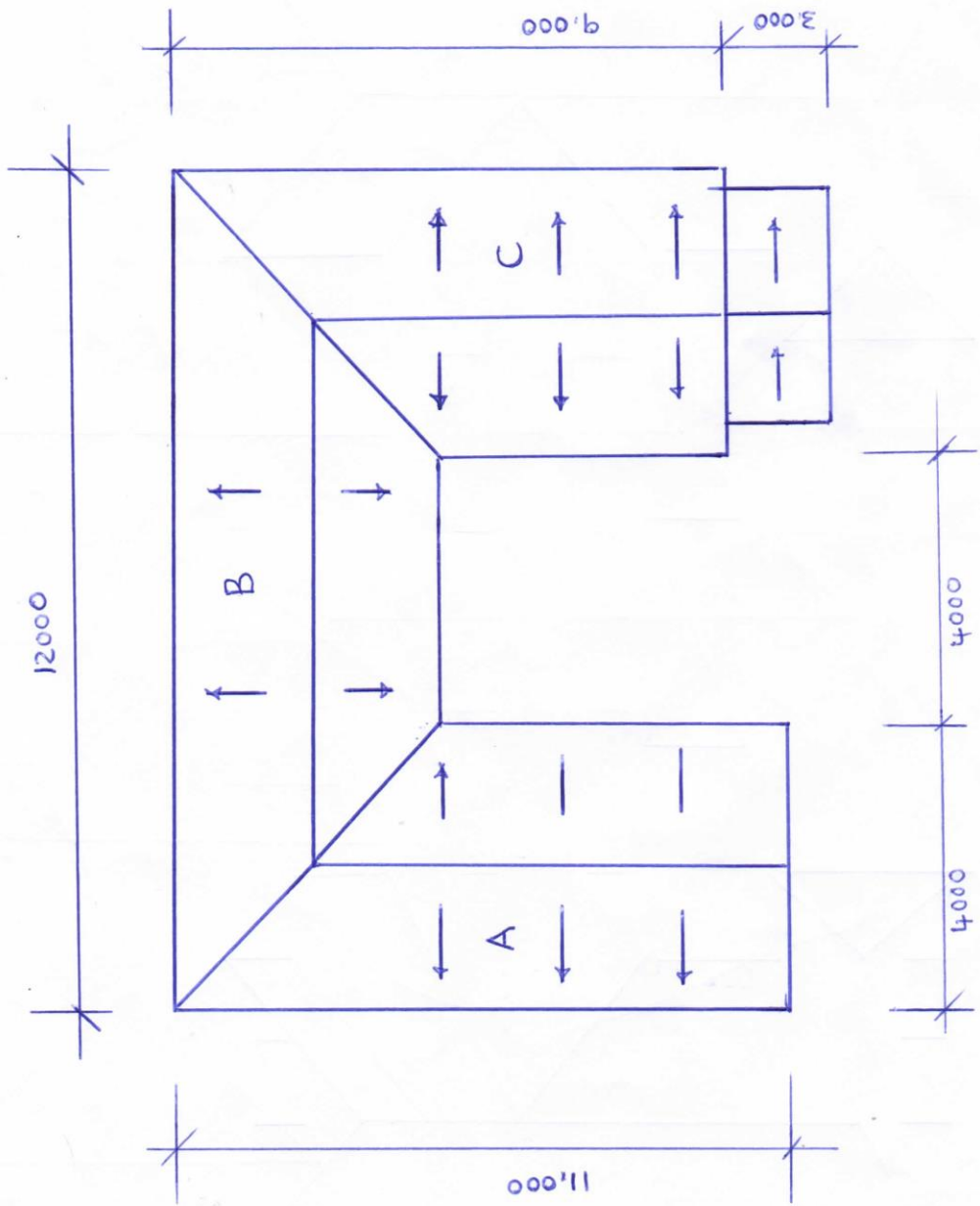
BUILDING/CIVIL RAIN WATER GOODS.

Length of Gutters	225 metres
Length of Conduit underground pipes	30 metres.
Number of downspouts	15
Height of building	7 metres
Length of downspouts	105 metres.
ROOF AREA (m ²).	TOTAL AREA.
$A = 11 \times 16$ $= \underline{176m^2}$	$= A + B + C + D + E + F + G + H + I$ $= \underline{1010m^2}$
$B = 24 \times 11$ $= \underline{264m^2}$	
$C = 13 \times 5$ $= \underline{65m^2}$	
$D = 5 \times 19.6$ $= \underline{98m^2}$	
$E = 15.8 \times 5$ $= \underline{79m^2}$	
$F = 24 \times 11$ $= \underline{264m^2}$	
$G = 6 \times 6$ $= \underline{36m^2}$	
$H = 5 \times 2.8$ $= \underline{14m^2}$	
$I = 5 \times 2.8$ $= \underline{14m^2}$	



ICT ROOF PLAN

ICT BUILDING RAIN WATER GOODS.	
Length of Gutters.	150 metres.
Number of downspouts.	10
Length of downspouts.	70 metres.
Height of building.	7 metres
Length of conduit underground pipes.	200 metres.
ROOF AREA (m ²)	TOTAL AREA
$A = 3(3.9 \times 4.1)$ $= 47.97 \text{ m}^2.$	$\Sigma \text{ of all sections.}$ $= 468.13 \text{ m}^2.$
$B = 24.7 \times 9.7.$ $= 239.59 \text{ m}^2.$	
$C = 18.1 \times 9.7.$ $= 175.57 \text{ m}^2.$	
$D = 2.5 \times 2$ $= 5 \text{ m}^2.$	

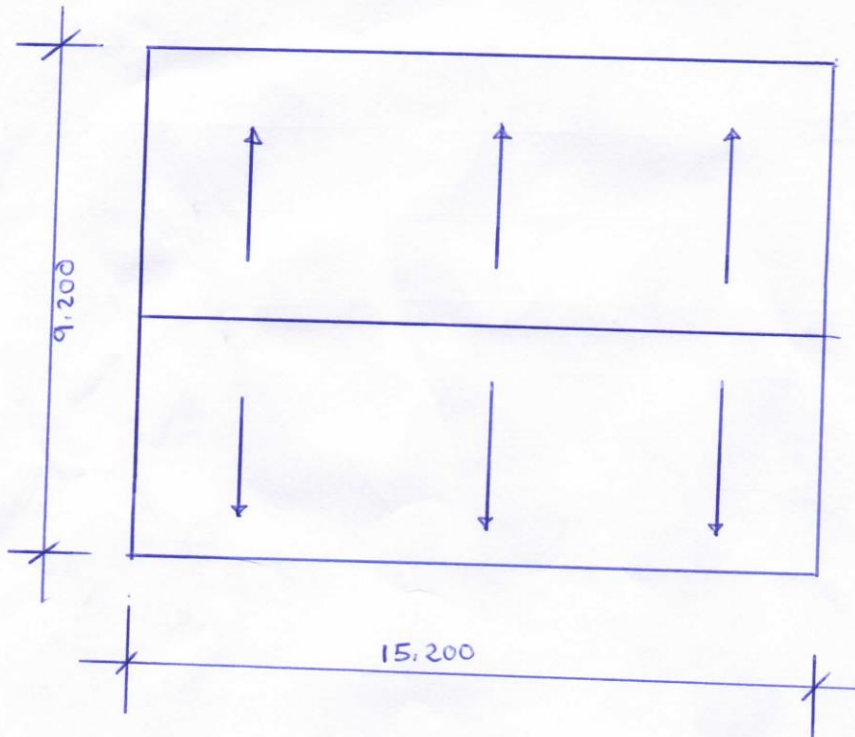


ABOLUTION ROOF PLAN

ABOLUTION BLOCK RAIN WATER GOODS

Length of Gutters.	60metres.
Number of downsprouts	4.
Length of downsprouts.	13metres.
Height of Building.	3100mm.
Length of conduit underground pipes	80metres
ROOF AREA.(m ²)	TOTAL AREA
$A = 11 \times 4$ $= \underline{\underline{44}} \text{m}^2.$	SUM OF ALL SECTIONS. $= 44 + 16 + 48$
$B = 4 \times 4$ $= \underline{\underline{16}} \text{m}^2$	$= \underline{\underline{108}} \text{m}^2.$
$C = 4 \times 12$ $= \underline{\underline{48}} \text{m}^2.$	

MASONRY ROOF PLAN



Length of Gutters.	48.8 metres.
Number of downspouts.	4
Length of downspouts.	13 metres.
Height of building.	3100 mm
Length of conduit underground pipes	15 metres.
ROOF AREA (m²).	
= 9.2 x 15.2	
= <u>139.84 m².</u>	
DEPTH OF WATER PAN.	
Total roof area = 2847.328 m ² .	Depth of water pan
Area of water pan = 30 x 20 = 600 m ² .	= 2847.328
	<u>600</u>
	= 5 metres