

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF VIHIGA

**CONSTRUCTION OF A SIX STOREY 160 BED PLAZA
AT
VIHIGA COUNTY REFERRAL HOSPITAL**

TENDER DOCUMENT

MAIN WORKS

TENDER NO:

**THE COUNTY SECRETARY
COUNTY GOVERNMENT OF VIHIGA
P.O.BOX 344-50300, MARAGOLI.**

MAY 2015

REPUBLIC OF KENYA
COUNTY GOVERNMENT OF VIHIGA
OFFICE OF THE GOVERNOR

TENDER DOCUMENTS

Supplied as part of the Contract No.
**PROPOSED CONSTRUCTION OF A 160 BED CAPACITY PLAZA AT VIHIGA
COUNTY REFERRAL HOSPITAL.**

Issued by:
.....
.....

The contract for the above mentioned work entered into thisday of 2015
by the undersigned refers to these bills of quantities and the ministry of Public Works
Specification dated March 1976 (together with any amendments issued thereto) shall be
read and construed as part of the said.

.....
CONTRACTOR
Date:

.....
COUNTY SECRETARY
COUNTY GOVERNMENT OF VIHIGA
Date:

Name of witness

In the presence of

Address

.....

Signature:

Date:

Date:

SPECIAL NOTES

The contractor is required to check the number of the pages of these Bills of Quantities
and should he find any missing or in duplicate or figures indistinct he must inform the
County Secretary, P.O. Box 344-50300, Maragoli at once and have the same rectified.

Should the contractor be in doubt about the precise meaning of any item or figure for any reason whatsoever, he must inform the Project Manager in order that the correct meaning may be decided before the date for submission of tenders.

No liability will be admitted nor claim allowed in respect of errors in the Contractor's tender due to mistakes in the specifications which should have been rectified in the manner described above.

SIGNATURE PAGE AND NOTES

INSTRUCTIONS TO TENDERERS
(TECHNICAL)

INSTRUCTIONS OF TENDERERS

1. General

- 1.1** The Employee as defined in Appendix to conditions of contract invites tenders for works contracts as described in the tender documents .The successful renderer. Will be expected to complete the works by the intended completion date specified in the tender documents.
- 1.2** All tenderers shall provide the qualification information, a statement that the tender (including all members of a joint venture and sub-contractors) is not associated, or has not been associated in the past ,directly or indirectly, with the consultant or any other entity that has prepared the design, specifications ,and other documents for the project or being purposed as Project Manager for the contract. A firm that has been engaged by the employer to provide consulting services for the preparation or supervision of the works, and any of its affiliates, shall not be eligible to tender.
- 1.3** All tenderers shall provide in the form of Tender and Qualification Information, a preliminary description of the purposed work method and schedule, including drawings and charts as necessary.
- 1.4** In the event that pre-qualification of potential tenderers has been under taken, only tenders from pre-qualified tenderers will be considered for award of contract. These qualified tenders should submit with their tenders any information updating their original pre-qualification applications or, alternatively, confirm in their tenders that the originally submitted pre-qualification information remains essentially correct as of the date of tender submission.
- 1.5** Where no pre-qualification of potential tenderers has been done, all tenderers shall include the following information and documents with their tenders, unless otherwise stated:

 - (a) copies of original documents defining the constitution of legal status, place of registration and principal place of business; written power of Attorney of the signatory of the tender to commit the tenderer.
 - (b) Total monetary value of construction work performed for each of the last five years
 - (c) Experience in works of a similar nature and size for each of the last five year and details of work underway or contractual committed and names and addresses of clients who may be contacted for further information on these contracts;

- (d) Major items of construction equipment proposed to carry out the contract and an undertaking that they will be available for the contract.
 - (e) Qualifications and experience of key site management and technical personnel proposed for the contract and an undertaking that they shall be available for the contract.
 - (e) Reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the last five years.
 - (f) Evidence of adequacy of working capital for this contract (access to line(s) of credit and availability of other financial resources.
 - (g) Authority to seek references from the tenderer's bankers.
 - (i) Information regarding any litigation, current or during the last five years in which the tenderer is involved, the parties concerned and disputed amount; and
 - (j) Proposals for sub-contracting components of the works amounting to more than 10 percent of the contract price.
- 1.6 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated:
- (a) The tender shall include all the information listed in clause 1.5 above for each joint venture partner.
 - (b) The tender shall be signed so as to be legally binding on all partners.
 - (c) All partners shall be jointly and severally liable for the execution of the contract in accordance with the contract terms.
 - (d) One of the partners will be nominated as being in charge ,authorized to incur liabilities and receive instructions for and on behalf of all partners of the joint venture; and
 - (e) The execution of the entire contract including payment, shall be done exclusively with the partner in charge.
- 1.7 To qualify for award of the contract, tenderers shall meet the following minimum qualifying criteria;
- (a) Annual volume of construction work of construction work of at least 2.5 times the estimated annual cash flow for the contract;

- (b) Experience as main contractor in the construction of at least two works of a nature and complexity equivalent to the works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);
 - (c) Proposal for the timely acquisition (own, lease, hire etc) of the essential equipment listed as required for the works;
 - (d) A contract Manager with at least five years experience in works of an equivalent nature and volume, including no less than three years as Manager; and
 - (e) Liquid assets and or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the contract, of no less than 4 months of the estimated payment flow under this contract.
- 1.8** The figures for each of the partners of a joint venture shall be added together to determine the tenderers' compliance with the minimum qualifying criteria of clause 1.7 (a) and (e) ; however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 1.7(a),(b) and (e) for an individual tenderer and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with the requirement will result in rejection of the joint venture's tender. Sub-contractors' compliance with the qualifying criteria, unless otherwise stated.
- 1.9** Each tenderer shall submit only one tender, either individually or as a partner in a joint venture. A tenderer who submits or participates in more than one tender (other than a sub-contractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the tenderer's participation to be disqualified.
- 1.10** The tenderer shall bear all costs associated with the preparation and submission of his tender, and the employer will in no case be responsible or liable for those costs.
- 1.11** The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the site of works and its surroundings and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the works. The costs of visiting the site shall be at the tenderer's own expense.

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

1.13 The price to be charged for the tender document shall not exceed Kshs.5000/=

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

2. Tender documents

2.1 The complete of tender documents comprises the documents listed below and any agenda issued in accordance with clause 2.4

- (a) These instructions to tenderers
- (b) Form of Tender and Qualification Information
- (c) Conditions of contract
- (d) Appendix to conditions of contract
- (e) Specifications
- (f) Drawings
- (g) Bills of Quantities
- (h) Forms of Securities

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

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

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

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

3. Preparation of tenders

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

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

- (a) These instructions to Tenderers, Form of Tender, conditions Contract, Appendix to Conditions of Contract and Specifications;
- (b) Tender security;
- (c) Priced Bill of Quantities;
- (d) Qualification Information Form and Documents
- (e) Alternative offers where invited; and
- (f) Any other materials require be completing and submitting by the tenderers.

3.3. The tenderer shall fill in rates and prices for all items of the works described in the Bills of Quantities. Items for which no rate of price is entered by the tenderer will not be paid for when executed and shall be deemed covered by the rates and prices in the Bills of Quantities. All duties, taxes and other levies payable by the contractor or for any other cause relevant to the contract, as of 30 days prior to the deadline for submission of tenders shall be included in the tender price submitted by the tenderer.

3.4 The rates and prices quoted by the tenderer shall only be subject to adjustment during the performance of the contract if provided for in the Appendix to Conditions of contract and provisions made in the conditions of Contract.

- 3.5** The unit rates and prices shall be in Kenya shillings.
- 3.6** Tenderers shall remain valid for a period of sixty(60) days from the date of submission. However, in exceptional circumstances, the Employer may request that the tenders extend the period of validity for a specified additional period. The request and the tenderers' responses shall be made in writing. A tenderer may refuse to request without forfeiting the tender Security. A tenderer agreeing to the request will not be required or permitted to other wise modify the tender but will be required to extend the validity of tender Security for the period of extension and in compliance with clause 3.7-3.11 in all respects.
- 3.7** The tenderer shall furnish, as part of the tender ,a Tender Security in the amount and form specified in the Appendix to invitation to tenderers.This shall be the amount not exceeding 2 percent of the tender price.
- 3.8** The format of the Tender Security should be in accordance with the form of Tender Security included in section G –Standard Forms of any other form acceptable to the Employer. Tender Security shall be valid for 30 days beyond the validity of the tender.
- 3.9** Any tender not accompanied by an acceptable Tender Security shall be rejected. The Tender Security of a joint venture must define as “Tender “ all venture partners and list them in the following manner: a joint venture consisting of “ ”, “ ” and” ”.
- 3.10** The Tender Securities of unsuccessful tenderers will be returned within 28 days of the end of the tender validity period specified in clause 3.6.
- 3.11** The tender Security of the successful Tenderer will be discharged when the tenderer has signed the Contract Agreement and furnished the required Performance Security.
- 3.12** The Tender Security may be forfeited;
- (a) If the tenderer withdraws the tender after tender opening during the period of tender Validity;
 - (b) If the tenderer does not accept the correction of the tender price, pursuant to clause 5.7;
 - (c) In the case of a successful tenderer, if the tenderer fails within the specified time limit to
 - (i) Sign the agreement or
 - (ii) Furnish the required Performance Security

- 3.13** Tenderers shall submit offers that comply with the requirements of the tendering documents, including the basic technical design as indicated in the drawings and specifications. Alternatives will not be considered unless specifically allowed in the invitation to tender. If so allowed, tenderers wishing to offer technical alternatives to the requirements of the tendering documents must also submit a tender that complies with the requirements of the tendering documents including the basic technical design as indicated in the Drawings and Specification. In addition to submitting the basic tender, the tenderer shall provide all information necessary for a complete evaluation of the alternative, including design calculations. Technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives if any, of the lowest evaluated tender confirming to the basic technical requirements shall be considered.
- 3.14** The tenderer shall prepare one original of the documents comprising the tender documents as described in clause 3.2 of these Instructions to Tenderers ,bound with the volume containing the Form of Tender and clearly marked ‘‘ORIGINAL’ ’In addition the tenderer shall submit copies of the tender in the number specified in the invitation to tender and clearly marked as ‘‘COPIES’’. In the event of discrepancy between them, the original shall prevail.
- 3.15** The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer, pursuant to clause 1.5(a) or 1.6(b),as the case may be. All pages of the tender where alterations or additions have been made shall be initialed by the persons signing the tender.
- 3.16** Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 3.17** The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.
- 3.18** The Tender Security shall be in the amount of 0.5-2 percent of the tender price.

4. Submission of Tenders

- 4.1** The tenderer shall seal the original and all copies of the tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as ‘‘ORIGINAL’’ and ‘‘COPIES’’ as appropriate .The inner and outer envelopes shall:

- (a) Be addressed to the Employer at the address provided in the invitation to tender;
- (b) Bear the name and identification number of the Contract as definer's modification or in the invitation to Tender; and
- (c) Provide a warning not to open before the specified time and date for tender opening.

- 4.2** Tenders shall be delivered to THE Employer at the address specified above not later than the time and date specified in the invitation to tender. However the Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with sub-clause 2.5 in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline will then be subject to the new deadline.
- 4.3** Any tender received after the deadline prescribed in clause 4.2 will be returned to the tenderer un-opened.
- 4.4** Tenderers may modify or withdraw their tenders by giving notice in writing before the deadline prescribed in clause 4.2. Each tenderer's modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the clause 3.13 and 4.1, with the outer and inner envelopes additionally marked "MODIFICATION" AND "WITHDRAWAL" as appropriate. No tender may be modified after the deadline for submission of tenders.
- 4.5** Withdrawal of a tender between the deadline of submission of tenders and the expiration of the period of tender validity specified in the invitation to tender or as extended pursuant to clause 3.6 may result in the forfeiture of the Tender Security pursuant to clause 3.11
- 4.6** Tenderers may only offer discounts to or otherwise modify the prices of their tender by submitting tender modifications in accordance with clause 4.4 or be included in the original tender submission.

5. Tender Opening and Evaluation

- 5.1** The tenders will be opened by the Employer, including modifications made pursuant to clause 4.4 in the presence of the tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender. Envelopes marked "WITHDRAWAL" Shall be opened and read out first. Tenderers' and Employer's representatives who are present during the opening shall sign a register evidencing their attendance.

- 5.2** The tenderers' names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security and such other details as may be considered appropriate, will be announced by the employer at the considered appropriate, will be announced by the Employer at the Opening. Minutes of the tender opening including the information disclosed to those present will be prepared by the Employer.
- 5.3** Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of contract shall not be disclosed to
Tenderers or any other persons not officially concerned with such process until the award to the successful tenderer has been announced. Any effort by a tenderer to influence the Employer's Officials, processing of tenders or award decisions may result in the rejection of his tender.
- 5.4** To assist in the examination, evaluation and comparison of tenders, the Employer at his discretion, may ask any tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction or arithmetic errors discovered in the evaluation of the tenders in accordance with clause 5.7.
- 5.5** Prior to the detailed evaluation of tenders the Employer will determine whether each tender (a) meets the eligibility criteria defined in clause 1.7; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the tendering documents. A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering document, without material deviation or reservation. A material deviation or reservation is one;
- (a) Which affects in any substantial way the scope, quality or performance of the Works;
 - (b) which limits in any substantial way, inconsistent with the tendering documents, the Employer's rights of the tenderer's Obligations under the Contract; or
 - (c) Whose rectification would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.
- 5.6** If a tender is not substantially responsive, it will be rejected and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or Reservation

5.7 Tenders determined to be substantially responsive will be checked for any arithmetic Errors .Errors will be corrected as follows:

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, here is an obvious typographical error in which case the adjustment will be made to the entry containing that error.
- (c) In the event of discrepancy between the tender amount stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount stated in the Form on Tender shall prevail.
- (d) The error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work(i.e. Corrected Tender sum less P.C and Provisional Sums)
- (e) The error Corrected Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purpose of valuations for Interim Certificates and valuation of variations.
- (f) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and with concurrence of the tenderer shall be considered in binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11

5.8 The Employer will evaluate and compare only the tenders determined substantially responsive in accordance with clause 5.5.

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

- a) Making any corrections for errors pursuant to clause 5.7;
- b) Excluding provisional sums and the provision if any, for contingencies if the Bill of Quantities but including Day works where priced competitively.

- c) Making an appropriate adjustment for any other acceptable variations, deviations or alternative offers submitted in accordance with clause 3.12 and
- d) Making appropriate adjustments to reflect discounts or other price
- e) Offered in accordance with clause 4.6

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

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

5.2 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not subcontract work valued at more than 50% of the contract price excluding Provisional Sums to a non-indigenous sub-contractor.

6. Award of Contract

6.1 Subject to clause 6.2 the award of the contract will be made to the tenderer whose Tender has been determined to be substantially responsive to the tendering Documents and who has offered the lowest evaluated tender price provided that Such tenderer has been determined to be (a) eligible in accordance with the Provision of clause 1.2 and (b) qualified in accordance with the provisions of clause 1.7 1.8.

6.1 Notwithstanding clause 6.1 above, the Employer reserves the right to accept or reject Any tender and to cancel the tendering process and reject all tenders at any time Prior to the award of Contract, without thereby incurring any liability to the affected Tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the action.

6.3 The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile.

This notification herein after and in all Contract documents called the ‘‘LETTER OF ACCEPTANCE’’ will state the sum (hereinafter and in all contract documents called the ‘‘Contact Price’’) that the Employer will pay the contractor in consideration the execution, completion and maintenance of the works by the contractor as prescribed by the Contract. At the same time the other tenderers shall be informed that their tenders Have not been successful.

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

- 6.4** The agreement will incorporate all agreements between the Employer and the Successful Tenderer will sign the agreement and return it to the Employer.
- 6.5** Within 21 days after receipt of the Letter of Acceptance, the successful tenderer shall
 - deliver to the Employer a Performance Security in the amount stipulated in the Appendix to conditions of contract and in the form stipulated in the Tender documents. The performance Security shall be in the amount and specified form.
- 6.6** Failure of the successful tenderer to comply with the requirements of the clause 6.5 Shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.
- 6.7** Upon the furnishing by the successful tenderer of the Performance Security, the Employer will promptly inform the other tenderers that their tenders have been unsuccessful.
- 6.8** Preference where allowed in the evaluation of the tenders shall not be allowed for contracts not exceeding one year (12 months).
- 6.9** The tender evaluation committee shall evaluate the tender within 30 days of the valid period from the date of opening the tender.
- 6.10** The parties of the contract shall have it signed within 30 days from the date of Notification of the contract award unless there is an administrative review request.
- 6.11** Contract price variation shall not be allowed for contracts not exceeding one year (12 months).
- 6.12** Where Contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.
- 6.13** Price variation request shall be processed by the procuring entity within 30 days of the receiving the request.

- 6.14 The procuring entity may at any time terminate procurement proceedings before Contract award and shall not be liable to any person for the termination.
- 6.15 The Procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 6.16 A tenderer who gives false information in the tender document about its qualification Or who refuses to enter into a contract after notification of contract award shall be Considered for debarment from participation in future public procurement.

7. Corrupt and Fraudulent practices

- 7.1 The Procuring entity requires the Tenderers observe the Highest standards of ethics during procurement process and expedition of contracts .A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent Practices.

**SECTION B:
APPENDIX TO INSTRUCTIONS TO
TENDERERS**

APPENDIX INSTRUCTION TO TENDERER

1. In addition to requirements under clause 105 (a) in the Standard Instructions to Tenderers,
2. Tenderers shall also be required to have been registered with National Construction Authority Clause: No. 1.3 in the standard Instructions to Tenderers **SHALL NOT** apply.
in the work category indicated in the advertisement/ invitation letter- inviting contractors to tender for these works.
3. Clause 1.7 (a) is amended to read as follows ‘‘Annual Volume of construction work of at least 1.5 times the estimated annual cash flow for the contract.’’
4. Clause 3.6 is amended to read as follows ‘‘Tenders shall remain valid for a period of (90) days from the date of submission.’’ The rest of the clause will remain the same.
5. Clause 4.1 is amended to read as follows, ‘The Tenderer shall seal and submit only ONE ORIGINAL TENDER’’ and not copies state. The rest of the clause and sub-clauses shall remain the same.

SECTION C:
CONDITIONS OF CONTRACT

STD/20

CONDITIONS OF CONTRACT

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CONDITIONS OF CONTRACT

Definitions: -

1. In this contract, except where context otherwise requires, the following terms shall be interpreted as indicated;
“Bill of Quantities” means the prices and completed bill of quantities forming part of the tender.
“**Compensation Events**” are those defined in clause 24 hereunder.

“**The completion Date**” means the date of completion of the work as certified by the project manager, in accordance with clause 31.

“**The Contract**” means the agreement into between the employer and the contractor as recorded in the agreement form and signed by the parties including all attachments and appendices thereto and all documents incorporated by reference therein to execute,, complete, and maintain the works,

“**The contractor**” refers to the person or corporate body whose tender to carry out the works has been accepted by the employer.

“**The contractors tender**” is the complete tendering document submitted by the contractor to the employer.

“**The contractors price**” is the price stated in the letter of acceptance and thereafter as adjusted in accordance with the provisions of the contract.

“**Days**” are calendar days; “months” are calendar months.

“**A Defect**” is any part of the works not completed in accordance with the contract.

“**The defects liability Certificate**” is the Certificate issued by Project Manager upon correction of defects by the contractor.

“**The Defects Liability Period**” is the period named in the contract Data and calculated from the completion date.

“**Drawings**” include calculations and other information provided or approved by the project Manager for the Execution of the Contract.

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

“Employer” or the “procuring entity” as defined in the public procurement regulations (i.e. Central or local Government administration, universities, public institutions and corporations, e.t.c) is the party who employs the Contractor to carry out the works.

“Equipment” is the contractors machinery and vehicles brought temporarily to the site for the execution of the works”

“The intended Completion Date” is the date on which it is intended that the contractor shall complete the works. The intended completion date may be revised only by the project manager by issuing an extension of time or an acceleration order.

“Materials” are all supplies, including consumable, used by the contractor for incorporation in the works.

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

“Project Manager” is the person named in the Appendix to conditions of contract or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager, who is responsible for supervising the execution of the works and administering the contract and shall be “Architect” or a “Quality Surveyor” registered under the Engineers Registration Act cap 530.

“Site” is the area defined as such in the appendix to condition of contract.

“Site investigation reports” are those reports that may be included in the tendering documents which are factual and interpretive about the surface and subsurface conditions at the site.

“Specifications” means the specifications of the works included in the contract and any modification or addition made or approved by the project Manager.

“Start Date” is the latest date when the contractor shall commence execution of the works. It does not necessarily coincide with the site possession date(s).]

”A subcontractor” is the person or corporate body who has a contact with the contractor to carry out a part of the work in the contract, which includes work on the site.

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

“**A Variation**” is an instruction given by the project manager which varies the works.

“**The Works**” are what the contractor requires the contractor to construct, install, and turnover to the employer, as defined in the Appendix to conditions of contract.

2. Interpretation

2.1 in the interpreting these conditions of contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English languages unless specifically defined. The project Manager will provide instructions clarifying queries about these conditions of contract.

2.2 If sectional completion is specified in the Appendix to conditions of contract, reference in the conditions of contract to the works, the completion date and the intended completion date apply to any section of the works (other than reference to intended completion date for the whole of the works)

2.3 The following documents shall constitute the contact documents and shall be interpreted in the following order of priority;

- 1) Agreement
- 2) Letter of acceptance
- 3) Contractors tender
- 4) Appendix to conditions contract
- 5) Conditions to contract
- 6) Specifications
- 7) Drawings
- 8) Bill of Quantities
- 9) Any other documents listed in the Appendix to conditions of contract as forming part of the contract.

Immediately after the execution of the contractor, the project manager shall furnish both the employer and the contractor with two copies each of all the contract documents. Further, as and when necessary the project manager shall furnish the contractor (always with a copy to the employer) with three (3) copies of such further drawings or details or descriptive or amplify the contract drawings or to enable the contractor to carry out and complete the works in accordance with these conditions.

3. Language and Law

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

4. Project managers Decisions

4.1 Except where otherwise specifically stated, the project manager will decide contractual matters between the employer and the contractor in the role representing the employer

5. Delegation

5.1 The project manager may delegate any of his duties and responsibilities to others after notifying the contractor.

6. Communications

6.1 A notice shall be effective only when it is delivered

7. Subcontracting

7.1 The contractor may subcontract with the approval of the project manager but may not assign the contract without the approval of the employer in writing. Subcontracting shall not alter the contractor's obligations.

8. Other Contractors

8.1 The contractor shall cooperate and share the site with other contractors, public authorities, utilities etc. as listed in the Appendix to conditions of contract and also with employer, as per the directions of the project manager. The contractor shall also provide facilities and services for them. The employer may modify the said list of other contractors etc, and shall notify the contractor of any such modification.

9. Personnel

9.1 The contractor shall employ the key personnel named in the qualification information, to carry out the functions stated in the said information or other personnel approved by the project manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel in the qualification information.

If the project manager asks the contractor to remove a person who is a member of the contractors staff or work force, stating the reasons, the contractors shall ensure that the person leaves the site within seven days and has no further connection with the work in the contract.

10. Works

10.1 The contractor shall construct and install the works in accordance with the specification and drawings. The works may commence on the start date and shall be carried out in accordance with the program with the program submitted by the contractor, as updated with the approval of the project manager and complete them by the intended completion date

11. Safety and temporary Works

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

11.2 The project managers approval shall not alter the contractors responsibilities for design of the temporary works and all drawings prepared by the contractor for the execution of the temporary or permanent works, shall be subjected to prior approval by the project manager before they can be used.

11.3 The contractor shall be responsible for the safe of all activities on the site

12. Discoveries

12.1 Anything of historical or other interest or of significant value unexpectedly discovered on site shall be the property of the employer. The contractor shall notify the project manager of such discoveries and carry out the project managers instructions for dealing with them

13. Work Program

13.1 Within the time started in the Appendix to conditions of contract, the contractor shall submit to the project manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the works. An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

The contactor shall submit to the project manager for approval an updated program at intervals no longer than the period stated in the appendix to conditions of contract. If the contractor does not submit an updated program within this period, the project manager may withhold the amount stated in the said appendix from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue program has been submitted. The project managers approval of the program of the program shall not alter the contactors obligations. The contractor may revise the program and submit to the project manager and compensation events.

14. Possession of Site

14.1 The employer shall give possession of all part soft he site to the contractor. If possession of a part is not given by the date stated in the appendix to conditions of contract, the employer will be deemed to have delayed the start of the relevant activities, and this will be compensation event.

15. Access to site

15.1 The contractor shall allow the project manager and any other person authorized by the project manager, access to the site and to any other place where work in connection with the contract is being carried out or is intended to be carried out

16. Instructions

16.1 The contractor shall allow the project manager and any other person authorized by the project manager, which are in accordance with the contract.

17. Extension or acceleration of completion Date

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

17.2 No bonus for early completion of the works shall be paid to the contractor by the employer.

18. Management Meetings

18.1 A contract management meeting shall be held monthly and attended by the project manager and the contractor. Its business shall be to review the plans for the remaining work and to deal with matters raised in accordance with the early warning procedure. The project manager shall record the minutes of management meetings and provide copies of the same to those attending the meeting and the employer. The responsibility of the parties for actions to be taken shall be decided by the project manager either at the management meeting or after the management meeting in writing to all who attended the meeting.

19. Early Warning

19.1 The contractor shall warn the project manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work increase the contract price or delay the completion of the works. The project manager may require the contractor to provide an estimate of the expected effect of the future event or circumstances on the contract price and completion date. The estimate shall be provided by the contractor as soon as reasonably possible.

19.2 The contractor shall cooperate with the project manager in making and considering proposals on how the effect of such an event or circumstances can be avoided or reduced by anyone involved in the work and in carrying out any resulting instructions of the project manager.

20. Defects

20.1 The project manager shall inspect the contractor's work and notify the contractor of any defects that are found. Such inspections shall not affect the contractor's responsibilities. The project manager may instruct the contractor to search for a defect and to uncover and test any work that the project manager considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the contractor, however, if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the contract price.

20.2 The project manager shall give notice to the contractor of any defects before end of defects liability period, which begins at completion, and is defined in the Appendix of the contract. The defects liability period shall be extended for as long as defects remain to be corrected.

20.3 Every time notice of a defect is given, the contractor shall correct the notified within the length of time specified by the project manager's notice. If the contractor has not corrected a defect within the time specified in the project managers notice, the project manager will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the contract price

21. Bills Quantities

21.1 The bills of quantities shall contain items for the construction, installation, testing and commissioning of the work to be done by the contractor. The contractor will be paid for the quantity of the work done at the rate in the bills of quantities for each item.

21.2 If the final quantity of the work done differs from the quantities in the bills of quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the initial contract price, the project manager shall adjust the rate to allow for the change.

21.3 If requested by the project manager, the contractor shall provide the project manager with a detailed cost breakdown on any rate in thrills of quantities.

22. Variations

22.1 All variations shall be included in updated programs produced by the contractor.

22.2 The contractor shall provide the project manager with a quotation for carrying out the variations when requested to do so. The project manager shall assess the quotation, which shall be given within seven days of the request or within any longer period as may be stated by the project manager any before the variation is ordered.

22.3 If the work in the variation corresponds within an item description in the Bills of quantities and if in the opinion of the project manager, the quantity of work is not above the limit stated in clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the bills of quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the variations does not correspond with items in the bills of quantities, the quotation by the contractor shall be in the form of new rates for the relevant items of work.

- 22.4 If the contractor's quotation is unreasonable, the project manager may order variation and make a change to the contract price, which shall be based on the project managers own forecast of the effects of the variations on the contractors costs.
- 22.5 If the project manager decides that the urgency of varying the work prevent a quotation being given and considered without delaying the work, no quotation shall be given and the variation shall be treated as a compensation event
- 22.6 The contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 22.7 When the program is updated, the contractor shall provide the project manager with an updated cash flow forecast.

23. Payment Certificates, Currency of payments and Advance Payment

- 23.1 The contractor shall submit to the project manager monthly applications for payment giving sufficient details of the work done and materials on site and the amounts which the contractor considers himself to be entitled to. The project manager shall check the monthly application and certify the amount to be paid to the contractor within 14 day. The value of work executed and payable shall be determined by the project manager.
- 23.2 The value of work executed shall compromise the value of the quantities of the items in the bills of quantities completed; materials delivered on site, variations and compensation events. Such materials delivered on site, variations and compensation events. Such materials shall become the property of the employer once the employer has paid the contractor for their value. Thereafter they shall not be removed from site without the project managers instructions expect for use upon the works
- 23.3 Payments shall be adjusted for deductions for retention. The employer shall pay the contractor the amounts certified by the project manager within 30days of the date of issue of each certificate. If the employer makes a late payment, the contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.

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

23.5 The contract price shall be stated in Kenya shillings. All payments to the contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the contract agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services. The employer and the project manager shall be notified promptly by the contractor for any changes in the expected foreign currency requirement of the contractor during the execution of the works as indicated in the schedule of foreign currency requirements and the foreign and local currency portions of the balance of the contract price shall then be amended by agreement between Employer and the contractor in order to reflect appropriately such changes.

23.6 In the event that an advance payment is granted, the following shall apply:

a) One signature of the contract, the contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 10% (ten percent) of the original amount of the contract. The advance shall not be subject to retention money

b) No advance payment may be made before the contractor has submitted proof of the establishment or deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.

c) Reimbursement of the lump sum advance shall be made by deductions from the interim payments and where applicable from the balance owing to the contractor. Reimbursement shall begin when the sum due under the contract reaches 20% of the original amount of the contract.

d) It shall have been completed by the time 80% of this amount is reached
The amount to be repaid by way of successive deductions shall be calculated by means of the formula:

Where:

$$R = A(x^1 - x^{11})$$

80-20

R = the amount to be Reimbursement

A = the amount of the advance which has been granted.

X¹ = the amount of proposed cumulative payment as a percentage of the original amount of the contract. This figure will exceed 20% but not exceed 80%

X¹¹ = the amount of the previous cumulative payment as a percentage of the original amount of the contract. This figure will be below 80% but not less than 20%

e) With each Reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.

24. Compensation Events

24.1 The following issues shall constitute compensation events:

- a) The employer does not give access to a part of the site by the site possession date stated in the appendix to conditions of contract.
- b) The employer modifies the list of other the list of other contractors, etc in a way that affects the work of the contractor under the contract.
- c) The project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the works on time.
- d) The project manager instructs the contractor to uncover or to carry out additional tests upon the work, which is then found to have no defects
- e) The project Manager unreasonably does not approve a subcontract to be let.

- f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the letter of acceptance from the information issued to tenders (including the site investigations reports), from information available publicly and from a visual inspection of the site.
 - g) The project manager gives instructions for dealing with an unforeseen condition, caused by the employer or additional work required for safety or other reasons.\
 - h) Other contractors, public authorities, utilities, or the employer does not work within the dates and other constraints stated in the contract, and they cause delay or extra cost to the contractor.
 - i) The effects on the contractor of any of the Employers risk
 - j) The project Manager unreasonably delays issuing a certificate of completion.
 - k) Other compensation events described in the contract or determined by the project manager shall apply.
- 24.2 If a compensation event would cause additional cost or would prevent the work being completed before the intended completion date, the contract price shall be increased and or the intended completion date shall be extended. The project manager shall decide whether and how much the contract price shall be increased and whether and by how much the intended completion date shall be extended
- 24.3 As soon as information demonstrating the effect of each compensation event upon the contractors forecast cost had been provided by the contractor, it shall be adjusted accordingly. If the contractors forecast are deemed unreasonably, the project manager shall adjust the contract price based on the project managers own forecast. The project manager will assume that the contractor will react competently and promptly to the event.
- 24.4 The contractor shall not be entitled to compensation to the extent that the employer's interests are adversely affected by the contractor not having given early warning or not having co-operated with the project manager.
- 24.5 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to conditions of contract.
- 24.6 The contractor shall give written notice to the project manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

Providing always that should the event giving rise to the claim of continuing affect, the contractor shall submit an interim within the said thirty days and a final claim within thirty days of the end of the event giving rise to the claim

25. Price Adjustment

- 25.1 The project manager shall adjust the contract price if taxes, duties and other levies changed between the date 30 days before the submission of tenders for the contract and the date of completion. The adjustment shall be the change in the amount of tax payable by the contractor.
- 25.2 The contractor price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the contractor of materials to be specifically imported (by express provisions in the contract bills of quantities or specifications) for permanent incorporation in the works. Unless otherwise stated in the contract, if at any time during the period of the contract exchange rates shall be varied and this shall affect the cost to the contractor of such materials, then the project manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the contract price, as the case may be.
- 25.3 Unless otherwise stated in the contract, the contract price shall be deemed to have been calculated in the manner set out below and in sub clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified there under;
- i) The prices contained in the contract bills of quantities shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building council of Kenya (J.B.C) and set out in the schedule of basis rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the contractor in his pricing shall be attached in the appendix to conditions of contract.
 - ii) Upon J.B.C determined that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the contract price shall be increased or decreased by the amount assessed by the project manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C and applied to the quantum of labour incorporated within the amount of work remaining to be executed at the date of publication of such increase or decrease.

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

25.4 The prices contained in the contract bills of quantities shall be deemed to be based upon the basis prices of materials to be permanently incorporated in the works as determined by the J.B.C and set out in the schedule of basic rates issued 30 days before date for submission of tenders. A copy of the schedule used by the contractor in his pricing shall be attached in the Appendix to conditions of contract.

25.5 Upon the J.B.C determining that any of the said basic prices are increased or decreased then the contract price shall be increased or decreased by the amount to be assessed by the project manager based issued 30 days before the date for submission of tenders and the rate published by the J.B.C and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 23 of these conditions issued before the date of publication of such increase or decrease.

25.6 No adjustment shall be made in respect of changes in basic prices of materials which occur after the date for completion except during such other period as may be granted as an extension of time under clause 17.0 of these conditions.

25.7 The provisions of sub-clause 25.1 to 25.2 herein shall not apply in respect of any materials included in the schedule of basis rates.

26. Retention

26.1 The employer shall retain from each payment due to the contractor the proportion stated in the Appendix to conditions of contract until completion of the whole of the works. On the completion of the whole of the works, half the total amount retained shall be repaid to the contractor and the remaining half when the defects liability period has passed and the project Manager has certified that all defects notified to the contractor before the end of this period have been corrected.

27. Liquidated Damages

27.1 The contractor shall pay liquidated damages to the employer at the rate stated in the Appendix to conditions of contract for each day that the actual completion date is later than the intended completion date.

The employer may deduct liquidated damages from payments due to the Contractor.

Payment of liquidated damages shall not alter the Contractors liabilities.

27.2 If the intended Completion Date is extended after liquidated damages have been paid, the project manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The date of payment to the date of repayment, at the rate specified in Clause 23.30

28. Securities

28.1 The Performance Security shall be provided to the employer no later than the date specified in the later of acceptance and shall be issued in an amount and form and by a reputable bank acceptable to the employer, and dominated in Kenya shillings. The performance security shall be valid until a date 30 days beyond the date of issue of the certificate of completion.

29. Day works

29.1 If applicable, the day works rates in the Contractors tender shall be used for small additional amounts of Work only when the Project manager has given the written instructions in advance for additional work to be paid for in that way.

29.2 All work to be paid for as Day works shall be recorded by the contractor on Forms approved by the Project Manager. Each completed form shall be verified and signed by the project manager within two days of the work being done.

29.3 The Contractor shall be paid for Day works subject to obtaining signed day work Forms

30. Liability and Insurance

30.1 From the start date until the defects correction certificate has been issued, the following are employers 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 unavoidable result of the works, or

- (II) Negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the contractor.
- b) The risk of damage to the Works, Plant, Materials and equipment to the extent that it is due to a fault of the employer or in employers design or due to war or radioactive contamination directly affecting the place where the Works are being executed.

- 30.2 From the Completion Date until the Defects Correction Certificate has been issued, to risk of loss of or damage to the works, Plant and materials is the Employer's risk except loss or damage due to;
- (a) A defect which existed on or before the Completion Date.
 - (b) An event occurring before the Completion Date, which was not itself the Employers risk
 - (c) The activities of the Contractor on the Site after the Completion Date.

- 30.3 From the start Date until the defects correction certificate has been issued, the risks of personal injury, death and loss of or damage to property(including, without limitation, the works, Plant, Materials and Equipment) which are not Employers risk are Contractor's risks.

The contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start date to the end of the defects liability period, in the amounts stated in the appendix to conditions of contract for the following events;

- a) loss of or damage to the works, plant and materials
- b) loss of or damage of equipments
- c) loss of or damage of property (except the works, plant, materials and equipment) in connection with the contract and
- d) Personal injury or death.

- 30.4 Policies and certificates for insurance shall be delivered by the contractor to the Project Manager for the Project manager's approval before the Start date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.

- 30.5 If the contractor does not provide any of the policies and certificates required, the employer may affect the insurance which the Contractor should have provided and recover the premiums from payments otherwise due to the contractor or if no payment is due, the payment of the premiums shall be a debt due.

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

31. Completion and taking over

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

32. Final Account

32.1 The contractor shall issue the project Manager with detailed account of the total amount that the contractor considers payable to him by the Employer under the Contract before the end of the defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the contractor within 30 days of receiving the Contractor's account if it is safe and complete. If it is not, the Project Manager shall issue within 30 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the [project Manager shall decide on the amount payable to the contractor and issue a Payment Certificate. The employer shall pay the Contractor the amount due in the final certificate within 60 days.

33. Termination

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

- a) The contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage of work is shown on the current program 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 30 days.
- c) The Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation.
- d) A payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.

- e) The Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager.
- f) The contractor does not maintain a security, which is required.

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

33.3 Notwithstanding the above, the employer may terminate the contract for convenience.

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

34. Payment Upon termination.

34.1 if the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and materials ordered and delivered to site up to the date of the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the employer exceeds any payment due to the contractor, the difference shall be a debt payable by the Contractor.

34.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of contract by the employer, the project Manager shall issue a certificate for the value of work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractors costs of protecting and securing the works.

34.3 The Employer may employ and pay other persons to carry out and complete the works and to rectify any defects and may enter upon the Works and use all materials on the site, plant, equipment and temporary works.

34.4 The Contractor shall, during the execution or after the completion of the Works under this clause remove from the site as and when required, within such reasonable time as the Project Manager may in writing specify, and temporary buildings, plant, machinery.

Appliances goods or materials belonging to or hired by him, and in default the Employer may (without being responsible for any lose or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor. Until after completion of the works under this clause the Employer shall not be bound by any other provision of this contract to make any payment to the Contractor, but upon such completions aforesaid and the verification within a reasonable time of the accounts therefore the project manager shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid by the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this contract, the difference shall be the debt payable to the Employer by the Contractor, and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

35. Release from Performance

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

36. Corrupt gifts and payments of commission

The Contractor shall not;

Offer or give or agree to give to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or for borne to do any act in relation to the obtaining or execution of this or any other Contract for the Employer or for showing or for bearing to show favor or disfavor to any person in relation to this or any other contract for the Employer.

- a) Enter into this or any other contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment therefore have been disclosed in writing to the Employer.

Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf(whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the public procurement Regulations issued under the Exchequer and Audit Act Cap 412 of the Laws of Kenya.

37. Settlement of Disputes

37.3 In case any dispute or difference shall arise between the Employer or the Project Manager on his behalf and the contractor, either during the progress or after the completion or termination of the Works, such as disputes shall be notified in writing by either party to the other with a request to submit it to arbitration and to conquer in the appointment of an Arbitrator within 30 days of notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to conquer in the appointment of an arbitrator, the Arbitrator shall be appointed by the chairman or vice-chairman of any of the following professional Institutions;

- i. Architectural Association of Kenya
- ii. Institute of Quantity Surveyors of Kenya
- iii. Association of Consulting Engineers of Kenya
- iv. Chattered Institute of Arbitrators(Kenya branch)
- v. Institution of Engineers of Kenya

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

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

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

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

- 37.7 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the works or termination of the Contract by either party:
- 37.7.1 The appointment of a replacement Project Manager upon the said person ceasing act.
 - 37.7.2 Whether or not the issue of an instruction by the Project manager is empowered by these conditions.
 - 37.7.3 Whether or not a certificate has been improperly withheld or is not in accordance with these conditions
 - 37.7.4 Any dispute or difference arising in respect of war risks or war damage.
- 37.8 All other matters shall only be referred to arbitration after the completion or alleged completion of the works or termination or alleged termination of the Contract, unless the Employer and the Contractor agree otherwise in writing.
- 37.9 The arbitrator shall, without prejudice to the generality of his powers, have the powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which out to have been the subject of or included in any certificate.
- 37.10 The Arbitrator shall, without prejudice to the generality of his powers, Have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 37.11 The award of such Arbitrator shall be final and binding upon the parties.

SECTION IV – APPENDIX TO CONDITIONS OF CONTRACT

THE EMPLOYER IS:

Name : COUNTY GOVERNMENT OF VIHIGA
Address : P.O. BOX 344-50300, MARAGOLI
Name of authorized representative : COUNTY SECRETARY

Telephone

Facsimile

THE PROJECT MANAGER IS:

Name:

Address :

Telephone :

Facsimile :

The name (and identification number) of the Contract is **PROPOSED CONSTRUCTION OF A SIX STOREY 160 BED PLAZA AT VIHIGA COUNTY REFERRAL HOSPITAL.**

The works consists of **ERECTION AND COMPLETION OF THE PLAZA, INCLUDING MECHANICAL WORKS.**

The start date shall be **AGREED WITH THE PROJECT MANAGER.**

The intended completion date for the whole of the works shall be **100 WEEKS** from the start date.

The following documents also form part of the Contract **“AS LISTED IN CLAUSE 2.3 OF THE CONDITIONS OF CONTRACT”.**

The Contractor shall submit a program for the works within **7 days** of delivery of the Letter of acceptance.

The site possession date shall be as **AGREED WITH THE PROJECT MANAGER.**

The site is located at **VIHIGA COUNTY REFERRAL HOSPITAL** and is defined in drawing **NOS TO BE PROVIDED.**

The defects liability period is **6 MONTHS.**

Other contractors, utilities etc to be engaged by the employer on site may include those for the execution of:

- 1. MECHANICAL, ENGINEERING SERVICES**
- 2. ELECTRICAL WORKS**

The minimum insurance covers shall be:

1. The minimum cover for insurance of the works and of Plant and materials in respect of the contractor's faulty design in
.....
2. The minimum cover for loss or damage to Equipment is
.....
3. The minimum for insurance of other property is **FIVE MILLION KENYA SHILLINGS**
4. The minimum cover for personal injury or death insurance
 - For the contractor's employees is **AS PER THE LAWS APPLICABLE**
 - And for other people is **ONE MILLION KENYA SHILLINGS.**

The following events shall also be compensation events:

- 1. NONE (ONLY THOSE DEFINED IN CLAUSE 24 OF THE CONDITIONS OF CONTRACT)**
2.
3.
4.

The period between program update is 7 days

The amount to be withheld for late submission of an update program if's FULL CERTIFICATE.

The proportion of payment retained is ten (10%) percent.

The price adjustment clause shall not apply.

The liquidated damages for the whole of the works is Kshs. 10,000 per week.

The performance security shall be for the following minimum amounts equivalent as a percentage of the contract price 5%.

The rate for calculation of foreign currency payment is **AS PER THE PREVAILING EXCHANGE RATE**.

The schedule of basic rates used in pricing by the contractor is as attached (contractor not to attach).

Advance payment **SHALL NOT** be granted.

ADD CLAUSE 38.0

38.0 Alternative Dispute Resolution

38.1 In pursuant to clause 37 of these conditions of contract, it shall be a condition of this contract that no dispute shall be referred to arbitration unless and until the matter has been dealt with through Alternative Dispute Resolution (ADR) Mechanism.

38.2 The person or persons to conduct the Alternative Resolution shall be agreed upon between the parties.

38.3 The Alternative Dispute Resolution shall involve reconciliation, mediation or adjudication.

**PARTICULARS OF INSERTIONS TO BE MADE IN APPENDIX TO
CONTRACT AGREEMENT**

The following are the insertions to be made in the appendix to the contract agreement

Period of final measurement 3 moths from practical completion

Defects liability period 6 months from practical completion

Date for possession To be agreed with the client

Date for completion **100 weeks** from date of possession

Liquidated and ascertained At the rate of **Kshs. 30,000 per**

Damages **Week** or part thereof

Prime cost sums for which the

The contractor desires to tender

Period of interim certificate Monthly

Period of honouring certificate 30days

Percentage of certified Value retained 10%

Limit of retention fund 10%

SECTION VI – STANDARD FORMS

- (a) Form of Invitation for tenders
- (b) Form of Tender
- (c) Letter of Acceptance
- (d) Form of Agreement
- (e) Form of Tender Security
- (f) Performance Bank Guarantee
- (g) Bank Guarantee for Advance Payment
- (h) Qualification Information
- (i) Tender Questionnaire
- (j) Confidential Business Questionnaire
- (k) Statement of Foreign Currency Requirement
- (l) Details of Sub-contractors

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 security in the form and amount specified in the tendering documents, and must be delivered to _____.

[Address and location]

At of before _____ [time and date]. Tenderers will be opened immediately thereafter, in the presence of tenderer's representatives who choose to attend.

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

Yours faithfully

_____ Authorized signature

_____ *[Name and Title]*

FORM OF TENDER

Date _____

Tender No. _____

To: _____

[Name and address of procuring entity]

Gentlemen and/or Ladies:

1. In accordance with the conditions of contract, specifications, drawings and bills of quantities for the execution of the above named works, we, the undersigned offer to construct, install 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 reasonably possible after the receipt of the Project Manager'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 tender for an on behalf of _____

Witness Name _____

Address _____

Signature _____ Date _____

LETTER OF ACCEPTANCE

[Letterhead paper of the employer]

_____ [date]

To: _____

[Name of the contractor]

[Address of the contractor]

Dear Sir,

This is to notify you that your tender dated _____ for the execution of _____ *[name of the contract and identification number as given in the tender documents]* for the contract price of Kshs. _____ *[amount in figures]* Kenya Shillings _____ *[amount in words]* in accordance with the instructions to tenderers is hereby accepted.

You are hereby instructed to proceed with the execution of the said works in accordance with the contract documents.

Authorized signature:

Name and title of signatory:

Attachment: Agreement

CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 20 _____
between [*name of Procurement entity*]
of [*Country of Procurement entity*] (hereinafter called “the
Procuring entity) of the one part and [*name of
tenderer*] of [*city and country of tenderer*] (hereinafter called “the
tenderer”) of the other part;

WHEREAS the Procuring entity invited tenders for certain goods] and has accepted a
tender by the tenderer for the supply of those goods in the sum of
..... [*contract price in words and figures*]
(hereinafter called “the Contract Price).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are
respectively assigned to them in the Conditions of Contract referred to:
2. The following documents shall be deemed to form and be read and construed as
part of this Agreement viz:
 - (a) The Tender Form and the Priced BQs by the tenderer
 - (b) The Schedule of Requirements
 - (c) the Technical Specifications
 - (d) The General Conditions of Contract
 - (e) The Special Conditions of contract; and
 - (f) The Procuring entity’s Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the
tenderer as hereinafter mentioned, the tender hereby covenants with the Procuring entity
to provide the goods and to remedy defects therein in conformity in all respects with the
provisions of the Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the
provisions of the goods and the remedying of defects therein, the Contract Price or such
other sum as may become payable under the provisions of the Contract at the times and in
the manner prescribed by the contract.

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

Under common seal of.....Date

Signed, sealed, delivered by _____ (Date)____ **(for the client)**

Signed, sealed, delivered by _____ the Signature _____ Date _____

(for the tenderer)

in the presence of: Name _____

Address _____

Signature _____ Date _____

TENDER SECURITY FORM

Whereas [name of the tenderer]
(hereinafter called "the tenderer") has submitted its tender dated
[date of submission of tender] for the supply, installation and
commissioning of [name and/or description of the
equipment] (hereinafter called "the Tender")
..... KNOW ALL PEOPLE by these
presents that WE of having
our registered office at (hereinafter called "the Bank"),
are bound unto [name of Procuring entity] (hereinafter
called "the Procuring entity") in the sum of for which
payment well and truly to be made to the said Procuring entity, the Bank
binds itself, its successors, and assigns by these presents. Sealed with
the Common Seal of the said Bank this _____ day of _____
_____ 20 _____.

THE CONDITIONS of this obligation are:-

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

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

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

[signature of the bank] _____ Date _____

Witness _____ Seal _____

BANK GUARANTEE FOR ADVANCE PAYMENT FORM

To
[name of Procuring entity]

[name of tender]

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment, [name and address of tenderer](hereinafter called “the tenderer”) shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of [amount of guarantee in figures and words].

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

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

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

Yours truly,

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

PERFORMANCE SECURITY FORM

To
[*name of Procuring entity*]

WHEREAS [*name of tenderer*]
(hereinafter called “the tenderer”) has undertaken , in pursuance of Contract
No. _____ [*reference number of the contract*] dated _____
20 _____ to supply
[*description of goods*] (hereinafter called “the Contract”).

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

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to
you, on behalf of the tenderer, up to a total of
[*amount of the guarantee in words and figure*] and we undertake to pay you,
upon your first written demand declaring the tenderer to be in default under
the Contract and without cavil or argument, any sum or sums within the
limits of [*amount of guarantee*] as aforesaid, without
you needing to prove or to show grounds or reasons for your demand or the
sum specified therein.

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

Signed and seal of the Guarantors

[*Name of bank or financial institution*]

[*Address*]

[*Date*]

BANK GUARANTEE FOR ADVANCE PAYMENT FORM

To
[name of Procuring entity]

[name of tender]

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment, [name and address of tenderer](hereinafter called “the tenderer”) shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of [amount of guarantee in figures and words].

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

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

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

Yours truly,

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

QUALIFICATION INFORMATION

1. Individual tenderers or individual member 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.

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

1.4 Major items of contractor's equipment's proposed for carrying out the works.
List all information requested below.

Item of equipment	Description, make and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom) or to be purchased(form whom)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

1.5 Qualifications and experience of key personnel proposed for administration and execution of the contract. Attach biographical data

Position	Name	Years of experience (General	Years of experience in proposed position
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

1.6 Financial reports for the past 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

2.4 The information listed in 1.1 – 1.10 above shall be provided for each partner of the joint venture.

- 2.5 The information required in 1.11 above shall be provided for the joint venture
- 2.6 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture.
- 2.7 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 ventures 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/Fax Address of Tenderer

.....

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

.....

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

.....

.....

Signature of Tenderer

Make a copy and deliver to: **The County Secretary,
County Government of Vihiga,
P.O. Box 344-50300,
Maragoli .**

CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

Part 1 – General:

Business Name

Location of business premises

Plot No..... Street/Road

Postal Address Tel No. Fax E mail

Nature of Business

Registration Certificate No.

Maximum value of business which you can handle at any one time – Kshs.

Name of your bankers Branch

	Part 2 (a) – Sole Proprietor																								
	Your name in full Age																								
	Nationality Country of origin																								
	<ul style="list-style-type: none"> • Citizenship details • 																								
	Part 2 (b) Partnership																								
	Given details of partners as follows:																								
	<table border="0"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship Details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship Details	Shares	1.	2.	3.	4.				
Name	Nationality	Citizenship Details	Shares																						
1.																						
2.																						
3.																						
4.																						
	Part 2 (c) – Registered Company																								
	Private or Public																								
	State the nominal and issued capital of company-																								
	Nominal Kshs.																								
	Issued Kshs.																								
	Given details of all directors as follows																								
	<table border="0"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship Details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>5.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship Details	Shares	1.....	2.....	3.....	4.....	5.....
Name	Nationality	Citizenship Details	Shares																						
1.....																						
2.....																						
3.....																						
4.....																						
5.....																						
	Date Signature of Candidate																								

- If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

STATEMENT OF FOREIGN CURRENCY REQUIREMENTS

(See Clause 23) of the conditions of contract)

In the event of our tender for the execution of _____
_____ (name of the contract) being
accepted, we would require in accordance with clause 21 of the conditions of
contract, which is attached hereto, the following percentage:
(Figures) _____ (Words) _____ of
the contract sum, (less fluctuations) to be paid in foreign currency.

Currency in which foreign exchange element is required:

Date: The _____ day of _____ 20 _____
Enter 0% (zero percent) if no payment will be made in foreign currency.

Maximum foreign currency requirements shall be _____
(percent) of the contract sum, less fluctuations

(Signature of tenderer)

DETAILS OF SUB-CONTRACTORS

If the tenderer wishes to sublet any portion 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 requirements may invalidate the tender.

1. Portion of works to be sublet _____
 - i) Full names 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 names 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

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

MANUFACTURER’S AUTHORIZATION FORM

To *[name of the Procuring entity]*

WHEREAS[*name of the manufacturer*] who are established and reputable manufacturers of [*name and/or description of the goods*] having factories at [*address of factory*] do hereby authorize [*name and address of Agent*] to submit a tender, and subsequently negotiate and sign the Contract with you against tender No. [*reference of the Tender*] for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

[signature for and on behalf of manufacturer]

Note: This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent.

8.9 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*) of
.....dated the...day of20.....in the matter of Tender No.....of
.....20...

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

INSTRUCTIONS TO TENDERERS (*GENERAL*)

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SECTION I INVITATION TO TENDER

Date:

TENDER Ref. No. TENDER No.

TENDER NAME : *PROPOSED CONSTRUCTION OF A SIX STOREY 160 BED PALZA AT VIHIGA COUNTY HOSPITAL*

- 1.1 The Vihiga County Government invites sealed bids from eligible candidates for *Proposed construction of a six storey 160 bed plaza at Vihiga County Referral Hospital.*
- 1.2 Interested eligible candidates may obtain further information from and inspect the tender documents at The sub county Offices along Kakamega -Kisumu road during normal working hours.
- 1.3 A complete set of tender documents may be obtained by interested candidates upon payment of non-refundable fees of Kshs. 3,000 in cash or Bankers cheque payable to The county cash office,
- 1.4 Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box at The Town Hall or be addressed to

***The County Secretary,
Vihiga County Government.
P.O.BOX 344
MARAGOLI.***

so as to be received on or beforeat 1200hr

- 1.5 Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for (120) days from the closing date of the tender.
- 1.6 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at the boardroom – main Governor’s Office complex.

SECTION II - INSTRUCTIONS TO TENDERERS

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SECTION II - INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.
- 2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not 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 goods under this Invitation for tenders.
- 2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2.2 Eligible Goods

- 2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components
- 2.2.3 The origin of goods is distinct from the nationality of the tenderer.

2.3 Cost of Tendering

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

2.3.2 The price to be charged for the tender document shall not exceed Kshs.5,000/=

2.3.3 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

2.4. The Tender Document

2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Tenderers

- (i) Invitation to Tender
- (ii) Instructions to tenderers
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Manufacturer's Authorization Form
- (xiii) Confidential Business Questionnaire

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

2.5 Clarification of Documents

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by post at the entity's address indicated in the Invitation to Tender. The Procuring

entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the Source of inquiry) will be sent to all prospective tenderers that have received the tender document.

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

2.6 **Amendment of Documents**

2.6.1 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.

2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them.

2.6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

2.7 **Language of Tender**

2.7.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchange by the tenderer and the Procuring entity, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

2.8 Documents Comprising of Tender

2.8.1 The tender prepared by the tenderers shall comprise the following components

- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
- (b) documentary evidence established in accordance with paragraph 2.1 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) documentary evidence established in accordance with paragraph 2.2 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) tender security furnished in accordance with paragraph 2.14

2.9 Tender Forms

2.9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

2.10 Tender Prices

2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract

2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.

2.10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22

2.10.4 The validity period of the tender shall be 60 days from the date of opening of the tender.

2.11 Tender Currencies

2.11.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the Appendix to Instructions to Tenderers.

2.12 Tenderers Eligibility and Qualifications

2.12.1 Pursuant to paragraph 2.1. The tenderer shall furnish, as part of its Tender documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1

2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to the Procuring entity's satisfaction;

- (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.
- (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

2.13 Goods Eligibility and Conformity to Tender Documents

2.13.1 Pursuant to paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract

2.13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the

goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

2.13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristic of the goods;
- (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Procuring entity; and
- (c) a clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

2.14 Tender Security

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.

2.14.2 The tender security shall be in the amount of 0.5 – 2 per cent of the tender price.

2.14.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7

- 2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.
- 2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.22
- 2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.
- 2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28
- 2.14.8 The tender security may be forfeited:
- (a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form;
or
 - (b) in the case of a successful tenderer, if the tenderer fails:
 - (i) to sign the contract in accordance with paragraph 2.27
or
 - (ii) to furnish performance security in accordance with paragraph 2.28

2.15 **Validity of Tenders**

- 2.15.1 Tenders shall remain valid for 90 days or as specified in the Invitation to Tender after the date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.
- 2.15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its

tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

2.16 Format and Signing of Tender

2.16.1 The Procuring entity shall prepare two copies of the tender, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER,” as appropriate. In the event of any discrepancy between them, the original shall govern.

2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

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

2.17 Sealing and Marking of Tenders

2.17.1 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.

2.17.2 The inner and outer envelopes shall:

(a) be addressed to the Procuring entity at the address given in the Invitation to Tender:

(b) bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” at 1200hrs

2.17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

2.18 Deadline for Submission of Tenders

2.18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 not later than at 1200hrs.

2.18.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended

2.19 Modification and Withdrawal of Tenders

2.19.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring Entity prior to the deadline prescribed for submission of tenders.

2.19.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

2.19.3 No tender may be modified after the deadline for submission of tenders.

2.19.4 No tender may be withdrawn 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 may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.14.7

2.19.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.19.6 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.20 Opening of Tenders

2.20.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at 1200hrs onand in the location specified in the Invitation to Tender.

The tenderers' representatives who are present shall sign a register evidencing their attendance.

2.20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3 The Procuring entity will prepare minutes of the tender opening.

2.21 Clarification of Tenders

2.21.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

2.21.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.22 Preliminary Examination

2.22.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

2.22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantify, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail

2.22.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.22.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

2.23 Conversion to Single Currency

2.23.1 Where other currencies are used, the procuring entity will convert these currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

2.24 Evaluation and Comparison of Tenders

2.24.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22

2.24.2 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

2.24.3 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

2.25 Preference

2.25.1 Preference where allowed in the evaluation of tenders shall not exceed 15%

2.26 Contacting the Procuring entity

2.26.1 Subject to paragraph 2.21 no tenderer shall contact the Procuring entity on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

2.26.2 Any effort by a tenderer to influence the Procuring entity in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

2.27 Award of Contract

(a) Post-qualification

2.27.1 In the absence of pre-qualification, 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.

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.

2.27.3 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.

(b) Award Criteria

2.27.4 The Procuring entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

(c) Procuring entity's Right to Vary quantities

2.27.5 The Procuring entity reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in

the Schedule of requirements without any change in unit price or other terms and conditions

(d) Procuring entity's Right to Accept or Reject Any or All Tenders

2.27.6 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action

2.28 Notification of Award

2.28.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.

2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties

2.28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

2.29 Signing of Contract

2.29.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

2.29.2 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.29.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

2.30 Performance Security

2.30.1 Within Thirty (30) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance

security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 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 Candidate or call for new tenders.

2.31 Corrupt or Fraudulent Practices

2.31.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;

(i) “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

(ii) “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 tenderer (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;

2.31.2 The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

2.31.3 Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

SECTION III: GENERAL CONDITIONS OF CONTRACT

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SECTION III - GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

3.1.1 In this Contract, the following terms shall be interpreted as indicated:-

(b) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

(c) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations

(d) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.

(e) “The Procuring entity” means the organization purchasing the Goods under this Contract.

(f) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

3.2 Application

3.2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment

3.3 Country of Origin

3.3.1 For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.

3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

3.4 Standards

3.4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

3.5 Use of Contract Documents and Information

- 3.5.1 The tenderer shall not, without the Procuring entity's prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.
- 3.5.2 The tenderer shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above
- 3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the Procuring entity

3.6 Patent Rights

- 3.6.1 The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Procuring entity's country

3.7 Performance Security

- 3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.
- 3.7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.

3.7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

3.8 Inspection and Tests

3.8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.

3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.

3.8.4 The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.

3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.9 Packing

3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

3.10 Delivery and Documents

3.10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

3.11 Insurance

3.11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

3.12 Payment

3.12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract

3.12.2 Payments shall be made promptly by the Procuring entity as specified in the contract

3.13 Prices

3.13.1 Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

3.13.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

3.13.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

3.13.4 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.

3.14. Assignment

3.14.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent

3.15 Subcontracts

3.15.1 The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract

3.16 Termination for default

3.16.1 The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part

- (a) if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity
- (b) if the tenderer fails to perform any other obligation(s) under the Contract
- (c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

3.16.2 In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, equipment similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar goods.

3.17 Liquidated Damages

3.17.1. If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of

10% of the delayed goods. After this the tenderer may consider termination of the contract.

3.18 Resolution of Disputes

3.18.1 The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

3.18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

3.19 Language and Law

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

3.20 Force Majeure

3.20.1 The tenderer shall not be liable for forfeiture of its performance security or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

- 4.1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.
42. Special conditions of contract as relates to the GCC

REFERENCE GCC	OF	SPECIAL CONDITIONS OF CONTRACT
3.7.1		<i>Performance Guarantee - Bankers Cheque of 10% of Contract Sum</i>
3.12.1		<i>Payment - Cheque</i>
3.18.1		<i>Dispute resolution - Amicable</i>

SECTION V - TECHNICAL SPECIFICATIONS

5.1 General

- 5.1.1 These specifications describe the requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc for the products they intend to supply
- 5.1.2 Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.
- 5.1.3 All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The procuring entity reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
- 5.1.4 The tenderers are requested to present information along with their offers as follows:
- (i) Shortest possible delivery period of each product
 - (ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

PARTICULAR PRELIMINARIES

PARTICULAR PRELIMINARIES

ITEM	DESCRIPTION	KSHS	CTS
A	<p>PRICING ITEMS OF PRELIMINARIES</p> <p>Prices shall be inserted against items “preliminaries” in the tenderer’s priced bills of quantities. The contractor is advised to read understand all preliminary items.</p>		
B	<p>DESCRIPTION OF THE WORKS</p> <p>The works shall be carried out under this contract basically involve general repairs and reimbursements to various buildings.</p>		
C	<p>MEASUREMENTS</p> <p>In the event of any discrepancies arising between the bills of quantities and the actual work, the site measurements shall generally take precedence. However, such discrepancies between any contract documents shall immediately be referred to the project manager in accordance with clause 22 of the conditions of contract. The discrepancies shall then be treated as a variation and be dealt with in accordance with clause 22 of the said of the said conditions.</p>		
D	<p>LOCATION OF SITE</p> <p>The site of the proposed works is within Vihiga County Referral Hospital. The contractor is advised to visit the site to familiarize with the nature and position of the site. No claims arising from the contractor’s failure to do so will be entertained.</p>		
	<p>Carried to collection</p>		

PARTICULAR PRELIMINARIES

ITEM	DESCRIPTION	KSHS	CTS
A	<p>CLEARING AWAY</p> <p>The contractor shall remove all temporary works, rubbish, debris and surplus materials from the site as they accumulate and upon completion of the works, remove and clear away all plant, equipment, rubbish, unused works and stains and leave in a clean and tidy state to the reasonable satisfaction of the Project Manager.</p> <p>The whole of the works shall be delivered up clean, complete and in project condition in every respect to the satisfaction of the project manager.</p>		
B	<p>CLAIMS</p> <p>It shall be a condition of this contract that upon it becoming reasonably apparent to the contractor that he has incurred losses and/or expenses due to any of the contract conditions, or by any other reason whatsoever, he shall present such, claim or intent to claim notice to the project manager within the contract period. No claims shall be entertained upon the expiry of the said contract period.</p>		
C	<p>PAYMENTS</p> <p>The tenderer's attention is drawn to the fact that the government does not make advance payments but pays for work done and materials delivered to site: all in accordance with clause 23 of the conditions of contract agreement. In order to facilitate this, a list of the general component elements for the works is given at the summary page of these specifications and the tenderer is requested to break down his tender sum commensurate to the said elements.</p>		
D	<p>PREVENTION OF ACCIDENT, DAMAGE OR LOSS</p> <p>The contractor is notified that these works are to be carried out on a restricted site where the client is going on with other normal activities. The contractor is instructed to take reasonable care in the execution of the works as to prevent accidents, damage or loss and disruption of normal activities being carried out by client. The contractor shall allow in his rate any expense he deems necessary by taking such care within the site.</p>		
	Carried to collection		

PARTICULAR PRELIMINARIES

ITEM	DESCRIPTION	KSHS	CTS
A	<p>WORKING CONDITIONS</p> <p>The contractor shall allow in his rates for any interference that he may encounter in the course of execution of the works for the client may in some cases ask the contractor not to proceed with the works until some activities within the site are completed, as the college will be operating as usual during the course of the contract.</p>		
B	<p>CLAIMS</p> <p>Allow for providing, erecting, maintaining throughout the course of the contract and afterwards clearing away a signboard as designed, specified and approved by the project manager.</p>		
C	<p>LABOUR CLAIMS</p> <p>The contractor shall not be allowed to house labour on site. Allow for transporting workers to and from the site during the tenure of the contract.</p>		
D	<p>MATERIALS FROM DEMOLITIONS</p> <p>Any material arising from demolitions and not-re-used shall become the property of the government. The contractor shall allow in his rates the cost of transporting the demolished materials to the</p>		
E	<p>PRICING RATES</p> <p>The tenderer shall include for all costs in executing the whole of the works, including transport, replacing damaged items, fixing, all to comply with said conditions of Contract.</p>		
F	<p>TENDER VALIDITY</p> <p>Tenders shall remain valid for a period of One Hundred and Twenty (120) days from the date of tender opening, and not ninety (90) days. All tenderers are advised to note this amendment when filling the form of tender</p>		
	<p>Carried to collection</p>		

PARTICULAR PRELIMINARIES

ITEM	DESCRIPTION	KSHS	CTS
A	<p>SECURITY</p> <p>The contractor shall allow for providing adequate security for the works and the workers in the course of execution of this contract. N claim will be entertained from the contractor for not maintaining adequate security for both the works and workers.</p>		
B	<p>URGENCY OF THE WORKS</p> <p>The contractor is notified that these “works are urgent” and should be completed within the period stated in these particular preliminaries. The contractor shall allow in the rates for any costs he deems that he/she may incur by having to complete the works within the stipulated contract period.</p>		
C	<p>PAYMENT FOR MATERIALS ON SITE</p> <p>All materials for incorporation in the works must be stored on site before payment is effected, unless specifically exempted by the project manager. This is to include material of the contractor, nominated sub-contractors and nominated supplier.</p>		
D	<p>EXISTING SERVICES</p> <p>Prior to the commencement of any work, the contractor is to ascertain from the relevant authority the exact position, depths and level of all existing services in the area and shall make whatever provisions that may be required by authorities concerned for the support, maintenance and protection of such services.</p>		
	Carried to collection		

PARTICULAR PRELIMINARIES

ITEM	DESCRIPTION	KSHS	CTS
A	<p>PERFORMANCE BOND</p> <p>A bond of 5% of the contract sum will be required in accordance with clause 6.00 on award of contract of the instruction to tenderer's no. payment on account for the works executed will be made to the contractor until he has submitted the performance bond to the project manager duly signed, sealed and stamped from an approved bank.</p>		
B	<p>TENDER DOCUMENTS</p> <p>Tender documents are as listed in clause 2.1 of the instruction to tenderer's page STD 8.</p>		
C	<p>DELIVERY OF TENDER</p> <p>Tenders and all documents in connection therewith, as specified above must be delivered in the addressed envelope which should be properly sealed and deposited at the office as specified in the letter accompanying these documents or as indicated in the advertisement.</p> <p>Tenders will be opened at the time specified in the letter accompanying these tender documents or as indicated in the advertisement. Tenders delivered/ received later than the above time will not be opened.</p>		
D	<p>VALUE ADDED TAX</p> <p>The contractor's attention is drawn to the legal notice in the finance act part 3 section 21(b) operative from 1st September 1993 which requires payment of VAT on all contract. The tenderer is advised that in accordance with Government public notice No. 35 and 35 dated 11th September 2003 operational from 1st October 2003, withholding VAT will be levied against the contract sum by the employer and remitted to the commissioner of Tore be advised to include this tax in the grand summary page as indicated herein</p>		
	Carried to collection		

PARTICULAR PRELIMINARIES

ITEM	DESCRIPTION	KSHS	CTS
PARTICULARS OF INSERTIONS TO BE MADE IN APPENDIX TO CONTRACT AGREEMENT			
The following are the insertions to be made in the appendix to the contract agreement			
A	Period of final measurement 3 moths from practical completion		
B	Defects liability period 6 months from practical completion		
C	Date for possession To be agreed with the client		
D	Date for completion 100 weeks from date of possession		
E	Liquidated and ascertained Damages At the rate of Kshs. 30,000 per Week or part thereof		
F	Prime cost sums for which the Contractor desires to tender		
G	Period of interim certificate Monthly		
H	Period of honouring certificate 30days		
I	Percentage of certified Value retained 10%		
J	Limit of retention fund 10%		
Carried to collection			

PARTICULAR PRELIMINARIES

ITEM	DESCRIPTION	KSHS	CTS
	COLLECTION		
1	Brought forward from page PP/1		
2	Brought forward from page PP/2		
3	Brought forward from page PP/3		
4	Brought forward from page PP/4		
5	Brought forward from page PP/5		
6	Brought forward from page PP/6		
	Particular preliminaries carried to Preliminaries summary		

SPECIAL PRELIMINARIES

SPECIAL PRELIMINARIES

ITEM	DESCRIPTION	KSHS	
	<p><u>PROJECT MANAGERS EXPENSES</u></p>		
A	Allow a sum of Kenya Shillings Thirteen Million only for consultancy and supervision services for the Project Consultants.	13,000,000	00
B	Include a percentage sum for contractors cost and profit on A above (%)		
C	Allow a sum of Kenya Shillings Three Hundred Thousand only for Project Manager’s stationery, computer accessories and associated equipment for the project manager’s office as per the Architect’s directions.	300,000	00
D	Allow for a percentage sum for the contractor’s cost and profit on C above..... (%)		
E	Allow a sum of Kenya Shillings One million only for the County Engineer’s team general allowances, airtime and transport.	1,000,000	00
F	Allow for a percentage sum for the contractor’s cost and profit on E above..... (%)		
	Total carried to preliminaries Summary		

GENERAL PRELIMINARIES

ITEM	DESCRIPTION	AMOUNT
A	<p>GENERAL PRELIMINARIES</p> <p>PRICING OF ITEMS OF PRELIMINARIES AND PREAMBLE Prices will be inserted against each items of preliminaries in the contractor’s priced bills of quantities and specification.</p> <p>The contractor shall be deemed to have included in his prices or rates for the various items in the bills of quantities or specification for all costs involved in complying with all the requirements for the execution of the whole of the works in the Contract.</p>	
B	<p>ABBREVIATIONS Throughout these bills, units of measurements and terms are abbreviated and shall be interpreted as follows:</p> <p>C.M. Shall mean cubic metre S.M. Shall mean square metre L.M. Shall mean linear metre MM Shall mean milimetre Kg. Shall mean Kilogramme No. Shall mean Number Prs. Shall mean pairs B.S. Shall mean British Standard Specification</p> <p>Published by the British Standards Institution, 2 Park Street, London W.I, England.</p> <p>Ditto shall mean the whole of the preceding description except as qualified in the description in which it occurs. m.s. Shall mean measured separately a.b.d. Shall mean as before described</p>	
	Carried to collection	

ITEM	DESCRIPTION	AMOUNT
A	<p>EXCEPTION TO THE STANDARD METHOD OF MEASUREMENT</p> <p><i>Attendance:</i> Clause B19 (a) of the standard method of measurement is deleted and the following clause is substituted.</p> <p>Attendance on nominated sub-contractors shall be given as an item in each case shall be deemed to include: allowing use of standing scaffolding, mess rooms, sanitary accommodations and welfare facilities; provision of special scaffolding where necessary; providing space for office accommodation and for storage of plant and materials; providing light and water for their work: clearing away rubbish; unloading checking and hoisting; providing electric power and removing and replacing duct covers, pipe casing and the like necessary for the execution and testing of sub-contractor’s work and being responsible for the accuracy of the same.</p> <p><i>Fix only:</i></p> <p>“Fix only” shall mean take delivery at nearest railway station (Unless otherwise stated), pay all demurrage charges, load and transport to site where necessary, unload, store, unpack, assemble as necessary, distribute to position, hoist and fix only.</p>	
B	<p>EMPLOYER</p> <p>The “Employer” and “Government” is County Secretary, Vihiga County.</p>	
C	<p>PROJECT MANAGER</p> <p>The term “P.M” wherever used in these Bills of Quantities shall be deemed to imply the Project Manager as defined in condition 1 of the conditions of contract or such person or persons as may be duly authorized to represent him on behalf of the Government.</p>	
D	<p>ARCHITECT</p> <p>The term “Architect” shall be deemed to mean “The project Manager” as defined above whose address unless otherwise notified is</p> <p>.....</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>QUANTITY SURVEYOR The term “Quantity Surveyor” shall be deemed to mean “The project Manager” as defined above whose address unless otherwise notified is</p>	
B	<p>ELECTRICAL ENGINEER The term “Electrical Engineer” shall be deemed to mean “The project Manager as defined above whose address unless otherwise notified is</p>	
C	<p>MECHANICAL ENGINEER The term “Mechanical Engineer” shall be deemed to mean “The project Manager as defined above whose address unless otherwise notified is</p>	
D	<p>STRUCTURAL ENGINEER The term “Structural Engineer” shall be deemed to mean “The project Manager as defined above whose address unless otherwise notified is</p>	
E	<p>FORM OF CONTRACT The form of contract shall be as stipulated in the Republic of Kenya’s standard tender documents for procurement of building works (2006 edition) included herein the condition of contract are also included herein conditions of contract. These are numbered from 1 to 37 as set out in pages 17 to 36 of these tender documents. Particulars of insertions to be made in the Appendix to the contract agreement will be found in the particular preliminaries part of these bills of quantities.</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>BOND</p> <p>The contractor shall find and submit on the form of tender an approved bank and who will be willing to be bound to the Government in an amount equal to five percent (5%) of the contract amount for the due performances of the contract up to the date of completion as certified by the project manager and who will when if called upon, sign a bond to that effect on the relevant standard form included herein. (Without the addition of any limitations) on the same day as the contract agreement is signed, by the government, the contractor shall furnish within seven days another surety to the approval of the Government.</p>	
B	<p>SECURITY OF WORKS ETC</p> <p>The contractor shall be entirely responsible for the security of all the works stores, materials, plant, personnel etc both his own and sub-contractors' and must provide all necessary watching, lighting and other precautions as necessary to ensure against theft, Loss or damage and the protection of the public.</p>	
C	<p>STORAGE OF MATERIALS</p> <p>The contractor shall provide at his own risk and cost where directed on the site whether proof lock-up sheds and make good damaged or disturbed surfaces upon completion to the satisfaction of the project manager nominated sub-contractors are to be made liable for the cost of any storage accommodation provided especially for their use.</p>	
D	<p>MECHANICAL ENGINEER</p> <p>The term "Mechanical Engineer" shall be deemed to mean "The project Manager as defined above whose address unless otherwise notified is</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>PLANT, TOOLS AND VEHICLES</p> <p>Allow for providing all scaffolding, plant, tools and vehicles required for the works except in so far as may be stated otherwise herein and except for such items specifically and only required for the use of nominated sub-contractors as described herein. No timber used for scaffolding, formwork or temporary works of any kind shall be used afterwards in the permanent work.</p>	
B	<p>TRANSPORT</p> <p>Allow for transport workmen, materials etc to and from the site at such hours and by such routes as may be permitted by the competent authorities.</p>	
C	<p>MATERIALS AND WORKMANSHIP</p> <p>All materials and workmanship used in the executions of the work shall be of the best quality and description unless otherwise stated. The contractor shall order all materials to be obtained from overseas immediately after the contract is signed and shall also order materials to be obtained from local sources as early as necessary to ensure that they are onsite when required for use in the works. The bills of quantities shall not be used for the purpose of ordering materials.</p>	
D	<p>SIGN FOR MATERIALS SUPPLIED</p> <p>The contractor will be required to sign a receipt for all articles and materials supplied by the project manager at the time of taking delivery thereof: as having received them in good order and condition, and will thereafter be responsible for any loss or damage and for replacements of any such loss or damage with articles and/or materials which will be supplied by the project manager at the current market prices including customs duty and V.A.T., all at the contractor's own cost and expense, to the satisfaction of the project manager.</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>SAMPLES</p> <p>The contractor shall furnish at his own cost any samples of materials on workmanship including concrete test cubes required for the works that may be called for by the project manager for his approval until such samples are approved by the project manager and the project manager, may reject any materials or workmanship not in his opinion to be up to approved samples. The project manager shall arrange for the testing of such materials as he may at his discretion deem desirable, but the testing shall be made at his discretion deem desirable, but the testing shall be made at the expense of the contractor and not at the expense of the project manager. The contractor shall pay for the testing in accordance with the current scale of testing charges laid down by the Ministry of Public works. The procedure for submitting samples of materials for testing and the method of marking for identification shall be as laid down by the project manager. The contractor shall allow in his tender for such samples tests except those in connection with nominated sub-contractor's work.</p>	
B	<p>GOVERNMENT ACTS REGARDING WORK ,PEOPLE ETC</p> <p>Allow for complying with all government acts, orders and regulations in connection with the employment of labour and other matters related to the connection of the works. In particular the contractor's attention is drawn to the provision of the factory act 1950 and his tender must include for all costs arising or resulting from compliance with any act, order or regulation relating to insurances, pensions and holidays for workpeople or so the safety, health and welfare of the workpeople. The contractor must make himself fully acquainted with current acts and regulations, including police regulations regarding the movement, housing, security and control of labour, labour camps, passes for transport etc. it is most important that the contractor, before tendering shall obtain from the relevant authority the fullest information regarding all such regulations and/or restrictions which may affect the information regarding all such regulations and/or restrictions which may affect the organization of the works, supply and control of labour etc, and allow accordingly in his tender.</p> <p>No claim in respect of want of knowledge in this connection will be entertained.</p>	
	Carried to collection	

ITEM	DESCRIPTION	AMOUNT
A	<p>PUBLIC AND PRIVATE ROADS Maintain as required throughout the execution of the works and make good any damage to public or private roads arising from or consequent upon the execution of the works to the satisfaction of the local and other competent authority and the project manager.</p>	
B	<p>EXISTING PROPERTY The contractor shall take every precaution to avoid damage to all existing property including roads, cables, drains and other services and he will be held responsible for and shall make good all such damage arising from the execution of this contract at his own expense to the satisfaction of the project manager.</p>	
C	<p>VISIT SITE AND EXAMINE DRAWING The contractor is recommended to examine the drawings and visit the site the locations of which is described in the particular preliminaries hereof. He shall be deemed to have acquainted himself therewith as to its nature, position, means of access or any other matter which, may affect his tender.</p>	
D	<p>ACCESS TO SITE AND TEMPORARY ROADS Means of access to the site shall be agreed with the project manager prior to commencement of the work and contractor must allow for building any necessary temporary access roads for the transport of the materials, plant and workmen as may be required for the complete execution of the works including the provision of temporary culverts, crossings, bridges, or any other means of gaining access to the site. Upon completion of works, the contractor shall remove such temporary access roads' temporary culverts, bridges etc and make good and reinstate all works and surfaces disturbed to the satisfaction of the project manager.</p>	
E	<p>AREA TO BE OCCUPIED BY THE CONTRACTOR The areas of the site which may be occupied by the contractor for use of storage and for the purpose of erecting workshops, etc shall be defined on site by the project manager.</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>OFFICE ETC FOR THE PROJECT MANAGER</p> <p>The contractor shall provide, erect and maintain where directed on site and afterwards dismantle the site office of the type noted in the particular preliminaries, complete with furniture. He shall also provide a strong metal trunk complete with strong hasp and staple fastening and two keys. He shall provide, erect and maintain a lock-up type water or bucket closet for the sole use of the project manager including making temporary connections to the drain where applicable to the satisfaction of Government and medical officer of health and shall provide services of cleaner and pay all conservancy charges and keep both office and closet in a cleaner and sanitary conditions from commencement to the completion of the works and dismantle and make good disturbed surfaces. The office and closer shall be completed before the contractor is permitted to commence the works. The contractor shall make available on the site as and when required by the project manager a modern and accurate level together with levelling staff, ranging rods and 50metre metallic or linen tape.</p>	
B	<p>WATER AND ELECTRICITY SUPPLY FOR THE WORKS</p> <p>The contractor shall provide at his own risk and cost all necessary water, electric light and power required for use in the works. The contractor must make his own arrangement for connection to the nearest suitable water main and for metering the water used. He must also provide temporary tanks and meters as required at his own cost and clear away when no longer required and make good on completion to the entire satisfaction of the project manager. The contractor shall pay all charges in connection herewith. No guarantee is given or implied that sufficient water will be available from mains and the contractor must make his own arrangements for augmenting this supply at his own cost. Nominated sub-contractors are to be made liable for the cost of any water or electric current used and for any installation provided especially for their own use.</p>	
C	<p>SANITATIONS OF THE WORKS</p> <p>The sanitation of the works shall be arranged and maintained by the contractor to the satisfaction of the government and/or local authorities, labour department and the project manager.</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>SUPERVISION AND WORKING HOURS</p> <p>The works shall be executed under the direction and to the entire satisfaction in all respects of the project manager who shall at all times during normal working hours have access to the works and to the yards and workshops of the contractor and sub-contractors or other places where work is being prepared for the contract.</p>	
B	<p>PROVISIONAL SUMS</p> <p>The term “Provisional Sum” wherever used in these bills of quantities shall have the meaning stated in section A item A7(i) of the Standard Method of measurement. Such sums are net and no addition shall be made to them for profit.</p>	
C	<p>PRIME COST (OR P.C) SUMS</p> <p>The term “Prime Cost Sum” or P.C. wherever used in these Bill of Quantities shall have the meaning stated in section A item A7 (ii) of the Standard Method of Measurement. Persons or firms nominated by the project manager to execute work or to provide and fix materials or goods are described herein as Nominated sub-contractors. Persons or firms so nominated to supply goods or materials are described herein as Nominated Suppliers.</p>	
D	<p>PROGRESS CHART</p> <p>The contractor shall provide within two weeks of profession of site and in agreement with the project manager a progress chart for the whole of the works including the works of nominated sub-contractors; one copy to be handed to the project manager and a further copy t be retained on site. Progress to be recorded and chart to be amended as necessary as the work proceeds.</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>ADJUSTMENT OF P.C.SUMS</p> <p>In the final account all p.c. Sums shall be deducted and the amount properly extended upon the project manager’s order in respect of each of them added to the contract sum. The contractor shall produce to the project manager such quotations, invoices or bills, properly receipted as may be necessary to show the actual details of the sums paid by the contractor. Items of profit upon P.C. sums shall be adjusted in the final account pro-rata to the amount paid. Items of ‘attendance’ (as previously described) following P.C. sums shall be adjusted pro-rata to the physical extent of the work executed (not pro-rata to the amount paid) and this shall apply even though the contractor’s priced bill shows a percentage in the rate column in respect of them. Should the contractor be permitted to tender and his tender be accepted of any work for which P.C. sum is included in these bill of quantities profit and attendance will be allowed at the same rate as it would be is the work were executed by a nominated sub-contractor.</p>	
B	<p>ATTENDANCE UPON OTHER TRADESMAN ETC</p> <p>The contractor shall allow for the attendance of trade upon trade and shall afford any tradesmen or other persons employed for the execution of any work not included in this contract every facility for carrying out their work and also for use of his ordinary scaffolding. The contractor, however, shall not be required to erect any special scaffolding for them the contractor shall perform such cutting away for and making good after the work of such tradesmen or persons as may be ordered by the project manager and the work will be measured and paid for to the extent executed at rate provided in their bills.</p>	
C	<p>CONTRACTOR’S SUPERITENDENCE/SITE AGENT</p> <p>The contractor shall constantly keep on the works a literate English speaking agent or representative, competent and experienced in the kind of work involved who shall give his whole experience in the superintendence of the works. Such agent or representative shall receive on behalf of the contractor all directions and instructions from the project manager and such directions shall be deemed to have been given to the contractor in accordance with the conditions of contract</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>ADJUSTMENT OF PROVISIONAL SUMS</p> <p>In the final account all Provisional Sums shall be deducted and the value of the work properly executed in respect of them upon the project manager’s order added to the contract sum. Such works shall be valued, but should any part of the work be executed by a nominated sub-contractor, the value of such work or articles for the work to be supplied by a nominated supplier, the value of such work or articles shall be treated as a P.C. sum and profit and attendance comparable to that contained in the priced bills of quantities for similar items added.</p>	
B	<p>NOMINATED SUB0CONTRACTORS</p> <p>When any work is ordered by the project manager to be executed by nominated sub-contractors, the contractor shall enter into sub-contacts and shall thereafter be responsible for such cub-contractors in every respect. Unless otherwise described the contractor is to provide for such sub-contractors any or all of the facilities described in these preliminaries. The contractor should price for these with the nominated sub-contract contractor’s work concerned in the P.C. sums under the description ‘add for attendance’.</p>	
C	<p>DIRECT CONTRACTS</p> <p>Notwithstanding the foregoing conditions, the government reserves the right to place a ‘direct contract for any goods or services requires in the works which are covered by a P.C. sum in the bill of quantities and to pay for the same direct. In any such instances, profit relative to the P.C. sum in the priced bills of quantities will be adjusted as described for P.C. sum is allowed. .</p>	
D	<p>BLASTING OPERATIONS</p> <p>Blasting will only be allowed with the express permission of the project manager in writing. All blasting operations shall be carried out at the contractor’s sole risk and cost in accordance with any Government regulation in force for the time being, and any special regulations laid down by the project manager governing the use and storage of explosives.</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>INSURANCE</p> <p>The contractor shall insure as required in conditions No. 30 of the conditions of contract. No payment on account of the work executed will be made to the contractor until he has satisfied the project manager either by production of an insurance policy or and Insurance Certificate that the provision of the foregoing thereafter the project manager shall from time to time ascertain that premiums are duly paid by the contractor who shall is called upon to do so, produce the receipted premium renewals for the project manager’s inspection. .</p>	
B	<p>PROVISIONAL SUMS</p> <p>All work described as “Provisional” in these bills of quantities is subject to remeasurement in order to ascertain the actual quantity executed for which payment will be made. All “Provisional” and other work liable to adjustment under this contract shall be left uncovered for a reasonable time to allow all measurements needed for such adjustment to be taken by the project manager. Immediately the work is ready for measuring, the contractor shall give notice to the project manager. If the contractor makes default in these respects he shall if the project manager so directs uncover the work to enable all measurements to be taken and afterwards reinstate at his own expense.</p>	
C	<p>ALTERATIONS TO BILLS, PRICING ETC</p> <p>Any unauthorized alteration or qualification made to the text of the bills of quantities may cause the tender to be disqualified and will in any case be ignored. The contractor shall be deemed to have made allowance in his prices generally to cover any items against which no price has been inserted in the priced bills of quantities. All items of measured works shall be priced in detail and the tenders containing Lump sums to cover trades or groups of work must be broken down to show the price of each item before the will be accepted.</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>MATERIALS ARISING FROM EXCAVATIONS</p> <p>Materials of any kind obtained from the excavation shall be the property of the Government. Unless the project manager directs otherwise such materials shall be dealt with as provided in the contract. Such materials shall only be used in the works, in substitution of materials which the contractor would otherwise have had to supply with the written permission of the project manager should such permission be given, the contractor shall make due allowance for the value of the materials so as used at a price to be agreed.</p>	
B	<p>PROTECTION OF THE WORKS</p> <p>Provide protection of the whole of the works contained in the Bills of Quantities, including casing, casing up, covering or such other means as may be necessary to avoid damage to the satisfaction of the project manager and remove such protection when no longer required and make good any damage which may nevertheless have been done at completion free of cost to the Government.</p>	
C	<p>REMOVAL OF RUBBISH ETC</p> <p>Removal of rubbish and debris from the buildings and site at it accumulate and at the completion of the works and remove all plant, scaffolding and unused materials at completion</p>	
D	<p>WORKS TO BE DELIEVERED UP CLEAN</p> <p>Clean and flush all gutters, rainwater and waste pipes, manholes and drains, wash (except where such treatment might cause damage) and clean all floors, sanitary fittings, glass inside and outside and any other parts of the works and remove all marks, blemishes, stains and defects from joinery, fittings and decorated surfaces generally, polish door furniture and bright parts of metalwork and leave the whole of the building watertight, clean, perfect and fit for occupation to the approval of the project manager.</p>	
	<p>Carried to collection</p>	

ITEM	DESCRIPTION	AMOUNT
A	<p>MATERIALS ARISING FROM EXCAVATIONS</p> <p>For the full description of materials and workmanship, method of execution of the work and notes for pricing, the contractor is referred to the Ministry of Public Works General Specifications dated 1976 or any subsequent thereof which is issued as a separate document, and which shall be allowed in all respects unless it conflicts with General preliminaries, Trade Preambles or other Items in these Bills of Quantities.</p>	
B	<p>TRAINING LEVY</p> <p>The Contractors attention is drawn to Legal Notice NO.237 of October, 1971, which requires payment by the contractor of a Training levy at the rate of ¼% of the Contract sum on all contracts of more than Kshs.50000.00 in value.</p>	
C	<p>MATERIALS ON SITE</p> <p>All materials for incorporation in the works must be stored on or adjacent to the site before payment is effected unless specifically exempted by the Project Manager. This includes materials of the Main Contractor, Nominated Sub-Contractors and Nominated Suppliers.</p>	
D	<p>HOARDING</p> <p>The Contractor shall enclose the site or part of the works under construction with a hoarding 2400mm High consisting of iron sheets on 100x50mm timber posts firmly secured at 1800mm centres with 2NO. 75x50mm timber rails. The contractor is in addition required to take all precautions necessary for the safe custody of the works, materials, plant, public and employer’s property on the site.</p>	
	<p>Carried to collection</p>	

PROPOSED 160 BED CAPACITY HOSPITAL PLAZA AT VIHIGA COUNTY REFERRAL HOSPITAL

ITEM	DESCRIPTION	AMOUNT
	<p>COLLECTION</p> <p>Brought forward from page GP/1</p> <p>Brought forward from page GP/2</p> <p>Brought forward from page GP/3</p> <p>Brought forward from page GP/4</p> <p>Brought forward from page GP/5</p> <p>Brought forward from page GP/6</p> <p>Brought forward from page GP/7</p> <p>Brought forward from page GP/8</p> <p>Brought forward from page GP/9</p> <p>Brought forward from page GP/10</p> <p>Brought forward from page GP/11</p> <p>Brought forward from page GP/12</p> <p>Brought forward from page GP/13</p> <p>Brought forward from page GP/14</p>	
	<p>Total for General Preliminaries Carried to Preliminaries Summary</p>	

GP/15

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
PRELIMINARIES		
SUMMARY		
1	Particular Preliminaries PP/7	
2	Special Preliminaries Page SSP/01	
3	General Preliminaries GP/15	
PRELIMINARIES SUMMARY TO GRAND TOTAL		

SECTION VII - BILLS OF QUANTITIES

5.2 PARTICULARS

NOTE:

Please insert Bill of Quantities here (Pgs VCH/01–VCH/15, SP/01, VCH/PC01 &G.S)