



**REQUEST FOR PROPOSAL**  
CONSTRUCTION, SUPPLY, INSTALLATION, TESTING,  
COMMISSIONING AND HANDING OVER OF THE WILDLIFE  
TOURISM COLLEGE (WTC) OF MAASAI MARA AS A  
TURNKEY PROJECT

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# **PART 1: INVITATION TO TENDERERS**

## **1.1. INTRODUCTION**

MMWCA invites consultants to submit financial and technical proposal for construction, supply, installation, testing, commissioning and handing over of the Wildlife Tourism College of Maasai Mara (WTC) as a turnkey project.

## **1.2. PROCUREMENT PROCESS**

The following key dates apply to this procurement process:

- RFP issue date: 25<sup>th</sup> November 2020
- RFP closing date and time: 16<sup>th</sup> December 2020, 17:00 EAT
- Estimated contract award date: January 2021

## **1.3. CONDITIONS**

- i. Interested candidates may obtain further information and inspect the tender documents at our website: <https://www.maraconservancies.org/bidders/>
- ii. A complete tender document may be obtained by any interested tenderer on submission of a written application to: [procurement@maraconservancies.org](mailto:procurement@maraconservancies.org)
- iii. Prices quoted shall be inclusive of duty and other taxes and shall remain valid for 60 days from the closing date of the tenders

## **1.4. QUERIES AND QUESTIONS DURING THE RFP PERIOD**

Proposers are to direct any questions regarding the RFP to the Project Manager Sean Fraser [confluence254@gmail.com](mailto:confluence254@gmail.com) No other MMWCA personnel are to be contacted in relation to this RFP. Proposers must submit questions no later than 10<sup>th</sup> December 2020, 17:00 EAT.

As far as possible, MMWCA will share the responses to any questions, suitably anonymized, with all invited proposers. If you consider the content of your question confidential, you must state this at the time the question is posed.

## **1.5. PROPOSAL LODGEMENT METHODS AND REQUIREMENTS**

Proposers must submit their proposal to MMWCA no later than 11<sup>th</sup> December 2020, 17:00 EAT by email to: [procurement@maraconservancies.org](mailto:procurement@maraconservancies.org) . The subject heading of the email should be 'RFP for Turnkey Construction Project for WTC by [organizational name].' Electronic copies are to be submitted in PDF, or MS Word, formats. Proposals must be in English.

## **1.6. SUBMISSION REQUIREMENTS**

All interested person(s) should submit technical and price proposals by the deadline.

Deadline: 17:00 EAT, December 16<sup>th</sup> 2020

Proposals should be emailed to: [procurement@maraconservancies.org](mailto:procurement@maraconservancies.org) and copy to [contact@maraconservancies.org](mailto:contact@maraconservancies.org)

**Signed By:**

A handwritten signature in blue ink, consisting of several overlapping loops and a horizontal stroke at the end.

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Chief Operations Officer

## **PART 2: BACKGROUND AND PRELIMINARY INFORMATION**

### **2.1 BACKGROUND OF MMWCA**

The Maasai Mara Wildlife Conservancies Association (MMWCA) is a membership organization of all the Mara conservancies, open to any existing or upcoming wildlife conservancy whose land is part of or integral to the greater Maasai Mara ecosystem. The MMWCA is one of the 12 regional associations forming the Kenya Wildlife Conservancies Association (KWCA) as envisaged in the Wildlife Conservation and Management Act 2013.

MMWCA's Mission is: 'conserving the greater Maasai Mara ecosystem for the prosperity of all: biodiversity and wildlife, the regional Maasai population, recreation and tourism for the nation of Kenya'.

The MMWCA has three key objectives:

1. Provide a space for open discussions, a hub for knowledge sharing and coordination driving policy in the interest of conservancies and conservation related issues.
2. Support the creation and development of conservancies and their neighbouring areas across the greater Mara ecosystem, as a sustainable form of land-use and to provide mechanisms for equitable and value-based benefit sharing to sustain land under conservation.
3. Lead or/and implement development and conservation programs across member conservancies to facilitate coordination, collaboration and synergetic action.

### **2.2 OBJECTIVES**

MMWCA is seeking a contractor who will undertake a turnkey project for the building and associated civil engineering works for the Wildlife Tourism College (WTC) of Maasai Mara.

### **2.3 PROJECT DESCRIPTION**

One of MMWCA's objectives is to secure Pardamat Conservation Area (PCA) for biodiversity and wildlife conservation while deriving benefits for the local Maasai landowning families within the Area. PCA is the only Mara conservancy that is premised on a dual-use conservation model, where the community's 850 landowners have legally registered their 26,000 hectares of land as a wildlife conservation area while remaining to live and work on it.

In 2005, the Koiyaki Guide School (KGS) was established in Naboisho Conservancy as a community empowerment facility to improve the standards of safari guiding and offer economic opportunity to local Maasai. Despite KGS's successes, the hiring needs of tourist operators in the 15 Conservancies and Maasai Mara National Reserve are evolving, with more citing the need for comprehensive hospitality training as well as additional language and cultural training.

Relocating, restructuring and expanding Koiyaki Guide School (KGS) as the Wildlife Tourism College of Maasai Mara (WTC) is the core of the project.

The Wildlife Tourism College (WTC) of Maasai Mara will be unparalleled in its approach to advanced courses, experiential learning, and cross-cultural immersion while facilitating the

highest caliber research and an innovative sustainable financing model not seen elsewhere in East Africa.

The WTC builds on the legacy of the Koiyaki Guide School (KGS), which has graduated over 300 trained Maasai safari guides since its opening 15 years ago. Key features of the expanded WTC program include:

- The latest in high-level training needed for future employment in the Greater Mara Ecosystem and throughout the region, including climate change adaptation, natural resource management, and international hospitality standards
- A strategic partnership and student, teacher, and graduate exchange program with the leading Southern African Wildlife College (SAWC) as well as other participating universities
- Unique integration of global and local Maasai students to mutual benefit; allowing for genuine social growth and 'G(local) citizenship education
- An on-site research hub, with participants from 5+ key international universities, to launch crucial impact measurements and further contribute to programs
- A profit-sharing model which supports both local student scholarships and operating expenses but also the expansion and sustainability of Pardamat, a ground-breaking dual-use conservation area, through land-lease payments

## **2.4 SCOPE OF THE WORK**

The selected site for the WTC sits on a 50-acre plot of land with a vital natural spring, both already donated by the PCA Community. It is in an easily accessible location with plans to build a new access road and airstrip. The total area of the hub is approximately 1,000m<sup>2</sup>, which includes close to 100 beds for students, visiting professors, and researchers.

WTC Hub's facilities have been designed to mimic its interdependent program, while also focusing on the highest standards of sustainability. This includes:

- i. Recycling existing KGS equipment
- ii. Using bricks from a local social enterprise
- iii. Installing a solar power system
- iv. Water tanks for rainwater harvesting
- v. Sustainable waste management
- vi. A garden.

The hub will have a 150m panorama view of PCA and the neighbouring conservancies.

Drawings are attached in **Annex One**.

## **2.5 CONTRACT DURATION**

The contract is expected to be undertaken within a period of one and a half years (548 days). The Koiyaki Guide School /WTC and the common area/social area (classrooms, dining area, toilets, staff quarters) will be expected to be ready by January 2022.

## 2.6 PAYMENT TERMS

A contract of agreement will be issued between MMWCA and the contractor prior to commencing any job.

## 2.7 APPLICATION REQUIREMENTS

The following are **mandatory** requirements that must be submitted together with the proposal:

- a) A Copy of Certificate of Incorporation
- b) Curriculum Vitae(s) of the proposed key staff
- c) Tax Compliance Certificate
- d) Copies of certificates of the proposed key staff and roles they will play
- e) Copies of relevant NCA registration certificate
- f) Firm's current workload
- g) Client testimonials on similar works having been successfully carried out
- h) A description of the work plan and methodology
- i) A financial proposal that will outline:
  - i. Summary of costs (outlining all Government taxes currently in force).
  - ii. Breakdown of price per activity
  - iii. Breakdown of remuneration per activity
  - iv. Miscellaneous expenses

**N.B: The tenderers who do not satisfy any of the above mandatory requirements shall be considered Non-Responsive and their tenders will not be evaluated further.**

## 2.8 DELIVERABLES

The deliverables for this Works will include:

- a) An inception report shall be submitted before the commencement of the Works. It shall include the proposals on how the objectives and scope of the services are to be achieved.
- b) An implementation schedule shall be prepared by the Contractor, taking as an input basis, the Time Program of the entire Contract. This implementation schedule shall be submitted along with the Inception Report. It is required to highlight in particular the milestones to be met in order that the Project can be executed smoothly.
- c) Monthly reports shall be submitted at the end of each month and shall cover the following items:
  - i. Details on the construction progress
  - ii. Contractor's equipment and personnel mobilization status.
  - iii. Engagement of different personnel of the Contractor's team in the works and utilization of man-hours.
  - iv. Description of delays and steps to be taken to overcome them.
  - v. Environmental management mitigation plan based on recommendations from the EIA report

- d) A quarterly progress report shall be submitted by the Contractor to the Client, addressed to the Project Manager, within 7 days after the end of the reporting month. The report shall cover the following items:
- i. A chronological listing of significant project events
  - ii. A concise summary of the major highlights of the report.
  - iii. Action on items, comprising a list of significant items on the Project which require resolution by either the Client or the Contractor
  - iv. A summary on the implementation of the biodiversity management plan
  - v. Any other project aspect considered necessary by the Project Manager
- e) The Contractor shall submit to the client a project close out report and works completion certificate once construction is finalised.

## **PART 3: INSTRUCTIONS TO TENDERERS**

### **A GENERAL**

#### **3.1 DEFINITIONS**

- (a) "Tenderer" means any person or persons, partnership or company submitting a tender for the project acting directly or through a legally appointed representative.
- (b) "Accepted tenderer" means the tenderer who is approved by the procuring entity
- (c) "Procuring entity" means Maasai Mara Wildlife Conservancies Association (MMWCA)

#### **3.2 ELIGIBILITY AND QUANTIFICATION OF TENDERS**

3.2.1 To be eligible and qualified the tender shall provide evidence satisfactory to the procuring entity of its eligibility, capability and adequacy of resources to effectively perform the subject contract. To this end, the tenderer shall be required to submit a "technical proposal" which will include the following information.

- (a) Details of experience and past performance of works of similar nature in the last five years and details of any current work on hand
- (b) The qualifications and experience of key personnel proposed for administration and execution of the contract both on and off site
- (c) Major items of construction plant and equipment proposed for use in the performance of the contract. The tenderer will also indicate on the schedule when each item will be available on the works. Included also should be a schedule of plant, equipment and materials to be imported for the propose of the contract, giving details of make, type, and CIF value as appropriate.
- (d) Details of subcontractors to whom it is proposed to sub-contract any portion of the contract and for whom authority will be required for such subcontracting in accordance with the conditions of contract.
- (e) A draft programme of works which shall form part of the contract if the tender is accepted. Any change in the programme shall be subject to the approval of the Procuring entity.

#### **3.2.2 Joint Venture**

Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements;

- (a) the tender and in cause of a successful tender, contract form shall be signed so as to be legally binding on all partners
- (b) one of the partners shall be nominated as being lead contractor, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners

- (c) the lead contractor shall be authorized to incur liability and receive instructions for and on behalf of any and all the partners of the joint venture and the entire execution of the contract including payment shall be done exclusively with the lead contractor.
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms, and a relevant statement to this effect shall be included in the authorization mentioned in (b) above as well as in the form of tender and the contract form (in case of the accepted tender).
- (e) A copy of the contract entered into by the joint venture partners shall be submitted with the tender.

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

3.2.4 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.

### **3.3 COST OF TENDERING**

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

### **3.4 SITE VISIT**

3.4.1 The tenderer is advised to visit and examine the site and its surrounding and obtain for itself on its own cost and responsibility all information that may be necessary for preparing the tender and entering into a contract.

3.4.2 The tenderer and any of its personnel or agent will be granted permission by the procuring entity to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, its personnel or agents, will release and indemnify the procuring entity from and against all liability in respect of and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.

3.4.3 The procuring entity shall organize a site visit at a date to be notified. A representative of the procuring entity will be available to meet the visiting tenderers at the site. The representative will not be available at any other time for site inspection visits. Tenderers must provide their own transport.

## **B TENDER DOCUMENTS**

### **3.5 CONTENTS OF TENDER DOCUMENTS**

3.5.1. The tender documents comprise the documents listed here below and should be read together with any addenda issued.

The tender documents consist of three parts:

- a) A technical proposal
- b) A financial proposal
- c) Annexures

3.5.1 The tenderer is expected to examine carefully all instructions, conditions, forms, terms specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the owner risk. Pursuant to clause 4.23 of Instructions to tenderers, tenders which are not substantially responsive to requirements of the tender documents will be rejected.

3.5.2 All recipients of documents for the proposed contract for the purpose of submitting a tender (whether they submit a tender or not) shall treat the details of the documents as "private and confidential".

### **3.6 INQUIRIES BY TENDERERS**

3.6.1 A tenderer making an inquiry relating to the tender documents may notify the procuring entity in writing by email at the procuring entity's mailing address indicated in the invitation to tender. The procuring entity will respond in writing to any request for clarification which is received earlier than five (5) days prior to the deadline for the submission of tenders. If a candidate sends an inquiry after the stated days, the procuring entity shall have the option of responding to the inquiry and extension of the date of submission of tenders or ignoring it.

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

3.6.3 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.

### **3.7 AMENDMENT OF TENDER DOCUMENTS**

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

3.7.2 Any Addendum will be notified in writing or by email to all prospective tenderers who have expressed interest to tender and will be binding upon them.

- 3.7.3 In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the employer may, at his discretion, extend the deadline for the submission of tenders.

## **C PREPARATION OF TENDERS**

### **3.8 LANGUAGE OF TENDER**

- 3.8.1 The tender and all correspondence and documents relating to the tender exchanged between the tenderer and the procuring entity shall be written in the English language. Supporting documents are printed literature furnished by the tenderer with the tender may be in another language provided they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the tender, the English language shall prevail.

### **3.9 DOCUMENTS COMPRISING THE TENDER**

- 3.9.1 All the appendixes submitted with the tender documents shall be used without exception.

### **3.10 TENDER PRICES**

- 3.10.1 All the insertions made by the tenderers shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialed by the person or persons signing the tender.
- 3.10.2 A price or rate shall be inserted by the tenderer for every item listed whether the quantities are stated or not items against which no rate or price is entered by the tenderer will not be paid for by the procuring entity when executed and shall be deemed covered by the rates for other items and prices.

The prices and unit rates are to be the full [all-inclusive] value of the work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties and taxes and other levies payable by the tenderer under the Contract or for any other cause prior to the deadline for the submission of tenders, shall be included in the rates and prices and the total tender prices submitted by the Tenderer.

Each price or unit rate inserted should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to these instructions.

Every rate entered, whether or not such rate be associated with quantity, shall form part of the Contract.

- 3.10.3 Where quantity contract variation is allowed, the variation shall not exceed 15% of the original contract price.

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

### **3.11 CURRENCIES OF TENDER AND PAYMENT**

3.11.1 Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings

### **3.12 TENDER VALIDITY**

3.12.1 The tender shall remain valid and open for acceptance for a period of Sixty (60) days from the specified date of tender opening or from the extended date of tender opening whichever is the later.

3.12.2 In exceptional circumstances prior to expiry of the original tender validity period, the Employer may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing by email. A tenderer may refuse the request without forfeiting his Tender Surety. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Surety correspondingly.

### **3.13 NO ALTERNATIVE OFFERS**

3.13.1 The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix. Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture.

3.13.2 Upon reviewing the tender document, the tenderer is encouraged to advise on where they think alternative options could help bring down the budget or streamline the building project. The Employer has observed that the major drivers of cost on the project shall be the steel frames on the public areas, tent decking, flooring and sub deck and the solar and waste water systems. In all regards the Employer is open to exploring alternatives but these alternatives must factor in the environmental impact of any changes. Similarly, if the tenderer feels anything has been under specked he can include it as feedback. The Employer acknowledges the water storage may need to be increased. It has been kept to a minimum currently for both the header tanks and rainwater tank based on the ample availability from the spring so this is open to discussion.

### **3.14 FORMAT AND SIGNING OF TENDER**

3.14.1 The tenderer shall prepare his tender as outlined in Part 1 above

3.14.2 The copy of the tender and Bills of Quantities shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender.

3.14.3 The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tender, in which case such corrections shall be initialed by the person or persons signing the tender.

## **D SUBMISSION OF TENDERS**

### **3.15 SUBMISSION OF TENDERS**

- 3.15.1 The tenderer shall submit the TECHNICAL PROPOSAL AND FINANCIAL PROPOSAL of the tender in separate attachments duly marked technical proposal and financial proposal to [procurement@maraconservancies.org](mailto:procurement@maraconservancies.org)

### **3.16 DEADLINE FOR SUBMISSION OF TENDERS**

- 3.16.1 Tenderers must be received by the procuring entity at the address specified and on the date and time specified in the invitation the tender subject to the provision of Part 1.

Proof of posting will not be accepted as proof of delivery and any tender delivered after the above stipulated time, from whatever cause arising will not be considered.

- 3.16.1 The procuring entity may at its discretion, extend the deadline for the submission of tenders through the issue of an Addendum in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline shall thereafter be subjected to the new deadline as extended.

- 3.16.2 Any tender received by the procuring entity after the prescribed deadline for submission of tenders will be returned unopened to the tenderer.

### **3.17 MODIFICATION AND WITHDRAWAL OF TENDERS**

- 3.17.1 The tenderer may modify or withdraw his tender after tender submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the prescribed deadline for submission of tenders.

- 3.17.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of tenders, additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.

- 3.17.3 No tender may be modified subsequent to the deadline for submission of tenders

- 3.17.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the period of tender validity specified on the tender form. Withdrawal of a tender during this interval will result in the forfeiture of the Tender Surety.

- 3.17.5 Subsequent to the expiration of the period of tender validity prescribed by the Employer, and the tenderer having not been notified by the Employer of the award of the Contract or the tenderer does not intend to conform with the request of the Employer to extend the period of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Surety.

## **E TENDER OPENING AND EVALUATION**

### **3.18 TENDER OPENING**

- 3.18.1 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 3.17 will not be opened. The Employer will examine the tenders to determine whether they are complete and whether the tenders are generally in order.
- 3.18.2 Tenders not opened and read out at tender opening shall not be considered further for evaluation, irrespective of the circumstances. Any tender recited after the deadline for submission of tender shall be returned to the tender unopened.

### **3.19 PROCESS TO BE CONFIDENTIAL**

- 3.19.1 After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenders or other persons not officially concerned with such process until the award of Contract is announced.
- 3.19.2 Any effort by a tenderer to influence the Employer in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender.

### **3.20 CLARIFICATION TENDERS**

- 3.20.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing by email, 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 arithmetical errors discovered by the employer during the evaluation of the tenders.
- 3.20.2 No tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

### **3.21 DETERMINATION OF RESPONSIVENESS**

- 3.21.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.
- 3.21.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specification of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the

competitive position of other tenderers who have presented substantially responsive tenders.

3.21.3 Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.

3.21.4 A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.

### **3.22 CORRECTION OF ERRORS**

Tenders determined to be substantially responsive shall be checked by the Employer for any arithmetic errors in the computations and summations. Errors will be corrected by the Employer as follows:

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
- (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 adjustment will be made to the entry containing that error
- (c) 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.

### **3.23 EVALUATION AND COMPARISON OF TENDERS**

3.23.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents.

3.23.2 In evaluating 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 3.22
- (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.

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

- 3.23.4 Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.
- 3.23.5 If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 3.27 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.
- 3.23.6 Firms incorporated in Kenya where Kenyan youth or women own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a non-indigenous sub-contract.
- 3.23.7 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 3.23.8 The procuring entity may at any time terminate procurement proceedings before award and shall not be liable to any person for the termination.
- 3.23.9 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.
- 3.23.10 Persons not officially involved in the evaluation of tender shall not attempt in any way to influence the evaluation.
- 3.23.11 Any person who has a conflict of interest with respect to the procurement shall not participate in the procurement proceedings.

## **F AWARD OF CONTRACT**

### **3.24 AWARD**

- 3.24.1 The Employer will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works.
- 3.24.2 The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.

### **3.25 NOTIFICATION OF AWARD AND SIGNING OF THE CONTRACT**

- 3.25.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by email and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.
- 3.25.2 Notification of award will constitute the formation of the Contract subject to the parties signing the contract.
- 3.25.3 Upon the furnishing of a Performance Security by the successful tenderer, the unsuccessful tenderers will promptly be notified that their tenders have been unsuccessful.
- 3.25.4 Within twenty-eight (28) days of receipt of the contract form from the Employer the successful tenderer shall sign the form and return it to the employer together with the required Performance Security.
- 3.25.5 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.

### **3.26 PERFORMANCE GUARANTEE**

- 3.26.1 Within fourteen (14) days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the employer with a Performance bond of 5% of the Contract Amount.
- 3.26.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by an established and a reputable Bank approved by the Employer and located in the Republic of Kenya.
- 3.26.3 No payment on account for the works executed will be made to the Contractor until they have submitted the Performance Bond to the Project Manager duly signed, sealed and stamped from an approved bank.

### **3.27 PENALTIES FOR DELAY IN COMPLETION**

If the Contractor fails to complete the Works by the date for practical completion stated under clause 2.5 of these conditions, and the Project Manager certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Contractor shall pay or allow to the Employer a sum calculated at the rate of 1% per week liquidated damages for the period during which the Works shall so remain or have remained incomplete, and the Employer may deduct such sum from any money due or to become due to the Contractor under the contract or recover the same from the Contractor as a debt.

The payment or deduction of such damages shall not relieve the Contractor from his obligations to complete the Works or any part thereof or from any other obligations and liabilities under the contract.

The Employer will have the right to terminate the contract and seek an alternative Contractor if the Works are still not completed after a duration of one month.

### **3.28 OTHER WORKS**

The Contractor shall fully disclose any other ongoing projects that they are engaged in. Furthermore, they should fully outline to the procuring entity their capacity to complete the Works if they are engaged in another project concurrently. Any new projects undertaken by the chosen Contractor will need to be approved by the procuring entity.

### **3.29 ADVANCE PAYMENT**

An advance payment if approved by the employer shall be made under the contract in accordance with the conditions of contract.

### **3.30 CORRUPT OR FRAUDULENT PRACTICES**

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

## **PART 4: SPECIFIC CONDITIONS TO TENDERERS**

### **4.1 DEFINITIONS**

**Contractor:** The individual or business entity that has entered into this Contract with Employer.

**Proposal:** The Technical and Financial Proposal packages submitted by the Proposers on the bid date.

**Candidate:** Any person or business entity acting directly or through an authorized representative who submits a Proposal for the work. "Candidate", Bidder" and Tenderer are synonymous.

**Request For Proposal (RFP):** The documents submitted by the Employer to the "Candidates" describing and specifying the requirements of the work/project.

**Supplier or Vendor:** Any individual or business entity that contracts with the Contractor to provide materials or equipment.

### **4.2 PROPOSALS**

#### **4.21 Duty to carefully examine these instructions**

Prospective Candidates for this project shall examine carefully the instructions contained herein and be satisfied with the conditions that must be satisfied prior to submitting a proposal and to the conditions that affect the award of the contract.

#### **4.22 Necessity for Careful Examination of Site, Plans, Specifications**

The Candidate shall carefully examine the project site and shall investigate and be satisfied as to the conditions to be encountered, the character and quantity of surface and subsurface materials or obstacles to be encountered, rights of way and easements at or near the site, the work to be performed, and the materials to be furnished as required by the RFP.

Any failure by the Candidate to acquaint itself with information that is available or with reasonable investigations that may be available will not relieve it from responsibility to properly estimate the difficulty or cost to perform the work. Such examination does not require independent underground soil borings unless required elsewhere.

##### **a. Subsurface Investigations**

Where the Employer has made investigations of subsurface conditions and has made that information available to Candidates, such information is limited in scope to that which has been actually encountered in the investigations, and is included only for the convenience of the Candidate.

The Employer assumes no responsibility whatsoever with respect to the sufficiency or accuracy of borings or of the log of test borings, or other preliminary investigations, or any

interpretation of the above. There is no guarantee or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the site, or any part of it, or that unforeseen conditions or developments may not occur.

Making such information available to Candidates is not to be construed in any way as a waiver of this provision. Candidates must satisfy themselves through their own investigations as to the actual conditions to be encountered.

**b. Differing Site Condition**

During the progress of the works, if a subsurface or latent condition is encountered at the site that is substantially different from those indicated in the RFP or made available for examination, a differing site condition may exist. The Contractor shall immediately notify the Project Manager in writing of the differing site condition.

The Project Manager shall investigate the assertion of a differing site condition by collecting the facts and applying the facts to the appropriate provisions of the contract documents.

If the Project Manager in the exercise of reasonable discretion determines that a differing site condition exists and that the differing site condition directly results in extra work, the Contractor shall be entitled to a variation order, which shall compensate the Contractor for the extra work.

**4.23 Clarification during Tendering**

The Candidate shall examine the RFP documents in preparing the tender and shall report to the Project Manager any omissions, discrepancies, or apparent errors found in RFP. Prior to the date of tender opening, the Candidate shall submit a written request for clarification to the Project Manager who may give such clarification in the form of addenda to all Candidates.

Only the Project Manager is authorized to answer questions or prepare addenda relating to the project. Information obtained from any other source shall not bind either party, may not be relied upon and shall have no standing in any event that may occur.

**4.24 Proposal Documents**

Each proposal will consist of two separate submittals, the Financial Proposal and the Technical Proposal.

**a) Proposal Package**

Any proposal submitted that is not signed by the Candidate or by the Candidate's duly authorized representative shall be rejected by the Employer as non-responsive.

**b) Power of Attorney or Agent**

When an agent signs proposals, a power of attorney shall either be on file with the Employer prior to the opening of proposals, or be submitted with the proposal. Failure to submit the power of attorney may result in the rejection of the proposal as irregular and

unauthorized. A power of attorney is not necessary in the case of a partner in a partnership.

#### **4.25 Competitive Tendering**

If more than one proposal is offered by an individual or business entity or combination thereof, under the same or different names, all such proposals may be rejected. A party who has quoted prices on materials or work to a Proposer is not thereby disqualified from quoting prices to other Proposers, or from submitting a proposal directly for the materials or work.

### **4.3 DESIGN REQUIREMENTS**

#### **4.31 Scope of Work**

From the approved drawings and detailed specifications, the Contractor shall furnish all labour, materials, equipment, services and transportation necessary for the complete construction of the project, including site works, structures, utilities and landscaping.

#### **4.32 Intent of the Contract Documents**

The intent of the contract documents is to provide the Employer with a project that is complete in all respects. All items necessary or reasonably required are to be provided to produce a complete and operational project.

#### **4.33 Plan Approval by Employer**

Any changes, alterations, substitutions or modifications made to the approved plans during construction must be approved in writing by the Project Manager where they could be construed to impact on the adherence to the applicable codes, standards or regulations.

### **4.4 CONDUCT OF THE CONSTRUCTION WORK**

#### **4.41 Laws to be Observed - Generally**

a) The Contractor shall observe all Government laws that affect the work under this contract.

The Contractor shall hold harmless defend and indemnify the Employer against any claim arising from the violation of any law, whether by itself or its agents, employees or subcontractors.

If a conflict arises between the provisions of this contract and a law, the Contractor immediately shall notify the Employer's Project Manager in writing.

**"Law"** as used in this paragraph includes statutes and regulations adopted as well as executive orders, authoritative interpretations and other rules and directives issued by legally constituted authority.

#### **4.42 Laws to be Observed – Regarding Labour**

##### **a) Labour**

- i) The Contractor shall comply with the provisions of the Kenyan Labour Laws.
- ii) The Contractor shall permit access by representatives of the Employer upon reasonable notice to its books, records, accounts, other sources of information and its facilities as the Employer shall require to ascertain compliance with this clause.
- iii) The Design Builder and its subcontractors shall give written notice of their obligations under this clause to any labour organizations with which they have a collective bargaining or other agreement.

##### **b) Prevailing Wage**

- i) Wage rates set forth are the minimum that may be paid by the Contractor on a public works contract.

Public works also means hauling refuse from a public works site to an outside disposal location.

Nothing herein contained shall be construed as preventing the Contractor from paying more than the minimum rates set forth.

No extra compensation whatsoever will be allowed by the Employer due to the inability of the Contractor to hire labour at minimum rates nor for the necessity for payment by the Contractor of subsistence, travel time, overtime or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing the bid.

- ii) If it becomes necessary to employ crafts other than those listed, the Contractor shall notify the Employer immediately and the Employer will ascertain additional prevailing rates and the rates thus determined shall be applicable as minimum from time of initial employment.
- iii) The Contractor and any subcontractor under the Contractor shall comply with all labour laws.

##### **c) Worker's Compensation**

The Contractor shall be required to secure payment of Worker's Compensation to its employees in accordance with Labour Laws and shall file with the Employer prior to performing the work the certification required.

##### **d) Education, Counseling and Training Programs**

All educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs, under this contract, shall be open to all qualified persons, without regard to race, sex, color, religion, national origin or ancestry.

Such programs shall be conducted to encourage the fullest development of the interests, skills, aptitudes and capacities of all students and trainees with special attention to the problems of culturally deprived, educationally handicapped or economically disadvantaged persons from the Mara region.

Expansion of training opportunities under these programs shall also be encouraged with a view toward involving larger numbers or participants from these segments of the labour force where the need for upgrading levels of skills is the greatest.

The Contractor shall obtain copies of such safety orders as are applicable to the type of work to be performed and shall be governed by their requirements in all construction operations. The Contractor shall fully inform each subcontractor and materials supplier as to the requirements of the applicable safety orders.

#### **4.43 Environmental Requirements**

##### **a) Air and Water Pollution Control**

The Contractor shall comply with all air and water pollution control rules, regulations, ordinances and statutes that apply to the work performed under the contract including any air pollution control rules, regulations, ordinances and statutes adopted under the authority of the Employer.

The Contractor must be eligible to perform work for the Project Manager by not being found to be in violation of any order, resolution or regulation relating to air or water pollution adopted in accordance with Project Manager requirements.

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds and liquid asphalt used on the project, shall comply with the applicable material requirements of the Kenya Bureau of Standards.

All containers of solvent paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.

A regular watering program shall be initiated to adequately control the amount of fugitive dust.

Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust.

Trucks hauling dirt from the site shall be covered in accordance with applicable state and local requirements.

To reduce exhaust omissions, unnecessary idling of construction vehicles and equipment shall be avoided.

Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

**b) Sound Control requirements**

The Contractor shall comply with all sound control and noise level rules, regulations and ordinances which apply to the work.

In the absence of any such rules, regulations and ordinances, the Contractor shall conduct its work to minimize disruption to others due to sound and noise from the workers and shall be responsive to the Employer's requests to reduce noise levels.

Loading and unloading of construction materials will be scheduled so as to minimize disruptions to any activities.

Construction activities will be scheduled to minimize disruption to the adjacent premises.

**4.44 Substitution of Subcontractors**

Once the subcontractors have been listed provisions of the subletting and subcontracting to any proposed substitution of subcontractors must be approved by the Project Manager.

When requested by the Project Manager, the Contractor shall submit a Subcontractor Status Report, which will be compared with the list of approved contractor.

If any subcontracts are still outstanding at the time of submittal, a follow-up request will be made.

No substitution of any subcontractor would be allowed without written approval of the Employer.

**4.45 Contractor's Responsibility for the Work**

**a) Generally**

The Contractor shall be fully responsible for all work performed under this contract and no subcontractor will be recognized as such.

For purposes of assessing responsibility to the Contractor, all persons engaged in the work shall be considered as employees of the Contractor.

The Contractor shall give her/his personal attention to the fulfillment of the contract and keep all phases of the work under her/his control.

The Employer will not arbitrate disputes among subcontractors nor between the Contractor and one or more subcontractors concerning responsibility for performing any part of the project.

**b) Quality Control**

The Contractor shall be fully responsible for the quality of materials and worker's skill in the project.

**c) Burden for Damage**

From the issuance of the official Notice to Proceed until formal acceptance of the project by the Employer, the Contractor shall have the charge and care of and shall bear the risk of damage to the project and materials and equipment for the project.

The Contractor, at its own expense, shall promptly rebuild, repair, restore and make good all such damage to any portion or to all of the project and materials therefore before the acceptance of the project by the Employer except for such damage as is proximately caused by acts of the Employer or public enemy.

In case of suspension of work from any cause whatsoever, the Contractor shall be responsible for all materials and shall properly store them, if necessary and shall provide suitable drainage and erect temporary structures where necessary.

If the Contractor damages any property belonging to the Employer, the Employer may, in addition to other remedies available to the Employer, retain from the money due to the Contractor an amount sufficient to ensure repair of the damage or an amount to contribute towards repair of the damage.

The Contractor shall be responsible for any damage to the project and materials and equipment for the project.

**d) Protection of Adjoining Facilities**

The Contractor shall protect adjoining property and nearby buildings, roads and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Contractor's operations.

Dust shall be controlled by sprinkling or other effective methods acceptable to Employer.

An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable Law.

**e) Safety**

The Contractor shall exercise precaution at all times for the protection of persons and their property.

The Contractor shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the work or permanently installed as part of the project.

The Contractor shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights and warning signs.

The Contractor shall comply with all applicable laws relating to safety precautions, including the safety regulations of the Project Manager.

If the Contractor designates other employees, its Foreman shall have the duty of prevention of accidents.

The Contractor shall institute a safety program, which includes all trades on the site.

Renovation, expansion, or remodel work of any existing building may expose workers to lead-containing materials such as paint, flashings and pipe joints. The Contractor shall comply with all applicable laws addressing such exposure.

The Employer and the Project Manager may bring to the attention of the Contractor a possible hazardous situation in the field regarding the safety of personnel on the site.

The Contractor shall be responsible for verifying that all local, state and Government workplace safety guidelines are being observed.

In no case shall this right to notify the Contractor absolve the Contractor of its responsibility for monitoring safety conditions.

Such notification shall not imply that anyone other than the Contractor has assumed any responsibility for field safety operations.

In the event of an accident, the Contractor shall make available to the Employer copies of its accident report to its insurance carrier.

The Contractor shall determine the cause of the accident and immediately correct any equipment, procedure or condition contributing to the accident.

**f) Water and Electricity Supply For The Works**

The Contractor shall provide at his own risk and cost all necessary water, electric light and power required for use in the works. The Contractor must make his own arrangements for connection to the nearest suitable water main and for metering the water used. They must also provide temporary tanks and meters as required at their own cost and clear away when no longer required and make good on completion to the entire satisfaction of the Project Manager.

The Contractor shall pay all charges in connection herewith. No guarantee is given or implied that sufficient water will be available from mains and the Contractor must make his own arrangements for augmenting this supply at his own cost. Nominated Sub-contractors are to be made liable for the cost of any water or electric current used and for any installation provided especially for their own use.

**g) Utilities**

If the Contractor discovers utility facilities not identified in the contract documents, the Contractor shall immediately notify the Employer and the utility involved in writing of such discovery.

When the Contractor is required by the plans and specifications to locate, remove or relocate utility facilities not identified in the contract documents with reasonable accuracy, she/he shall be compensated for any reasonable actual added cost incurred.

The Contractor shall also be compensated for the cost of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the Contractor to exercise reasonable care.

The Employer or the public utility, where it is the owner of the utility facilities shall have the sole discretion to perform repairs, or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price, where such work is required to facilitate the project.

The Contractor shall not be assessed liquidated damages for delay in the completion of the project which is caused by the failure of the Employer or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.

The Contractor shall be responsible at its own cost for all work, expense or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the project work including without limitation, repair of any damage that may result including any damage resulting from hand or exploratory excavation.

**h) Public and Private Road**

Maintain as required throughout the execution of the works and make good any damage to public or private roads arising from or consequent upon the execution of the works to the satisfaction of the local and other competent authority and the Project Manager.

**i) Existing Property**

The Contractor shall take every precaution to avoid damage to all existing property including roads, cables, drains and other services and they will be held responsible for and shall make good all such damage arising from the execution of this contract at their own expense to the satisfaction of the Project Manager.

**j) Sanitation**

The Sanitation of the works shall be arranged and maintained by the Contractor to the satisfaction of the Government and/or Local Authorities, Labour Department and the Project Manager.

**i) Existing Property**

The Contractor shall take every precaution to avoid damage to all existing property including roads, cables, drains and other services and they will be held responsible for and shall make good all such damage arising from the execution of this contract at their own expense to the satisfaction of the Project Manager.

#### **4.46 Occupancy by Employer Prior to Acceptance**

The Employer reserves the right to occupy all or any part of the project prior to completion of the entire contract, upon issuance of a written contract change order therefore.

In such event, the Contractor shall be relieved of responsibility for any injury or damage to such occupied part as results from the Employer's occupancy and use.

If the Contractor carries insurance against damage to such premises or against liability to third persons covering the premises so used and occupied by the Employer and if such occupancy results in increased premiums for such insurance, the Employer will pay to the Contractor the added premium costs for such insurance during the period of occupancy.

The Occupancy change order shall be the vehicle for such payment, if applicable.

The Employer's occupancy shall not constitute acceptance by the Employer either of the project as completed or of any portion thereof, nor will it relieve the Contractor of full responsibility for correcting defective work or materials found at any time before the formal written acceptance of the project as completed by the Employer and during the full guarantee period after such acceptance, nor does it stop the assessment of liquidated damages.

However, when the project includes several separate facilities and one or more of such facilities is entirely occupied by the Employer, then upon written request of the Contractor, the guarantee period for the occupied facility may commence from the date of occupancy subject to written consent thereto by the Employer.

#### **4.47 Responsibility to Secure and Pay for permits, Licenses, Utility Connections Etc.**

The Contractor shall secure all permits and licenses required for any operations required under this contract.

It is the Contractor's responsibility to ascertain the necessity of such permits and licenses in preparing its tender and include in its tender the cost thereof as well as adjustments for any delays, which may be caused by securing permits and licenses.

#### **4.48 Patented or Copyrighted Materials**

The Contractor shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices or processes used on or incorporated in the project and agrees to save harmless, defend and indemnify the Employer Consultants, the Employer, Employees of each of them from all suits, actions or claims for or on account of the use of any patented or copyrighted materials, equipment, devices or processes.

#### **4.49 Property Rights in Materials and Equipment**

Nothing in the contract shall be construed as vesting in Contractor any property in the materials or equipment after they have been attached to or permanently placed in or upon the work or the soil or after payment has been made for the value of the materials or

equipment delivered to the site of the work whether or not they have been so attached or placed.

All such materials or equipment shall become the property of Employer upon being so attached or placed or upon payment of the value of the materials or equipment delivered on the site but not yet installed and the Contractor warrants that all such property shall pass to Employer free and clear of all liens, claims, security interests or encumbrances.

#### **4.50 Taxes**

The Contractor shall pay all taxes imposed by law which are levied or become payable as a result of the Contractor's performance under this contract.

#### **4.51 Contract Time**

##### **(a) Time is of the Essence.**

All time limits specified in this contract are of the essence of the contract.

##### **(b) Starting and Completion Date**

The Employer shall designate in the Notice to proceed the starting date of the contract on which the Contractor shall immediately begin and thereafter diligently execute the work to completion.

The Contractor agrees to complete the work on the date specified for completion of the Contractor's performance in the contract unless such time is adjusted in writing by change order by the Employer.

The Contractor may complete the work before the completion date if it will not interfere with employer or other contractors engaged in related or adjacent work.

The work shall be regarded as completed as noted on the Employer Notice of Completion.

#### **4.52 Labour Force and Foreman**

At all times the Contractor shall provide sufficient labour to properly execute the work and to ensure completion of each part in accordance with the schedule and within the contract time.

The Contractor shall make certain that competent workers are employed who are skilled in the type of work required and that workmanship is of the best, regardless of the quality of material.

If in the judgment of the Employer, any person is incompetent or disorderly, the Contractor shall promptly remove such person from the project and shall not re-employ such person thereon.

The Contractor shall retain a competent, full time on-site Foreman to represent the Contractor and to direct the project at all times while any work under this contract is being performed.

The Foreman shall prepare a daily report, which includes worker count and work in progress and shall provide the report to the Employer upon request.

The Contractor shall make certain that all subcontractors employed are properly registered and are in good standing with Project Manager requirements.

#### **4.53 Limitation of Construction Operations**

The Contractor shall limit the area and nature of the construction operations to that which is authorized in the plans and specifications or approved in writing by the Employer.

The Contractor shall be responsible to others engaged in the related or adjacent work for all damage to work, to persons and to property and for loss caused by failure to complete the work within the specified time for completion.

The Contractor shall coordinate its work with the work of others so that no discrepancies shall result in the project.

#### **4.54 Access for Inspection**

The Contractor shall at all times permit the Employer and the Project Manager to visit and inspect the work and the shops where work is in preparation and shall maintain proper facilities and provide safe access for such inspection.

Work requiring testing, inspection or verification shall not be covered up without such test, inspection or approval.

The Contractor shall notify the Project Manager in writing at least 24 hours in advance of the Project Manager being required to inspect the work.

For a project with part time inspection, a minimum of 48 hours written notification by the Contractor to the Project Manager is required before the Project Manager is required to inspect the work, whenever the Contractor intends to perform work on a Saturday.

#### **4.55 Clean-up of Project and Site**

The Contractor shall clean up its work at frequent intervals and at other times when directed by the Employer.

At all times while finish work is being done, floors shall be kept broom clean.

Upon completion of the work, the Contractor shall promptly remove from the premises construction equipment and any waste materials not previously disposed of leaving the premises thoroughly clean and ready for occupancy.

In the event the Contractor does not maintain the project or the site clear of debris and rubbish in manner acceptable to the Employer, the Employer may cause the project or site

to be properly cleaned and may withhold the expense incurred therefore from payments due to the Contractor.

#### **4.56 Project Sign, Advertising**

The Contractor shall furnish and install a project sign required as part of the work under the contract.

As a minimum, the sign shall be 2 metres wide and 4 metres high.

The sign shall identify the Project Name, the Employer, the Contractor and the Project Manager.

No advertising is permitted on the project or site.

#### **4.57 Defects**

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.

The Project Manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion up to 150 days after the date of completion. The Defects Liability Period shall be extended for as long as defects remain to be corrected.

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.

#### **4.58 Liabilities And Insurance**

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.

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.

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 organization and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period 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 – Kshs 500,000
- d. Personal injury or death – Kshs 1,000,000

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.

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

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

#### **4.59 Completion and Taking Over**

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

#### **4.60 Termination**

The Organisation 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;

- i. The Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorized by the Project Manager
- ii. The Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days
- iii. The Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation
- iv. A payment certified by the Project Manager is not paid by the Organisation to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue
- v. 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
- vi. The Contractor does not maintain a security, which is required.

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

Notwithstanding the above, the Organisation may terminate the Contract for convenience.

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.

#### **4.61 Payment Upon Termination**

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.

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

The Contractor shall, during the execution or after the completion of the Works under this clause remove from the Site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by them, and in default the Organisation 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 Organisation 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 Organisation 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 Organisation 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 Organisation to the Contractor.

#### **4.62 Release from Performance**

If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Organisation 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.

#### **4.63 Settlement of Disputes**

In case any dispute or difference shall arise between the Organisation 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.

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 rights and liabilities of the parties subsequent to the termination of Contract.

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

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

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

- i. The appointment of a replacement Project Manager upon the said person ceasing to act.
- ii. Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- iii. Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- iv. Any dispute or difference arising in respect of war risks or war damage.

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

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

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

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

## PART 5: EVALUATION OF PROPOSALS

Evaluation of submitted proposals will use a merit-point scoring system and be selected based on technical expertise. The evaluation will be carried out exclusively based on the weights specified in the table below:

The primary and sub-criteria for the evaluation are:

Criteria	Points
<p><b>1. Mandatory Documents</b> Submission of:</p> <ul style="list-style-type: none"> <li>i. <i>A Copy of Certificate of Incorporation – 2 marks</i></li> <li>ii. <i>Tax Compliance Certificate – 2 marks</i></li> <li>iii. <i>Copies of NCA registration certificate – 2 marks</i></li> <li>iv. <i>Firm's current workload – 2 marks</i></li> </ul>	8 Marks
<p><b>2. Company Profile:</b></p> <ul style="list-style-type: none"> <li>a) Proof of a functional working office – 2 marks</li> <li>b) Experience of the firm in project management in the building and construction industry of at least 5 years. <ul style="list-style-type: none"> <li>i. <i>Five years and above – 2.5 marks</i></li> <li>ii. <i>Four years – 2 marks</i></li> <li>iii. <i>Three years – 1.5 marks</i></li> <li>iv. <i>Two years – 1 marks</i></li> <li>v. <i>One year and below – 0 mark</i></li> <li>vi. <i>Extra marks for 5 years' experience in managing green construction projects (Provide evidence in the form of completion certificates and recommendation letters) – 2 marks</i></li> <li>vii. <i>Extra marks for 5 years' experience in managing construction turnkey projects (Provide evidence in the form of completion certificates and recommendation letters)- 2 marks</i></li> <li>viii. <i>Evidence of bricks, wood, glass installation and tile works – 1 mark</i></li> </ul> </li> <li>c) Schedule of major items of construction plant and equipment proposed for use – 8 marks</li> </ul>	22 Marks
<p><b>3. Subcontractors</b> Details of subcontractors proposed to sub-contract any portion of the contract</p> <ul style="list-style-type: none"> <li>i. <i>Brief profile of each sub-contractor – 1.5 marks</i></li> <li>ii. <i>Work experience of each sub-contracting firm – 1.5 marks</i></li> <li>iii. <i>Relevant certifications by governing bodies – 1.5 marks</i></li> <li>iv. <i>Role to be played in the project – 0.5 marks</i></li> </ul>	5 Marks
<p><b>4. Methodology</b> A statement work methods (Methodology) and time frame. Include description of this project management process supported with charts, pictures and drawings.</p>	10 Marks
<p><b>5. Financial Documents</b></p> <ul style="list-style-type: none"> <li>a) Certified Bank Statement for the most recent six (6) months – 3 marks</li> <li>b) Proof of sound financial capacity – <ul style="list-style-type: none"> <li>i. <i>lines of credit to finance a project and/or – 1 mark</i></li> </ul> </li> </ul>	5 marks

ii. <i>letter from suppliers of materials – 1 mark</i>	
<p><b>6. Staff Profile</b></p> <p>a) Three (3) qualified technical staff in the firm relevant to building and construction project management who will be actively involved in the proposed project. Provide certified CVs, Academic and professional certificates and evidence of registration with relevant professional bodies and telephone contacts.</p> <p>i. <i>One (1) with a minimum Bachelor degree in Architecture or Building or Civil engineering or Quantity surveyor – 5 marks</i></p> <p>ii. <i>Two (2) with at least a Diploma in Architecture, Building or Civil or Quantity surveyor – 2 marks</i></p> <p>b) Number of years of gainful employment of key staff in construction project management</p> <p>- <u>Supervisor</u></p> <p>i. <i>8 years and above -5 marks</i></p> <p>ii. <i>Below 8 years-2 marks</i></p> <p>- <u>Assistant Project Manager</u></p> <p>i. <i>5 years and above - 5marks</i></p> <p>ii. <i>Less than 5 years - 1 mark</i></p>	20 Marks
<p><b>7. Accomplishments</b></p> <p>Five similar construction management projects completed within the last 10 years with evidence of completion certificate</p>	5 Marks
<p><b>8. On-going Projects (Attach Evidence of award)</b></p> <p>i. <i>Projects of similar nature and complexity - 5 marks</i></p> <p>ii. <i>Projects of similar nature but lower complexity - 3 marks</i></p> <p>iii. <i>No on-going projects - 0 marks</i></p>	5 Marks
<p><b>Financial Proposal</b></p> <p>Detailed itemized costs which shall include:</p> <p>i. A summary of costs</p> <p>ii. Breakdown of price per activity</p> <p>iii. Breakdown of remuneration per activity</p> <p>iv. Reimbursables per activity</p> <p>v. Miscellaneous expenses</p> <p>The lowest cost proposal will be awarded 20 points.</p> <p>Other cost proposals will be awarded proportionate points as per formula:</p> <p><i>Financial Weight = (Lowest Cost/Proposal's Cost) X 20</i></p>	20 Marks
<b>Total</b>	<b>100 points</b>

Only the financial proposals of the firms that score 75% and above shall be evaluated for responsiveness. The contract will be awarded to the proposal with the highest score and documented evidence for all responses.

## **PART 6: ANNEXTURES**