REPUBLIC OF KENYA

COUNTY ASSEMBLY OF SIAYA

STANDARD TENDER DOCUMENT FOR

PROPOSED FENCING AND SENTRY CONSTRUCTION AT THE WARD OFFICES

CAS/FEN/WARDS/20/21-11 UGUNJA

IFMIS NUMBER: 850670

CLOSING DATE: THURSDAY 25TH FEBRUARY 2021 AT NOON

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INTRODUCTION

1.1 This standard tender document for procurement of works has been prepared for use by procuring entities in Kenya in the procurement of works (i.e. Buildings and associated Civil Engineering Works).

1.2 The following guidelines should be observed when using the document:-

(a) Specific details should be furnished in the Invitation to tender and in the special conditions of contract (where applicable). The tender document issued to tenderers should not have blank spaces or options.

(b) The instructions to tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through Appendix to instructions to tenderers and special conditions of contract respectively.

1.3

(b) Information contained in the invitation to tender shall conform to the data and information in the tender documents to enable prospective tenderers to decide whether or not to participate in the tender and shall indicate any important tender requirements

(c) The invitation to tender shall be as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have been prequalified following a request for prequalification.

1.4 The cover of the document shall be modified to include:-

I. Tender number.
II. Tender name.
III. Name of procuring entity.

SECTION I

INVITATION FOR TENDERS

Tender reference No. (as per tender document)

Tender Ward Name (.....

1.1 The **County Assembly of Siaya** invites bidder's for fencing and sentry construction **at County Assembly ward offices.**

1.2 Interested eligible candidates may obtain further information and inspect tender documents from the County Assembly Website: **www.siayaassembly.go.ke** **or** GOK supplier portal, supplier.treasury.go.ke

1.3 A complete set of tender documents may be obtained from the website free of charge.

1.4 Prices quoted should be net inclusive of all taxes, must be in Kenya shillings and shall remain valid for **120** days from the closing date of tender.

1.5 Completed tender documents **MUST** be uploaded in the GOK supplier portal, supplier.treasury.go.ke and hard copies MAY also be submitted addressed to the Clerk County Assembly of Siaya Box 7-40600 Siaya so as to be received on or before **Thursday 25th FEBRUARY 2021 at 12.00 noon.**

ERICK ODHIAMBO OGENGA
Ag. COUNTY ASSEMBLY CLERK

SECTION II

INSTRUCTIONS TO TENDERERS

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INSTRUCTIONS TO TENDERERS.

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

1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful tenderer will be expected to complete the Works by the Intended Completion Date specified in the tender documents.

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

1.3 All tenderers shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

1.4 In the event that pre-qualification of potential tenderers has been undertaken, only tenders from pre-qualified tenderers will be considered for award of Contract. These qualified tenderers should submit with their tenders any information updating their original pre-qualification applications or, alternatively, confirm in their tenders that the originally submitted pre-qualification information remains essentially correct as of the date of tender submission.

1.5 Where no pre-qualification of potential tenderers has been done, all tenderers shall include the following information and documents with their tenders , unless otherwise stated:

(a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer:

(b) total monetary value of construction work performed for each of the last three years:

(c) experience in works of a similar nature and size for each of the last three years, and details of work under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts;

(d) major items of construction equipment proposed to carry out the Contract and an undertaking that they will be available for the Contract.

(e) qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.

(f) reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the past three years;

(g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);

(h) authority to seek references from the tenderer's bankers;

(i) information regarding any litigation, current or during the last three years, in which the tenderer is involved, the parties concerned and disputed amount; and

(j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.

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

(a) the tender shall include all the information listed in clause 1.5 above for each joint venture partner;

(b) the tender shall be signed so as to be legally binding on all partners;

(c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

(d) one of the partners will be nominated as being in charge, authorised to incur liabilities, and receive instructions for and on behalf of all partners of the joint venture; and

(e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

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

(a) annual volume of construction work of at least 2.5 times the estimated annual cashflow for the Contract;

(b) experience as main contractor in the construction of at least two works

of a nature and complexity equivalent to the Works over the last 5 years (to comply with this requirement, works cited should be at least 70 percent complete);

(d) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Works;

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

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

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

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

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

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

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

1.13 There is no price to be changed for the tender document- download at own cost from **www.siayaassembly.go.ke or government tenders portal**

1.14 The procuring entity shall allow the tenderer to review the tender document in the Assembly Website.

2. Tender Documents

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

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

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

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

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

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

3. Preparation of Tenders

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

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

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

(b) Tender Security;

(c) Priced Bill of Quantities ;

(d) Qualification Information Form and Documents;

(e) Alternative offers where invited; and

(f) Any other materials required to be completed and submitted by the tenderers.

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

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

3.5 The unit rates and prices shall be in Kenya Shillings.

3.6 Tenders shall remain valid for a period of ninety (90) days from the date of submission. However in exceptional circumstances, the Employer may request that the tenderers extend the period of validity for a specified additional period. The request and the tenderers' responses shall be made in writing. A tenderer may refuse the request without forfeiting the Tender Security. A tenderer agreeing to the request will not be required or permitted to otherwise modify the tender, but will be required to extend the validity of Tender Security for the period of the extension, and in compliance with Clause 3.7 - 3.11 in all respects.

3.7 The tenderer shall furnish, as part of the tender, a Tender Security in the amount and form specified in the appendix to invitation to tenderers. This shall be in the amount not exceeding 2 percent of the tender price

3.8 The format of the Tender Security should be in accordance with the form of Tender Security included in Section G - Standard forms or any other form acceptable to the Employer . Tender Security shall be valid for 30 days beyond the validity of the tender.

3.9 Any tender not accompanied by an acceptable Tender Security shall be rejected. The Tender Security of a joint venture must define as "Tenderer" all joint venture partners and list them in the following manner: a joint venture consisting of"……","……",and "……".

3.10 The Tender Securities of unsuccessful tenderers will be returned within 28 days of the end of the tender validity period specified in Clause 3.6.

3.11 The Tender Security of the successful tenderer will be discharged when the tenderer has signed the Contract Agreement and furnished the required Performance Security.

3.12 The Tender Security may be forfeited

(a) if the tenderer withdraws the tender after tender opening during the period of tender validity;

(b) if the tenderer does not accept the correction of the tender price, pursuant to Clause 5.7;

(c) in the case of a successful tenderer, if the tenderer fails within the specified time limit to

(i) sign the Agreement, or

(ii) furnish the required Performance Security.

3.13 Tenderers shall submit offers that comply with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. Alternatives will not be considered, unless specifically allowed in the invitation to tender. If so allowed, tenderers wishing to offer technical alternatives to the requirements of the tendering documents must also submit a tender that complies with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and

Specifications. In addition to submitting the basic tender, the tenderer shall provide all information necessary for a complete evaluation of the alternative, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated tender conforming to the basic technical requirements shall be considered.

3.14 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.

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

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

4. Submission of Tenders

4.1 The tenderer shall fill tender documents and uploaded in the GOK supplier portal using the provided reference….."

(a) be addressed to the Employer at the address provided in the invitation to tender;

(b) bear the name and identification number of the Contract as defined in the invitation to tender; and

4.2 Tenders shall be uploaded in the GOK supplier portal using the provided reference….. not later than the time and date specified in the invitation to tender. However, the Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with Sub-Clause 2.5 in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline will then be subject to the new deadline.

5. Tender Evaluation

5.1 Information relating to the examination, clarification, evaluation, and comparison of tenders and recommendations for the award of Contract shall not be disclosed to tenderers or any other persons not officially concerned with such process until the award to the successful tenderer has been announced. Any effort by a tenderer to influence the Employer's officials, processing of tenders or award decisions may result in the rejection of his tender.

5.2 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may ask any tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.5.

5.3 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender (a) meets the eligibility criteria defined in Clause 1.7;(b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the tendering documents. A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the works; (b) which limits in any substantial way, inconsistent with the tendering documents, the Employer's rights or the tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.

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

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

(a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and

(b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the

Employer, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.

(c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.

(d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work (i.e. Corrected tender sum less P.C. and Provisional Sums)

(e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.

(f) the amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11.

5.6 The Employer will evaluate and compare only the tenders determined to be substantially responsive in accordance with Clause 5.3.

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

(a) making any correction for errors pursuant to clause 5.5;

(b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Dayworks where priced competitively.

(c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and

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

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

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

6. Award of Contract

6.1 Subject to Clause 6.2, the award of the Contract will be made to the tenderer whose tender has been determined to be substantially responsive to the tendering documents and who has offered the lowest evaluated tender price, provided that such tenderer has been determined to be (a) eligible in accordance with the provision of Clauses 1.2, and (b) qualified in accordance with the provisions of clause 1.7 and 1.8.

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

6.3 The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum (hereinafter and in all Contract documents called the "Contract Price")that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time the other tenderers shall be informed that their tenders have not been successful.

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

6.4 The Agreement will incorporate all agreements between the Employer and the successful tenderer. Within 14 days of receipt the successful tenderer will sign the Agreement and return it to the Employer.

6.5 Within 21 days after receipt of the Letter of Acceptance, the successful tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and specified form

6.6 Failure of the successful tenderer to comply with the requirements of clause 6.5 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.

6.7 Upon the furnishing by the successful tenderer of the Performance Security, the Employer will promptly notify the other tenderers that their tenders have been unsuccessful.

6.8 Preference where allowed in the evaluation of tenders shall not be allowed for contracts not exceeding one year (12 months)

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

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

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

6.12 Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.

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

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

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

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

7. Corrupt and Fraudulent practices

7.1 The procuring entity requires that tenderers observe the highest standards of ethics during procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.

SECTION III CONDITIONS OF CONTRACT

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CONDITIONS OF CONTRACT

1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Equipment" is the Contractor's machinery and vehicles brought temporarily to the Site for the execution of the Works.

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

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

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

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

"Site" is the area defined as such in the Appendix to Condition of Contract.

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

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

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

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

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

"A Variation" is an instruction given by the Project Manager which varies the Works.

"The Works" are what the Contract requires the Contractor to construct, install, and turnover to the Employer, as defined in the Appendix to Conditions of Contract.

2. Interpretation

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

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

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

(1) Agreement,

(2) Letter of Acceptance,

(3) Contractor's Tender,

(4) Appendix to Conditions of Contract,

(5) Conditions of Contract,

(6) Specifications,

(7) Drawings,

(8) Bill of Quantities,

(9) Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.

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

3. Language and Law

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

4 Project Manager's Decisions

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

5 Delegation

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

6 Communications

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

7 Subcontracting

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

8 Other Contractors

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

9 Personnel

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

10 Works

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

11 Safety and Temporary Works

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

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

11.3 The Contractor shall be responsible for the safety of all activities on

the Site.

12. Discoveries

12.1 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.

13. Work Program

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

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

14. Possession of Site

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

15. Access to Site

15.1 The Contractor shall allow the Project Manager and any other person authorised by the Project Manager, access to the Site and to any place

where work in connection with the Contract is being carried out or is intended to be carried out.

16. Instructions

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

17. Extension or Acceleration of Completion Date

17.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining

Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager in writing for a decision upon the effect of a Compensation Event or variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay caused by such failure shall not be considered in assessing the new (extended) Completion Date.

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

18. Management Meetings

18.1 A Contract management meeting shall be held monthly and attended by the Project Manager and the Contractor. Its business shall be to review the plans for the remaining Work and to deal with matters raised in accordance with the early warning procedure. The Project Manager shall record the minutes of management meetings and provide copies of the same to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

19. Early Warning

19.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the Work, increase the Contract Price or

delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

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

20. Defects

20.1 The Project Manager shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a defect and to uncover and test any Work that the Project Manager considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor, However, if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.

20.2 The Project Manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.

20.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Project Manager's notice. If the Contractor has not corrected a defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

21. Bills Of Quantities

21.1 The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rate in the Bills of Quantities for each item.

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

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

22. Variations

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

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

22.3 If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the variation does not correspond with items in the Bills of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.

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

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

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

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

23. Payment Certificates, Currency of Payments and Advance Payments

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

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

23.3 Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. If the Employer makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the Central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.

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

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

23.6 The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange

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

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

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

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

c) Reimbursement of the lump sum advance shall be made by deductions from the Interim payments and where applicable from the balance owing to the Contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the Contract. It shall have been completed by the time 80% of this amount is reached.

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

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

Where:

R = the amount to be reimbursed

A = the amount of the advance which has been granted

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

X^{11} = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80%but not less than 20%.

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

24. Compensation Events

24.1 The following issues shall constitute Compensation Events:

(a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Appendix to Conditions of Contract.

(b) The Employer modifies the List of Other Contractors, etc., in a way that affects the Work of the Contractor under the Contract.

(c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the Works on time.

(d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon the Work, which is then found to have no defects.

(e) The Project Manager unreasonably does not approve a subcontract to be let.

(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site investigation reports), from information available publicly and from a visual inspection of the Site.

(g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional work required for safety or other reasons.

(h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the

Contract, and they cause delay or extra cost to the Contractor.

(i) The effects on the Contractor of any of the Employer's risks.

(j) The Project Manager unreasonably delays issuing a Certificate of Completion.

(k) Other compensation events described in the Contract or determined by the Project Manager shall apply.

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

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

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

24.5 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.

24.6 The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

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

25. Price Adjustment

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

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

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

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

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

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

Conditions.

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

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

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

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

26. Retention

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

27. Liquidated Damages

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

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

28. Securities

28.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a reputable bank acceptable to the Employer, and denominated in Kenya Shillings. The Performance Security shall be valid until a date 30 days beyond the date of issue of the Certificate of Completion.

29. Dayworks

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

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

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

30. Liability and Insurance

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

(a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to;

(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or

(ii) negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.

(b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in Employer's design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.

30.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is the Employer's risk except loss or damage due to;

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

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

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

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

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

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

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

31. Completion and taking over

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

32. Final Account

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

33. Termination

33.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These

fundamental breaches of Contract shall include, but shall not be limited to, the following;

(a) the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorised by the Project Manager;

(b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;

(c) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

(d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.

(e) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time

determined by the Project Manager;

(f) the Contractor does not maintain a security, which is required.

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

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

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

34. Payment Upon Termination

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

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

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

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

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

35. Release from Performance

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

36. Corrupt gifts and payments of commission

The Contractor shall not;

(a) Offer or give or agree to give to any person in the service of the

Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for the Employer or for showing or forbearing to show favour or disfavor 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 him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement Regulations issued under The Exchequer and Audit Act Cap 412 of the Laws of Kenya.

37. Settlement Of Disputes

37.1 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) Institution of Engineers of Kenya

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

37.2 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.

37.3 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.

37.4 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.

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

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

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

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

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

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

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

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

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

SECTION IV – APPENDIX TO CONDITIONS OF CONTRACT

THE EMPLOYER IS

Name: COUNTY ASSEMBLY OF SIAYA

Address: BOX 7-40600 SIAYA

Name of Authorized Representative: ERIC ODHIAMBO (COUNTY ASSEMBLY CLERK)
Telephone: 0575321021 OR 0708745148

Email: clerk@siayaassembly.go.ke

The Project Manager is:

Name: ASSEMBLY TECHNICAL OFFICER

Address: BOX 7- SIAYA

Telephone: 0575321021 OR 0708745148

Email:

The name of the contract is **Proposed Fencing and Sentry Construction at County Ward Offices – CAS/FEN/WARDS/20/21- LOT 01**

The Works consist of fencing and sentry construction at the county ward offices.

The Start Date shall be as agreed with the Employer

The Intended Completion Date for the whole of the Works shall be **4 Months**

The following documents also form part of the Contract: AS LISTED UNDER CLAUSE 2.1 OF THE INSTRUCTION TO TENDERERS

The Contractor shall submit a revised program for the Works within 1 4 days of delivery of the Letter of Acceptance.

The Site Possession Date shall be AS AGREED WITH THE EMPLOYER

The Site is located at WARD LEVEL and is defined in drawings attached

---

The Defects Liability period is 6 MONTHS.

The minimum insurance covers shall be; CONTRACTOR ALL RISK INSURANCE

1. The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor's faulty design is 1,000,000 SHILLINGS

2. The minimum cover for loss or damage to Equipment is 100,000 SHILLINGS

3. The minimum for insurance of other property is 500,000 SHILLINGS

4. The minimum cover for personal injury or death insurance

   For the Contractor's employees is 1,000,000 SHILLINGS

   And for other people is 1,000,000 SHILLINGS

The period between Program updates is 1 4 days.

The amount to be withheld for late submission of an updated Program is AS DERICTED BY PROJECT MANAGEMENT COMMITTEE

The proportion of payments retained is 10% percent.

The Price Adjustment Clause SHALL apply

The Performance Security shall be for the following minimum amounts equivalent as a percentage of the Contract Price 10 percent (%)

The Completion Period for the Works will be within 4 months

The schedule of basic rates used in pricing by the Contractor is as attached [Contractor to attach].

Advance Payment shall not be granted.

The tenderer should be in class **NCA 7 and ABOVE**

Bid **EACH WARD** separately

Access and fill uploaded tender documents in the GOK supplier portal using the provided reference numbers

Submit hard copies of tender documents as per advert

Payment shall be as per work done

Evaluation criteria is attached at the end of the Bill of Quantities.

The County Assembly of Siaya will carry out a thorough exercise of due diligence to establish the technical and financial capability; and compliance to statutory requirements of the successful bidder prior to award.

TENDERERS MUST NUMBER ALL THE PAGES OF THEIR UPLOADED TENDER DOCUMENT

SECTION V - SPECIFICATIONS

Notes for preparing Specifications

1.0 Specifications must be drafted to present a clear and precise statement of the required standards of materials, and workmanship for tenderers to respond realistically and competitively to the requirements of the Employer and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other supplies to be permanently incorporated in the Works be new, unused, of the most recent or current models, and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsible for the design of any part of the permanent Works, the extent of his obligations must be stated.

2.0 Specifications from previous similar projects are useful and may not be necessary to re-write specifications for every Works Contract.

3.0 There are considerable advantages in standardizing General Specifications for repetitive Works in recognized public sectors, such as highways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions, although not necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General Specifications to the particular Works.

4.0 Care must be taken in drafting Specifications to ensure they are not restrictive. In the Specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized international standards may also be used.

5.0 The Employer should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in tender documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential tenderers.

The Employer should provide a description of the selected

parts of the Works with appropriate reference to Drawings, Specifications, Bills of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and Specifications.

Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the Employer each on its own merits and independently of whether the tenderer has priced the item as described in the Employer's design included with the tender documents.

SECTION VI - DRAWINGS

Note 1. A list of drawings should be inserted here

2. The actual drawings including Site plans should be annexed in a separate booklet – **see attached**

SECTION VII - BILL OF QUANTITIES

Notes for preparing Bills of Quantities

1.0 The objectives of the Bills of Quantities are;

(a) to provide sufficient information on the quantities of Works to be performed to enable tenders to be prepared efficiently and accurately; and

(b) when a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.

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

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

(a) Preliminaries.

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

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

(b) Work Items

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

grouped as a separate section in the Bill of Quantities.

(ii) Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage or waste. Quantities should be rounded up or down where appropriate.

(iii) The following units of measurement and abbreviations are recommended for use.

Unit	Abbreviation	Unit	Abbreviation
cubic meter	m^3 or cu m	millimeter	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m^2 or sq m
lump sum	sum	square millimeter	mm^2 or sq mm
meter	m	week	wk
metric ton (1,000 kg)	t		

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

(c) Daywork Schedule

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

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

(ii) a percentage to be entered by the tenderer against each basic Day work Subtotal amount for labour, materials and plant representing the Contractor's profit,

overheads, supervision and other charges.

(d) Provisional Quantities and Sums

(i) Provisionforquantitycontingenciesinanyparticular item orclassofWorkwithahighexpectationof quantity overrunshouldbemadebyenteringspecific "Provisional Quantities"or"ProvisionalItems"inthe BillofQuantities,andnot byincreasingthequantities forthatitemorclassofWorkbeyondthoseoftheWork normallyexpectedtoberequired. Totheextentnot coveredabove,ageneralprovisionforphysical contingencies(quantityoverruns)shouldbemadeby includinga"ProvisionalSum"intheSummaryofthe BillofQuantities. Similarly,acontingencyallowance forpossiblepriceincreasesshouldbeprovidedasa "ProvisionalSum"intheSummaryoftheBillof Quantities. Theinclusionofsuchprovisionalsumsoften facilitatesbudgetaryapprovalbyavoidingtheneedto requestperiodicsupplementaryapprovalsasthefuture needarises.

(ii) Provisional sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialised Works should be included as a section of the main Bills of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name (s) of

the specialised firms he proposes to engage to carry out the specialized Works as his approved domestic sub-contractors. Only provisional sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities.

(e) Summary

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

SECTION VIII – STANDARD FORM

(i) Form of Invitation for Tenders
(ii) Form of Tender
(iii) Letter of Acceptance
(iv) Form of Agreement
(v) Form of Tender Security
(vi) Performance Bank Guarantee
(vii) Bank Guarantee for Advance Payment
(viii) Qualification Information
(ix) Tender Questionnaire
(xi) Confidential Business Questionnaire
(x) Statement of Foreign Currency Requirement
(xi) Details of Sub-Contractors
(x) Request for Review Form

FORM OF INVITATION FOR TENDERS

_____[date]

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

Dear Sirs:

Reference:_____[Contract Name]

You have been prequalified to tender for the above project.

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

A complete set of tender documents may be purchased by you from _____
_____
[mailing address, cable/telex/facsimile numbers].

Upon payment of a non-refundable fee of Kshs _____

All tenders must be accompanied by _____number of copies of the same and a security in the form and amount specified in the tendering documents, and must be delivered to
_____
[address and location]

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

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

Yours faithfully,

_____ Authorised Signature

_____ Name and Title

FORM OF TENDER

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

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs._____[Amount in figures]Kenya Shillings_____
_____[Amount in words]

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.

3. We agree to abide by this tender until _____ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.

4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.

5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____20_____

Signature _____in the capacity of_____

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

Witness; Name_____

Address_____

Signature_____
Date_____

LETTER OFACCEPTANCE
[letterhead paper of the Employer]

_____[date]

To:
_____
[name of the Contractor]

_____
[address of the Contractor]

Dear Sir,

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

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

Authorized Signature .....

Name and Title of Signatory .....

Attachment : Agreement

FORM OF AGREEMENT

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

WHEREAS THE Employer is desirous that the Contractor executes
_____
(name and identification number of Contract) (hereinafter called "the Works")
located at_____[Place/location of the Works]and the
Employer has accepted the tender submitted by the Contractor for the execution
and completion of such Works and the remedying of any defects therein for the
Contract Price of Kshs_____[Amount in figures],Kenya
Shillings_____[Amount in words].

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.

   (i) Letter of Acceptance

   (ii) Form of Tender

   (iii) Conditions of Contract Part I

   (iv) Conditions of Contract Part II and Appendix to Conditions of Contract

   (v) Specifications

   (vi) Drawings

   (vii) Priced Bills of Quantities

3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby

covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

The common Seal of _____

Was hereunto affixed in the presence of _____

Signed Sealed, and Delivered by the said _____

Binding Signature of Employer _____

Binding Signature of Contractor _____

In the presence of (i) Name_____

Address_____

Signature_____

[ii] Name _____

Address_____

Signature_____

FORM OF TENDER SECURITY

WHEREAS ……(hereinafter called "the Tenderer") has submitted his tender dated …… for the construction of ……
…… (name of Contract)

KNOW ALL PEOPLE by these presents that WE …… having our registered office at ……(hereinafter called "the Bank"), are bound unto ……(hereinafter called "the Employer") in the sum of Kshs…… for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this ……. Day of ……20……

THE CONDITIONS of this obligation are:

1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers
   Or

2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:

   (a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
   (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;

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

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

_____ _____

[date[[signature of the Bank]

_____ _____

[witness] [seal]

PERFORMANCE BANK GUARANTEE

To:

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

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

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

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

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

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

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

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

SIGNATURE AND SEAL OF THE GUARANTOR _____
Name of Bank _____

Address _____
Date _____

BANK GUARANTEE FOR ADVANCE PAYMENT

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

Gentlemen,

Ref: _____[name of Contract]

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

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

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between _____ [name of Employer] and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.
No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

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

Yours faithfully,

Signature and Seal _____

Name of the Bank or financial institution _____

Address _____

Date _____

Witness: Name: _____

Address: _____

Signature: _____

Date: _____

QUALIFICATION INFORMATION

1. Individual Tenderers or Individual Members of Joint Ventures

1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate);
Place of registration: _____

Principal place of business _____

Power of attorney of signatory of tender _____

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

Year	Volume	
	Currency	Value

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

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

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

Item of equipment	Description, make and age (Year)	Condition (New, Good, Poor) and Number Available	Owned, Leased (From whom) or to be purchased (From Whom)

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

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

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

_____
_____

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

_____
_____
_____

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

_____
_____

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

_____
_____
_____

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

2 Joint Ventures

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

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

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

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

a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and

c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

TENDER QUESTIONNAIRE

Please fill in block letters.

1. Full names of tenderer

   .....

2. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below)

   .....

3. Telephone number (s) of tenderer

   .....

4. Telex address of tenderer

   .....

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

   .....

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

   .....

   .....

_____
Signature of Tenderer

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

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part 1 – General

Business Name .....

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

Plot No..... Street/Road .....

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

Nature of Business.....

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

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

Name of your bankers.....

Branch.....

Part 2 (a) – Sole Proprietor

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

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

*Citizenship details .....

Part 2 (b) – Partnership

Give details of partners as follows:

	Name in full	Nationality	Citizenship Details	Shares
1				
2				
3				

Part 2(c) – Registered Company:

Private or public……

State the nominal and issued capital of the Company-

Nominal Kshs……

Issued Kshs……

Give details of all directors as follows:

Name in full. Nationality. Citizenship Details*. Shares.

1.
……

2.
……

3.
……

4.
……

Part 2(d) – Interest in the Firm:

Is there any person / persons in …… ……(Name of Employer) who has interest in this firm? Yes/No……(Delete as necessary)

I certify that the information given above is correct.

…… …… ……
(Title) (Signature) (Date)

Attach proof of citizenship

STATEMENT OF FOREIGN CURRENCY REQUIREMENTS

(See Clause 23] of the Conditions of Contract)

In the event of our Tender for the execution of_____ _____(name of Contract) being accepted, we would require in accordance with Clause 21 of the Conditions of Contract, which is attached hereto, the following percentage:

(Figures)…… (Words)……

of the Contract Sum, (Less Fluctuations) to be paid in foreign currency.

Currency in which foreign exchange element is required:

……

Date: The …… Day of …… 20…….

Enter 0% (zero percent) if no payment will be made in foreign currency.

Maximum foreign currency requirement shall be _____(percent) of the Contract Sum, less Fluctuations.

_____

(Signature of Tenderer)

DETAILS OF SUB-CONTRACTORS

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

Failure to comply with this requirement may invalidate the tender. (1)

Portion of Works to be sublet: .....

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

..... (ii)

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

.....

..... (2)

Portion of Works to sublet: .....

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

.....

..... (ii)

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

.....

_____ _____

[Signature of Tenderer) Date

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity
_____
_____

To:_____
_____
_____
_____

RE: Tender No._____

Tender Name_____

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

_____
_____

1. Please acknowledge receipt of this letter of notification signifying your acceptance.

2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.

3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

   (FULL PARTICULARS)_____
   _____

SIGNED FOR ACCOUNTING OFFICER

FORM RB 1

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO……OF……20……..

BETWEEN

……APPLICANT AND

……RESPONDENT (Procuring Entity)

Request for review of the decision of the……. (Name of the Procuring Entity) 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

APPENDICES

I. EVALUATION CRITERIA

II. BILL OF QUANTITIES

III. DRAWINGS

Tender Evaluation Criteria

The following criteria will be used in the evaluation of all bids. The submission of the required documents will be used in the determination of the Completeness and Suitability of the Bid. Bids that do not contain all the information required will be declared non responsive and shall not be evaluated further.

1.1 Mandatory Requirements

No	Description	Pass/Fail
A	**Submission of the following**	
	Certificate of Incorporation/Registration	
	Legally certified CR12	
	Relevant Registration with National Construction Authority NCA 7 or above.	
	Valid NCA practicing license for the Main Contractor.	
	NCA Practicing license for the proposed Site Foreman/ Supervisor	
	Legally Certified true copies of NSSF and NHIF Valid Compliant Certificates.	
	Valid trading license (Siaya county government)	
	Certificate of Registration of Work Place,	
	Submission of Valid Tax Compliance Certificate	
	Provision of affidavits as indicated below;	

	• Sworn Anti-Corruption	
	• Litigation History	
	• Declaration of not being debarred to participate in Public Tenders	
	• Power of Attorney to sign Tender Documents	
	Duly filled, Signed and Stamped Form of Tender	
	Duly filled Confidential business questionnaire	
B	Serialization of all pages	

1.2 Other Requirements : Technical Evaluation

No	Description	Weighting Factor
A	Presentation and Response. (This includes binding the Documents & neat presentation, separation and arrangement of requested information & general response to all requirements)	**2**
B	Relevant past experience for the past three years. At least three similar projects for the same period. Present 3 projects undertaken in the last three years showing the details of projects:- (Type of project, Value, Client, Consultants, duration of the project and Attach Award LPOs/Contracts, Completion	**18**

	Certificates and Recommendation Letters for the same).	
C	Company Profile with detailed Company Organization Chart and Site Organization Chart. The Charts to include Positions, Qualifications and Name of Officers.	**5**
D	Financial Ability and Capability to Finance the Works as borne from Audited Accounts for the past two (2) years 2019 and 2020, with an aggregate turnover of **Kshs.3, 000,000.00** for the past two years. Provide certified bank statement for the two years. (Attach Valid ICPAK Practicing license of Auditor).	**15**
H	List of 10 '**RELEVANT'** Construction Equipment, Tools and plant to be used for the works owned by the Firm. Attach Proof of ownership/ Lease/Hire Agreement with plant Hire Firm if not owned. Attach clear coloured photograph of your Workshop and Location. (please note, Dozers and Excavators are not RELEVANT Equipment in this case)	**10**
TOTAL		**50**

A cut off point of 35 (70%) score meaning that any firm scoring less than 35 points on the 50 points scale is not considered as Technically responsive nor capable and therefore shall not be considered in the financial evaluation.

The client reserves the right to cross check any information provided above. If a bidder is found to have presented untrue information they will be automatically disqualified.

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	PEREMETER(175) LM				
	Site clearance				
A	Clear site of existing trees,bushes and burn all the arising on site	175	LM		
B	Excavate for post holes starting from ground level but not exceeding 1.5m deep	0	CM		
C	50 x25mm Angle lines 2.4 metres long cranked on top hounched and mortised in plain concrete 1:3:6 at 2.4 metres centres	0	NO		
D	Extra-over ditto struts and ties 1800mm long placed at every 30m and all corners	0	NO		
E	2.4m high x12 gauge chain link fixed to steel posts	175	LM		
F	12.5 gauge x 8 strand galvanized barbed wire fencing fixed steel posts	0	LM		
	TOTAL			Ksh	

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	ELEMENT NO. 01 - GATE SUBSTRUCTURE- all provisional				
A	Excavate for column bases not exceeding 1.5m deep starting from reduced levels	CM	5		-
B	Ditto: strip foundation	CM	4		-
C	Extra over for excavation in rock of any class	CM	2		-
D	Return fill in ram imported material around columns	CM	6		-
E	Cart-away surplus excavated materials to where directed	CM	3		-
	concrete work				
F	50mm thick mass concrete 1:4:8 blinding under column bases	SM	3		-
G	Ditto: foundation	SM	3		-
	Vibrated reinforced concrete 1:2:4 to:-				
H	Ditto in column bases	CM	1		-
I	Ditto sub - columns	CM	1		-
	Reinforcement				
J	8mm diameter mild steel reinforcement round bars to B.s 4449 including all cutting to size, binding wire and spacer blocks in strip	KG	15		-
K	12mm high tensile square twisted bars to B.s 4461 and ditto	KG	56		-
L	10 mm high tensile square twisted bars to B.s 4461 and ditto	KG	16		-
	Carried to Collection			Ksh	-

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	Sawn form work to:-				
A	Vertical edges of sub - columns	SM	3		-
	Damp proofing				
	3 ply hessian based bituminous felt damp proof course bedded on mortar including leveling:-				
B	150mm wide damp proof course under walls.	LM	5		-
C	200 mm thick stone walling bedded in cement sand mortar 1: 3	SM	5		-
	Plinths				
D	12mm thick rendering in cement sand mortar 1:4	SM	7		-
E	Prepare and apply 3 coats black bitumous paint to ditto	SM	7		-
	Carried to collection				-
	COLLECTION				
	Brought forward from page: 1				-
	Brought forward from above				-
	TOTAL FOR ELEMENT NO. 1. SUBSTRUCTURE CARRIED TO SAMMURY			Ksh	-

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	ELEMENT NO. 02-WALLING				
	Vibrated reinforced concrete 1:2:4 (20/20) in:-				
A	Columns	CM	1		-
	Reinforcement				
B	8mm diameter bars to B.s 4449 as before described	KG	18		-
C	12mm diameter square twisted bars to B.s 4461 ditto	KG	23		-
	Formwork				
D	Vertical sides of columns	SM	4		-
	Walling				
E	200mm thick dressed stone walling externally in cement sand mortar 1:4 with and including hoop iron after every 2nd cource	SM	11		-
	TOTAL FOR ELEMENT NO.2 WALLING CARRIED TO SUMMARY			Ksh	-

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	ELEMENT NO. 6 FINISHES				
	Walls				
A	Labour and material in creating 20 mm diameter semi-circular recesses in horizontal joints in stone walling, neatly finished with cement and sand (1:2) mortar	SM	22		-
B	450 x 350 pillar heads	NO	2		-
C	750 X 450 coping slabs	LM	5		-
D	Supply and fix buglar proof gate size 5000x2100 including pedestrian size 900x1800 and all fittings accersories including fixing in concrete columns(ms)	NO	1		-
	Total for element No. 3 Finishes carried to summary			Ksh	-

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	SUMMARY ELEMENT				
A	ELEMENT NO1 SUBSTRUCTURE.				-
B	ELEMENT NO 2 WALLING.				-
C	ELEMENT NO 3 FINISHES.				-
	TOTAL				-

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	ELEMENT NO. 01 - SENTRY SUB-STRUCTURES (ALL PROVISIONAL)				
A	Clear site of grass shrubs and small trees and dispose.	SM	10		0.00
B	Excavate to remove vegetable top soil average 150mm and remove away from site	SM	6		-
	Excavate in normal soil depth not exceeding 1500mm				
C	From the stripped level to reduce levels.	CM	3		
D	From the reduced level of foundation trenches.	CM	5		
E	Return fill in and ram selected excavated material in foundations	CM	3		-
F	Load wheel and cart away surplus excavated material from site	CM	5		-
G	300mm thick approved hardcore laid and compacted in 100mm layers	CM	3		-
H	50mm thick approved murrum blinding to surface of hardcore.	SM	7		
I	Extra over normal excavation for all rock.	CM	1		
J	Vibrated reinforced concrete 1:1:5:3 in foundations	CM	2		
K	150mm thick concrete 1:1:5:3 in floor bed.	SM	7		
L	BRC No. A142 includind bending and laps	SM	7		
M	1000 gauge approved damp membrane laid with	SM	7		
	Total to collection			Ksh	

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
A.	Sawn formwork as described to edges of floor slab girth 75-150mm	LM	10		-
B	Treat surface of hardcore with approval insecticide to manufactures instructions	SM	7		-
	3-ply black bituminous felt damp proof course laid with laps as instructed				
C	200mm wide.	LM	9		
D	200mm thick dressed natural stone foundation walling in cement sand 1:4 mortar reinforced with including hoop iron at alternate cources	SM	7		
	Plinths				
E	15mm cement/sand render plinths	SM	7		
F	Prepare apply 3 coats black bituminous paint to rendered plinths.	SM	7		
	Total to collection				
	Total collection below				
	Brought forward from page:2/7				
	From above				
	TOTAL CARRIED TO SUMMARY			Ksh	

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	ELEMENT NO 2				
	WALLING AND BEAMS				
	Selected fine dressed natural stone walling with a minimum of 7.0 N/mm2 average compessive strength to B.S 5390: bedded and jointed in cement and sand (1:4) mortar to Architect's approval				
A	150mm Thick walling: reinforced with 20 gauge hoop iron at alternate courses	SM	25		
B	Extra over walling for pointing on masonry walling : horizontal recessed and flush vertical joints	SM	25		
	In situ concrete class 25 (20 mm aggregate): vibrated:reinforced: in				
C	Beams	CM	1		-
	Sawn form work or equal and approved				
D	To sides of beams	SM	5		
E	To soffittes of beams over openings	SM	1		
	High yield square twisted bars to B.S. 4461: including bends, hooks and tying wire: (Provisional)				
F	12mm diameter	KG	40		
G	8mm diameter	KG	30		
	Total for Super structure carried to summary			Ksh	

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	ELEMENT NO:03 Structural timber to be sawn celcured cypress The following in 4 No roof trusses spanning 1500mm 3000mm high				
A	100x50mm tie beams	LM	9		
B	100x50mm rafters	LM	16		
C	Ditto hip rafters	LM	8		
D	75x50mm struts/ties	LM	9		
E	75x50mm purlins nailed to rafters (m.s)	LM	30		
F	100x50mm wall plate fixed with and including 12mm hoop irons at 1200 mm centers	LM	10		
G	28 gauge prepainted sheets nailed to timber purlinns(versatie) Ditto ridge caps	SM	11		
H	225x25mm wrot fascia/barge boards	LM	13		
I	Knot prime and stop prepare and apply 3 coats gloss oil pint to isolated timber surfaces girth 200-300	LM	13		
J	100mm diameter down pipes	LM	4		
K	150mm diameter half round upvc gutters including fixing clips	LM	13		
	Extra Over downpipe for:				
L	Sawn neck	NO	1		
M	Horse shoe end	NO	1		
N	Corner ends	NO	3		
	TOTAL FOR ROOF CARRIED TO SUMMARY			Ksh	

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	ELEMENT NO. 04 DOORS				
A.	Standard steel casement door to Architects details overal size 900x2100 single leaf and in one coat metal primer complete with 5-lever mortise steel door lock and iron mongery	NO	1		
B	4mm thick clear sheet glass bedded in steel puty	SM	1		
C.	Touch up primer and prepare and apply three coats gloss oil paint to general metal surfaces	SM	4		
D	Rubber door stop rawl bolted to floor.	NO	1		
	TOTAL FOR DOOR CARRIED TO SUMMARY			Ksh	

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	ELEMENT NO. 05 WINDOWS STEEL CASEMENT Supply, assemble and fix:steel casement windows as Architects drawing: including fixing putty: plugged screwed to concrete or blockwork: including ironmongery and accessories to Architects schedule vented				
A	Window size 900 x 1200 mm	NO	2		-
B	5mm thick glass in panes 0.1-0.5 and with putty glazing tinted	SM	1		-
C	Touch up primer and prepare and apply three coats of gloss paint to metal surfaces	SM	2		-
D	275x100mm P.C window cill bedding in cement /sand (1:4) mortar	LM	3		-
	Carried to summary			Ksh	-

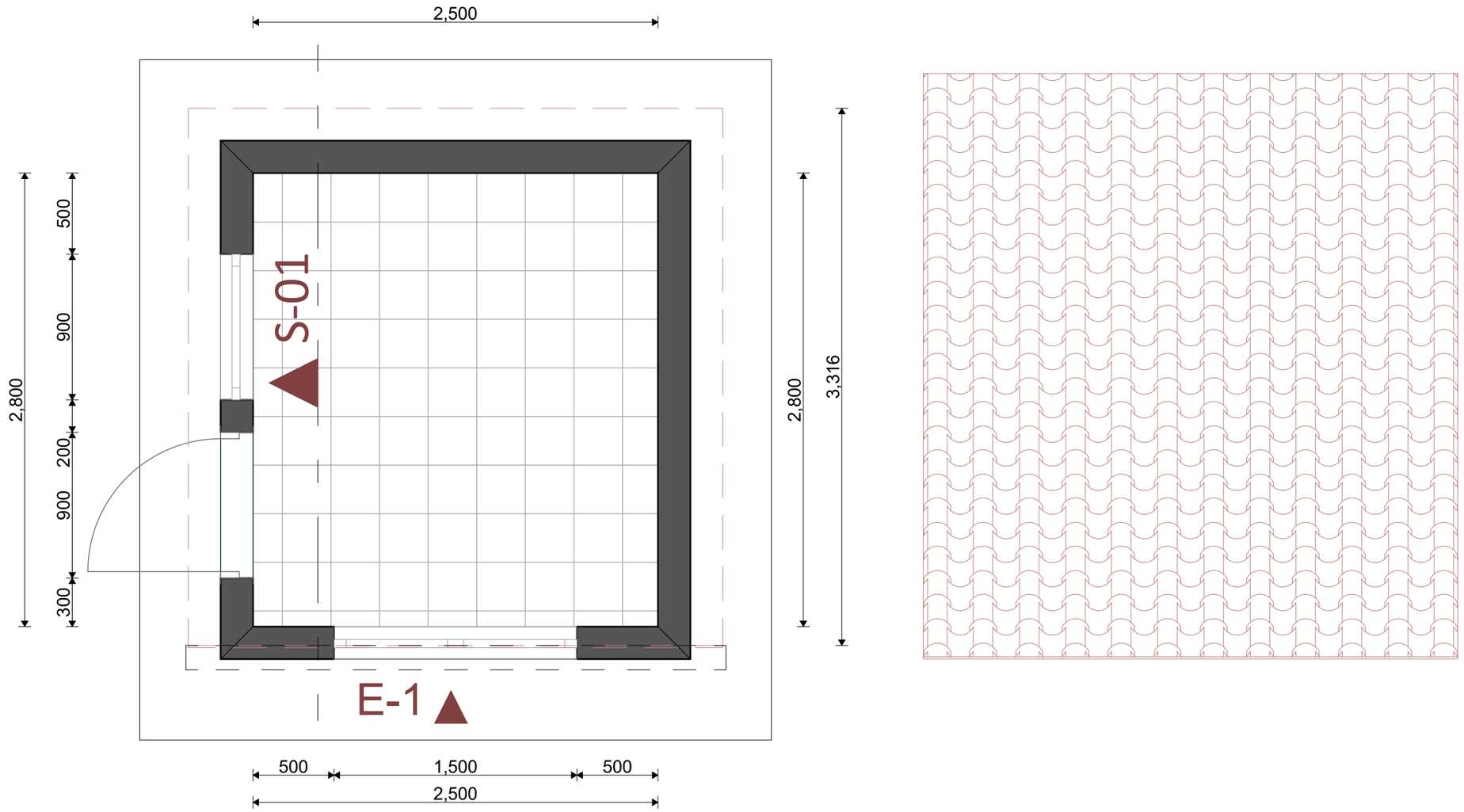
ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	ELEMENT NO. 06 FINISHES FLOOR				
A.	40mm thick cement/sand (1:2) screed	SM	7		
B	300x300x10mm thick ceramic floor tiles as saf fixed to floor with approved adhesives	SM	7		
C	25x75mm ditto skirting	LM	9		
	CEILING				
D	12mm thick chip board ceiling nailed to timber brandering	SM	7		
E	75x50 timber brandering	LM	24		
F	50x50 ditto	LM	20		
G	75x40 coved	LM	10		
H	Allow for forming acess panel	NO	1		
I	T and g pvc in eaves including timber brandering	SM	6		
J	Prepare and apply one undercoat and two finishing coats of first quality plastic emulsion paint to general surfaces of ceiling	SM	7		
	WALL FINISHES Cement and sand (1:4) externally:				
K	15 mm Plaster applied externally in two coats: wood floated to exposed beams	SM	3		-
	Carried to summary			Ksh	-

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	INTERNAL LIME PLASTER: first coat of cement lime and sand (1:2:9) second coat of cement,lime and sand (1:1:6) steel trowelled smooth				
A	15 mm Thick two coat plaster to walls: internally	SM	25		-
	Prepare and apply one mist coat and three coats of prime grade Silk Vinyl Emulsion paint internally on.				
B	Plastered surfaces	SM	25		-
	Prepare and apply one undercoat and two coats of first grade weather resistant gloss oil paint				
C	Rendered surfaces	SM	3		-
	Carried to collection				
	COLLECTION				
	From page :2/13				
	From a bove				
	TOTAL FOR FINISHES CARRIED TO SUMMARY			Ksh	

	SUMMARY		
	TOTAL FOR ELEMENT NO. 01 -(substructure)		
	TOTAL FOR ELEMENT NO. 02 - (walling/beams		
	TOTAL FOR ELEMENT NO. 03 - (roof)		
	TOTAL FOR ELEMENT NO. 04 - (doors)		
	TOTAL FOR ELEMENT NO:05(windows)		
	TOTAL FOR ELEMENT NO. 06 - (finishes)		
	SUB TOTAL I KSHS.		
	PROVISIONAL SUMS		
	Allow for ksh 40,000 PMC and supervision		
	Allow for ksh 70,000 for contigency and electrical works		
	SUB TOTAL II KSHS.		
	GRAND TOTAL	Ksh	

	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	SUMMARY				
	Fencing				-
	Gate				-
	Sentry				-
	TOTAL				-
	Add 16% VAT				-
	GRAND TOTAL				-

A	**Amount in words kenya shillings:**
B	Tenderers name
C	Address_____
D	Signature & STAMP
E	Date_____
F	Witness name_____
G	Addrtess_____
H	Signature_____
J	Date _____



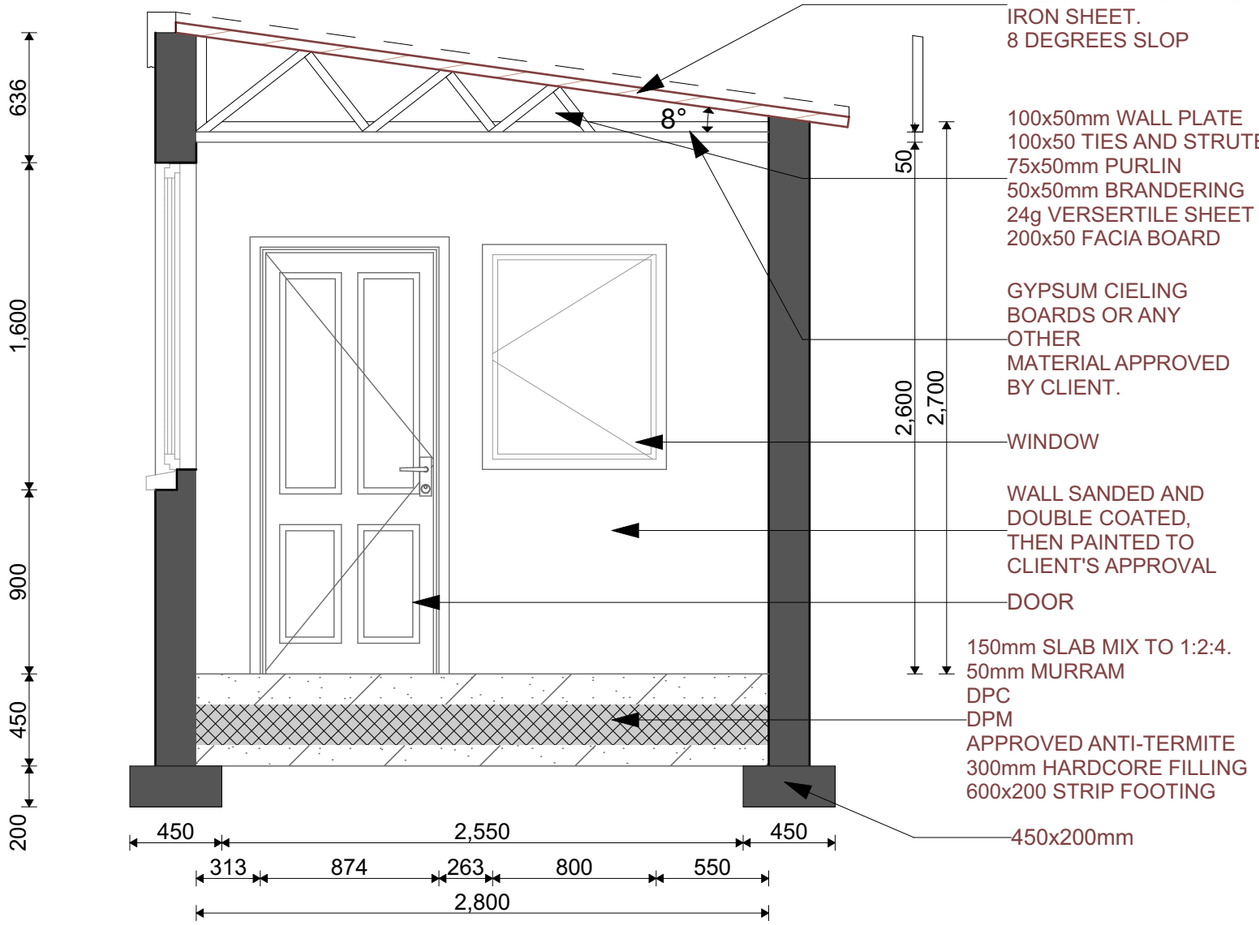
KEY

	30*30 TILES PLACED TO CLIENT'S APPROVAL		ROOFING IRONSHEET- 28 GAUGE PREPAINTED SHEET
	200 mm WALL PLACED TO ENGINEER'S APPROVAL	**NOTE;** **FOR THE TIMBER TO BE USED WILL BE CYPRESS**	

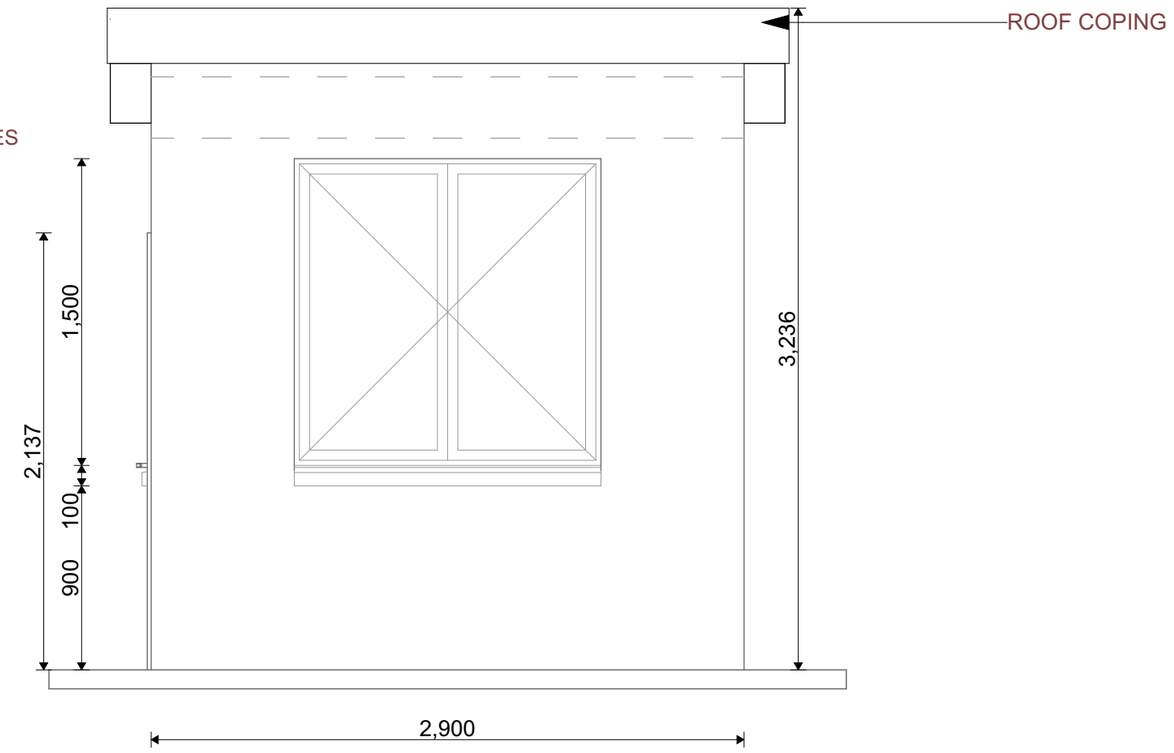
W-01 PLAN VIEW 1:30

TITLE : GATE HOUSE PLAN VIEW **SCALE : 1:30** **MEASUREMENTS : mm**

SECTION S-01



ELEVATION E-1



ELEVATIONS

ELEVATION VIEWS

1:30

TITLE : GATE HOUSE FRONT AND SIDE ELEVATIONS

SCALE : 1:30

MEASUREMENTS : mm