

# REPUBLIC OF KENYA



## MINISTRY OF ENERGY

NYAYO HOUSE

P. O. BOX 30582 – 00100

NAIROBI

**TENDER No.: MOE/ONT/012/2019-2020 FOR  
REHABILITATION AND CORRECTIVE MAINTENANCE OF  
WIND MASTS AND DATA LOGGERS IN 84 SITES ACROSS  
THE COUNTRY.**

***ALL TENDERERS ARE ADVISED TO READ CAREFULLY THIS  
TENDER DOCUMENTS IN ITS ENTIRETY BEFORE MAKING  
ANY TENDER***

**MARCH 2020**

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## 1 SECTION I – INVITATION TO TENDER

**Date: 3<sup>rd</sup> March, 2020**

**Tender REF No.: MOE/ONT/012/2019-2020**

**Tender Name: REHABILITATION AND CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS, IN 84 SITES ACROSS THE COUNTRY.**

The Ministry of Energy invites sealed tenders from eligible candidates for **REHABILITATION AND CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS, IN 84 SITES ACROSS THE COUNTRY.**

Interested eligible bidders may download a complete set of the Tender Documents free of charge from the Ministry's website: [www.energy.go.ke](http://www.energy.go.ke)/or from National Treasury's Supplier portal: [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke)/and **MUST** register with Head, Supply Chain Management Services Ministry of Energy Room 24-16 on the 24th floor, Nyayo House. Bidders may also obtain the same from the Head, Supply Chain Management Services, Ministry of Energy Room 24-16 on the 24th floor, Nyayo House upon payment of a non-refundable fee of **KES. 1,000/=** (Kenya shillings one thousand) at the Cash Office located on the 21<sup>st</sup> Floor of Nyayo house.

**Please note that:-**

- 2 This tender is open to all interested bidders;
- 3 The Tender consists of 3 Lots and the tenderers may bid for any number of lots.
- 4 **ONLY** one (1) lot will be awarded to the lowest evaluated most responsive tenderer.
- 5 Prices quoted should be net inclusive of all taxes, must be in Kenya Shillings and shall remain valid for at least One hundred and twenty (120) days from the closing date of the tender.
- 6 . Tenderers **MUST** submit Tender Security of 2% of the tender sum in form of bank or insurance guarantee valid for at least One hundred and fifty 150 days from the date of the closing of the tender in the format provided in the Tender Document..
- 7 Bidders **MUST** fill all the forms in **SECTION VII** of the Tender Document **EXCEPT** the Performance Security Form, the Bank Guarantee for Advance Payment Form and the Contract Form. **FAILURE TO DULY FILL AND**

**CERTIFY THE FORMS COMPREHENSIVELY WILL RENDER THE BID NON-RESPONSIVE.**

- 8** Complete tender documents should be submitted in plain sealed envelopes marked with Tender Name: **REHABILITATION AND CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS IN 84 SITES ACROSS THE COUNTRY,; Tender Number: MOE/ONT/012/2019-2020 and addressed to:**

**The Principal Secretary,  
Ministry of Energy,  
Nyayo House,  
P. O. Box 30582 – 00100,  
NAIROBI**

or be deposited in the Tender Box situated on 24th Floor, Nyayo House so as to reach on or before **Tuesday 24<sup>th</sup> March, 2020**. Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at the Ministry's Main Boardroom, Nyayo House, 23rd Floor.

**Head, Supply Chain Management Services**  
**For: PRINCIPAL SECRETARY, MINISTRY OF ENERGY**

## **2 SECTION II INSTRUCTIONS TO TENDERERS**

### **2.1 Eligible Tenderers**

- 2.1.1. This Invitation to tender is open to all tenderers eligible as described in the instructions to tenderers. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 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 unless where specially allowed under section 131 of the Act.
- 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 services under this Invitation for tenders.
- 2.1.4. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

### **2.2 Cost of Tendering**

- 2.2.1 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.
- 2.2.2 The price to be charged for the tender document shall not exceed Kshs.5,000/=
- 2.2.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

### **2.3 Contents of Tender Documents**

- 2.3.1 The tender document comprises of the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders
  - i) Invitation to Tender
  - ii) Instructions to Tenderers
  - iii) General Conditions of Contract
  - iv) Special Conditions of Contract
  - v) Schedule of Requirements
  - vi) Details of Service



- vii) Form of Tender
- viii) Price Schedules
- ix) Contract Form
- x) Confidential Business Questionnaire Form
- xi) Tender Security Form
- xii) Performance Security Form
- xiii) Principal's or Manufacturers Authorization Form
- xiv) Declaration Form

2.3.2. 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.

#### **2.4 Clarification of Documents**

2.4.1 A prospective candidate making inquiries of the tender document may notify the Procuring entity in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no 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 who have received the tender documents”

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.

#### **2.5 Amendment of Documents**

2.5.1 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 issuing an addendum.

2.5.2 All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.

2.5.3 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.

## **2.6 Language of Tender**

- 2.6.1. The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language. 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.

## **2.7 Documents Comprising the Tender**

The tender prepared by the tenderer shall comprise the following components:

- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 9, 10 and 11 below.
- (b) Documentary evidence established in accordance with Clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) Tender security furnished is in accordance with Clause 2.12
- (d) Confidential business questionnaire

## **2.8 Form of Tender**

- 2.8.1 The tenderers shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed.

## **2.9 Tender Prices**

- 2.9.1 The tenderer shall indicate on the Price schedule the unit prices where applicable and total tender prices of the services it proposes to provide under the contract.
- 2.9.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable:
- 2.9.3 Prices quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22.
- 2.9.4 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 2.9.5 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

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

## **2.10 Tender Currencies**

2.10.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the appendix to in Instructions to Tenderers.

2.11 Tenderers Eligibility and Qualifications.

2.11.1 Pursuant to Clause 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.

2.11.2 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

## **2.12 Tender Security**

2.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Invitation to tender.

2.12.2 The tender security shall be in the amount not exceeding 2 per cent of the tender price.

2.12.2 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 2.12.7

2.12.3 The tender security shall be denominated in a Kenya Shillings or in another freely convertible currency and shall be in the form of:

- a) A bank guarantees.
- b) Cash.
- c) Such insurance guarantee approved by the Authority.
- d) Letter of credit

2.12.4 Any tender not secured in accordance with paragraph 2.12.1 and 2.12.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.20

- 2.12.5 Unsuccessful tenderer's 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.
- 2.12.6 The successful tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.29, and furnishing the performance security, pursuant to paragraph 2.30.
- 2.12.7 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 30  
or
    - (ii) to furnish performance security in accordance with paragraph 31.
  - (c) If the tenderer rejects, correction of an error in the tender.

### **2.13 Validity of Tenders**

- 2.13.1 Tenders shall remain valid for 60 days or as specified in the invitation to tender after 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 nonresponsive.
- 2.13.2 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 2.12 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.

### **2.14 Format and Signing of Tender**

- 2.14.1 The tenderer 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.
- 2.14.2 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. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

- 2.14.3 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.

## **2.15 Sealing and Marking of Tenders**

- 2.15.1 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. 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 to tender and the words: “DO NOT OPEN BEFORE **Tuesday 24<sup>th</sup> March, 2020 10 am East African time.**”

- 2.15.3 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”. —

- 2.15.4 If the outer envelope is not sealed and marked as required by paragraph 2.15.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

## **2.16 Deadline for Submission of Tenders**

- 2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 no later than **Tuesday 24<sup>th</sup> March, 2020 10 am East African time**

- 2.16.2 The procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

- 2.16.3 Bulky tenders which will not fit in the tender box shall be received by the procuring entity as provided for in the appendix.

## **2.17 Modification and Withdrawal of Tenders**

- 2.17.1 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 tender's is received by the procuring entity prior to the deadline prescribed for the submission of tenders.
- 2.17.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.15. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 2.17.3 No tender may be modified after the deadline for submission of tenders.
- 2.17.4 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 2.12.7.
- 2.17.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.17.6 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.

## **2.18 Opening of Tenders**

- 2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at (*time, day, and date of closing*) and in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.18.3 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.
- 2.18.4 The procuring entity will prepare minutes of the tender opening which will be submitted to the tenderers that signed the tender opening register and will have made the request.

## **2.19 Clarification of Tenders**

- 2.19.1 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 shall be sought, offered, or permitted.
- 2.19.2 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.

Comparison or contract award decisions may result in the rejection of the tenderers' tender.

## **2.20 Preliminary Examination and Responsiveness**

- 2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.20.2 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 quantity, 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 may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.
- 2.20.3 The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 2.20.4 Prior to the detailed evaluation, pursuant to paragraph 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.
- 2.20.5 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 nonconformity.

## **2.21 Conversion to a Single Currency**

2.21.1 Where other currencies are used, the procuring entity will convert those currencies to Kenya shillings using the selling exchange rate on the date of tender closing provided by the central bank of Kenya.

## **2.22 Evaluation and Comparison of Tenders.**

2.22.1 The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.22.2 The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services.

2.22.3 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.4 and in the technical specifications:

(a) operational plan proposed in the tender;

(b) deviations in payment schedule from that specified in the Special Conditions of Contract;

2.22.4 Pursuant to paragraph 2.23 the following evaluation methods will be applied:

### **(a) Operational Plan.**

The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenders offering to perform longer than the procuring entity's required delivery time will be treated as non-responsive and rejected.

### **(b) Deviation in payment schedule.**

Tenderers shall state their tender price for the payment on a schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.



2.22.5 The tender evaluation committee shall evaluate the tender within 30 days from the date of opening the tender.

2.22.6 To qualify for contract awards, the tenderer shall have the following: -

- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- (b) Legal capacity to enter into a contract for procurement
- (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing
- (d) Shall not be debarred from participating in public procurement.

### **2.23. Contacting the Procuring Entity**

2.23.1 Subject to paragraph 2.19, no tenderer shall contact the procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

2.23.2 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 tenderers tender.

### **2.24 Award of Contract**

#### **a) Post Qualification**

2.24.1 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.

2.24.2 The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderer's qualifications submitted by the tenderer, pursuant to paragraph 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.

2.24.3 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**

2.24.3 Subject to paragraph 2.29 the Procuring entity will award the contract to the successful tenderer 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.

2.24.4 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. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.

2.24.5 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 Notification of Award**

2.25.1 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.

2.25.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.29. Simultaneously the other tenderers shall be notified that their tenders have not been successful.

2.25.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 31, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

## **2.26 Signing of Contract**

- 2.26.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.
- 2.26.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.
- 2.26.3 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.

## **2.27 Performance Security**

- 2.27.1 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.
- 2.27.2 Failure of the successful tenderer to comply with the requirement of paragraph 2.29 or paragraph 2.30.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated or call for new tenders.

## **2.28 Corrupt or Fraudulent Practices**

- 2.28.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.
- 2.28.2 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;
- 2.28.3 Further, a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

## APPENDIX TO INSTRUCTIONS TO THE TENDERERS

The following information for procurement of services shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

Clause	Particulars of Appendix to Instructions to Tenders
2.1.1	<p>This Invitation to Tenders is open to all tenderers/joint ventures/consortium.</p> <p>The tenderer shall submit details of experience and past performance of the tenderer on the works of a similar nature within the past three years and details of current work on hand and other contractual commitments.</p> <p>Bidders must submit a proposed Works Program, failure to which the bid will be non-responsive. The Works and maintenance Program should detail timelines of all activities starting from material procurement and ending in testing and commissioning. Please note that the Contract period will be <b>15 Weeks</b>.</p>
2.1.3	<p>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 services under this Invitation for tenders.</p> <p>A copy of the agreement entered into by a joint venture partners <b><u>MUST</u></b> be submitted with the tender. Firms participating in more than one joint venture will lead to the disqualification of the bids of those Joint Ventures.</p>
2.2.2	<p>The price of obtaining the tender document from the Head, Supply Chain Management Services, Ministry of Energy, Room 24-16, 24th Floor, Nyayo House is a non-refundable fee of KES. 1,000/=</p> <p>The documents can also be downloaded from Ministry's website: <a href="http://www.energy.go.ke">www.energy.go.ke</a>/or from National Treasury's Supplier portal: <a href="http://www.supplier.treasury.go.ke">www.supplier.treasury.go.ke</a>/ <b>FREE OF CHARGE</b>.</p> <p>Bidders who download the documents <b>MUST</b> register with the Supply Chain Management Services, Ministry of Energy Room 24-16 on the 24th floor, Nyayo House.</p>
2.7 (c)	<p>The tenderer shall furnish, as part of its tender document, a tender security for <b>2% of the tender sum</b> in the format provided in the Tender Document.</p>

2.11	<p>i. Tenderer shall submit a certificate of incorporation/business name registration certificate and in case of Joint ventures, a certificate of incorporation for all the joint ventures/consortium partners.</p> <p>ii. Tenderers shall submit valid tax compliance certificate ((issued by the Kenya Revenue Authority);</p> <p>iii. In case of a Joint venture a valid tax compliance certificate for all joint venture partners;</p> <p>Joint Ventures</p> <p>Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements:-</p> <ul style="list-style-type: none"> <li>• The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners.</li> </ul> <p>(b) One of the partners shall be nominated as being in charge; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners.</p> <p>(c) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.</p> <p>(d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender).</p> <p>(e) A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.</p>
2.13.1	The tender validity shall be One hundred and twenty <b>(120) days</b> from the date of tender opening.
2.15.1	<p>a) The name and address of the Procuring Entity for the purposes of submission of tenders is</p> <p style="text-align: center;"><b>The Principal Secretary, Ministry of Energy, Nyayo House,</b></p>

	<p style="text-align: center;"><b>P.O. Box 30582 – 00100, <u>NAIROBI</u></b></p> <p>b) The Tender Number and name of the proposed Works is <b>Tender No. MOE/ONT/012/2019-2020 FOR REHABILITATION AND CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS IN 84 SITES ACROSS THE COUNTRY.</b></p>
2.18.1	The tender opening date and time are <b>Tuesday 24<sup>th</sup> March, 2020</b> at 10 am East African time.
2.20.2	<p>Subject to the provisions of the Public Procurement and Assets Disposal Act (PP&amp;AD) Act, 2015;</p> <p>a) In the event of a discrepancy between the tender amount as stated in the form of Tender and the corrected tender figure in the Main summary of the Bills of Quantities, the amount as stated in the Form of Tender shall prevail</p> <p>b) The Error correction factor shall be computed by expressing the difference between the amount and the corrected tender sum as a percentage of the corrected contract works (i.e. corrected tender sum less P.C; and Provisional Sums).</p> <p>c) The Error correction factor shall be applied to all contract works (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.</p>
2.22	<p><b>EVALUATION CRITERIA</b></p> <p><b>The evaluation of the tender for REHABILITATION AND CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS IN 84 SITES ACROSS THE COUNTRY s will be in threefold comprising mandatory requirements/ preliminary; technical and financial.</b></p> <p><b>d) MANDATORY/PRELIMINARY EVALUATION</b></p> <p>e) Form of Tender <b><u>MUST</u></b> be duly filled, dated, signed and stamped in the format provided in the tender document.</p> <p>f) Tender Security Form <b><u>MUST</u></b> be duly filled, dated, signed and stamped in the format provided in the tender document.</p> <p>g) Bidders <b><u>MUST</u></b> provide copies of:</p> <ol style="list-style-type: none"> <li>a. Registration Certificate/ Certificate of Incorporation</li> <li>b. Valid Tax Compliance Certificate.</li> <li>c. National Identity card of the owner (sole proprietorship) Partnership deed for partnerships or CR12 for Directors for Limited companies.</li> </ol> <p>h) All Standard Forms, Form of Tender; Confidential Questionnaire Form; Tender Security Form; Declaration Form and Declaration Not</p>

to be Involved in Corrupt or Fraudulent Practices, **MUST** be duly filled, dated, signed and stamped.

- i) Detailed company profile showing the physical address, telephone contacts and organizational structure evidenced by copy of lease agreements, utility bills or proof of ownership (e.g. title deed) of the company location to be verified by the Procuring Entity;
- j) Provide a list of Key Personnel,
- k) Provide a Schedule of Contracts completed in the last three (3) years, Schedule of on-going projects, Financial Reports for the last two years, Evidence of Financial Resources to meet expenditure and Qualification Requirements;
- l) Bidders must submit with their bid a proposed Works Maintenance Programme to complete the works within a period of **15 Weeks**, failure to which the bid will be non-responsive.
- m) Manufacturer's Authorization for Solar Modules **MUST** be provided
- n) Manufacturer's Authorization for accumulators (Batteries) **MUST** be provided
- o) Manufacturer's Authorization for wind Data Logger **MUST** be provided
- p) Manufacturer's Authorization for Anemometers **MUST** be provided
- q) Manufacturer's Authorization for Wind Vanes **MUST** be provided
- r) Manufacturer's Authorization for wind Data Logger Modems **MUST** be provided
- s) Manufacturer's Authorization for wind sensor cables **MUST** be provided

A Properly bound (spiral or perfect cover, hard copy or case bound) paginated, serialized tender document (each page of the tender submission must have a number and the numbers must be in chronological order). **For pagination, the number system to be used are numerical numbers, i.e. 1, 2, 3,...**The documents **MUST** be valid as of the Date of Tender Opening.

**Failure to meet the above preliminary requirements will lead to disqualification and the tender will not proceed to the next stage of evaluation.**

## **II. TECHNICAL EVALUATION**

### **Mandatory Requirements for Technical evaluation criteria**

- 3 The detailed specifications for Monocrystalline solar modules **MUST** meet the minimum specifications stated in Section VI of the tender document. Any tender not meeting these minimum specifications will be disqualified. Manufacturer's Authorization for Solar Modules **MUST** be provided

- 4 The detailed specifications for solar accumulators (Batteries) **MUST** meet the minimum specifications stated in Section VI of the tender document. Any tender not meeting these minimum specifications will be disqualified. Manufacturer's Authorization for accumulators (Batteries) **MUST** be provided
- 5 The detailed specifications for Data Loggers **MUST** meet the minimum specifications stated in Section VI of the tender document. Any tender not meeting these minimum specifications will be disqualified. Manufacturer's Authorization for wind Data Logger **MUST** be provided
- 6 The detailed specifications for Wind Anemometers **MUST** meet the minimum specifications stated in Section VI of the tender document. Any tender not meeting these minimum specifications will be disqualified. Manufacturer's Authorization for Anemometers **MUST** be provided
- 7 The detailed specifications for Wind Vanes **MUST** meet the minimum specifications stated in Section VI of the tender document. Any tender not meeting these minimum specifications will be disqualified. Manufacturer's Authorization for Wind Vanes **MUST** be provided
- 8 The detailed specifications for wind data logger modems **MUST** meet the minimum specifications stated in Section VI of the tender document. Any tender not meeting these minimum specifications will be disqualified. Manufacturer's Authorization for wind Data Logger Modems **MUST** be provided
- 9 The detailed specifications for sensor cables **MUST** meet the minimum specifications stated in Section VI of the tender document. Any tender not meeting these minimum specifications will be disqualified. Manufacturer's Authorization for wind sensor cables **MUST** be provided

**NOTE: Manufacturer shall sign and stamp all the above-mentioned detailed Technical Specifications Brochures on the Manufacturer's Letter head.**

**Technical Evaluation on Tenderers Necessary Qualifications, Capability Experience, Services, Equipment and Facilities to undertake the Assignment:**

<b>Specifications</b>	<b>Requirements</b>	<b>Marks</b>
Key Personnel	Qualified and Experienced Supervisor (1 per Lot)	$\frac{\text{No of Supervisors}}{\text{No of Lots Bid}} \times 10\text{Mks}$ <p><b>Maximum marks: 10</b></p>



	Qualified and Experienced Technicians (2 per Lot)	$\frac{\text{No of Technicians}}{2 \times \text{No of Lots Bid}} \times 10 \text{Mks}$ <b>Maximum marks: 10</b>
Contracts completed (provide a completion certificate issued by the Employer as evidence) and/or copies of on-going contracts in the last three years	Number of related (i.e. electromechanical works wind masts and data logger installations and any other renewable energy project) projects	1 mark for each project. <b>Maximum marks: 5</b>
	Value of related projects done per year as % of tender sum	50% – 59%: 2 60% - 69%: 4 70% - 79% :6 80% - 89% :8 90% - 100%:10 <b>Maximum marks: 10</b>
	Wind Masts and data loggers Installation, & Maintenance projects	3 Mark for each project. <b>Maximum marks: 15</b>
Audited Financial reports	Turn over as % of tender sum	1% – 9% - 1 10% - 19% - 2 20% - 29% - 4 30% - 39% - 6 40% - 49% - 8 50% and above - 10 <b>Maximum marks: 10</b>
	Cash flow – positive	Negative – 0 Positive – 5 <b>Maximum marks: 5</b>
	Net Assets – positive	Negative: 0 Positive : 5

			<b>Maximum marks: 5</b>
Evidence of financial resources	Liquidity position (Cash and cash equivalents including lines of credit) as % of tender sum	1% – 9% : 5 10% - 19% : 10 20% - 29% :20 30% and Above :30	<b>Maximum marks: 30</b>
	<p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• The maximum allowable score is 100 Marks</li> <li>• Qualified Supervisors must possess a relevant Degree/Diploma with 2 years-experience in Electro-Mechanical installation works supervision with 2 years being in Wind Masts and data logger installations. (<b>Up to date CV's by the Supervisors and copies of Certificates <u>MUST</u> be submitted</b>).</li> <li>• Qualified Technicians must possess a relevant Diploma/Artisan with 2 years' experience in Electro-Mechanical installation works (<b>Up to date CV's by the Technicians and copies of Certificates {Trade Test for Artisans} <u>MUST</u> be submitted</b>).</li> <li>○ <b>Only those bids having a score of 70% and above will be considered for further evaluations.</b></li> <li>○ Due diligence may be carried out to ascertain that the information provided by the tenderer is correct. Any incorrect information provided will amount to disqualification.</li> </ul>		
2.22.5	The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening of the tender.		
2.24	<p>The Procuring entity will award the contract to the successful tenderer whose tender has been determined to be responsive and is the lowest evaluated bidder as per the Letter of Invitation.</p> <p>Award of the tender may be subject to due diligence.</p>		

### 3 SECTION III - GENERAL CONDITIONS OF CONTRACT

#### 3.1 Definitions

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

**“Bills of quantities”** means the priced and completed bill of quantities forming part of the tender.

**“Compensation Events”** are those defined in clause 24 hereunder

**“Completion date”** means the date of completion of the works as certified by the Project Manager, in accordance with Clause 31.

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

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

**“The Contractor’s Tender”** is the completed tendering document submitted by the Contactor to the Employer.

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

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

**“Defects”** is any piece of work not completed in accordance with the Contract.

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

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

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

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

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

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

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

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

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

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

**“Site”** means the place or places where the permanent Works are to be carried out including workshops where the same is being prepared.

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

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

**“Start Date”** is the date when the Contractor shall commence execution of the Works.

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

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

**“Employer’s Representative”** is the person appointed by the Employer and notified to the Contractor for the purpose of supervision of the Works.

**“A Variation”** is an instruction given by the Employer’s Representative which varies the Works.

“The Works” are what the Contract requires the Contractor to construct, install, and turnover to the Employer.

### **3.2 Interpretation**

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

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

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

- (1) Agreement,
- (2) Letter of acceptance,
- (3) Contractor’s Tender,
- (4) Special Conditions of Contract,
- (5) Conditions of Contract,
- (6) Specifications,
- (7) Drawings,
- (8) Bills of Quantities,
- (9) Any other documents listed in the Special Conditions of Contract as forming part of the contract.

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

### **3.3 Application**

These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment to the extent that they are not superseded by provisions of other part of contract.

### **3.4 Country of Origin**

- 3.4.1 For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.
- 3.4.2 The origin of Goods and Services is distinct from the nationality of the tenderer and will be treated thus in the evaluation of the tenders.

### **3.5 Use of Contract Documents and Information**

- 3.5.1 The Candidate 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**

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 twenty-eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable 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) Cash
  - b) Bank guarantee
  - c) Such insurance guarantee approved by the Authority

#### d) Letter of credit

3.7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not late 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 equipment 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. 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 equipment 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 equipment after the equipment arrival and installation 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 3.8.4 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 and packaging of the equipment 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**



Delivery of the equipment, documents and installation of the same 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 Assignment**

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.

### **3.12 Force Majeure**

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.

### **3.13 Notices**

- 3.13.1 Any notice given by one party to the other pursuant to this contract shall be sent to other party by post or by fax or Email and confirmed in writing to the other party's address specified.
- 3.13.2 A notice shall be effective when delivered or on the notices effective date, whichever is later.

### **3.14 Project Manager's Decisions**

- 3.14.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contract in the role representing the Employer.

### **3.15 Delegation**

- 3.15.1 The Project manager may delegate any of his duties and responsibilities to others after notifying the Contractor.

### **3.16 Communications**

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

### **3.17 Subcontracting**

3.17.1 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.

### **3.18 Other Contractors**

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

### **3.19 Personnel**

3.19.1 The Contractor shall employ the key personnel named in the Qualification Information, to carry out the functions stated in the said information or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Qualification Information. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within Seven days and has no further connection with the Work in the Contract.

### **3.20 Works**

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

### **3.21 Safety and Temporary Works**

3.21.1 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.

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

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

### **3.22 Discoveries**

- 3.22.1 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 manager's instructions for dealing with them.

### **3.23 Work Program**

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

The Contractor shall submit to the Project Manager for approval an updated program at intervals no longer than the period stated in the Special 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 Special Conditions from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue program has been submitted. The Project Manager's approval of the program shall not alter the Contractor's obligations. The Contractor may revise the program and submit it to the Project Manager again at any time. A revised program shall show the effect of Variations and Compensation Events.

### **3.24 Possession of Site**

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

### **3.25 Access to Site**

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

### **3.26 Instructions**

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

### **3.27 Extension of Acceleration of Completion Date**

3.27.1 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 with 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 caused by such failure shall not be considered in assessing the new (extended) Completion Date.

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

### **3.28 Management Meetings**

3.28.1 A Contractor management meeting shall be held monthly and attended by the Project Manager and the Contractor. Its business shall be to review the plans for the remaining Work and to deal with matters raised in accordance with the early warning procedure. The Project manager shall record the minutes of management meetings and provide copies of the same to those attending the meeting and the Employer.

The responsibility of the parties for actions to be taken shall be decided by the Project manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

### **3.29 Early Warning**

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

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

### **3.30 Defects**

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

### **3.31 Bills of Quantities**

- 3.31.1 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.
- 3.31.2 If the final quantity of the work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the Initial Contractor price, the Project Manager shall adjust the rate to allow for the change.
- 3.31.3 If requested by the Project Manager, the Contractor shall provide the Project manager with a detailed cost breakdown of any rate in the Bills of Quantities.

### **3.32 Variations**

- 3.32.1 All variations shall be included in updated programs produced by the Contractor.
- 3.32.2 The Contractor shall provide the Project Manager with a quotation for carrying out the variations when requested to do so. The Project Manager shall assess the quotation, which

shall be given within seven days of the request or within any longer period as may be stated by the Project Manager and before the Variation is ordered.

- 3.32.3 If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the variation does not correspond with items in the Bills of Quantities, the quotation by the contractor shall be in the form of new rates for the relevant items of work.
- 3.32.4 If the Contractor's quotation is unreasonable, the Project manager may order the variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the variation on the Contractor's cost
- 3.32.5 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the works, no quotation shall be given and the variation shall be treated as a Compensation Event.
- 3.32.6 The Contractor shall not be entitled to additional payment for cost that could have been avoided by giving early warning.
- 3.32.7 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.

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

- 3.33.1 The Contractor shall submit to the Project Manager monthly applications for payment giving sufficient details of the Work done and materials on Site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the monthly application and certify the amount to be paid to the Contractor within 14 days. The value of work executed and payable shall be determined by the Project Manager.
- 3.33.2 The value of work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed, materials delivered on site, variations and compensation events. Such materials shall become the property of the Employer once the Employer has paid the Contractor for their value. Thereafter, they shall not be removed from site without the Project Manager's instructions except for use upon the works.
- 3.33.3 Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. If the Employer makes a late payment, the Contractor shall be

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

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

3.33.5 Items of the works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

3.33.6 The Contract Price shall be stated in Kenya Shillings. All payments to the contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Special Conditions of Contract. If the contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services. The Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The Employer and the Project manager shall be notified promptly by the Contractor of any changes in the expected foreign currency requirements of the Contractor during the execution of the works as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.

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

- a) On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 10% (ten percent) of the original amount of the contract. The advance shall not be subject to retention money.
- b) No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.
- c) Reimbursement of the lump sum advance shall be made by deductions from the Interim payments and where applicable from the balance owing to the contractor. Reimbursement shall begin when the amount of the sums due under the Contract

reaches 20% of the original amount of the contract. It shall have been completed by the time 80% of this amount is reached.

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

$$R = \frac{A(X^1 - X^{11})}{80 - 20}$$

Where:

R = the amount to be reimbursed

A = the amount of the advance which has been granted

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

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

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

### **3.34 Compensation Events**

3.34.1 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 Special Conditions of Contract.



- b) The Employer modifies the List of Other Contractors, etc., in a way that affects the Work of the Contractor under the Contract.
- c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the works on time.
- d) The Project Manager instructs the contractor to uncover or to carry out additional tests upon the work, which is then found to have no defects.
- e) The Project Manager unreasonably does not approve a subcontract to be let.
- f) Ground conditions are substantially more<sup>3</sup> adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the site investigation reports), from information available publicly and from a visual inspection of the site.
- g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional works required for safety or other reasons.
- h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- i) The effects on the Contractor of any of the Employer's risks.
- j) The Project Manager unreasonably delays issuing a Certificate of Completion.
- k) Other compensation events described in the Contract or determined by the Project manager shall apply

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

3.34.3 As soon as information demonstrating the effect of each compensation event upon the Contractor's forecast cost has been provided by the Contract, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly.

- 3.34.4 If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.
- 3.34.5 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.
- 3.34.6 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Special Conditions of Contract.
- 3.34.7 The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

Provided always that should the event giving rise to the claim of continuing effect, the Contractor shall submit an interim claim within the said thirty days and a final claim within thirty days of the end of the event giving rise to the claim.

### **3.35 Price Adjustment**

- 3.35.1 The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.
- 3.35.2 The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provision in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works. Unless otherwise stated in the Contract, if 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.
- 3.35.3 Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manner set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified thereunder;
- a) The price contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other emoluments and expenses as

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

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

3.35.4 The price contained in the Contract Bills of Quantities shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the works as determined by the J.B.C. and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Special Conditions of Contract.

3.35.5 Upon the J.B.C. determining that any of the said basic prices are increased or decreased then the Contract Price shall be increased or decreased by the amount to be assessed by the Project Manager based upon the difference between the price set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 23 of these Conditions issued before the date of publication of such increase or decrease.

3.35.6 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.

3.35.7 The provisions of sub-clause 25.1 to 25.2 herein shall not apply in respect of any materials included in the schedule of basic rate.

### **3.36 Retention**

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

### **3.37 Liquidated Damages**

3.37.1 The Contractor shall pay liquidated damages to the Employer at the rate stated in the Special Conditions of Contract for each day that the actual Completion Date is later than the Intended Completion Date. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not alter the Contractor's liabilities.

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

### **3.38 Dayworks**

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

3.38.2 All work to be paid for as Dayworks shall be recorded by the Contractor on Forms approved by the Project Manager. Each completed form shall be verified and signed by the Project manager within two days of the work being done.

3.38.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

### **3.39 Liability and Insurance**

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

- a) The risk of personal injury, death or loss of or damage to property (excluding the works, plant, materials and equipment), which are due to;

- i) use or occupation of the site by the works or for the purpose of the works, which is the unavoidable result of the works, or
- ii) negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.

- b) The risk of damage to the works, plant, materials, and equipment to the extent that it is due to a fault of the Employer or in Employer's design, or due to war or radioactive contamination directly affecting the place where the works are being executed.

3.39.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the works, plant, and materials is the Employer's risk except loss or damage due to;

- a) a defect which existed on or before the Completion Date.
- b) An event occurring before the Completion Date, which was not itself the Employer's risk.
- c) The activities of the Contractor on the Site after the Completion Date.

3.39.3 From the Start Date until the Defects Correction Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the works, plant, materials, and equipment) which are not Employer's risk are contractor's risks.

The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Special Conditions of Contract for the following events;

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

3.39.4 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.

3.39.5 If the Contractor does not provide any of the policies and certificates required, the Employer may effect 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.

3.39.6 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.

### **3.40 Completion and Taking Over**

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.

### **3.41 Final Account**

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

### **3.42 Termination**

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

- a) The Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been 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.

3.42.2 When either party to the contract gives notice 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.

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

3.42.4 If the Contractor 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.

### **3.43 Payment Upon Termination**

3.43.1 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 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.

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

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

3.43.4 The contractor shall, during the execution or after the completion of the works under this clause remove from the site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary building, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, hold the proceeds less all costs incurred to the credit of the Contractor.

Until after completion of the works under this clause the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Project Manager shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

#### **3.44 Release from Performance**

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

#### **3.45 Corrupt gifts and Payment of Commission**

The Contractor shall not;

- a) Offer or give or agree to give to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the Employer.
- b) Enter into this or any other contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.



Any breach of this Condition by the Contractor or by anyone employed by his 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.

### **3.46 Settlement of Disputes**

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

- (i) Architectural Association of Kenya
- (ii) Institute of Quantity Surveyors of Kenya
- (iii) Association of Consulting Engineers of Kenya
- (iv) Chartered Institute of Arbitrators (Kenya Branch)
- (v) Institute of Engineers of Kenya

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

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

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

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

- 3.46.5 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the works or abandonment of the works or termination of the Contract by either part:
- 3.46.6 The appointment of a replacement Project Manager upon the said person ceasing to act.
- 3.46.7 Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- 3.46.8 Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- 3.46.9 Any dispute or difference arising in respect of war risks or war damage.
- 3.46.10 All other matter 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.
- 3.46.11 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be 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.

### **3.47 Language and Law**

The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise specified in the SCC

#### 4 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 those in the GCC.

4.2 Special conditions of contract as relates to the GCC

Reference to GCC	Special Conditions of Contract
3.1	<p>The Start Date shall be <b>Within Seven Days after the signing of the Contract by the Contractor and the Employer.</b></p> <p>Duration of the contract will be <b>15 Weeks.</b></p> <p>The Intended Completion Date for the whole of the Works shall be <b>15 Weeks from the Start Date.</b></p> <p>The following documents also form part of the Contract: <b>As listed in Clause 3.2.3 of the conditions of contract.</b></p> <p><b>Price Schedule (Schedule of Unit Rates)</b></p>
3.7	<p>The amount of Performance Security is 10% of the Contract Sum; and Performance security shall <b>NOT</b> be divided in two elements and shall be payable in Kenya Shillings Only.</p> <p>Format-Bank Guarantee</p>
3.14	<p>The Project Manager for the purpose of this contract shall be:  <b>Secretary of Renewable Energy</b>  <b>Ministry of Energy</b>  <b>Nyayo House, 22<sup>nd</sup> Floor</b>  <b>P. O. Box 30582 – 00100, GPO</b>  <b>NAIROBI</b></p>
3.20	<p>The Contractor shall execute the service works in accordance with the specifications and conditions of the contract and shall commence the works in accordance with the Letter of Acceptance.</p> <p>Should the contractor find that there are no drawings, showing the wind masts and data loggers have been provided, it is his responsibility to prepare these drawings for the site. The drawings should be simple to understand and all necessary details must be clearly shown.</p>

	A copy of this drawing shall be handed over to the Project Manager / for record and safekeeping.
3.23	The Contractor shall provide complete work program for inspection, preventive and corrective maintenance and major servicing of the wind masts and data loggers. The Contractor shall also be required to remedy and/or make good any defects that may arise before the end of Defects Liability Period (DLP). The contractor shall be ready to respond to any calls anytime of the day, night, during public holidays or weekends whenever called upon by the Employer to do so.
3.24	<p>The Sites are located in Nakuru, Baringo, Elgeyo Marakwet, Uasin Gishu, Bungoma, Kakamega, Kisumu, Homabay, Narok, Kajiado, Kiambu, Makueni, Kitui, Taita Taveta, Kwale, Kilifi, Tana River, Lamu, Garrisa, Wajir, Marsabit, Samburu, Isiolo, Laikipia, Meru, Tharaka Nithi, Nyeri, Nyandarua, West Pokot, Turkana Counties as detailed here-below:</p> <p><b>LOT 1:</b> 26 Number of Wind masts sites located in Baringo, Elgeyo Marakwet, Uasin Gishu, Bungoma, Kakamega, Kisumu, Homabay, Narok, Kajiado, Kiambu, Makueni and Kitui;</p> <p><b>LOT 2:</b> 31 Number of wind mast sites located in Taita Taveta, Kwale, Kilifi, Tana River, Lamu, Garrisa, Wajir and Marsabit Counties</p> <p><b>LOT 3:</b> 27 Number of wind mast sites located in Samburu, Isiolo, Laikipia, Meru, Tharaka Nithi, Nyeri, Nyandarua, West Pokot and Turkana Counties</p> <p>The Site Possession Date shall be Immediately after the First Management (Kick-Off) Meeting.</p> <p>The Project Manager shall convene First Management meeting within seven days from the date of contract signing by the Contractor and the Employer.</p>
3.30.2	The Defects Liability Period is <b>12 Months from practical completion date.</b>
3.33.1	Change to read: “The Contractor shall submit to the Project Manager application for payment for each site once it is complete, tested, commissioned and certified by an authorized representative of the Employer. The Project Manager shall check the application and certify the amount to be paid to the contractor within 14 days. The value of work executed in the institution and payable shall be determined by the Project Manager.

	<b>Payment shall only be on completion of each wind mast site.</b>
3.33.2	Change to read: “The value of work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed, variations and compensation events.”
3.36	Percentage of Certified Value Retained: <b>10%</b>  Limit of Certified Value Retained: <b>5%</b>
3.37	Liquidated and Ascertained damages: <b>At the rate KES. 40,000/= per week or part thereof.</b>
3.40	Period of honoring completion certificate: <b>30 days</b>
3.46	Change to read;  Any dispute, controversy or claim arising out of or in connection to this Contract, or breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Nairobi Centre for International Arbitration Rules in force when the Request for Arbitration is submitted.  i) The language of the Arbitration will be English,  ii) The seat of the Arbitration shall be Nairobi, Kenya.  iii) The Tribunal shall be composed of a sole Arbitrator.
3.47	This contract shall be construed and interpreted in accordance with the Laws of Kenya.

## **5 SECTION V – SCHEDULE OF REQUIREMENTS**

The schedule of requirements, together with the price schedule, should serve as a base in the event of quantity variations at the time of award of contract pursuant to instructions to tenderers clause 26.

The date or period of delivery should be carefully specified, taking into account the date prescribed herein from which the procuring entity's delivery obligations start (notice of award).

This part will include any deliverables under the service contract

### **5.1 Preamble to the Bills of Quantities**

1. The Bills of Quantities shall be read in conjunction with the instructions to Tenderers, General Conditions of Contract, Particular Conditions of Contract and Technical specifications.
2. The quantities given in the Bills of Quantities are provisional and are given to provide a common basis for tendering. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the contractor and verified by the Engineer and valued at the rates and prices quoted in the Price Schedules and Schedule of Unit Rates where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.
3. The rates and prices quoted in the Price Schedules and Schedule of Unit Rates shall except insofar as it is otherwise under the Contract, maintenance, insurance, profit, together with all general risks, liabilities and obligations set out or implied in the Contract.
4. A rate or price shall be entered against each item in the Price Schedules and Schedule of Unit Rates, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by the Contract Price.
5. The whole cost of complying with the provisions of the Contract shall be included in the items provided in the Price Schedules and Schedule of Unit Rates, and where no Items are provided the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Works.
6. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bills of Quantities, Price Schedules and Schedule of Unit Rates. References to the relevant sections of the contract documentation shall be made before entering prices against each item in the priced Bill of Quantities, Price Schedules and Schedule of Unit Rates.

**NOTE:**

1. All Prices shall include **VAT**
2. The Contractor will be required to fill in the unit rates or prices in the **Bills of Quantities, Price Schedules** and **Schedule of Unit Rates** in **(Section VI)**, for the site under a particular LOT.
3. **Drawings:** Clause 3.20 of **Section IV:** “Specific Conditions of Contract” and, particularly, in Reference to “General Conditions of Contract” shall apply.
4. **NO** claim of components replaced without Project Manager’s Instructions.

**BILLS OF QUANTITIES FOR REHABILITATION AND CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS IN 26 SITES ACROSS THE COUNTRY - LOT 1**

	<b>SITE</b>	<b>County</b>	<b>SN</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>UNIT COST (KSH)</b>	<b>TOTAL COST (KSH)</b>	<b>BRAND</b>	<b>COUNTRY OF ORIGIN</b>
1	Kamathatha Primary School,	Nakuru	1	Battery	No	1				
			2	Solar Panel	No.	1				
			3	Charge Controller	No.	1				
			4	Antenna Cable	Meter	2				
			5	Sensor Cables	Meter	250				
			6	Modem Antenna and Cable	No.	1				
			7	Desiccant	Lot	1				
				<b>Total Material Cost</b>						
2	Londiani	Nakuru	1	9v battery	No	1				
			2	12v battery	No	1				
			3	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
3	Marigat	Baringo	1	Brackets, bolts and bushes.	Lot	1				
			2	9v battery	No	1				
			3	12v battery	No	1				
			4	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
4			1	Battery (9Volt)	No	1				



	Kapsowar Primary School	Elgeyo Marakwet	2	Battery (12Volt)	No	1				
			3	Desiccant	Lot	1				
				<b>Total Material Cost</b>						
5	Sergoit Secondary School	Uasin Gishu	1	Desiccant	Lot	1				
			2	12v Batteries		1				
			3	9v Batteries	No	2				
			4	GSM SIM card.	No	1				
				<b>Total Material Cost</b>						
6	Kimaeti	Bungoma	1	Desiccant	Lot	1				
			2	9v Batteries	No	1				
			3	12v Batteries	No	2				
			4	GSM Sim card.	No	1				
				<b>Total Material Cost</b>						
7	Bungoma	Bungoma	1	Data Logger	No	1				
				<b>Total Material Cost</b>						
8	Kakamega High School	Kakamega	1	data logger (the whole enclosure with its accessories)	No	1				
			2	Solar panel	No	1				
			3	Sensor cables.	Meters	150				
			4	GSM SIM Card	No	1				
				<b>Total Material Cost</b>						
9		Kisumu	1	Solar panel	No	1				

	Koru Girls Secondary		2	12v Batteries	No	1					
			3	9v Batteries	No	1					
					<b>Total Material Cost</b>						
10	Mfangano Island	Homabay	1	12v battery,	No	1					
					2	9v battery,	No	1			
					3	Cable Rubber Glands,	No	10			
					4	Desiccant.	Lot	1			
					5	GSM SIM card	No	1			
						<b>Total Material Cost</b>					
11	Ulanda Girls Secondary	Homabay	1	12v battery,	No	1					
					2	9v battery,	No	1			
					3	Desiccant	Lot	1			
					4	GSM SIM Card	No	1			
						<b>Total Material Cost</b>					
12	Olonkerin	Narok	1	Desiccant	Lot	1					
					2	9v battery,	No	1			
					3	12v battery,	No	1			
					4	GSM SIM Card	No	1			
						<b>Total Material Cost</b>					
13	Narok High School	Narok	1	12v battery,	No	1					
					2	9v battery,	No	1			
					3	GSM SIM card ,	No	1			
					4	60m Anemometer	No	1			
					5	Desiccant.	Lot	1			

				<b>Total Material Cost</b>						
14	Parkitabu	Narok	1	12v battery,	No	1				
			2	9v battery,	No	1				
			3	GSM SIM Card	No	1				
			4	Charge Controller	No	1				
			5	Solar panel	No	1				
			6	Sensor Cable	M	250				
			7	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
15	Mau Narok	Narok	1	12v battery	No	1				
			2	9v battery	No	1				
			3	GSM SIM card	No	1				
			4	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
16	Oloitokitok	Kajiado	1	Desiccant	Lot	1				
			2	12v Battery	No	1				
			3	9v Battery	No	1				
				<b>Total Material Cost</b>						
17	Kapiti plains	Kajiado	1	Desiccant	Lot	1				
			2	9v Battery	No	1				
			3	12v Battery	No	1				
				<b>Total Material Cost</b>						
18	Elangata	Kajiado	1	desiccant	Lot	1				

			2	12v Battery	No	1				
			3	9v Battery	No	1				
				<b>Total Material Cost</b>						
19	Magadi	Kajiado	1	desiccant	Lot	1				
			2	9v Battery	No	1				
			3	12v Battery	No	1				
			4	Enclosure Mounting Bracket	No	4				
				<b>Total Material Cost</b>						
20	Ndeiya	Kiambu	1	Desiccant	Lot	1				
			2	12v Battery	No	1				
			3	9v Battery	No	1				
				<b>Total Material Cost</b>						
21	Makindu	Makueni	1	GSM SIM card	No	1				
			2	12v battery	No	1				
			3	9v battery	No	1				
				<b>Total Material Cost</b>						
22	Mutha	Kitui	1	9v battery,	No	1				
			2	Solar Panel	No	1				
			3	12v battery,	No	1				
			4	Charge Controller,	No	1				
			5	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						

23	Mutomo	Kitui	1	data logger	No	1				
			2	Solar panel	No	1				
			3	Sensor cables.	Meters	250				
				<b>Total Material Cost</b>						
24	Mutonguni Hills	Kitui	1	GSM Sim card	No	1				
			2	12V battery	No	1				
			3	9v battery	No	1				
			4	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
25	Mwingi, Musuani Secondary School	Kitui	1	9v battery,	No	1				
			2	12v battery,	No	1				
			3	Charge Controller	No	1				
			4	Solar panel	NO	1				
			5	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
26	Katse	Mwingi	1	9v battery	No	1				
			2	12v Battery	No	1				
			3	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
				<b>Desktop Computer</b>	No	1				
				<b>Total Materials Cost For Lot 1</b>						
				<b>Labour Cost For Transport, Storage,</b>						

	<b>Installation, Testing And Commissioning.</b>						
	<b>Total Material And Labour</b>						
	<b>Contingencies</b>				<b>500,000</b>		
	<b>Total Amount Carried Forward To Price Summary Page</b>						

**BILLS OF QUANTITIES FOR REHABILITATION AND CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS IN 31 SITES ACROSS THE COUNTRY - LOT 2**

	<b>SITE</b>	<b>County</b>	<b>SN</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>UNIT COST (KSH)</b>	<b>TOTAL COST (KSH)</b>	<b>BRAND</b>	<b>COUNTRY OF ORIGIN</b>
1	Wundanyi	Taita Taveta	1	9v battery,	No	1				
			2	12v battery,	No	1				
			3	GSM SIM card,	No	1				
			4	Charge Controller	No	1				
			5	Solar panel	No	1				
			6	Sensor Cable	M	250				
			7	Desiccant	Lot	1				
				<b>Total Material Cost</b>						
2	Mwabungu	Kwale	1	Data logger	No	1				
			2	Solar panel	No	2				
			3	Sensor cables.	No	3				
			4	<b>Total Material Cost</b>						
3	Lunga Lunga	Kwale	1	9v battery,	No	1				
			2	12v battery,	No	1				
			3	Charge Controller	No	1				
			4	Desiccant.	Lot	1				
			5	Solar Panel	No	1				
				<b>Total Material Cost</b>						

4	Ramisi	Kwale	1	data logger (the whole enclosure with its accessories)	No	1			
			2	Solar panel	No	1			
			3	Sensor cables.	Meters	150			
				<b>Total Material Cost</b>					
5	Gede	Kilifi	1	9v battery,	No	1			
			2	12v battery,	No	1			
			3	Charge Controller	No	1			
			4	Desiccant.	Lot	1			
			5	Solar Panel	No	1			
				<b>Total Material Cost</b>					
6	Ras Ngomeni	Kilifi	1	data logger	No	1			
			2	Solar panel	No	1			
			3	Sensor cables.	Meters	100			
				<b>Total Material Cost</b>					
7	Kilifi	Kilifi	1	Sensor Cables	Meters	150			
			2	9v battery,	No	1			
			3	12v battery,	No	1			
			4	GSM SIM card	No	1			
			5	Desiccant.	Lot	1			
				<b>Total Material Cost</b>					
8	Marafa Secondary	Malindi, Kilifi	1	Mast support brackets	No	24			
			2	GSM SIM card	No	1			



			3	12V battery	No	1			
			4	9v battery	No	1			
				<b>Total Material Cost</b>					
9	Garsen	Tana River	1	Sensor cables	Meters	150			
			2	12v battery,	No	1			
			3	9v battery,	No	1			
			4	GSM SIM card	No	1			
			5	Desiccant.	Lot	1			
				<b>Total Material Cost</b>					
10	Garsen High School	Tana River	1	Anemometer	No	3			
			2	Wind vane	No	3			
			3	sensors cables,	Meters	480			
			4	12V Battery	No	1			
			5	Solar panel	No	1			
			6	GSM SIM card.	No	1			
				<b>Total Material Cost</b>					
11	Bangale	Tana River	1	data logger (the whole enclosure with its accessories)	No	1			
			2	Solar panel	No	1			
			3	Sensor cables.	Meters	150			
				<b>Total Material Cost</b>					
12	Hola	Tana River	1	9v battery	No	1			
			2	12v batteries.	No	1			

				<b>Total Material Cost</b>						
13	Soroko	Lamu	1	12v battery	No	1				
			2	9v battery	No	1				
			3	Desiccant	Lot	1				
				<b>Total Material Cost</b>						
14	Kiongwe	Lamu	1	Enclosure brackets.	No	6				
			2	12v battery	No	1				
			3	9v battery	No	1				
			4	GSM SIM card	No	1				
			5	Desiccant	Lot	1				
				<b>Total Material Cost</b>						
15	Dadaab	Garissa	1	data logger (the whole enclosure with its accessories)	No	1				
			2	Solar panel	No	1				
			3	GSM SIM Card	No	1				
			4	Sensor cables	Meter	150				
				<b>Total Material Cost</b>						
16	KBC	Garissa	1	GSM SIM card	No	1				
			2	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
17	Garissa	Garissa	1	9v battery	No	1				
			2	12v battery	No	1				

			3	GSM SIM card	No	1			
			4	Modem	No	1			
			5	Desiccant	Lot	1			
				<b>Total Material Cost</b>					
18	Habaswen High School	Waijr	1	Sensor cables	Meters	150			
			2	GSM SIM card	No	1			
			3	Desiccant	Lot	1			
				<b>Total Material Cost</b>					
19	Griftu	Waijr	1	12v battery	No	1			
			2	9V battery	No	1			
			3	Desiccant	Lot	1			
				<b>Total Material Cost</b>					
20	Griftu (100M Mast)	Waijr	1	GSM SIM Card	No	1			
			2	Desiccant	Lot	1			
			3	sensor cable	Meters	150			
				<b>Total Material Cost</b>					
21	Buna	Waijr	1	desiccant	Lot	1			
			2	GSM SIM Card	No	1			
				<b>Total Material Cost</b>					
22	Buna (100M Mast)	Waijr	1	Rubber glands	No	4			
			2	12v battery	No	1			
			3	9v battery	No	1			
			4	Desiccant	Lot	1			

				<b>Total Material Cost</b>					
23	Moyale Town	Marsabit	1	9v batteries	No	1			
			2	12v batteries	No	1			
			3	desiccant	Lot	1			
				<b>Total Material Cost</b>					
24	Walda	Marsabit	1	data logger (the whole enclosure with its accessories)	No	1			
			2	Solar panel	No	1			
			3	Sensor cables.	Metres	150			
				<b>Total Material Cost</b>					
25	Maikona	Marsabit	1	9V battery	No	1			
			2	12v battery	No	1			
			3	desiccant	Lot	1			
				<b>Total Material Cost</b>					
26	Maikona (100M Mast)	Marsabit	1	Charge controller	No	1			
			2	12v battery	No	1			
			3	desiccant	Lot	1			
			4	Solar Panel	No	1			
				<b>Total Material Cost</b>					
27	Hurri Hills	Marsabit	1	Enclosure glands.	No	4			
			2	GSM SIM card	No	1			
			3	9v battery	No	1			

			4	12v battery	No	1				
				<b>Total Material Cost</b>						
28	Hurri Hills (100M Mast)	Marsabit	1	solar panel	No	1				
			2	9V battery,	No	1				
			3	12v battery,	No	1				
			4	desiccant	Lot	1				
			5	GSM SIM card.	No	1				
				<b>Total Material Cost</b>						
29	North Horr	Marsabit	1	9V battery	No	1				
			2	12v battery	No	1				
				<b>Total Material Cost</b>						
30	Loiyangala ni	Marsabit	1	data logger (the whole enclosure with its accessories)	No	1				
			2	Solar panel	No	1				
			3	Sensor cables	Meters	150				
				<b>Total Material Cost</b>						
31	Laisamis	Marsabit	1	12v battery	No	1				
			2	9v battery	No	1				
			3	desiccant	Lot	1				
				<b>Total Material Cost</b>						
				<b>Total Materials Cost For Lot 2</b>						

		<b>Labour Cost For Transport, Storage, Installation, Testing And Commissioning</b>						
		<b>Total Material And Labour</b>						
		<b>Contingencies</b>				<b>500,000</b>		
		<b>Total Amount Carried Forward To Price Summary Page</b>						

**BILLS OF QUANTITIES FOR REHABILITATION, CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS, IN 27 SITES ACROSS THE COUNTRY - LOT 3**

	<b>SITE</b>	<b>County</b>	<b>S N</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>UNIT COST (KSH)</b>	<b>TOTAL COST (KSH)</b>	<b>BRAN D</b>	<b>COUNTRY OF ORIGIN</b>
1	Baragoi	Samburu	1	Logger Enclosure mounting washers,	No	4				
			2	12V battery	No	1				
			3	9v battery	No	1				
			4	GSM SIM card	No	1				
			5	desiccant	Lot	1				
				<b>Total Material Cost</b>						
2	Baragoi (100M Mast)	Samburu	1	Logger Enclosure mounting washers,	No	4				
			2	9v battery	No	1				
			3	12V battery	No	1				
			4	GSM SIM card	No	1				
			5	desiccant	Lot	1				
				<b>Total Material Cost</b>						
3	Archers Post (100M Mast)	Samburu	1	Lambrecht Data Logger modem,	No	1				
			2	12v battery,	No	1				
			3	GSM SIM card	No	1				
			4	desiccant	Lot	1				
				<b>Total Material Cost</b>						

4	Archers Post (100M)	Samburu	1	9v batteries	No	1				
			2	12v batteries	No	1				
			3	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
5	Merti	Isiolo	1	9v battery	No	1				
			2	12v battery	No	1				
			3	desiccant	Lot	1				
				<b>Total Material Cost</b>						
6	Garbatula	Isiolo	1	9v battery	No	1				
			2	12v battery	No	1				
			3	GSM SIM card	No	1				
			4	Modem	No	1				
			5	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
7	Lotim	Isiolo	1	9v battery	No	1				
			2	12v battery	No	1				
			3	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
8	Attan Primary School	Isiolo	1	Lambrecht Data Logger modem,	No	1				
			2	12v battery,	No	1				
			3	GSM SIM card,	No	1				
			4	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						



9	Rumuruti (100M Mast)	Laikipia	1	Lambrecht Data Logger modem,	No	1				
			2	12v battery,	No	1				
			3	GSM SIM card,	No	1				
			4	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
10	Rumuruti	Laikipia	1	9v battery	No	1				
			2	12v battery	No	1				
			3	Desiccant.	Lot	1				
			4	<b>Total Material Cost</b>						
11	Nyambene Hills	Meru	1	12v battery	No	1				
			2	9v battery	No	1				
			3	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
12	Meru University	Meru	1	Lambrecht Data Logger modem,	No	1				
			2	12v battery	No	1				
			3	GSM SIM card,	No	1				
			4	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
13	Marimanti	Tharaka Nithi	1	9v battery	No	1				
			2	12v battery	No	1				

			3	GSM sim card	No	1				
			4	Disiccant.	Lot	1				
				<b>Total Material Cost</b>						
14	Kieni	Nyeri	1	12v battery	No	1				
			2	9v Battery	No	1				
			3	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
15	Dedan Kimathi University	Nyeri	1	Sensor cables	Meters	480				
			2	Anemometers	No	3				
			3	Wind Vanes	No	3				
			4	9v battery	No	1				
			5	12v battery	No	1				
			6	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
16	Maili Nne Nyahururu	Nyandarua	1	9v battery	No	1				
			2	12v battery	No	1				
			3	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
17	Sigor	West Pokot	1	Data logger (the whole enclosure with its accessories)	No	1				
			2	Solar panel	No	1				
			3	Sensor cables.	Meters	150				
				<b>Total Material Cost</b>						

18	Alale	West Pokot	1	desiccant	Lot	1				
			2	12v Battery	No	1				
			3	9v Battery	No	1				
				<b>Total Material Cost</b>						
19	Kainuk	Turkana	1	12v battery	No	1				
			2	9v battery	No	1				
			3	Desiccant.	Lot	1				
				<b>Total Material Cost</b>						
20	Lokoli	Turkana	1	desiccant	Lot	1				
			2	12 Battery	No	1				
			3	9v Battery	No	1				
			4	GSM SIM Card.	No	1				
				<b>Total Material Cost</b>						
21	Lodwar Town	Turkana	1	12v battery	No	1				
			2	9v battery	No	1				
			3	desiccant	Lot	1				
			4	<b>Total Material Cost</b>						
22	Lokichar	Turkana	1	desiccant	Lot	1				
			2	9v Battery	No	1				
			3	12v Battery	No	1				
			4	GSM SIM Card.	No	1				
				<b>Total Material Cost</b>						

23	Lokichogio	Turkana	1	desiccant	Lot	1				
			2	12v Battery	No	1				
			3	9v Battery,	No	1				
			4	GSM Sim Card	No	1				
				<b>Total Material Cost</b>						
24	Kakuma	Turkana	1	Data Logger	No	1				
			2	desiccant	Lot	1				
			3	12v Battery	No	1				
			4	9v Battery	No	1				
			5	GSM SIM Card	No	1				
				<b>Total Material Cost</b>						
25	Lokitaung	Turkana	1	desiccant	Lot	1				
			2	9v Battery	No	1				
			3	12v Battery	No	1				
			4	GSM SIM Card.	No	1				
				<b>Total Material Cost</b>						
26	Lokitaung (100M Mast)	Turkana	1	desiccant	Lot	1				
			2	GSM SIM Card	No	1				
			3	<b>Total Material Cost</b>	No	1				
27	Kalemungo rok	Turkana	1	desiccant	Lot	1				
			2	9v Battery	No	1				
			3	12V Battery	No	1				
				<b>Total Material Cost</b>						
				<b>Laptop Computer</b>	No	1				

		<b>Total Materials Cost For Lot 3</b>						
		<b>Labour Cost For Transport, Storage, Installation, Testing And Commissioning</b>						
		<b>Total Material And Labour</b>						
		<b>Contingencies</b>				<b>500,000</b>		
		<b>Total Amount Carried Forward To Price Summary Page</b>						

**PRICE SUMMARY**

<b>Item</b>	<b>Description</b>	<b>Amount (KSH)</b>
<b>Lot 1</b>	<b>Total amount for, FOR REHABILITATION AND CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS IN 26 SITES ACROSS THE COUNTRY - LOT 1 CARRIED TO THE FORM OF TENDER</b>	
<b>Lot 2</b>	<b>Total amount for, FOR REHABILITATION AND CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS IN 31 SITES ACROSS THE COUNTRY - LOT 2 CARRIED TO THE FORM OF TENDER</b>	
<b>Lot 3</b>	<b>Total amount for, FOR REHABILITATION AND CORRECTIVE MAINTENANCE OF WIND MASTS AND DATA LOGGERS IN 27 SITES ACROSS THE COUNTRY - LOT 3 CARRIED TO THE FORM OF TENDER</b>	

**TOTAL AMOUNT IN WORDS FOR LOT 1: -**

**Kenya Shillings**

.....  
.....

**TOTAL AMOUNT IN WORDS FOR LOT 2: -**

**Kenya Shillings**

.....  
.....

**TOTAL AMOUNT IN WORDS FOR LOT 3: -**

**Kenya Shillings**

.....  
.....

**Tenderer's Name and Stamp,**

.....  
.....

**Signature..... Date.....**

**PIN No..... VAT Certificate No.....**

**Witness..... Address.....**

**Signature of witness..... Date.....**

## 6 SECTION VI DESCRIPTION OF SERVICES

### 6.1 General Technical Specifications

1. These specifications describe the basic requirements for equipment. Tenderers are requested to submit with their offers the detailed specifications **from manufacturers**, drawings, catalogues, etc. for the products they intend to supply. **Downloads from the internet will not be accepted.**
2. Tenderers **MUST** only offer one set of detailed specifications per equipment. Failure to comply will render the bid non-responsive.
3. Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.
4. 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. 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.
3. All offered equipment must comply with the relevant Kenyan Standards for such equipment.
4. The Contractor shall execute the service works in accordance with the specifications and the general and specific conditions of the contract.
5. The wind masts and data loggers Rehabilitation and Corrective Maintenance Contract shall comprise of Rehabilitation, Corrective Maintenance and servicing of the existing Wind masts and data loggers and ensuring that all the Wind masts and data logger defects are made good to restore their functional service. This shall consist of Supply, Installation, Testing and Commissioning of the various equipment for Rehabilitation and Corrective Maintenance and ensuring all defects are made good.
6. The Contractor shall also be required to, at no extra cost, remedy and/or make good any defects that may arise before the end of Defects Liability Period (DLP). The contractor shall be ready to respond to any calls anytime of the day, night, during public holidays or weekends whenever called upon by the Employer to do so.

## 6.2 Detailed Technical Specifications for Equipment and Accessories

### A. Weather Data Logger System

#### General

The data measured is used for a wind resource assessment, therefore the data loggers should produce all the required information to perform the task adequately. Data capture and storage formats should be Windows based and be compatible with *Windycator*, a web based tool for managing and visualising wind measuring activities for campaigns of all sizes, wind flow modeling software applications *WasP* and Wind Farm modeling software applications *WindPRO*. These are the softwares that are being used for an ongoing projects. Bidders may visit the workstation set at Employer's offices to verify this.

*WindYcator* is a comprehensive web based tool for managing and visualizing wind measuring activities for campaigns of all sizes in wind. It covers information from detailed measuring documentation, to surveillance and visualization, all the way to monthly updates and a final summary. *WindYcator* can be used from any location anywhere in the world where internet access is available. Only a computer with a standard web browser is necessary. The Ministry of Energy & Petroleum has already procured *WindYcator*.

The data loggers should be compatible with sensor types described below. It should be able to accept, record and store the type of signals generated by the sensors and should have inbuilt processing functions to record the values of average, standard deviations, maximum and minimum. The data logger should facilitate the other essential information such as inclusion of site number and identity of the logger and selection of data recording interval.

The Data Loggers shall be calibrated to present data in SI units

The Data Logger should have adequate channels (sensor consoles) for the measurement of wind speed, wind direction, temperature, barometric pressure, solar radiation and relative humidity.

The data logger should be compact, durable, lightweight, reliable and have a weather-proof enclosure to IP 55 standard and be rugged enough for use in the field.

Brochures giving detailed information on the product/s should be provided.



Warranty Period: Data Loggers should be warranted for at least one year

### **Sampling Time and Recording Intervals.**

The sampling time of data should be 2 seconds or less and the same should be used to derive the average, standard deviation, maximum and minimum. Data should be recorded serially with a corresponding time and date information and should be able to download in the same format.

**Minimum data recording interval shall be 10 minutes or less.**

Average values for all the data should be calculated on the basis of 10 minute interval. Wind speed data and average temperature values should be the mean value of all the two second samples. Wind direction average has to be calculated as the resultant of (vector additions) of sample value. Standard deviation should be the value for true population derived from all the two second samples for a given data recording interval. The maximum wind speed recorded during a particular data recording interval should be recorded and made available with the average data.

### **Storage Memory Capacity and Power Supply**

Non-volatile memory capable of storing captured data for all the parameters for a minimum period of 300 days. Power supply to the system should be from a solar photovoltaic system comprising a long lasting rechargeable non-flooded battery, solar panel, charge controller and all associated accessories and fittings. The battery should be of sufficient capacity to ensure that it can power the data logger for 120 days without recharge (120 days autonomy) in the event of a failure of the PV system. The Card storage modules should be compatible with the data logger complete with cables, adapters, and associated software packages to be able to be connected to the com-port of a compatible computer.

### **On-Site Data Download.**

Hand held download devices must be compatible with the data logger and shall be supplied complete with cables (category 5 with RJ 45 Connection) long enough to enable data downloading from the data loggers at the Data Logger mounting Height from ground level, adapters, associated software packages to be able to be connected to the com-port of a compatible computer. The data logger mounting height above ground should provide for easy access for downloading purposes

### **Remote Access Software for Data Retrieval and Communication System.**

A provision for data access and downloading from the logger via GSM (Wireless GPRS) modem to the computer located at an office should be provided. It should have a provision for changing parameters such as time, averaging intervals, etc.

## Clock

The Data Logger shall incorporate an accurate real time Clock for time-stamping the measurements. The Clock should be battery backed.

<b>Input channels</b> 3 x Wind speed	2 x Wind direction 1 x rel. air humidity 1 x Air temperature 1 x Air pressure 1 x Global radiation 1 x Rain
<b>Housing</b> – protection - connectors	IP65, connectors IP67 approx. 1,2 kg (incl. batteries) screwed miniature round-socket, Binder series 723
<b>Power Supply</b> - operation  - external - current	2 Alkaline-Batteries (9V E-Block - 6LR61 - PP3) can be replaced by Lithium batteries input 12 VDC 10...24 Volt (connector supplied) approx.: 0,5 mA (between the measurements), 45 mA (Mean. Operation)
<b>Temperature</b> - operation - Display readable	- 40 ... + 85 °C - 10 ... + 50 °C
<b>Memory</b>	4000 kByte non-volatile-memory (EEPROM) recorded app. 2.000.000 values
<b>Clock Backup-Battery</b>	Buffered real time clock, accuracy -30°C ... +60°C: < 5 ppm 3V Lithium Button Cells CR2032, approx. 180...230mAh
<b>Digital out</b>	Open-Drain, 12 ... 24VDC, approx. 20mA, e.g. can be switch on or off a sensor heating via relay (also via SMS)

<b>Data output</b>	Display, 2 x 16 character double spaced serial RS232, 38400baud, E71 ASCII
<b>Series meas. - Scan interval</b> - Log interval - Configuration - Functions	1 .60 seconds 1 .9999 scan intervals Shift register, subdivided in daily data blocks Average, maximum, minimum, standard deviation
<b>Statistics - Scan interval</b> - Log interval - Configuration - Evaluation	1 minute Monthly according to real time calendar Shift register, subdivided in 4 statistic blocks 29 classes à 1 m/s wind speed distribution (2 heights) sectors wind rose with unique distributions (anemometer 1)

**(Attach detailed technical specifications in form of Manufacturer's Datasheets)**

## **B. ANEMOMETERS (WIND SPEED SENSORS)**

High quality anemometer class 0.5

Optimized dynamic behavior even at high turbulence intensity

Minimum over-speeding.

Excellent linearity  $r > 0.99999$

Low power

High survival speed

Type : Cup anemometer (Three cups)

Measurement Range : 0 to 50 m/s

Maximum Wind Speed : above 50 m/s

Resolution :  $\leq 0.1$  m/s

Threshold (starting) :  $\leq 1.0$  m/s

Distance Constant :  $\leq 3$  m

Operating Temperature : -20 °C to 50 °C

Accuracy :  $\leq 2\%$

Non-linearity :  $\leq 2\%$

Operating Humidity : 0% - 100%

Calibration : Individual MEASNET calibration certificate as required for IEC 61400-12-1

**(Attach detailed technical specifications in form of Manufacturer's Datasheets)**

**C. WIND VANE (WIND DIRECTION SENSOR)**

Type : Wind Vane  
Range : 0° to 360°, ( $\leq 8^\circ$  deadband)  
Resolution :  $\leq 1^\circ$   
Threshold (starting) :  $\leq 1.0$  m/s  
Operating Temperature : -20 °C to 50 °C  
Accuracy :  $\leq 2^\circ$   
Damping Ratio : 0.3 to 1  
Operating Humidity : 0% - 100%  
Threshold wind speed : 0.7m/s

Calibration : Individual MEASNET calibration certificate

**(Attach detailed technical specifications in form of Manufacturer's Datasheets)**

**D. SOLAR BATTERIES (12V)**

Rated capacity - 5.0-7Ah  
Discharge rate (to 1.75V/Cell for the Specified Capacities) - Maximum 10 Hours  
Battery Type - Dry sealed batteries (Maintenance Free)  
Plate type - Flat plate or Tubular acceptable  
Electrolyte - Gel Type  
Nominal Voltage - 12V. Supply may be in 12V or 6V mono-blocks  
Self-discharge per month - 6% maximum  
Cycle Life - 2500 cycles at 20% daily depth of discharge  
Warranty - 5 years

**(Attach detailed technical specifications in form of Manufacturer's Datasheets)**

**E. BATTERIES (9V)**

Classification:	Lithium 9V
Chemical System:	Lithium-Manganese Dioxide (Li/MnO <sub>2</sub> )
Nominal Voltage:	9.0 volts
Operating Temp:	-40°C to 60°C (-40°F to 140°F)
Max Discharge :	1000 mA continuous
Safety Features:	Positive Temperature Coefficient Switch (PTC)
Terminal:	Miniature Snap
Shelf Life:	10 Years

**(Attach detailed technical specifications in form of Manufacturer's Datasheets)**

**F. SOLAR PHOTOVOLTAIC MODULES**

<b>Module Type:</b>	-	Monocrystalline Solar Module for Ammonit Stand-alone Power Supply Systems.
Voltage at maximum power	-	17.7 V (Minimum)
Maximum Power Current, Imp	-	1.69A
Warranted minimum Power rating:	-	20Wp
Open circuit Voltage (Minimum)	-	21.5 VDC
Short Circuit Current, Isc	-	1.91A
Normal operating Cell Temperature	-	44.4+/- 2 Degrees Celsius
Entire Module Certificate to withstand high wind loads 2.4kPa		
Robust, Anodized Aluminium Frame.		
Highly Transparent, Low tempered glass, antireflective coating.		
Excellent characteristic performance under low light environment.		
Guarantee:	-	15 Years

**(Attach detailed technical specifications in form of Manufacturer's Datasheets)**

## **G. CHARGE CONTROLLER**

### **Main features**

**Series or Shunt type, constant-voltage, pulse width - modulation (PWM) charging, with battery type (sealed/gel and flooded lead acid) selection provision and temperature compensation.**

Nominal Voltage	-	12V DC
Rated solar charging current	-	Upto 10A
Earthing	-	Negative earth
End of Charge Voltage		13,9V
Operating temperature	-	-25 to + 50° C
Protection	-	Reversed polarity protection
	3	Overload and short circuit protection
	4	lightning and transients surge protection
	5	Night reverse current protection (blocking diode or equivalent.)
Self- Consumption	-	Less than 4mA
Status Indicators (minimum)	-	Charging and low battery visual indicators
Guarantee	-	3 years

**(Attach detailed technical specifications in form of Manufacturer's Datasheets)**

## **H. MODEM**

Air Interface UMTS/HSPA/GSM/EDGE AND GPS System with Omni Directional Antenna

Frequency Bands	800/850, 900, 1900, 2100 MHz
GPRS	Class 12
GPRS Data Rate	Max 85.6kbps
Supply Voltage	10-60V
USB	USB 2.0 High Speed, type B
Control	AT Commands
Accessories	GPS Antenna
	USB Cable
	Supply Cable

**(Attach detailed technical specifications in form of Manufacturer's Datasheets)**

## **I. OMNIDIRECTIONAL ANTENNA GSM/UMTS**

Type	Omnidirectional
Frequency Range	GSM: 890-960MHz UMTS 1710-2150MHz
Gain	3dBi ( 890-960MHz) 5dBi (1710-2150MHz)
Impedance	50 Ohm
Max. Input	10W
Connector	FME (Female)
Cable	RG58 – 3.5m

**(Attach detailed technical specifications in form of Manufacturer’s Datasheets)**

## **J. SENSOR CABLES**

### **Anemometer Cable:**

Cable for anemometer Fc:

C11100 Cable for anemometer Fc

Sensor connection without heating cores

3-core cable - Shielded cable LiYCY 3 x 0.25 mm<sup>2</sup>

HS Code: 85444290

### **Wind Vane:**

C22200 Cable for wind vane compact

Sensor connection without heating cores

6-core cable - Shielded cable LiYCY 6 x 0.25 mm<sup>2</sup>,

HS Code: 85444290

**K. DESKTOP COMPUTER**

ITEM	SPECIFICATION
Processor	Dual Intel® Platinum Dual Intel® Gold Dual Intel® Silver Dual Intel® Bronze Up to 28 cores, up to 3.6 GHz per CPU
Operating System	Windows 10 Pro for Workstations Ubuntu Linux (preload) Redhat Linux (certified)
Power Supply	690W @ 92% 900W @ 92%
Graphics	Up to 2 x NVIDIA® Quadro® GV100 / P6000 OR Up to NVIDIA® Quadro® RTX 6000
Memory	Up to 384 GB RDIMM 2666 MHz DDR4, 12 DIMM slots 8 GB DIMM capacity 16 GB DIMM capacity 32 GB DIMM capacity
Max Storage	Up to 12 total drives Up to 4 internal storage bays Max M.2 = 2 (4 TB) Max 3.5" HDD = 6 (60 TB) Max 2.5" SSD = 10 (20 TB)
RAID	0, 1, 5, 6, 10
Removable Storage	9-in-1 media card reader 15-in-1 media card reader (optional) 9 mm Slim ODD (optional)
Chipset	Intel® C621
Storage	3.5" SATA HDD 7200 rpm up to 10 TB 2.5" SATA HDD up to 1.2 TB 2.5" SATA SSD up to 2 TB M.2 PCIe SSD up to 2 TB
Ports	Front: 4 x USB 3.1 Gen 1 (Type A) Front: 2 x USB-C/Thunderbolt 3 (optional) Front: Microphone Front: Headphone



	Rear: 4 x USB 3.1 Gen 1 (Type A) Rear: USB-C (optional) Rear: Thunderbolt 3 (optional) Rear: 2 x USB 2.0 Rear: Serial Rear: Parallel Rear: 2 x PS/2 Rear: 2 x Ethernet Rear: Audio line-in Rear: Audio line-out Rear: Microphone-in Rear: eSATA (optional) Rear: Firewire (optional)
WiFi	Intel® Dual Band Wireless- 8265 AC 802.11 a/c, 2 x 2, 2.4 GHz / 5 GHz + Bluetooth® 4.2
Expansion Slots	3 x PCIe x16 1 x PCIe x8 1 x PCIe x4 1 x PCI

#### L. LAPTOP COMPUTER

ITEM	SPECIFICATION
<b>Display</b>	<ul style="list-style-type: none"> <li>14" anti-glare display, up to FHD (1920 x 1080) IPS with touch option</li> </ul>
<b>Processor</b>	<ul style="list-style-type: none"> <li>8<sup>th</sup> Generation Intel® Core™ i7</li> </ul>
<b>Memory</b>	<ul style="list-style-type: none"> <li>32GB DDR4</li> </ul>
<b>Storage</b>	<ul style="list-style-type: none"> <li>1 TB PCIe NVMe SSD or 2 TB HDD storage</li> </ul>
<b>Graphics and Video Support</b>	<ul style="list-style-type: none"> <li>Intel® HD Graphics 620 or NVIDIA GeForce® 940MX (2GB 2.5GHz GDDR5 memory)</li> </ul>
<b>Connections and Expansion</b>	<ul style="list-style-type: none"> <li>3 x USB 3.0</li> <li>1 x Thunderbolt™ 3 port</li> <li>3.5 mm Combo Audio Jack</li> <li>1 x HDMI™</li> <li>1 x RJ45 Gigabit LAN</li> </ul>

	<ul style="list-style-type: none"> <li>• 1x CS13 Docking</li> <li>• 1 x Media Card Reader (SD 3.0, UHS-I)</li> <li>• 1 x Smart Card Reader</li> <li>• 1x Micro SIM</li> </ul>
<b>Keypad and Track pad</b>	Precision Keyboard
<b>Electrical Requirements</b>	<ul style="list-style-type: none"> <li>• Line voltage: 240V AC</li> <li>• Frequency: 50Hz</li> </ul>
<b>Software</b>	<ul style="list-style-type: none"> <li>• 64-bit Microsoft® Windows® 10 Pro</li> </ul>

## **7 SECTION VII - STANDARD FORMS**

### **Notes on standard forms**

1. The tenderer shall complete and submit with its tender the form of tender and price schedules pursuant to instructions to tenderers clause 9 and in accordance with the requirements included in the special conditions of contract.
2. When requested by the appendix to the instructions to tenderers, the tenderer should provide the tender security, either in the form included herein or in another form acceptable to the procuring entity pursuant to instructions to tenderers clause 12.3
3. The contract form, the price schedules and the schedule of requirements shall be deemed to form part of the contract and should be modified accordingly at the time of contract award to incorporate corrections or modifications agreed by the tenderer and the procuring entity in accordance with the instructions to tenderers or general conditions of contract.
4. The performance security and bank guarantee for advance payment forms should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance/entity and bank guarantee for advance payment forms in accordance with the forms indicated herein or in another form acceptable to the procuring entity and pursuant to the – conditions of contract.
5. The principal's or manufacturer's authorization form should be completed by the principal or the manufacturer, as appropriate in accordance with the tender documents.

The Standard Forms consists of the following and provided in this section:

1. Form of Tender;
2. Price Schedules;
3. Contract Form;
4. Confidential Questionnaire Form;
5. Tender Security Form;
6. Performance Security Form;
7. Bank Guarantee for Advance Payment;
8. Letter of Notification of Award
9. Declaration Form; and
10. FORM RB 1 – Request for Review (Public Procurement Administrative Review Board)
11. Declaration Not to be Involved in Corrupt or Fraudulent Practices

**7.1 Form of Tender**

Date \_\_\_\_\_  
Tender No. \_\_\_\_\_

To.....

.....

[Name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos.. *[insert numbers,* the of which is hereby duly acknowledged, we, the undersigned, offer to provide. *[description of services]* in conformity with the said tender documents for the sum of the following:

LOT 1: KES..... [Amount in figures]  
Kenya Shillings.....  
..... [Amount in words]

LOT 2: KES. .... [Amount in figures]  
Kenya Shillings.....  
..... [Amount in words]

LOT 3: KES. .... [Amount in figures]  
Kenya Shillings.....  
..... [Amount in words]

or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

- 2. We undertake, if our Tender is accepted, to provide the services in accordance with the services schedule specified in the Schedule of Requirements.
- 3. If our Tender is accepted, we will obtain the tender guarantee in a sum equivalent to \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract, in the form prescribed by (Procuring entity).

4. We agree to abide by this Tender for a period of *[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20  
*[signature]* *[In the capacity of]*  
Duly authorized to sign tender for and on behalf of \_\_\_\_\_

**7.2 Contract Form**

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

WHEREAS the procuring entity invited tenders for certain materials and spares. Viz.....[*brief description of materials and spares*] and has accepted a tender by the tenderer for the supply of those materials and spares in the sum of .....[*contract price in words and figures*]

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Procuring entity)

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer)

in the presence of \_\_\_\_\_.

### 7.3 Confidential Business Questionnaire

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

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

<p><b>Part 1 General</b></p> <p>Business Name.....</p> <p>Location of Business Premises .....</p> <p>Plot No, ..... Street/Road.....</p> <p>Postal address ..... Tel No. .... Fax Email .....</p> <p>.....</p> <p>Nature of Business .....</p> <p>Registration Certificate No. ....</p> <p>Maximum value of business which you can handle at any one time – Kshs.....</p> <p>Name of your bankers.....</p> <p>.....</p>
---

Branch.....

	<b>Part 2 (a) – Sole Proprietor</b>																									
	Your name in full.....Age..... Nationality.....Country of Origin..... Citizenship details .....																									
	<b>Part 2 (b) – Partnership</b>																									
	Given details of partners as follows <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 30%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 20%;">Citizenship details</th> <th style="width: 10%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship details	Shares	1.	.....	.....	.....	.....	2.	.....	.....	.....	.....	3.	.....	.....	.....	.....	4.	.....	.....	.....	.....
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1.	.....	.....	.....	.....																						
2.	.....	.....	.....	.....																						
3.	.....	.....	.....	.....																						
4.	.....	.....	.....	.....																						
	<b>Part 2 (c) – Registered Company</b>																									
	Private or Public State the nominal and issued capital of company Nominal Kshs. Issued Kshs. Given details of all directors as follows <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 30%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 20%;">Citizenship details</th> <th style="width: 10%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship details	Shares	1.	.....	.....	.....	.....	2.	.....	.....	.....	.....	3.	.....	.....	.....	.....	4.	.....	.....	.....	.....
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1.	.....	.....	.....	.....																						
2.	.....	.....	.....	.....																						
3.	.....	.....	.....	.....																						
4.	.....	.....	.....	.....																						
	Date.....Signature of Candidate.....																									

**7.4 Tender Security Form**

Whereas .....[name of the tenderer]

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

[name and/or description of the services]

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

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

Of.....having registered office at

[name of procuring entity](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 tender validity specified by the tenderer on the Tender Form; or 2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:

- (a) fails or refuses to execute the Contract Form, if required; or (b) fails or refuses to furnish the performance security, in accordance with the instructions to tenderers;

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

\_\_\_\_\_  
[signature of the bank]

(Amend accordingly if provided by Insurance Company)



**7.5 Performance Security Form**

To: .....

[name of the 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 services] (Hereinafter called “the contract”)

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

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

THEREFORE, WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of .....  
*[amount of the guarantee in words and figures],*

and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of .....  
*[amount of guarantee]* as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the \_\_\_\_\_ day of 20

\_\_\_\_\_  
Signature and seal of the Guarantors

\_\_\_\_\_  
*[name of bank or financial institution]*

\_\_\_\_\_  
*[address]*

\_\_\_\_\_  
*[date]* (Amend accordingly if provided by Insurance Company)

**7.6 Bank Guarantee for Advance Payment**

To.....

[name of tender] .....

Gentlemen and/or Ladies:

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

.....

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

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

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

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

Yours truly,

Signature and seal of the Guarantors  
\_\_\_\_\_ [name of bank or financial institution]

\_\_\_\_\_ [address]  
\_\_\_\_\_ [date]

**7.7 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

7.8 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 of .....20.....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**

**7.9 Declaration Not To Be Involved In Corrupt Or Fraudulent Practices**

A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

**ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE FORM (Mandatory)**

I/We/Messrs.....

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

Contact/Phone/E mail.....

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

I/We .....

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

Tender name.....

Tender No .....

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

Authorized Signature.....

**Name and Title of Signatory.....**

**Official Seal/ Stamp .....**

**7.10 DECLARATION FORM (Mandatory)**

Date \_\_\_\_\_

To \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The tenderer i.e. (name and address)

\_\_\_\_\_

Declare the following:

- Has not been debarred from participating in public procurement.
- Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

\_\_\_\_\_

Title

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

(To be signed by authorized representative and officially stamped)