



EXPORT PROCESSING ZONES AUTHORITY

**PROPOSED DECOMMISSIONING OF THE DUMPSITE,
CONSTRUCTION OF WASTE TRANSFER STATION AND OTHER
CIVIL WORKS AT ATHI RIVER EPZ**

**BID DOCUMENTS, SPECIFICATIONS AND BILLS OF QUANTITIES
TENDER NO. EPZA TENDER NO. 12/ 2016-2017.**

CLIENT
**CHIEF EXECUTIVE OFFICER,
EXPORT PROCESSING ZONES AUTHORITY,
P.O. Box 50563-00200
NAIROBI.**

JUNE, 2017

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EXPORT PROCESSING ZONES AUTHORITY

TENDER NOTICE

Export Processing Zones Authority (EPZA) is a statutory body established in 1990 through an Act of Parliament (The EPZA Act Cap 517, Laws of Kenya) with the main objective of promoting and facilitating export oriented investments and to develop an enabling environment for such investments. It is responsible for facilitating the implementation of new investment projects, providing after care services for new and existing investments.

The Athi River Export Processing Zone is Kenya's largest and leading industrial park, designed to offer your export-oriented project an ideal location. The Zone offers the best of both worlds: world class infrastructure and services; generous tax incentives and a supportive, business friendly operating system; all within a spacious, green, well maintained park environment.

EPZA invites applications from interested and competent suppliers possessing the requisite skills, resources and experience for the supply of the under listed works and services as per specifications detailed in the Tender Document.

N o.	Tender No.	Tender Description	Cost of tender Document (Ksh) Non-Refundable	Pre site visit Date	Closing Date	Applicants
1.	EPZA Tender No.12 /2016 - 2017	Tender for Proposed Decommissioning of the Dump Site, Construction of Waste Transfer Station and Other Civil Works at Athi River EPZ	Kshs. 1,000.00, Nil if downloaded	As per the advert	As per the advert	Open to the General Public

Interested, eligible and competent firms may obtain further information and inspect the Tender Documents detailing the requirements from **EPZA Procurement Offices on 1st Floor, Administration Building ,Viwanda Road, off Nairobi – Namanga Highway**, during normal working hours and upon payment of a non-refundable fee of **Kshs.1,000.00 per set of documents for each category** in cash or bankers cheque payable to the cashier on second floor, at the Export Processing Zones Authority Offices, Administration Building, located on Viwanda Road, off Nairobi – Namanga Highway –Kitengela. The documents can also be downloaded from the websites www.epzakenya.com and www.ifmis.go.ke.

The applicant or his/her agent may inspect the Tender document **BEFORE** purchase and collect the Tender document at the Procurement Office, 1st Floor of the same building upon production of a payment receipt. Completed Tender Documents in plain sealed outer envelope enclosing separately sealed envelopes (in **“Original”** and **“two copies” properly bound**) **ALL** clearly marked **EPZA TENDER NO: 12/2016 – 2017 – AND TENDER NAME** as per instructions in the tender documents and be addressed to:-

THE CHIEF EXECUTIVE OFFICER
EXPORT PROCESSING ZONES AUTHORITY
P O BOX 50563-00200
NAIROBI

Completed tender documents should be deposited in the **Tender Box on Ground Floor, Administration Building, Viwanda Road, off Nairobi – Namanga Highway** on or before **29th June, 2017 at 11.00 a.m. local time**. Tender documents will be opened immediately thereafter in the **Conference Room on Ground floor**, of the same building in the presence of bidder representatives who choose to attend.

Mandatory site visits will take place on the **respective date and time for each tender**. Tenderers or their respective are advised to assemble **on Ground Floor, Administration Building, Viwanda Road, Off Nairobi – Namanga Highway by 10.00a.m** so as to be taken around the site by EPZA representatives. Tenderers are expected to make their own travel arrangements to and from the site. Tenderers are also expected to sign the pre – site visit register.

Prices quoted should be inclusive of all taxes and must be in Kenya Shillings, and shall remain valid for 150 days from the closing date of the tender.

EPZA reserves the right to accept or reject any application either in whole or in part without giving reasons for either rejection or acceptance.

CHIEF EXECUTIVE OFFICER

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SPECIAL NOTES

1. These notes shall form part of the Instructions to Tenderers and Conditions of Contract.
2. The tenderer is required to check the number of pages in this document and should he find any missing, or in duplicate, or indistinct he should inform the Engineer, Export Processing Zones Authority.
3. Should the tenderer be in any doubt about the precise meaning of any item or figure, for any reason whatsoever, he must inform the Engineer, Export Processing Zones Authority, in order that the correct meaning may be decided before the date of submission of tender.
4. No liability will be admitted nor claim allowed, in respect of errors in the tender due to mistakes in the specification, which should have been rectified in the manner, described above.
5. All tenderers must make a declaration that they have not and will not make any payment to any person which can be perceived as an inducement to enable them to win this tender.

FORM OF TENDER

To: The Chief Executive Officer
Export Processing Zones Authority
P.O. Box 50563-00200
NAIROBI.

Dear Sir,

PROPOSED DECOMMISSIONING OF THE DUMP SITE, CONSTRUCTION OF THE WASTE TRANSFER STATION AND OTHER CIVIL WORKS AT ATHI RIVER EPZ- EPZA TENDER NO. 12/2016-2017.

1. In accordance with the Instructions to Tenderers, Conditions of Contract, Specifications 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 Employer’s Representative’s notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
- 3. We agree to abide by this tender for **a period of 150 days from the date of tender opening** and 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 of20.....

Signaturein the capacity of

duly authorized to sign tenders for and on behalf of:

.....**[Name of Tenderer]**

of.....**[Address of Tenderer]**

PIN No.

VAT CERTIFICATE No.

Witness: Name

Address

Signature

FORM OF TENDER SECURITY
Appendix I

To: The Chief Executive Officer
Export Processing Zones Authority
P.O. Box 50563-00200
NAIROBI.

WHEREAS (hereinafter called "the Tenderer") has submitted his tender dated **For the Proposed Decommissioning of the Dump Site, Construction of Waste Transfer Station and Other Civil Works at Athi River EPZ.**

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

THE CONDITIONS of this obligation are:

1. If after tender opening the Tenderer withdraws his tender during the period of tender validity specified in the instructions to Tenderers

Or

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

We undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by his 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 **one hundred and fifty (150) days** after the day of tender opening, and any demand in respect thereof should reach the Bank not later than the said date.

.....
(date)

.....
(signature of the Bank)

.....
(witness)

.....
(seal)

PART A:

INSTRUCTIONS TO TENDERERS.

INSTRUCTIONS TO TENDERERS

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INSTRUCTION TO TENDERERS

Note: The tenderer must comply with the following conditions and instructions and failure to do so is liable to result in rejection of the tender.

GENERAL

1. Definitions

- (a) **“Tenderer”** means any person or persons partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications, Drawings and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative.
- (b) **“Approved tenderer”** means the tenderer who is approved by the Employer.
- (c) Any noun or adjective derived from the word **“tender”** shall be read and construed to mean the corresponding form of the noun or adjective **“bid”**. Any conjugation of the verb “tender” shall be read and construed to mean the corresponding form of the verb “bid.”
- (d) **“Employer”** means a Central Government Ministry, Local Authority, State Corporation or any other Public Institution.

2. Eligibility and Qualification Requirements

- 2.1 This invitation to tender is open to all tenderers who have been prequalified.
- 2.2 To be eligible for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility under Sub clause 2.1 above and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to update the following information already submitted during prequalification:-
 - (a) Details of experience and past performance of the tenderer on the works of a similar nature within the past five years and details of current work on hand and other contractual commitments.
 - (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 carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.
- (d) Details of subcontractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Conditions of Contract.
- (e) A draft Program of Works in the form of a bar chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Engineer.
- (f) Details of any current litigation or arbitration proceedings in which the Tenderer is involved as one of the parties.

2.3 Joint Ventures

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

- (a) The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners.
- (b) One of the partners shall be nominated as being in charge; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners.
- (c) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender).
- (e) A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

3. Cost of Tendering

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, regardless of the conduct or outcome of the tendering process.

4. Site Visit

- 4.1 The tenderer is advised to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the Site shall be the tenderer's own responsibility.
- 4.2 The tenderer and any of his personnel or agents will be granted permission by the Employer to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, his personnel or agents, will release and indemnify the Employer 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.
- 4.3 The Employer shall organize a site visit at a date to be notified. A representative of the Employer will be available to meet the intending tenderers at the Site.

Tenderers must provide their own transport. The representative will not be available at any other time for site inspection visits.

Each tenderer shall complete the Certificate of Tenderer's Visit to the Site, whether he in fact visits the Site at the time of the organized site visit or by himself at some other time.

TENDER DOCUMENTS

5. Tender Documents

- 5.1 The Tender documents comprise the documents listed here-below and should be read together with any Addenda issued in accordance with Clause 7 of these instructions to tenderers.
 - a. Form of Invitation for Tenders
 - b. Instructions to Tenderers
 - c. Form of Tender
 - d. Appendix to Form of Tender
 - e. Form of Tender Surety
 - f. Statement of Foreign Currency Requirements
 - g. Form of Performance Security
 - h. Form of Agreement
 - i. Form of Advance payment Bank Guarantee
 - j. Schedules of Supplementary Information
 - k. General Conditions of Contract – Part I
 - l. Conditions of Particular Application – Part II
 - m. Specifications
 - n. Bills of Quantities
 - o. Drawings

- 5.2 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 tenderer's own risk. Pursuant to clause 22 of Instructions to Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.
- 5.3 All recipients of the 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".

6. Clarification of Tender Documents

- 6.1 A prospective tenderer requiring any clarification of the tender documents may notify the Employer in writing or by telex, cable or facsimile at the Employer's mailing address indicated in the Invitation to Tender. The Employer will respond in writing to any request for clarification which he receives earlier than 28 days prior to the deadline for the submission of tenders. Written copies of the Employer's response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased the tender documents.

7. Amendment of Tender Documents

- 7.1 At any time prior to the deadline for submission of tenders the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.
- 7.2 Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them.
- 7.3 If during the period of tendering, any circular letters (tender notices) shall be issued to tenderers by, or on behalf of, the Employer setting forth the interpretation to be placed on a part of the tender documents or to make any change in them, such circular letters will form part of the tender documents and it will be assumed that the tenderer has taken account of them in preparing his tender. The tenderer must promptly acknowledge any circular letters he may receive.
- 7.4 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.

PREPARATION OF TENDERS

8. Language of Tender

8.1 The tender and all correspondence and documents relating to the tender exchanged between the tenderer and the Employer shall be written in the English language. Supporting documents and 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.

9. Documents Comprising the Tender

9.1 The tender to be prepared by the tenderer shall comprise: the Form of Tender and Appendix thereto, a Tender Surety, the Priced Bills of Quantities and Schedules, the information on eligibility and qualification, and any other materials required to be completed and submitted in accordance with the Instructions to Tenderers embodied in these tender documents. The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 13.2 regarding the alternative forms of Tender Surety).

10. Tender Prices

10.1 All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Bills of Quantities 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.

10.2 A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities 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 Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.

The prices and unit rates in the Bills of Quantities 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 Contractor under the Contract or for any other cause as of the date 28 days 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 in the Bills of Quantities 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 this instruction.

Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.

- 10.3 Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Bills of Quantities for Contingencies and Variation of Prices [V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.
 - 10.4 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of unit rates for the supply of items listed in the Conditions of Contract clause 47 where appropriate.
 - 10.5 The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the provisions of the Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other supporting information as required under clause 47 of the Conditions of Contract Part II.
11. Currencies of Tender and Payment
- 11.1 Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.
 - 11.2 Tenderers are required to indicate in the Statement of Foreign Currency Requirements, which forms part of the tender, the foreign currency required by them. Such currency should generally be the currency of the country of the tenderer's main office. However, if a substantial portion of the tenderer's expenditure under the Contract is expected to be in countries other than his country of origin, then he may state a corresponding portion of the contract price in the currency of those other countries. However, the foreign currency element is to be limited to two (2) different currencies and a maximum of 30% (thirty percent) of the Contract Price.
 - 11.3 The rate of rates of exchange used for pricing the tender shall be selling rate or rates of the Central Bank ruling on the date thirty (30) days before the final date for the submission of tenders.
 - 11.4 Tenderers must enclose with their tenders, a brief justification of the foreign currency requirements stated in their tenders.
12. Tender Validity
- 12.1 The tender shall remain valid and open for acceptance for a period of one hundred and fifty (150) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 7.4 here above) whichever is the later.
 - 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 or by cable, telex or facsimile. 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.

13. Tender Surety

13.1 The tenderer shall furnish as part of his tender, a Tender Surety in the amount stated in the Appendix to Instructions to Tenderers.

13.2 The unconditional Tender Surety shall be in Kenya Shillings and be in form of a bank draft from a reputable Bank located in the Republic of Kenya.

The format of the Surety shall be in accordance with the sample form of Tender Surety included in these tender documents; other formats may be permitted subject to the prior approval of the Employer. The Tender Surety shall be valid for One hundred and fifty days (150) days beyond the tender validity period.

13.3 Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive.

13.4 The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible but not later than twenty eight (28) days after concluding the Contract execution and after a Performance Security has been furnished by the successful tenderer. The Tender Surety of the successful tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.

13.5 The Tender Surety may be forfeited:

(a) if a tenderer withdraws his tender during the period of tender validity; or

(b) in the case of a successful tenderer, if he fails

(i) to sign the Agreement, or

(ii) to furnish the necessary Performance Security

(c) if a tenderer does not accept the correction of his tender price pursuant to clause 23.

14. No Alternative Offers

14.1 The tenderer shall submit an offer which complies fully with the requirements of the tender documents.

Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture.

14.2 The tenderer shall not attach any conditions of his own to his tender. The tender price must be based on the tender documents. The tenderer is not required to present alternative construction options and he shall use without exception, the Bills of Quantities as provided, with the amendments as notified in tender notices, if any, for the calculation of his tender price.

Any tenderer who fails to comply with this clause will be disqualified.

15. Pre-Tender Meeting

- 15.1 The tenderer's designated representative is invited to attend a pre-tender meeting, which if convened, will take place at the venue and time stated in the Invitation to Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 15.2 The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than seven days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:
- (a) Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in --Clause 9 which may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting.
 - (b) Non-attendance at the pre-tender meeting will not be cause for disqualification of a bidder.

16. Format and Signing of Tenders

- 16.1 The tenderer shall prepare his tender as outlined in clause 9 above and mark appropriately one set "ORIGINAL" and the other "COPY".
- 16.2 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. Proof of authorization shall be furnished in the form of the written power of attorney which shall accompany the tender. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender.
- 16.3 The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

SUBMISSION OF TENDERS

17. Sealing and Marking of Tenders

- 17.1 The tenderer shall seal the original and copy of the tender in separated envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope.
- 17.2 The inner and outer envelopes shall be addressed to the Employer at the address stated in the Appendix to Instructions to Tenderers and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of tenders stated in the said Appendix.
- 17.3 The inner envelopes shall each indicated the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late", while the outer envelope shall bear no mark indicating the identity of the tenderer.
- 17.4 If the outer envelope is not sealed and marked as instructed above, the Employer will assume no responsibility for the misplacement or premature opening of the tender. A tender opened prematurely for this cause will be rejected by the Employer and returned to the tenderer.

18 Deadline for Submission of Tenders

- 18.1 Tenders must be received by the Employer at the address specified in clause 17.2 and on the date and time specified in the Letter of Invitation, subject to the provisions of clause 7.4, 18.2 and 18.3.

Tenders delivered by hand must be placed in the "tender box" provided in the office of the Employer.

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.

- 18.2 The Employer may, at his discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline shall thereafter be subject to the new deadline as extended.
- 18.3 Any tender received by the Employer after the prescribed deadline for submission of tender will be returned unopened to the tenderer.

19 Modification and Withdrawal of Tenders

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

- 19.3 No tender may be modified subsequent to the deadline for submission of tenders.
- 19.4 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.
- 19.5 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 prior of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Surety.

TENDER OPENING AND EVALUATION

20 Tender Opening

- 20.1 The Employer will open the tenders in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 20.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 19, will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the documents have been properly signed and whether the tenders are generally in order.
- 20.3 At the tender opening, the Employer will announce the tenderer's names, total tender price, tender price modifications and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.
- 20.4 The Employer shall prepare minutes of the tender opening including the information disclosed to those present.
- 20.5 Tenders not opened and read out a tender opening shall not be considered further for evaluation, irrespective of the circumstances.

- 21 Process to be Confidential
- 21.1 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 tenderers or other persons not officially concerned with such process until the award of Contract is announced.
- 21.2 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.
- 22 Clarification of Tenders
- 22.1 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 or by cable, facsimile or telex, 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 in accordance with clause 24.
- 22.2 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.
- 23 Determination of Responsiveness
- 23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.
- 23.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation and has a valid bank guarantee. 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.
- 23.3 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.
- 23.4 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.

24 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 and the Tender Security may be forfeited in accordance with clause 13.

25 Conversion to Single Currency

25.1 For compensation of tenders, the tender price shall first be broken down into the respective amounts payable in various currencies by using the selling rate or rates of the Central Bank of Kenya ruling on the date twenty eight (28) days before the final date for the submission of tenders.

25.2 The Employer will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Dayworks where priced competitively) to Kenya Shillings at the selling rates stated in clause 25.1.

26 Evaluation and Comparison of Tenders

26.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 23.

26.2 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 24.
- (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.

26.3 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.

- 26.4 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.
- 26.5 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 29 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.
- 26.6 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 a non-indigenous sub-contractor.

AWARD OF CONTRACT

27 Award

- 27.1 Subject to clause 27.2, 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.
- 27.2 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.

28 Notification of Award

- 28.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, telefax or telex 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.
- 28.2 Notification of award will constitute the formation of the Contract.
- 28.3 Upon the furnishing of a Performance Security by the successful tenderer, the unsuccessful tenderers will promptly be notified that their tenders have been unsuccessful.
- 28.4 Within fourteen [14] days of receipt of the form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.

29 Performance Guarantee

- 29.1 Within fourteen [14] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in an amount stated in the Appendix to Instructions to Tenderers.
- 29.2 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 and shall be divided into two elements namely, a performance security payable in foreign currencies (based upon the exchange rates determined in accordance with clause 35.4 of the Conditions of Contract) and a performance security payable in Kenya Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.
- 29.3 Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract the Employer may award the Contract to the next ranked tenderer.

30 Advance Payment

An advance payment, if approved by the Employer, shall be made under the Contract, if requested by the Contractor, in accordance with clause 33.1 of the Conditions of Contract. The Advance Payment Guarantee shall be denominated in the proportion and currencies named in the form of foreign currency requirements. For each currency, a separate guarantee shall be issued. The guarantee shall be issued by a bank located in the Republic of Kenya, or a foreign bank through a correspondent bank located in the Republic of Kenya, in either case subject to the approval of the Employer.

TENDER EVALUATION CRITERIA

STAGE ONE – PRELIMINARY EVALUATION

i) Preliminary evaluation of open tenders

Tenders shall be subjected to a preliminary evaluation to determine whether:-

- (a) the tender has been submitted in the required format and number of copies submitted as per the advertisement and tender instructions;
- (b) any tender security submitted is in the required form, amount and validity period (150 days);
- (c) the tender has been signed by the person lawfully authorized to do so (signed and stamped form of tender);
- (d) the tender is valid for the period required;

ii) Mandatory / Statutory requirements

1. Certificate of Company / Firm Registration
2. List of Directors with respective shareholding & details of citizenship (Form CR12)
3. Valid TAX Compliance Certificate
4. Audited Accounts for the last three years **(i.e. 2014, 2015 & 2016)**
5. Registration certificate from the National Construction Authority **(Category 4 and above for Roads, Building Works, Water and other Civil Works)**
6. Bid Bond of Kshs. 1,000,000.00 in form of a bank guarantee from a reputable bank located in Kenya valid for 150 days from the closing date of the Tender
7. Signed Certificate of Tenderers Pre-Site Visit
8. Power of attorney (of Tender signatory) authorizing the person to act on behalf of the bidding firm.
9. Signed and Stamped Statement of Verification that the bidder is not debarred in matters of Public Procurement.

Tenders which do not satisfy any of the above requirements shall be rejected.

STAGE TWO – TECHNICAL REQUIREMENTS (MAXIMUM 130 POINTS)

(Use the format given to present the required information and where relevant documentary evidence must be provided)

A. DOCUMENTS FULLY COMPLETED AND IN COMPLIANCE WITH PRICING INSTRUCTIONS (6 POINTS)

➤ Signed and filled Tender Questionnaire (3 points)

- No signed and filled Tender Questionnaire **(0 points)**

➤ Signed and filled Confidential Business Questionnaire (3 points)

- No signed and filled Confidential Business Questionnaire **(0 points)**

A-15

B. PERSONNEL (20 POINTS)

- Project Manager to have at least a Degree in Civil Engineering with seven (7) years experience or Diploma in Civil Engineering with 10 years experience in the proposed position or works of a similar nature. **(10 Points)**
 - Academic Qualification **(4 points)** & Experience for the Period Indicated **(4 Points)**
 - With the required qualification but less experience than the period indicated **(Pro-rate)**
 - Less Qualifications than stated above **(0 Points)**
- Detailed curriculum vitae of the Project Manager certified by employee and bidding company to be attached **(2 Points)**
 - Submission of detailed C.V signed by both employee and bidding company **(2 Points)**
 - CV attached not signed by both employee and bidding company **(0 Points)**
 - No attached C.V **(0 points)**
- Supervisor to have at least Diploma in Civil Engineering with 5 years experience or trade test Certificate in Civil Engineering field with 7 years experience in the proposed position or works of a similar nature. **(10 Points)**
 - Academic Qualification **(4 points)** & Experience for the Period Indicated **(4 Points)**
 - With the required qualification but less experience than the period indicated **(Pro-rate)**
 - Less Qualifications than stated above **(0 Points)**
- Detailed curriculum vitae of the Supervisor certified by employee and bidding company to be attached **(2 Points)**
 - Submission of detailed C.V signed by both employee and bidding company **(2 Points)**
 - CV attached not signed by both employee and bidding company **(0 Points)**
 - No attached C.V **(0 points)**

C. RELEVANT EXPERIENCE (40 POINTS)

- Details of experience and past performance on at least five projects in works of a similar nature within the past five years (2012 – 2016) each with value of not less than forty (40) million including current contracts, names of clients/firms, clear physical address and contact persons. (Attach award letters, Local Purchase / Service Orders, signed contracts or completion certificates as evidence / proof of contract) **(40 Points)**

Details of projects to include the following **(8 Points for each client)**

- i) Name of project – **(1 Point)**
- ii) Address of project- **(1 Point)**
- iii) Contact persons- **(1 Point)**
- iv) Their values **(40 million and above) – (2 Points) below 40 million (0 Points)**
- v) Proof of such contracts **(Attach award letters, LPO's, LSO's, signed contracts or completion certificates) – (3 Points)**
 - Less number of clients– **(Pro-rate)**
 - If no award letters/completion certificates are attached – **(0 Points for the entire project)**

D. MACHINERY & EQUIPMENT (10 POINTS)

- Major items of Contractor's Equipment proposed for carrying out the Works including but not limited to the listed items;- Excavators, Tippers, Low Loader, Back Hoe,Grader etc
- Availability of the equipments as listed, state if the equipment is available – **(2 Points)**
 - State if equipment is owned or leased, attach proof of ownership – **(3 Points)**, No proof of ownership – **(0 Points)**
 - Attach a firm commitment letter authorizing EPZA to inspect the items at any time – **(5 points)**

E BUSINESS SUPPORT (20 POINTS)

- Access to lines of credit or other financial resources – attach a firm commitment letter on the same from a reputable financial institution - **(7 points)**
- Indicate appointed bankers showing the name, address, contact person and address of bidders bankers – **(2 point)**
- Letter of authority from the bidder authorizing EPZA to seek reference from the bidder's bankers – **(3 points)**
- Bank statements for the last twelve months (May 2016 to May 2017) – **(8 points)**

F. REFERENCE LETTERS (10 POINTS)

At least Five (5) letters of recommendation from referees – **(2 points per letter)**

- Five (5) letters – **(10 Points)**
- Less than Five (5) letters – **(pro rate)**

Please note that LPO's or award letters shall not be treated as reference letters. Proper recommendation from satisfied clients for work performed or services provided shall be required.

G. LITIGATION HISTORY – (4 Points)

- Filled or Declared litigation history - **(4 points)**
- Not Filled or Declared **(0 points)**

H. COMPLETION PERIOD AND WORK PROGRAMME – (20 Points)

- Shortest Completion Period but within Engineers estimated completion time – **(5 points)**
- Pro -rate for others
- Attach a Gant Chart Diagram showing the proposed work plan – **(15 points)**

N.B. CUT OFF – 95 POINTS OUT OF 130 TO QUALIFY FOR STAGE 2 (A) – COMPLIANCE WITH TECHNICAL SPECIFICATIONS AND STAGE 2 (B) TECHNICAL EXAMINATION

STAGE 2 (A) – COMPLIANCE WITH TECHNICAL SPECIFICATIONS

STAGE 2 (B) – TECHNICAL EXAMINATION

All bids proceeding past preliminary evaluation stage to be compared according to their evaluated technical score and ranked as per criteria of the technical requirements.

STAGE 3 – FINANCIAL EVALUATION

Technically qualified financial bids to be compared according to their evaluated price and ranked as per financial evaluation criteria.

STAGE 4 – FINAL SCORE

Ranking of financial scores of technically qualified bids.

RECOMMENDATIONS:

Award to the lowest evaluated bidder and whose offer has been determined to be substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

SECTION B

CONDITIONS OF CONTRACT

CONDITIONS OF CONTRACT

1.0 Definitions

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

"Bills of quantities" means the priced and completed bill of quantities forming part of the tender.

"Compensation Events" are those defined in clause 24 hereunder

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

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

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

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

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

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

"Defects" is any piece of work not completed in accordance with the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Interpretation

- 2.1. In interpreting the Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 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) Bills of Quantities,
 - (9) Any other documents listed in the Appendix to Conditions of Contract as forming part of the contract.
- 2.4. 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 Contract and the law governing the Contract shall be English language and the Laws of Kenya respective 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 Contract 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. 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.

13.2. 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.

13.3. 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.

13.4. 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 Compensation Event.

15. Access to Site

15.1. The Contractor shall allow the Project manager and any other person authorized by the Project Manager, access to the Site and to any 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 of Acceleration of Completion Date

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

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

19. Early Warning

19.1. The Contractor shall warn the Project at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the Work increase the Contract Price or delay the execution of the Works. The Project Manager may required 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 instruction 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 defects.

- 20.2. 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.
- 20.3. The Project Manager shall give notice to the Contractor of any defects before the end of the Defect Liability Period, which begins at completion, and is defined in the Appendix to Conditions of contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.
- 20.4. 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 Contractor 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 cost
- 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 works, 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 cost 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 of a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 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.

23.7. 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.

23.8. The Employer and the Project manager shall be notified promptly by the Contractor of any changes in the expected foreign currency requirements of the Contractor during the execution of the works as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.

23.9. 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.

23.10. 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

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

X¹¹ = 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 works required for safety or other reasons.
- h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- i) The effects on the Contractor of any of the Employer's risks.
- j) The Project Manager unreasonably delays issuing a Certificate of Completion.
- k) Other compensation events described in the Contract or determined by the Project manager shall apply

- 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 Contract, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly.
- 24.4.If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.
- 24.5.The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.
- 24.6.Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.
- 24.7.The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.
- 24.8.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 provision in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works.
- 25.3.Unless otherwise stated in the Contract, if any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case may be.

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

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

25.6. 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.

25.7. 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.

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

26. Retention

26.1. The Employer shall retain from the 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. Liquidate 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 not 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 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 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.

32.2. 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.

32.3. 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 authorized by the Project Manager.
- b) The Project Manager instructs the Contractor to delay the progress of the works, and the instruction is not withdrawn within 30 days.
- c) The Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation.
- d) A payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.
- e) The Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager.

- f) The Contractor does not maintain a security, which is required.
- 33.2. When either party to the contract gives notice of 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 Contractor is terminated, the contractor shall stop work immediately, make the site safe and secure, and leave the site as soon as reasonably possible.
- 33.5. 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 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 and 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 building, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, hold the proceeds less all costs incurred to the credit of the Contractor.
- 34.5. 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 Payment of Commission

36.1. The Contractor shall not;

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

36.2. 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) Association of Consulting Engineers of Kenya
- (ii) Chartered Institute of Arbitrators (Kenya Branch)

(iii) Institution of Engineers of Kenya.

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

37.3. The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising hereunder 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.

37.4. 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.

37.5. 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.

37.6. Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the works or abandonment of the works or termination of the Contract by either part:

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

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

37.8. The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

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

APPENDIX TO CONDITIONS OF CONTRACT

CONDITIONS OF CONTRACT CLAUSE 1

The Employer is: **Government of the Republic of Kenya,**

Represented by: **The Chief Executive Officer,
Export Processing Zones Authority,**

Address: **P.O. Box 50563-00200,
NAIROBI**

CONDITIONS OF CONTRACT CLAUSE 1

The Project Manager is: **Shall be appointed by the C.E.O,
Export Processing Zones Authority (Kenya)**

Address: **P. O. Box 50563 - 00200,
NAIROBI**

CONDITIONS OF CONTRACT CLAUSE 1

The name (and identification number) of the Contract is: **Proposed Decommissioning of the
Dumpsite, Construction of Waste Transfer Station and Other Civil Works at Athi River EPZ.**

CONDITIONS OF CONTRACT CLAUSE 1

The Contract Works consist of :

- **Excavation and Carting away of soil mass**
- **Excavation for the composite pit**
- **Grading and leveling of the ground**
- **Laying of murrum layer**
- **Construction of prescribed fence**
- **Construction of a gate and gate house**
- **Construction of waste separation pens**
- **Construction of small size dam**
- **Soft and Hard Landscaping works**
- **Construction of small size swimming pool**
- **Any other work as instructed by the Project Manager**

CONDITIONS OF CONTRACT CLAUSE 1

The start date shall be **as stated in the contract agreement**

CONDITIONS OF CONTRACT CLAUSE 1

The Intended Completion Date for the whole of the Works shall be **as stated in the contract agreement**

CONDITIONS OF CONTRACT CLAUSE 2

The following documents also form part of the Contract: **Only as listed in Clause 2 of the conditions of contract.**

The Site Possession Date shall be **as agreed with the Project Manager**

CONDITIONS OF CONTRACT CLAUSE 1

The Site is located along Nairobi – Namanga highway, Athi River.

CONDITIONS OF CONTRACT CLAUSE 13

The contractor shall submit a revised program for the works within **7 days** of delivery of the letter of acceptance.

CONDITIONS OF CONTRACT CLAUSE 1

The Defects Liability Period is 6 months from practical completion date

CONDITIONS OF CONTRACT CLAUSE 32

Period of final measurement: **6 months after practical completion**

INSTRUCTION TO TENDERERS CLAUSE 20

The tender opening date and time is **as stated in the Tender Invitation Notice.**

INSTRUCTION TO TENDERERS CLAUSE 20

The name and Address of the Employer's representative for the purposes of submission of Tenders is **as stated in the Tender Invitation Notice**

INSTRUCTION TO TENDERERS CLAUSE 13

Amount of Tender Security is **Kshs. 1,000, 000.00**

INSTRUCTION TO TENDERERS CLAUSE 29

The amount of performance security is **10 percent** insurance bond of the Contract Price.

CONDITIONS OF CONTRACT CLAUSE 27

Liquidated and Ascertained damages: **At the rate of Kshs. 5,000.00 per week or part thereof.**

CONDITIONS OF CONTRACT CLAUSE 23

Period of honouring certificate : **30 days**

Percentage of certified value retained : **10%**

Limit of certified value retained : **5%**

Period between program updates is : **14 days**

The completion period for the Contract works: **52 Weeks**

OMIT CLAUSE 23.7

SECTION C:

CONDITIONS OF CONTRACT – PART I

(GENERAL CONDITIONS)

CONDITIONS OF CONTRACT, PART 1 – GENERAL CONDITIONS

The Conditions of Contract, Part 1 General Conditions, shall be those forming Part 1 of the “Conditions of Contract for works of Civil Engineering Construction, Fourth Edition 1987, re-printed in 1992 with further amendments prepared by the federation Inaternationale desingenieus conseils (FIDIC). The Conditions are subject to variations and additions set out in Part II hereof entitled “Conditions of Contract Part II – Conditions of particular Application”.

Note

- i. The standard text of the General Conditions of Contract must be retained intact to facilitate its reading and interpretation by tenderers. any amendments and additions to the General Conditions, specific to a given Contract, should be introduced in the Conditions of Particular Application or in the Appendix to Form of Tender.
- ii. The Conditions of Particular Application take precedence over the General Conditions of Contract.
- iii. Copies of the FIDIC Conditions of Contract can be obtained from:

FIDIC Secretariat
P.O Box 86
1000 Lausanne 12

Switzerland

Fax: 41 21 653 5432
Telephone: 41 21 653 5003

SECTION C:

CONDITIONS OF CONTRACT PART II

(CONDITIONS OF PARTICULAR APPLICATION)

CONDITIONS OF PARTICULAR APPLICATION

1. Definitions

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

"Bills of Quantities" means the priced and completed Bill of Quantities forming part of the tender [where applicable].

"Schedule of Rates" means the priced Schedule of Rates forming part of the tender [where applicable].

"The Completion Date" means the date of completion of the Works as certified by the Employer's Representative.

"The Contract" means the agreement entered into by the Employer and the Contractor as recorded in the Agreement Form and signed by the parties.

"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.

"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 Employer's Representative upon correction of defects by the Contractor.

"The Defects Liability Period" is the period named in the Appendix to Conditions of Contract and calculated from the Completion Date.

"Drawings" include calculations and other information provided or approved by the Employer's Representative for the execution of the Contract.

"Employer" includes Central or Local Government administration, Universities, Public Institutions and Corporations and 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.

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

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

"Employer's Representative" is the person appointed by the Employer and notified to the Contractor for the purpose of supervision of the Works.

"Specification" means the Specification of the Works included in the Contract.

"Commencement Date" is the date when the Contractor shall commence execution of the Works.

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

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

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

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

2. Contract Documents

2.1 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) Conditions of Contract,
- (5) Specifications,
- (6) Drawings,
- (7) Bills of Quantities or Schedule of Rates [whichever is applicable]

3. Employer’s Representative’s Decisions

- 3.1 Except where otherwise specifically stated, the Employer’s Representative will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

4. Works, Language and Law of Contract

- 4.1 The Contractor shall construct and install the Works in accordance with the Contract documents. The Works may commence on the Start Date and shall be carried out in accordance with the Programme submitted by the Contractor, as updated with the approval of the Employer’s Representative, and complete them by the Intended Completion Date.
- 4.2 The ruling language of the Contract shall be English language and the law governing the Contract shall be the law of the Republic of Kenya.

5. Safety, Temporary works and Discoveries

- 5.1 The Contractor shall be responsible for design of temporary works and shall obtain approval of third parties to the design of the temporary works where required.
- 5.2 The Contractor shall be responsible for the safety of all activities on the Site.
- 5.3 Anything of historical or other interest or significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Employer’s Representative of such discoveries and carry out the Employer’s Representative’s instructions for dealing with them.

6. Work Programme and Sub-contracting

- 6.1 Within seven days after Site possession date, the Contractor shall submit to the Employer's Representative for approval a programme showing the general methods, arrangements, order and timing for all the activities in the Works.

The Contractor may sub-contract the Works (but only to a maximum of 25 percent of the Contract Price) with the approval of the Employer's Representative. However, he shall not assign the Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor's obligations.

7. The site

- 7.1 The Employer shall give possession of all parts of the Site to the Contractor.
- 7.2 The Contractor shall allow the Employer's Representative and any other person authorized by the Employer's Representative, 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.

8. Instructions

- 8.1 The Contractor shall carry out all instructions of the Employer's Representative, which are in accordance with the Contract.

9. Extension of Completion Date

- 9.1 The Employer's Representative shall extend the Completion Date if an occurrence arises which makes it impossible for completion to be achieved by the Intended Completion Date. The Employer's Representative shall decide whether and by how much to extend the Completion Date.
- 9.2 For the purposes of this Clause, the following occurrences shall be valid for consideration;

Delay by:-

- (a) force majeure, or
- (b) reason of any exceptionally adverse weather conditions, or
- (c) reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
- (d) reason of the Employer's Representative's instructions issued under these Conditions, or
- (e) reason of the contractor not having received in due time necessary instructions, drawings, details or levels from the Employer's Representative for which he specifically applied in writing on a date which having regard to the date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under this Clause

was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

- (f) delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
- (g) reason of delay by statutory or other services providers or similar bodies engaged directly by the Employer, or
- (h) reason of opening up for inspection of any Work covered up or of the testing or any of the Work, materials or goods in accordance with these conditions unless the inspection or test showed that the Work, materials or goods were not in accordance with this Contract, or
- (i) reason of delay in appointing a replacement of Employer's Representative, or
- (j) reason of delay caused by the late supply of goods or materials or in executing Work for which the Employer or his agents are contractually obliged to supply or to execute as the case may be, or
- (k) Delay in receiving possession of or access to the Site.

10. Management Meetings

- 10.1 A Contract management meeting shall be held regularly and attended by the Employer's Representative and the Contractor. Its business shall be to review the plans for the remaining Work. The Employer's Representative shall record the business of management meetings and provide copies of the record to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Employer's Representative either at the management meeting or after the management meeting and stated in writing to all who attend the meeting.
- 10.2 Communication between parties shall be effective only when in writing.

11. Defects

- 11.1 The Employer's Representative 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 Employer's Representative may instruct the Contractor to search for a defect and to uncover and test any Work that the Employer's Representative 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.
- 11.2 The Employer's Representative 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.
- 11.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Employer's Representative's notice. If the Contractor has not corrected a defect within the time specified in the Employer's Representative's notice, the Employer's Representative 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.

12. Bills of Quantities/Schedule of Rates

- 12.1 The Bills of Quantities/Schedule of Rates 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 rates in the Bills of Quantities/Schedule of Rates for each item. Items against which no rate is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the rates for other items in the Bills of Quantities/Schedule of Rates.
- 12.2 Where Bills of Quantities do not form part of the Contract, the Contract Price shall be a lump sum (which shall be deemed to have been based on the rates in the Schedule of Rates forming part of the tender) and shall be subject to re-measurement after each stage.

13. Variations

- 13.1 The Contractor shall provide the Employer's Representative with a quotation for carrying out the variations when requested to do so. The Employer's Representative shall assess the quotation and shall obtain the necessary authority from the Employer before the variation is ordered.
- 13.2 If the Work in the variation corresponds with an item description in the Bill of Quantities/Schedule of Rates, the rate in the Bill of Quantities/Schedule of Rates shall be used to calculate the value of the variation. If the nature of the Work in the variation does not correspond with items in the Bill of Quantities/Schedule of Rates, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 13.3 If the Contractor's quotation is unreasonable, the Employer's Representative may order the variation and make a change to the Contract Price, which shall be based on the Employer's Representative's own forecast of the effects of the variation on the Contractor's costs.

14. Payment Certificates and Final Account

- 14.1 The Contractor shall be paid after each of the following stages of Work listed here below (subject to re-measurement by the Employer's Representative of the Work done in each stage before payment is made). In case of lump-sum Contracts, the valuation for each stage shall be based on the quantities so obtained in the re-measurement and the rates in the Schedule of Rates.
- (i) First stage (*define stage*) **AS PER PROGRESS**
 - (ii) Second stage (*define stage*) **AS PER PROGRESS**
 - (iii) Third stage (*define stage*) **AS PER PROGRESS**
 - (iv) After defects liability period.
- 14.2 Upon deciding that Works included in a particular stage are complete, the Contractor shall submit to the Employer's Representative his application for payment. The Employer's Representative shall check, adjust if necessary and certify the amount to be paid to the Contractor within 21 days of receipt of the Contractor's application. The Employer shall pay the Contractor the amounts so certified within 30 days of the date of issue of each Interim Certificate.

14.3 The Contractor shall supply the Employer's Representative with a detailed final account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Employer's Representative shall issue a Defect 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 Employer's Representative shall issue within 21 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 Employer's Representative shall decide on the amount payable to the Contractor and issue a Final Payment Certificate. The Employer shall pay the Contractor the amount so certified within 60 days of the issue of the Final Payment Certificate.

14.4 If the period laid down for payment to the Contractor upon each of the Employer's Representative's Certificate by the Employer has been exceeded, the Contractor shall be entitled to claim simple interest calculated pro-rata on the basis of the number of days delayed at the Central Bank of Kenya's average base lending rate prevailing on the first day the payment becomes overdue. The Contractor will be required to notify the Employer within 15 days of receipt of delayed payments of his intentions to claim interest.

15. Insurance

15.1 The Contractor shall be responsible for and shall take out appropriate cover against, among other risks, personal injury; loss of or damage to the Works, materials and plant; and loss of or damage to property.

16. Liquidated Damages

16.1 The Contractor shall pay liquidated damages to the Employer at the rate of **one tenth per cent (0.1%)** of the Contract price per day for each day that the actual Completion Date is later than the Intended Completion Date except in the case of any of the occurrences listed under Clause 9.2. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

17. Completion and Taking Over

17.1 Upon deciding that the Work is complete the Contractor shall request the Employer's Representative to issue a Certificate of Completion of the Works, upon deciding that the Work is completed.

The Employer shall take over the Site and the Works within seven days of the Employer's Representative issuing a Certificate of Completion.

18. Termination

18.1 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 continuously without reasonable cause or authority from the Employer's Representative;

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

- (c) If a payment certified by the Employer's Representative is not paid by the Employer to the Contractor within 30 days after the expiry of the payment periods stated in Sub-Clauses 14.2 and 14.3 hereabove.
 - (d) The Employer's Representative 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.
- 18.2 If the Contract is terminated, the Contractor shall stop Work immediately, and leave the Site as soon as reasonably possible. The Employer's Representative 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.

19. Payment Upon Termination

- 19.1 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 Site, plant, equipment and temporary works.
- 19.2 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 Employer's Representative may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to him, and in default thereof, 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.
- 19.3 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 Employer's Representative 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.

20. Corrupt Gifts and Payments of Commission

- 20.1 The Contractor shall not:
- (a) Offer or give or agree to give to any person in the service of the Employer any gifts 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 with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract with the Employer.
 - (b) 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 Laws of Kenya.

21. Settlement of Disputes

- 21.1 Any dispute arising out of the Contract, which cannot be amicably settled between the parties, shall be referred by either party 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 of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.

SECTION D

GENERAL SPECIFICATIONS

OF

MATERIALS AND WORKS

GENERAL SPECIFICATIONS OF MATERIALS AND WORKS

1. GENERAL

This specification is to be read in conjunction with the drawings which are issued with it. Bills of quantities shall be the basis of all additions and omissions during the progress of the works.

2. STANDARD OF MATERIALS

Where the material and equipment are specifically described and named in the Specification followed by approved equal, they are so named or described for the purpose of establishing a standard to which the contractor shall adhere.

Should the contractor install any material not specified herein before receiving approval from the proper authorities, the Engineer shall direct the contractor to remove the material in question immediately. The fact that this material has been installed shall have no bearing or influence on the decision by the Engineer.

All materials condemned by the Engineer as not approved for use, are to be removed from the premises and suitable materials delivered and installed in their place at the expense of the contractor. All materials required for the works shall be new and the best of the respective kind and shall be of a uniform pattern.

3. WORKMANSHIP

The workmanship and method of installation shall conform to the best standard practice. All work shall be performed by a skilled tradesman and to the satisfaction of the Engineer. Helpers shall have qualified supervision.

Any work that does not in the opinion of the Engineer conform to the best standard practice will be removed and reinstated at the contractor's expense.

Permits, Certificates or Licences must be held by all tradesmen for the type of work; in which they are involved where such permits, certificates or licences exist under Government legislation.

4. PROCUREMENT OF MATERIALS

The contractor is advised that no assistance can be given in the procurement or allotment of any materials or products to be used in and necessary for the construction and completion of the work.

Contractors are warned that they must make their own arrangements for the supply of materials and/or products specified or required.

5. SHOP DRAWINGS

Before manufacture or Fabrication is commenced the contractor shall submit two copies of detailed drawings of all control pillars, meter cubicles, medium voltage switchboards including their components showing all pertinent information including sizes, capacities, construction details, etc, as may be required to determine the suitability of the equipment for the approval of the Engineer. Approval of the detailed drawings shall not relieve the contractor of the full responsibility of errors or the necessity of checking the drawings himself or of furnishing the materials and equipment and performing the work required by the plans and specifications.

6. RECORD DRAWINGS

These diagrams and drawings shall show the completed installation including sizes, runs and arrangements of the installation. The drawings shall be to scale not less than 1:50 and shall include plan views and section.

The drawings shall include all the details which may be useful in the operation, maintenance or subsequent modifications or extensions to the installation.

Three sets of diagrams and drawings shall be provided, all to the approval of the Engineer.

One coloured set of line diagrams relating to operating and maintenance instructions shall be framed and, mounted in a suitable location.

7. REGULATIONS AND STANDARDS

All work executed by the contractor shall comply with the current edition of the "Specifications for Civil Engineering Works, issued by the Directorate of Public Works, or the relevant Local Authority bye-Laws.

Where two sets of regulations appear to conflict, they shall be clarified with the Engineers. All materials used shall comply with relevant Kenya Bureau of Standards Specification or the appropriate British Standard.

8. SETTING OUT WORK

The contractor at his own expenses; is to set out works and take all measurements and dimensions required for the erection of his materials on site; making any modifications in details as may be found necessary during the progress of the works, submitting any such modifications or alterations in detail to the Engineer before proceeding and must allow in his Tender for all such modifications and for the provision of any such sketches or drawings related thereto.

9. TESTING ON SITE

The contractor shall conduct during and at the completion of the installation and, if required, again at the expiration of the maintenance period, tests in accordance with the relevant section of the current edition of the Regulations or the standards for Civil engineering Works issued by the Directorate of Public Works or the latest Kenyan or British Standards Specification or Local Authority **By-Laws**.

- (a) The contractor shall provide accurate instruments and apparatus and all labour required to carry out all the necessary tests. The instruments and apparatus shall be made available to the engineer to enable him to carry out such tests as he may require.
- (b) The Contractor shall generally attend on other Contractors employed on the project and carry out such tests as may be necessary.
- (c) The Contractor shall test to the engineer's approval and as specified elsewhere in this specification or in Standards and regulations already referred to, all equipment, plant and apparatus forming part of the works and before connecting to any other setting or work.
- (d) Where such equipment, etc. forms part of or is connected to a system whether primarily or of whatever nature or otherwise, the Sub-Contractor shall attend on and assist in balancing, regulating testing and commissioning, or if primarily an electrical or other system forming part of works, shall balance, regulate, test and commission the system to the engineer's approval.

SECTION E

STANDARD SPECIFICATIONS

Standard Specifications refers to

1. The Standard Specifications for Road and Bridge Construction, 1986 Edition.
2. The Standard Specifications for Buildings and Civil Works, Ministry of Works, 1978 Edition

SECTION F
SPECIAL SPECIFICATIONS
OF
MATERIALS AND WORKS

SPECIAL SPECIFICATION

01. SITE LOCATION

The site of the proposed works is located at Athi River EPZ

i) SCOPE OF WORKS

The works to be carried out under this contract comprise the work described under (ii) below.

ii) DESCRIPTION OF WORKS

The main items of work are as follows:-

- a) Excavation and Carting away of soil mass
- b) Excavation for the composite pit
- c) Grading and Levelling of the ground
- d) Laying of murrum
- e) Construction of prescribed fence
- f) Construction of a gate and gate house
- g) Construction of waste separation pens
- h) Construction of small size dam
- i) Soft and Hard Landscaping works
- j) Construction of small size swimming pool
- k) Any other works as instructed by the Project Manager.

iii) SITE VISIT

The Employer shall organize a mandatory site visit for the contractor to acquaint himself with topography, soil condition, access, sources of construction materials, reliability of water source, periods during which execution of work will be possible etc as specified in clause number 4 of instructions to tenderers and no claims incurred due to lack of knowledge of the said and other site conditions will be considered.

iv) ACCESS TO SITE

The site can be approached through the EPZA Athi River Zone Office

v) DRAWINGS

All drawings are deemed to be self-explanatory. However, where doubts exist, the contractor should liaise with the Engineer before proceeding with the works. The scales are as shown and only figured dimensions are to be applied.

vi) ENGINEER'S STATIONERY

The tenderer shall be required to provide stationery, as described in Bills of Quantities, to be used by the Engineer in running of the project.

vii) SITE OFFICE

The main contractor shall be required to construct and maintain a site office for his own use. The contractor shall be responsible for paying all connections, rent and call charges in connection therewith.

viii) LABOUR CAMP

The contractor is not permitted to house labour on site. He will be responsible for the transportation of workmen to and from site at his own cost and risk.

02 THE MANAGEMENT OF THE CONTRACT

1. The Project Manager, appointed by the C.E.O, Export Processing Zones Authority will be responsible for the contract management and site supervision.
2. All materials and workmanship shall comply with the latest edition of the Directorate of Public Works specifications for Civil Engineering works.

03 EXTENT OF CONTRACT AND ALTERATION OF DESIGN

1. The works specified under this contract shall include all general work preparatory to execution of all matters, things, requisites and work of any kind necessary for the due and satisfactory construction, completion and maintenance of the work to the intent and meaning of the drawings and this specification and further drawings and orders, that may be issued by the Engineer from time to time. Compliance by the Contractor with all the General Conditions of Contract, whether specifically mentioned or not in the clause of this specification, all materials, apparatus, plant, machinery, tools, fuel, water, timbering and tackle of every description, transport, offices, stores, workshops, staff, labour, the provision of proper and sufficient protective works, temporary fencing, lighting and watching required for the safety of the public and protection of the works and adjoining lands: first aid equipment, sanitary , accommodation for the staff and workmen; the effecting and maintenance of all insurances, the payment of all wages, salaries, fees, royalties, duties or other charges arising out of the execution of the works and the regular clearance of rubbish, re-instatement and clearing and leaving perfect on completion. The Contractor will be deemed to have included in his rates the cost of complying with the requirements of this Specification and General Conditions of the Contract unless otherwise specified.
2. Should the Contractor have comments regarding soundness of the design of any part of the work, or should he consider that the execution of the design is impossible on any part of the Contract, the Contractor is required to notify the Engineer in writing at the time of the tender and provide factual evidence substantiating his opinion when required to do so by the Engineer.
3. Notices given by the Contractor in respect of the above after the tender is submitted will not be considered as the basis of a claim for additional costs or extensions of the time.
4. The Engineer may require to alter the design of any part of the structure should site conditions warrant such a change and the rates entered in the Bill of Quantities should be applicable for the similar items. The rates for the items of the work not covered by the Bill of Quantities shall be established by the Engineer.

04 PROGRAMME FOR EXECUTION OF THE WORKS

1. In accordance with the terms of Clause 14 of the General Conditions of the Contract, the Contractor shall submit to the Engineer within 14 days from the order to commence fully detailed programme showing the order, procedure and method by which he proposes to carry out the construction and completion of the works

2. The information to be supplied to the Engineer shall include drawings showing the general arrangement of the temporary offices and any other temporary structures, which the Contractor proposes to use together with details of the construction plant and temporary works and all other devices, which he proposes to adopt for the construction and completion of the whole of the works, and in addition to details of the labour strength, skilled and unskilled, and supervision arrangements.
3. The Order in which it is proposed to execute the permanent works is subject to adjustment and approval by the Engineer and the Contract Price shall be held to include for any reasonable and necessary adjustment required by the Engineer during the course of the Works.
4. The Contractor will be deemed to have considered the effect of seasonal weather variations, when programming his operations it must be clearly understood, that rains of up to 75mm per day will be deemed to be normal and expected. No claims by the sub-Contractor for extension of time due to rains or floods less than 75mm per day as measured by the Meteorological Department will be considered by the Engineer.
5. The Contractor, when preparing his programme has to consider the time for the delivery of any imported material and the Engineer's normal working hours.
6. The Engineer's normal working hours shall be defined as 8a.m. to 5p.m. on weekdays with Saturdays and Sundays set aside for rest. If the Contractor wishes to execute permanent works outside these hours, he shall obtain the written permission of the engineer to make provision for supervision of such works.
7. The Contractor shall carry out the Contract in accordance with the Programme agreed with the Engineer, but he shall in no manner be relieved by the Engineer's approval of the programme of his obligations to complete the works by the prescribed completion date, and he shall from time to time review his progress and make such amendments to his rate of execution of the works as may be necessary to fulfill his obligations.
8. If in the opinion of the Engineer the plant or the equipment used by the Contractor for any specific item of the work does not fulfill the requirements of the specifications in respect of the workmanship, quality and safety of structures, some items of plant and equipment shall be replaced with similar or equivalent items of plant or equipment to the satisfaction of the Engineer. No extra payment will be made in respect of such replacements.

05 TEMPORARY WORKS

1. After the Contract is placed and before the work commences, the Contractor shall submit to the Engineer drawings showing the general arrangement of his offices, quarters, workshops, etc and other temporary works with diagrams and descriptions showing how he proposes to execute such temporary works and how they fit into his programme for the permanent works, all to be subject to adjustment and approval by the Engineer.
2. The Contractor shall be fully responsible for the sufficiency, stability and safety of all temporary works and their care in accordance with the Conditions of Contract.
3. The Contractor shall at his own expense, supply in advance to the Engineer for his approval detailed drawings and calculations of stability of such temporary works as the Engineer may direct, but no approval given or implied by the Engineer shall relieve the Contractor of his responsibilities in connection with the temporary works
4. Unless otherwise instructed, upon completion of the contract and after receiving approval in writing from the Engineer, the Contractor shall take down and remove all structures forming part of his own camp and that of the Engineer, and shall arrange for the disconnection of water supply, remove all drains and culverts, backfill trenches, fill in all latrine pits, soak away and other sewage disposal excavations, with the exception of items and services to revert to the ownership of the Employer and shall restore the site as far as practicable to its original condition and leave it neat and tidy to the satisfaction of the Engineer.

06 *SITE PERSONNEL*

1. The Engineer will require the contractor to submit a list of professional and sub-professional personnel to be employed on the site stating their qualifications and experience.
2. The contractor shall be responsible for ensuring, that all personnel of Non-Kenyan origin employed on site by himself or his sub-contractors or who are otherwise connected with the construction contract through the sub-contractor must be approved and cleared individually in writing by the appropriate government official to work on the project. Where personnel are not approved, the Contractor shall be responsible at his own expense for obtaining and employing suitable and approved personnel.
3. The Engineer reserves the right to determine suitability of the persons employed by the contractor and may request replacement at any time of any member of the team employed by the contractor. If in the opinion of the Engineer the presence of such a person is deleterious to the execution of the Contract, the Engineer's decision is final and binding.
4. The Site Agent to be a competent person approved by the engineer.
5. The contractor shall always keep a literate, English speaking Agent or Engineer as his representative on the site, competent and experienced in the type of works Involved, who shall give his whole time to the Supervision of the contractor's operations.

The name of such Agent or Representative shall be submitted in writing to the Engineer for approval and he shall receive on behalf of the contractor all directions and instructions from the Engineer or his representative and such directions and instructions shall be deemed to have been given to the contractor in accordance with the conditions of contract.

07 **NOTICE OF OPERATIONS**

1. No important operations shall be carried out without the consent of the Engineer in writing, or without full and complete notice also in writing, being given to the Engineer by the contractor sufficiently in advance of the time of the operation as to enable the Engineer to make such arrangements, as he may deem necessary for its inspection.
2. The contractor shall supply, from time to time, to the Engineer in writing, full information with respect of locations in which the work is being prepared.
3. The contractor shall give the Engineer not less than 24 hours notice of his intentions to set out or give levels for any part of the works, in order that arrangements may be made for checking. The Contractor shall carefully preserve any benchmarks, setting out pegs or other line or level markings installed or made by the Engineer. Working shall be suspended for such times as may be necessary for checking the lines and levels on any part of the work.

08 *SETTING OUT*

1. It will be the responsibility of the Contractor to obtain before commencing work the value and location of the benchmarks to be used for the works from the Engineer. All temporary benchmarks will be referred hereto. The Contractor shall construct such temporary benchmarks as the engineer may direct and agree the level thereof with the Engineer. The establishment of such temporary benchmarks will be deemed to be part of the Contractor's responsibility in setting out the works and no additional payment will be allowed.
2. Should the Contractor discover any error in the alignment or levels of the basic setting out, he shall at once notify the Engineer, who will then issue amended drawings or instructions regarding the correction of the error.

3. All approved setting out points, lines, stations etc shall be marked by concrete markers and steel pegs or as otherwise approved by the Engineer.
4. The contractor shall allow in the Bill of Quantities for complying with the provisions of this Clause and any abortive setting out occasioned by errors in the alignment of levels of the Contractor's basic setting out.

09. HEALTH AND SAFETY ON SITE

1. The Contractor shall ensure, so far as is reasonably practicable and to the satisfaction of the Engineer, the health, safety and welfare at work of his employees including those of his sub-contractors and of all other persons on the site.
2. From the time any portion of the works is commenced, until the end of the maintenance period, the Contractor shall be responsible for protecting the public from anything dangerous to persons or property and for the safe and easy passage of pedestrians and vehicular traffic.
3. The Contractor shall designate one of his senior staff, who shall have specific knowledge of safety regulations and experience of safety precautions on similar works and who shall advise on matters affecting the safety of workmen and on measures to be taken to promote safety in compliance with the factories Act Cap. 514 as a safety officer.
4. The Contractor shall provide protective clothing and equipment, first aid stations with such personnel and equipment as are necessary. The appropriate information, instruction, training and supervision will be arranged by the Contractor to ensure the safety and health of all the persons employed on the works, all in accordance with the laws of Kenya.
5. The Contractor shall provide adequate waterborne sanitation and refuse collection and disposal complying with the laws of Kenya and all local by- laws, and to the satisfaction of the Engineer, for all houses, offices, workshops erected on site. Construction of pit latrines will not be permitted unless the Engineer has given his approval in writing.
6. During the period of execution of the works the Contractor shall ensure that no pollution of existing water courses or of reservoir catchment areas is allowed to take place as a result of his operation.

10. PRIVATELY OWNED AND PUBLIC UTILITY SERVICES

1. The Contractor shall make himself acquainted with the position of all existing works and services inter alia sewers, storm water drains, cables for electricity and telephone and lighting poles and water mains before any excavation commences.
2. The Contractor will be held responsible for damage caused in the course of the execution of the works to some existing works and services and shall indemnify the Employer against any claims arising from such damage (including consequential damages). Any damage caused must be made good at the Contractor's own expense.
3. Such existing works and services, where exposed the execution of the works, must be properly shored, hung-up and supported to the satisfaction of the Engineer and of the Authority concerned. The Contractor shall exercise special care, when refilling trenches or other excavations around some existing works / services.
4. Poles supporting cables, etc adjacent to the works will be kept securely in place, until the work is completed and will then be made as safe and permanent as before.
5. Notwithstanding the foregoing requirements and without lessening the Contractor's responsibility, the contractor shall inform the Engineer immediately when existing works have been exposed and conform to any requirements of the Authority concerned and of the Engineer.

6. Any damage to or interference with existing services occasioned during the progress of the works, will be deemed to be the responsibility of the Contractor who shall undertake to make good at his own expense any damage so caused to the existing underground services or other features, and shall be liable in respect of all claims arising from such damage or interference, however occasioned.
7. Only when and as directed by the Engineer the position of an existing work or service can be changed by the Contractor to meet the requirements of the proposed work. The cost of such work will be paid for on a day work basis, except where a specific item has been provided in the Bills of Quantities.

11. EXISTING ROADS AND ACCESSES

1. The Contractor shall comply with all requirements of the Employer, owners or the competent Authority concerning the use of traded equipment or other construction plant on any public or private road.
2. The cost of providing all *diversions*, signs, operators, flagmen and all reinstatement to *the* approval of the Engineer will be deemed to be included in the rates entered in the Bill of Quantities, as will the cost of any road opening permit.
3. Before excavating across any public road, the Contractor shall give 10 days notice in writing to the Engineer and the Local Authority his intention to excavate. He shall satisfy the Engineer, the Local Authority and the Police as to the precautions he proposes to take and the signs and lights to be provided and operated. On *any* road or track at least 4 red lights shall be suitably placed on either side of the trench and diversions shall be clearly marked, signed and maintained.
4. The Contractor shall further give to the Engineer a 24 hours notice before excavating across a private road. Existing access to lands, property and all other things will be maintained by the Contractor during the continuance of the Works to the Engineer's satisfaction. The cost of such maintenance will be deemed to be covered by and included in the rates entered on the Bills of Quantities.
5. When a road, used *by* the Contractor for transporting labour or construction plant or for delivery of any materials for the works, is closed under Section 71 of the traffic ordinance 1962 or amendments thereto, the Contractor shall obey such closure and shall use alternative roads.

12. COMPLIANCE WITH STATUTES AND REGULATIONS

1. In addition to the requirements of Clause 26 of the General Conditions of Contract, the Contractor shall be responsible for acquainting himself with all current valid statute ordinances or bye-laws or building regulations, which may affect the Works and shall include in his rates for all costs arising from compliance with the same. This applies in particular to the training levy and similar taxes for which no claims on the part of the Contractor will be entertained.
2. The Contractor shall also keep in close touch with Police and other Government Officials of the area regarding their requirements in the control of traffic or other matters, and shall provide all assistance or facilities, which may be required by such officials in the execution of their duties.
3. The Contractor's attention is drawn to legal Notice No.237 of October, 1971, which requires payment by the Contractor for Training Levy at the rate of 0.25% of the Contract sum on all contracts of more than KSh50,000.00 value and his tender must include for all costs arising or resulting thereof. The Contractor without delay shall pay the Training levy. The original receipt shall be given to the Engineer for verification. The Engineer will certify no payment certificate, until the Contractor complies with the above legal notice.

13. WATER SUPPLY

1. The Contractor shall provide clean and sufficient supply of fresh water both for construction of the works and for all offices and workshops, etc. including the arrangement of pipe lines, metres, etc for connecting to local water main, the provision of storage tanks or water conveyance where necessary, payment of all fees and water charges.
2. The water shall be reasonably clear of suspended solids and free from any matter in quantities considered by the Engineer to be deleterious to the proposed work. Water supplied to the Engineer's offices, laboratories, etc. shall be drinkable to the satisfaction of the Medical Officer in the area. No separate payment shall be made for the provision of water or its attendant facilities and the Contractor shall allow for all these in his tender rates.
3. In the event that a water main is not available on or near the site, or that any available mains will not have sufficient capacity for provision of water adequate for the works, then the Contractor shall provide temporary tanks or other means of collecting, storing and distributing water on the site.

14. LIGHTING, POWER AND TELEPHONE

1. The Contractor shall make his own arrangements for the supply of light, power and telephone required for the construction of the works and shall pay all fees and charges in connection therewith.
2. The Contractor shall arrange with the appropriate authority for a temporary meter and supply of electricity and provide all temporary wiring, power and lighting points as he may consider necessary. In the event no fixed electricity being available, the Contractor shall provide the necessary power generating plant his own expense.

15. WORKING AREA

1. The Contractor shall restrict his operations to those areas made available to him by the Engineer and shall at all times provide and maintain an adequate access for the Employer's employees and vehicles to carry out their normal duties in and around the existing works.
2. The Contractor shall, before entering upon any land purchased, rented, or for the use of which compensation has been paid, ensure that all formalities have been completed and the agreement of the Owner, Tenant and the Engineer has been obtained.
3. All requirements of land for temporary works and construction purposes shall be to the approval of the Engineer but the Contractor will make all necessary arrangements with the property owners concerned and pay all charges arising there from. On or before completion of the Contract, the Contractor shall remove all temporary works and shall restore all such land to the condition in which it was immediately prior to the occupation thereof as far as is reasonable and practicable. No separate payment will be made to the Contractor on account of these items and the Contractor must make due allowance for them in his rates.

16. CO-ORDINATION OF THE WORKS

1. The Employer reserves the right to execute works on the site which are not included in this Contract. He will employ for this purpose either his own employees or another Contractor. The Contractor shall ensure that neither his own operations nor trespass by his employees will interfere with the operations of the Employer nor his Contractor employed on such works.
2. The Contractor will be required to carefully co-ordinate his activities and work, both on and off site, with the activities and work of the other Contractors, Sub-Contractors, statutory, undertaking and all

supervisory staff for the works appointed by the Employer. He shall allow all works to proceed without undue hindrance and will cooperate to expedite execution of the works.

3. If any dispute or difference of any kind whatsoever shall arise between the Contractor or statutory undertaking regarding the phasing, progress or execution of the works then the Engineer shall have full power to direct in what order the works, or any portion thereof shall be carried on or completed and he may from time to time require the whole or any portion of the works to be discontinued or the execution thereof postponed for such a period as he may think fit.
4. The Contractor shall respect any works executed by others and articles supplied or installed by others and will be held responsible for any loss or damage thereto, if caused by him or his Sub-Contractors.

17. COPIES OF ORDERS AND TEST CERTIFICATES

1. Before entering into any sub-Contract for the supply of any material or article the Contractor shall obtain the Engineer's approval in writing of the Sub-Contractor from whom he proposes to obtain such materials or goods. Should the Engineer at any time be dissatisfied with such materials or goods or with the method of operations carried out at such Sub-Contractor's works or place or business, he shall be empowered to cancel his previous given approval of sub-contract and shall specify any other supplier whom he may choose, or shall approve another sub-contractor for the supply of such materials or goods. The Contractor shall then obtain such said materials or goods from such other supplier and shall bear any additional cost thereof, together with the costs and consequences of replacing any unsatisfactory materials already incorporated in the work.
2. The Contractor shall deposit with the Engineer samples of materials and manufactured articles including the manufacturer's specification, when and where appropriate.
3. When instructed by the Engineer, the Contractor shall submit test-certificates from the suppliers of the materials and goods to be used for the contract to the Engineer. Such certificates shall certify that the materials or goods concerned have been tested in accordance with the requirements of the specifications and shall give the results of all tests carried out. The Contractor shall provide adequate means of identifying the materials and goods delivered to the site with the corresponding certificates.
4. The Contractor shall provide the Engineer with copies of all orders for the supply of materials and goods required in connection with the works as the Engineer may require.
5. All materials and manufactured articles shall be stored on site in a manner acceptable to the Engineer. The Contractor shall carefully protect from weather and vermin all work, materials and manufactured articles, which may be affected.

18. PROGRESS PHOTOGRAPHS AND RECORD DRAWINGS

1. Colour negatives showing the progress of the works shall be taken every month by the Contractor from positions to be selected by the Engineer. The Contractor shall supply proof prints of each negative from which the Engineer shall select negatives. The Contractor shall produce 2No. sets of those selected colour prints which shall be handed over to the Engineer together with all the negatives. Each photograph shall be marked with the number of negative and a statement shall be submitted giving location and date when taken and a brief description or title.
2. The photographs shall be mounted on A4 loose-leaf sheets, minimum 200g, with transparent plastic sheets...
3. After the work has been completed, the Contractor shall furnish as built drawings, showing the works as constructed together with all other information that may either be required or be useful for the operation and maintenance of the works in the future, such as alignment and depth of cover of pipelines, type of

soil, rock levels, type, dimensions and location of structures, size of pipelines and cables encountered during excavation

4. All drawings shall be A 1 in size to the ink border and drawn on a permatrace paper.

19. SURVEY EQUIPMENT FOR THE ENGINEER

1. The Contractor will make available the following survey equipment for use by the Engineer for the duration of the Contract. The survey equipment will be in proper adjustment to the satisfaction of the Engineer.
 - 1 No. Wild NK2 theodolite or equivalent with tripod
 - 1 No. 50m metric steel tape
 - 1 No. 30m metric linen or plastic tape
 - 1 No. 3m metric steel tape
 - 1 No. Ranging rod
 - 1 No. Engineer's automatic level, Wild NA2 or equivalent
2. A supply of wooden pegs, steel survey pins, hammer and other such surveying accessories.
3. The Contractor will maintain the equipment and replace items as necessary all to the satisfaction of the Engineer and for the entire duration of the Contract.
4. The equipment will be deemed to be the property of the Employer during the Contract and will revert to the Contractor.
5. The Contractor will provide two experienced chainmen for the assistance of the Engineer in checking the setting out of the works.

20. SITE MEETINGS

The Contractor to provide for monthly site meetings to be held on site.

TECHNICAL SPECIFICATIONS

A. EARTHWORKS SPECIFICATIONS

1. GENERAL

1.1 Method Statements

At least seven (7) days prior to the commencement of any open excavation at any section of the Works, the Contractor shall submit for the Employer's Representative's (Engineer's) approval, a statement of the excavation methods and procedures he intends to adopt on that section.

The statement shall include a description of the following, together with any other items which the Contractor considers relevant:

- Sequence of operations;
- A detailed programme of events and any consequent change in the overall programme of the Works;
- Methods and plant to be used;
- blasting techniques, including charge spacing, delays, etc;
- Excavation protection and support, including drainage and temporary works;
- Disposal or re-use of materials, including quantities and locations.

The methods adopted shall provide for the safe and efficient execution of the excavation work in such a way as to conform to the programme for completion of the Works and so that they do not interfere with other operations in progress of the Contractor or others.

The Employer's Representative's (Engineer's) approval of the Contractor's method of excavation shall not relieve the Contractor of any of his responsibilities or obligations under the Contract.

In the event the Contractor's methods do not provide results which satisfy requirements stated in the Specification, the Contractor will be obliged to change them and to use techniques and procedures either agreed between the engineer and the Contractor or as indicated by the Engineer. Such changes will not warrant any extra payment to the Contractor.

1.2 Location and Shape of Excavation

The Contractor shall locate the excavations for structures and all other work as shown on the drawings and in accordance with the benchmarks provided to him by the Engineer.

The Contractor shall be responsible for correct location, and all extra work caused by his negligence in this matter will be at his expense and shall be corrected at the Engineer's request.

If local survey points or bench marks have been removed or are insufficient, the setting-out shall be related back to other established survey points or bench marks. Excavation shall be to the lines, grades and dimensions shown on the drawings or as established by the Engineer.

During the progress of any open excavation work, it may be found necessary or desirable to vary the slopes or the dimensions of the excavations from those shown on the drawings or established by the Engineer. Such adjustment or trimming of the final excavated surface is considered to be a separate operation as defined hereafter.

Any and all over-excavation performed by the Contractor for any purpose or reason, except as may be directed by the Engineer, shall be at the expense of the Contractor. All such over-excavation shall be backfilled with approved material from excavations or concrete as directed by the Engineer, and the cost of furnishing and placing this backfill or concrete shall be at the expense of the Contractor.

The Engineer may direct alternative measures of backfilling, and the cost of such measures shall be at the expense of the Contractor.

Any other excavation performed at the option of the Contractor to secure access to required work, for disposal of material excavated, or for any other purpose, shall be at the expense of the Contractor.

1.3 Measurement of Excavated Volumes

The Contractor shall submit to the Engineer for approval the proposed surveying method for the measurement of excavated volumes not less than seven (7) days before commencing any such work. The proposed method shall take one of the following forms:

a) Contour Line Method

Maps defining the ground surface before the commencement of excavation works shall be prepared. Immediately after a change of type of work or classification of material and after completion of any excavation, the Contractor shall take survey measurements to define the dimensions and elevations of the corresponding excavated surface. Measurements shall be taken with a tacheometer with a minimum density of points of one per 20m². From these measurements, sets of contour lines shall be prepared for each successive surface, e.g. original ground, rock final and excavated surfaces, and all sets shall be presented on a single plan. From this plan, the measurement of excavated volumes shall be calculated by an analytical method and checked by means of a planimeter.

b) Average Section Method

Profiles shall be taken by the Contractor of the ground surface before commencement of excavation, immediately after a change of type of work or classification of material and after completion of any excavation. Measurements shall be taken by means of a tacheometer or leveling instrument in order that vertical sections may be prepared at intervals of 3.0m or as directed by the Engineer.

The volumes of excavated material shall be calculated between adjoining sections by considering the average area of the two sections over the intermediate distance. In the case of a curvilinear area, the profiles shall be measured radially. Volumes of excavated material shall be calculated for the cross-sectional area of each profile. The distance over which this area shall be considered is the length of the arc, passing through the centre of gravity of the section, subtended by the angle between the radial sections. Measurements, which are to be the basis of quantities for payment, shall be taken in the presence of the Engineer. The Contractor shall give notice of his intention to take such measurements not less than twenty four (24) hours beforehand.

1.4 Classification of Excavated Materials

Separate measurements shall be made for bulk and trench excavation classified either as "common excavation" or "rock excavation". At the commencement of any excavation operations at each location of each section of the Works, the Contractor shall establish and agree with the Engineer the separate classification and their limits. Subsequent modifications to these limits may be made during the progress of the Works in accordance with actual conditions as encountered, but such modifications will only be agreed when the materials are exposed.

Whenever an agreement is not possible on the classification of the material exposed in a certain area, a ripping test, in the form described below, shall be performed by the Contractor at his own expense at the area considered, in the presence of the Engineer.

The ripping test shall comprise:

- (a) a survey, on a 1.0 m grid, to establish cross-sections over a test area of not less than 10 x 4 m within the area to be classified;
- (b) provision of a Caterpillar Model D8K tractor or equivalent machine, equipped with a single straight ripper tooth 60 m penetration, hydraulically operated and approved by the manufacturer for use with the D8K;
- (c) Ripping of test area with two passes per meter of width, with the full load applied to ripper tooth;
- (d) After ripping, removal of ripped material by loading machine of approved type;
- (e) Re-survey of the cross-sections and calculation of the volume and equivalent depth of excavation.

Common excavation for the purposes of measurement and payment shall be defined as:

- (a) All materials excavated without prior visual inspection and classification by the Engineer;
- (b) All material that gives an equivalent depth of excavation equal to or more than 0.25 meters in the ripping test;

(c) All non-rippable boulders, or detached pieces of solid rock, embedded in common excavation material, but each having a volume of less than one cubic meter or a weight of less than two tonnes.

Rock excavation for the purposes of measurement and payment shall be defined as:

(a) All material so classified by visual inspection and agreed with the Engineer.

(b) All material that gives an equivalent depth of excavation less than 0.25 meters in the ripping test;

(c) All non-rippable boulders, or detached pieces of solid rock embedded in common excavation, each having a volume of more than one cubic meter or a weight of more than two tonnes.

1.5 Dewatering

The Contractor shall be responsible for the protection of all sections of the Works from effects of surface water run-off and ground water.

Such protection shall include pipes, channels, embankments and pumping arrangements to keep the Works free from any water which may damage the finished quality or impede progress or inspection during construction.

Where local streams or natural drainage channels intersect the Site of the Works, these streams and channels shall be diverted outside the limits of the Works, at the expense of the Contractor. The Contractor shall be responsible for the design of all such temporary dewatering works, and shall on request, provide the Engineer with drawings, calculations, explanatory reports and any other evidence that their performance will be adequate for their purpose.

Where some part of the Permanent Works can be adopted for such dewatering, the Engineer will instruct the Contractor on any limitations he requires with respect to their temporary use for dewatering during the construction of the Works.

2. TYPES OF EXCAVATION

2.1 General Clearing

General clearing comprises the removal and disposal of all trees, shrubs, buildings, fences and similar matter from the areas shown on the drawings or as directed by the Engineer.

The areas to be cleared shall include the foundation areas to all parts of the Works.

The limits of general clearing shall extend 5m beyond the toe of the fills and the limits of excavation, except where otherwise directed or indicated on the drawings.

Timber may be retained and used on Site by the Contractor. Unsuitable material shall be removed directly to an approved disposal area.

2.2 Stripping

Stripping shall consist of the removal from the surface and disposal of all humus, stumps, roots, brush, rubbish, other vegetation matter, and perishable and undesirable materials generally to a depth of 0.5m or as otherwise directed by the Engineer.

Stripping work shall include the transporting and disposal of stripped material. The limits of stripping shall extend at least 3 m beyond the toe of fills and limits of excavation, except where otherwise directed or shown on the drawings.

2.3 Bulk Excavation

Bulk excavation comprises the open cut excavation to be performed to lines, grades and dimensions shown on drawings or as directed by the Engineer. The method adopted shall be suitable for the types of material encountered, to provide for the work to progress in an orderly manner and to restrict over-excavation to a minimum.

Within 3 m of the levels shown on the drawings, the Engineer may direct the excavation in successive stages until a suitable foundation or surface, as determined by the Engineer, is reached.

The Contractor shall not be entitled to any additional payment above the unit prices for the excavation by reason of such successive stages in the excavation procedure. Each successive stage shall include sufficient cleaning to enable the Engineer to inspect the foundation in order to direct further excavation if required.

Loose excavated material shall be removed from the excavation as the work proceeds and shall be transported to the disposal area or stockpile as directed.

For the final preparation of slopes and foundations, the Engineer may direct that the last 20 cm of the excavation, whether in common material or rock excavation, shall be excavated without the use of explosives or ripping, and such excavation methods will not be considered for separate payment, since they shall be deemed to have been already included in the unit prices for excavation work.

For the Emergency Spillway, excavation shall be carried out by such methods that shall not in any way disturb the condition of the adjacent existing spillway and dam.

2.4 Trench Excavation

Trench excavations shall be defined as those whose final width is less than 2 meters, or greater than 2 meters when depth is greater than width. Excavation for trenches (including pits, footings, etc.) shall be performed by the use of hand tools and approved mechanical equipment in such a manner as to prevent shattering of the sides and bottom of the excavation.

At the option of the Contractor, and with the approval of the Engineer, blasting may be carried out in accordance with Sub-section 3 hereafter.

All planking, strutting and supports necessary to retain the sides of the excavation shall be provided, erected and maintained in a safe condition by the Contractor.

2.5 Slope Adjustment and Trimming

If, during the progress or after completion of bulk or trench excavations in common material, the Engineer instructs the Contractor to modify or extend the slopes or dimensions of the excavation by a horizontal width of less than 5 m, such modifications or extensions will be considered as separate excavation operations defined as "slope adjustment" or "trimming".

Modifications or extensions of more than 5 m will be considered and paid for as bulk excavation.

- Slope adjustment shall apply where the modification or extension involves the adjustment of the limits of the bulk excavation by additional excavation of a horizontal width of more than 1 m up to 5m.

- Trimming shall apply where the adjustment to the bulk excavation limits is required by a thickness of additional excavation of less than 1m.

2.6 Seams and Cavities

The assumed lines of excavation shown on the drawings shall not be interpreted as indicating accurately the final or actual excavation lines. There may be depressions, fissures, faults, seams and bands of soft disintegrating material running in various directions in the materials to be excavated and in the foundations, slopes and other areas.

Where defects occur they shall be made safe by supports or corrected by local excavation below the general surface of excavation to the lines, depths and dimensions directed by the Engineer.

3. DISPOSAL AND STOCKPILING AREAS

The Contractor shall maintain appropriate disposal areas in the locations shown on the drawings, or as otherwise approved, for materials unsuitable for fill or aggregate production, surplus material from excavation and other approved waste.

All debris, bush, roots and other combustible material shall be burned or buried.

All non-combustible waste shall be buried. Disposal by burying shall be done in such a manner that the material disposed of is buried with a minimum cover of 50 cm of excavation spoil or stripped material. The Contractor shall at no time leave a fire unattended and shall be responsible for any fire damage resulting from his operations.

Should the Contractor wish to form spoil dumps for his own convenience, other than those described, he shall obtain the Engineer's approval before any dumping is started.

Where excavated materials are suitable and are required for use in subsequent work, the Engineer may direct that these are separately stockpiled and will designate the location for such stockpiles within the disposal areas or in separate locations adjacent to the sites of the Works.

Adequate road access to the disposal and stockpile areas shall be established and maintained by the Contractor. Disposal and stockpile areas shall be cleared in accordance with Sub-section 2.1, and drainage channels shall be formed to remove surface water.

The tipping of materials in disposal or stockpile areas shall be controlled to provide a uniform and progressive use of the area, and tipped material shall be spread and graded to form layers of not more than 1 m thickness. On completion of the Works, the disposal and stockpile areas shall be left in a tidy and safe condition to the satisfaction of the Engineer.

4. BACKFILL

The Contractor shall supply, place and compact backfill or selected material in trenches and around concrete structures as shown on the drawings or as directed by the Engineer.

No backfilling shall commence until the foundation and Permanent Works have been inspected and approved by the Engineer. Backfill shall be placed and compacted in successive layers not exceeding 25 cm in thickness.

Compaction of cohesive soils shall continue until the dry density of the material reaches a value of 90% of the AASHTO maximum dry density, as determined in accordance with BS 1377.

The compaction of granular soils shall continue until the dry density of the material reaches a value of not less than 80% of the relative density as determined in accordance with Test 12 of U.S. Bureau of Reclamation Earth Manual (Section Edition, 1974).

In the event of any damage to any structure as a result of the placing or compaction of backfill, the Contractor shall repair the structure at his own expense, to the satisfaction of the Engineer.

5. RIP-RAP

The rock for rip-rap shall be of compact, firmly bound, uniformly grain texture and absolutely weather-resistant and shall not have cracks, holes, laminations or detrimental materials.

The materials shall be sound, un-weathered and with a low water absorption capacity in order to avoid cracking, bursting and decomposition as a result of exposure to rain, flowing water, abrasion and other elements. The rock shall mainly consist of large pieces of rock such that when placed and compacted, the height should not exceed 300mm and smaller pieces to secure the boulders against sliding and to form a mechanically interlocked uniform surface protection against the action of flowing water, waves, heavy rainfall, washouts, etc., and to provide stability to the fill structure.

The rock blocks shall be of natural irregular shape and of the size as specified hereunder. Thin-sliced blocks shall not be accepted. Any blocks covered by impurities shall be cleaned thoroughly before being used.

Unless it is indicated otherwise, the Contractor shall submit rock samples to be used in the slopes to the approval of the Engineer. Furthermore he shall send the samples at his own cost to the place assigned by the Engineer for the performance of all required tests and at least 60 days before the beginning of the riprap placement.

Unless otherwise specified in the Bill of Quantities and Rates, the following grading shall apply for riprap:

- The largest individual block shall not exceed 500 mm all directions.
- The smallest individual block shall not be less than 150 mm all directions.

6. Placing of Rip-Rap

The rock blocks in rip-rap as specified in sub-Clause 5 shall be dumped and graded in a manner to ensure that the larger blocks are uniformly distributed and the smaller rock blocks serve to fill the interstices between the larger rocks in a manner that will result in compact uniform layers of rip-rap of the specified thickness.

No pockets of small rocks or clusters of large blocks will be permitted.

B. EMBANKMENT SPECIFICATIONS

1. GENERAL

The embankment works shall be executed generally in accordance with the drawings and this Specification or as the Engineer may direct.

The Engineer reserves the right to modify, during the progress of the Works, any other features as he may consider necessary for the proper performance of the Works.

2. FOUNDATION PREPARATION

2.1 General

The foundation for the embankments shall be excavated generally in accordance with the requirements of Section 2 - Excavation;

All overhanging rock shall be detached by barring or wedging and all loose or semi-detached blocks shall be removed from foundation surfaces.

Preparation of foundations shall include adequate drainage and dewatering systems to obtain sufficiently dry working conditions.

The placing of fill to form the embankments may proceed only with the approval of the Engineer, based on the conditions of the foundations determined by inspection after completion of all foundation preparation works.

The Contractor shall be responsible for maintaining foundation surfaces in the approved condition until they have been covered by fill material.

Where erodible material is exposed in the foundations, specially selected and graded stone shall be placed over the area as directed by the Engineer to provide inverse filler.

2.2 Placing

Thickness of compacted layers shall not exceed 25 cm; optimum placing thickness shall be determined by trial embankments, to the approval of the Engineer.

Material which is too dry shall be spread in a layer, sprinkled with water and remixed with equipment approved by the Engineer. On the other hand, material brought to Site which is too moist shall be removed and taken away, or, subject to specific approval by the Engineer and provided such material has not already been compacted, it may be left to dry out to the required moisture content level prior to being compacted.

Emplacement of materials shall be carried out using all means necessary to obtain maximum homogeneity in each zone of the embankment; lenses, pockets, bands and layers of material markedly different from that surrounding it shall not be allowed.

Where an emplacement surface is too moist, it shall be left to dry out sufficiently, to the Engineer's approval, prior to emplacement of the next layer.

Where, in the opinion of the Engineer, a surface is too dry or too smooth, it shall be appropriately moistened and harrowed prior to emplacement of the next layer.

Emplacement operations shall be suspended in the event of threat or actual occurrence of rain. In the latter instance, work shall not be resumed until all excess moisture in the soil has evaporated.

Where moisture levels are too high, the Engineer may require removal of emplaced material to an appropriate depth.

Whereas placing of core materials during the rainy season is not envisaged in the construction program approved by the Engineer, the Contractor may construct the embankment dam and place such core materials during the rainy season, provided however that any extra cost arising there from as may be necessary to meet the requirements of the Specification shall be borne exclusively by the Contractor.

Emplacement surfaces shall at all times be flat and slightly inclined to upstream and downstream, in order to avoid the possibility of stagnant water collecting (even in small pockets).

Prior to any suspension of work, emplacement surfaces shall be leveled and rolled to eliminate subsequent stagnation of water; upon resumption of laying operations, they shall be re-set and harrowed.

2.3 Compaction

Compaction of materials shall be carried out in layers, using suitable plant, machinery and equipment.

In general, the use of static sheep-foot or vibrating rollers shall be preferred.

In the event that excessively smooth surfaces are obtained from the use of rubber-tired rollers, the Engineer may require harrowing of the lower layer prior to emplacement of the upper layer. Based on trial embankment results, the Engineer shall be entitled to reject the type of plant, machinery and equipment proposed by the Contractor if specified results cannot be obtained by the use of same and, at particular locations or zones, establish moisture content, number of passes, and speed and time of vibration, even if these vary from those applied to trial embankment.

All parts of the embankment which rests on or are in contact with steep or irregular lateral surfaces, or zones of difficult contact, or areas where compaction equipment is difficult to access, as well as those parts of the embankment in contact with concrete structures or measurement and control equipment built into the embankment, shall be compacted in layers of not more than 15 cm, suitable means, such that their degree of compaction shall not be lower than that of other embankment zones.

The thickness of the Embankment material layer shall have a tolerance of ± 15 cm at any specified level.

3. FINE FILTERS

3.1 General

Materials to be utilized for the construction of fine filters shall have the following characteristics:

$$C_u = D_{60}/D_{10} < 12$$

$D_{max} < 20\text{mm}$ not more than 5% of the material shall be finer than 0.074 mm (200 mesh); the granulometric curve shall be comprised within the zone defined by gradings G and H of Table A; the grading curve shall be continuous;

Permeability $K > 5 \times 10^{-3}$ cm/sec;

In-situ dry density: 90% \pm 3% of maximum density Obtainable by the Standard AASHTO test.

Filter material may be obtained from crushing rock on Site, or, preferably, washed, sieved, natural sand from the nearby Areas where they are available; if mixed, particular attention shall be given to obtaining uniformity.

Utmost care shall be taken to avoid mixing of materials along their limiting planes and any filter material contaminated by other material shall be removed in its entirety. The Contractor shall propose and test a method of placement, which avoids any penetration of adjacent materials. If each penetration exceeds the permitted maximum of 10 cm, the Engineer shall require the use of appropriate separators, which shall be removed after emplacement but before compaction of the material.

No. 100 grading tests, 10 Standard AASHTO, 10 permeability and 10 transmissibility tests shall be carried out by the Contractor for the purpose of determining suitability of quarries or borrow pits, mixes, coarse and fine filters and for control purposes.

4. DRAINAGE

Materials for drains shall be sound clean rock or stone, Dmax 80 mm, Dmin 10mm, with not more than 5% of the material smaller than 10 mm; maximum size of the material may be varied at the discretion of the Engineer.

Drain material shall be placed using light compaction and ensuring that the drainage zone is filled entirely.

SECTION G SCHEDULE OF CONTRACT DRAWINGS

Copies of the drawings can be downloaded from the EPZA website, www.epzakenya.com, or obtained from EPZA Engineer's office.

SECTION H
STANDARD FORMS

TENDER QUESTIONNAIRE

Please fill in block letters.

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

.....
Signature of Tenderer

Make copy and deliver to:

The Chief Executive Officer,
Export Processing Zones Authority
P.O. Box 50563 – 00200,
NAIROBI

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 (2d) 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:

Kenya Shillings.....

Name of your bankers.....

Branch.....

Part 2 (a) – Sole Proprietor

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

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

Citizenship details

Part 2 (b) – Partnership

Give details of partners as follows:

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

4.

Part 2(c) – Registered Company

Private or Public

State the nominal and issued capita of the company:

Nominal KShs.

Issued KShs.

Give details of all directors as follows:

	<i>Name in full</i>	<i>Nationality</i>	<i>Citizenship Details*</i>	<i>Shares</i>
1.
2.
3.
4.

Part 2(d) Interest in the Firm:

Is there any person/persons in the employment of the Government of Kenya WHO has interest in this firm? Yes/No (Delete as necessary)

I certify that the above information is correct.

.....
 Title Signature Date

* Attach proof of citizenship

KEY PERSONNEL

Qualifications and experience of key personnel proposed for administration and execution of the Contract.

POSITION	NAME	YEARS OF EXPERIENCE (GENERAL)	YEARS OF EXPERIENCE IN PROPOSED POSITION
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

I certify that the above information is correct.

.....

Title

.....

Signature

.....

Date

CONTRACTS COMPLETED IN THE LAST FIVE (5) YEARS

Work performed on works of a similar nature, complexity and volume over the last 5 years.

PROJECT NAME	NAME OF CLIENT	TYPE OF WORK AND YEAR OF COMPLETION	VALUE OF CONTRACT (KSH)

I certify that the above works were successfully carried out and completed by ourselves.

.....
Title

.....
Signature

.....
Date

SCHEDULE OF ON-GOING PROJECTS

Details of similar on-going or committed projects, including expected completion date.

PROJECT NAME	NAME OF CLIENT	CONTRACT SUM	% COMPLETE	COMPLETION DATE

I certify that the above works are currently being carried out by ourselves.....

.....
Title

.....
Signature

Date

LITIGATION STATUS

Give full information and particulars of your company's litigation history and the nature of any litigation.

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

Client	Contract Name	Contract Sum	Commencement Date	Completion Date	Date of Litigation

N.B. Indicate ``**NONE**'' in case your company does not have any litigation history.

NATURE AND DETAIL OF LITIGATION

Note: More sheets may be attached if necessary.

.....
(Signature of Contractor)

.....
(Date)

FORM OF WRITTEN POWER-OF-ATTORNEY

The Tenderer shall state here below the name and address of his representative who is authorized to receive on his behalf correspondence in connection with the Tender.

.....
(Name of Tenderer's Representative in Block Letters)

.....
(Address of Tenderer's Representative)

.....
(Signature of Tenderer's Representative)

CERTIFICATE OF TENDERER'S OR REPRESENTATIVES

VISIT TO SITE

1. This is to certify that I,.....
..... (Name of Tenderer or his Representative)
of the Firm of
..... (Name of the Firm Tendering)
2. Having previously studied the Bidding Documents I carefully examined the site.
3. I have made myself familiar with all the local conditions likely to influence the Tender and the cost thereof.
4. I further certify that I am satisfied with description of the scope of the study and that I understand perfectly the work to be done as specified and implied in the Conditions of this Invitation to Tender.
5. I also confirm that M/S
.....Will Perform the contract in accordance with the Terms and Conditions of this Invitation to Tender.

Signed (Tenderer or his Representative)

Witness

Signature

Date

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 name of head office:
.....
.....
- ii. Sub-contractors' experience of similar works carried out in the last 3 years with contract value:
.....
.....
.....

- 2) Portion of works to be sublet:
.....
.....
- i. Full Name of sub-contractor:
.....
and name of head office:
.....
.....
- ii. Sub-contractors' experience of similar works carried out in the last 3 years with contract value:
.....
.....
.....

(NOTE: - The above list may be extended depending on the number of sub-contractors required.)

.....
(Signature of Tenderer)

.....
(Date)

Note: Details of each machine/equipment is more than one of the same make or type must be given separately.

Item to be imported pursuant to clause 78(1) of the conditions of contract to be indicated together with the seller's name, address and CIF value @ details of proposed hire or hire purchase to be submitted giving names and addresses of hiring/selling party and serial number/engines number before the award of contract, the Engineer or his representative may carry out physical verification of the availability of the plant and equipment listed on the schedule.

SECTION J

SCHEDULE OF UNIT RATES

SCHEDULE OF UNIT RATES

1. The tenderer shall insert unit rates against the items in the following schedules and may add such other items as he considers appropriate.
2. The unit rates shall include for supply, transport, insurance, delivery to site, storage as necessary, assembling, cleaning, installing, connecting, profit and maintenance in defects liability and any other obligation under this contract.
3. The unit rates will be used to assess the value of additions or omissions arising from authorised variations to the contract works.
4. Where trade names or manufacturer's catalogue numbers are mentioned in the specification, the reference is intended as a guide to the type of article or quality of material required. Alternative brands of **equal** and **approved** quality will be accepted.

SCHEDULE OF MATERIALS:-BASIC PRICES

MATERIALS	UNIT	ORIGIN AND PRICE			TRANSPORT COST FROM SOURCE OF ORIGIN IF ANY	
Cement	Ton					
Lime	Ton					
Pen Grade 80/100 Bitumen	L					
Diesel	L					
Regular Petrol	L					
Super Petrol	L					
Reinforcement steel	Kg					
Oil and Lubricants	L					
MC 30	L					
K70	L					
Aggregate	Ton					
River Sand	Ton					
150mm dia. concrete pipe	m					
300mm dia. concrete pipe	m					
450mm dia. concrete pipe	m					
600mm dia. concrete pipe	m					
900mm dia. Concrete pipe	m					
600x600x50 paving slab	sm					
125x250 pc road kerb	m					
125x100 pc road channel	m					
150x750x600 pc shallow invert block	m					
450x25x600 pc IBD	m					
457mm dia. x 912 road gulley	No.					
Gravel	Ton					

Note

Prices of imported materials to be quoted CIF Mombasa as appropriate regardless of whether materials are imported by the tenderer directly or through a local agent.

SCHEDULE OF LABOUR: - BASIC RATES

LABOUR CATEGORY	UNIT (MONTH/SHIFT/ HOUR)	RATES

Categories to be generally in accordance with those used by the Kenya Building Construction and Engineering and Allied Trades Workers' Union.

SECTION K

BILLS OF QUANTITIES

BILLS OF QUANTITIES

1.0 Preamble To Bill of Quantities

- a) The Bill of Quantities shall form part of the Contract Documents and is to be read in conjunction with the Instructions to Tenderers, Conditions of Contract, Specifications and Drawings.
- b) The brief description of the items in the Bill of Quantities is purely for the purpose of identification, and in no way modifies or supersedes the detailed descriptions given in the conditions of Contract and Specifications for the full direction and description of work and materials.
- c) The Quantities set forth in the Bill of Quantities are estimated and provisional, representing substantially the work to be carried out, and are given to provide a common basis for tendering and comparing of Tenders. There is no guarantee to the Contractor that he will be required to carry out all the quantities of work indicated under any one particular item or group of items in the Bill of Quantities. The basis of payment shall be the Contractor's rates and the quantities of work actually done in fulfillment of his obligation under the Contract.
- d) The prices and rates inserted in the Bills of Quantities will be used for valuing work executed, and the Engineer will measure the whole of the works executed in accordance with this Contract.
- e) A price or rate shall be entered in ink against every item in the Bill of Quantities with the exception of items, which already have provisional sums, affixed thereto. The Tenderers are reminded that no "nil" or "included" rates or "lump-sum" discounts will be accepted. The rates for various items should include discounts if any. Tenderers who fail to comply will be disqualified.
- f) The price and rates entered in the Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional plant to be used, labour, insurance, supervision, compliance, testing, materials, erection, maintenance or works, overheads and profits, taxes and duties together with all general risks, liabilities and obligations set out or implied in the Contract, transport, electricity and telephones, water, use and replenishment of all consumables, including those required under the Contract by the Engineer and his staff.
- g) Errors will be corrected by the Employer for any arithmetic errors in computation or summation as follows:
 - 1) Where there is a discrepancy between amount in words and figures, the amount in words will govern; and
 - 2) Where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer, there is an obviously gross misplacement of the decimal point in the unit price, in which event the total amount as quoted will govern and the unit rate will be corrected.
 - 3) If a Tenderer does not accept the correction of errors as outlined above, his Tender will be rejected.
- h) The Bills of Quantities, unless otherwise expressly stated therein, shall be deemed to have been prepared in accordance with the principles of the latest edition of the Civil Engineering Standard Method of Measurement (CESMM).
- i) "Authorised" "Directed" or "Approved" shall mean the authority, direction or approval of the Engineer.
- j) Unless otherwise stated, all measurements shall be net taken on the finished work carried out in accordance with the details shown on the drawings or instructed, with no allowance for extra cuts or fills,

waste or additional thickness necessary to obtain the minimum finished thickness or dimensions required in this Contract. Any work performed in excess of the requirements of the plans and specifications will not be paid for, unless ordered in writing by the Engineer.

- k) (a) Hard material, in this Contract, shall be defined as the material which, in the opinion of the Engineer, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and which cannot be extracted by ripping with a dozer tractor of at least 150 brake horse power (112 kilowatt) with a single, rear-mounted, hydraulic ripper. Boulders of more than 0.2m³ occurring in soft material shall be classified as hard material

(b) Soft material shall be all material other than hard material.

- l) Standing Time

Standing time for the plant and crew shall be applicable only to delays resulting from the causes under direct control of the Engineer. Delays to plant and crew arising from the constructional variations, exceptional weather conditions will not be considered applicable to the standing time claims.

- (a) Delays to plant and crew arising from the constructional sequence adopted by the contractor, irrespective whether such as constructional sequence has been approved by the Engineer shall not form a basis for the claims of whatsoever nature.
- (b) Delays to plant and crew arising from constructional methods adopted by the contractor, misinterpretation of the results given by the contract documents, wrong assumptions arrived at from the information given by the contract documents, mistakes in the information or in phrasing of items in the tender documents shall not form any basis for claims of whatsoever nature.
- (c) Delays to plant and crew arising from the fulfillment of the requirements stipulated in the Special Specifications and General Notes shall not form a basis for the claim of whatsoever nature.
- (d) Delays to plant and crew arising from use of the unsuitable or faulty plant, delays to plant and crew arising from the Engineers rejection of the plant or equipment as defined under Clause 4 of the Special Specifications, shall not form a basis for claims of whatsoever nature.

The stipulations under (a), (b), (c), (d), and (e), shall refer where applicable to all Bills contained in the tender documents.

2.0 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 Bills of Quantities for use in the periodic valuation of Works executed.

In order to attain these objectives, Works are itemized in the Bills 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 Bills of Quantities is as simple and brief as possible.

3.0 The Bills of Quantities is divided generally into the following sections:

- (a) Preliminaries.

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

The numbers of preliminary items to be priced by the tenderer are 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 are included in the Contractor's rates.

(b) Work Items

The items in the Bills of Quantities are 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 have been grouped as a separate section in the Bills of Quantities.

The brief description of the items in the Bill of Quantities should in no way modify or supersede the detailed descriptions given in the Contract drawings, Conditions of Contract and Specifications.

- (i) Quantities are computed net from the Drawings, unless directed otherwise in the Contract, and no allowance has been made for bulking, shrinkage or waste. Quantities have been rounded up or down where appropriate.
- (ii) The following units of measurement and abbreviations apply:

<i>Unit</i>	<i>Abbreviation</i>	<i>Unit</i>	<i>Abbreviation</i>
cubic meter	m ³ or cm	Millimeter	mm
hectare	ha	Month	mon
hour	h	Number	no
kilogram	kg	Square meter	m ² or sm
lump sum	sum	Square millimeter	mm ² or sq mm
meter	m	Week	wk
metric ton (1,000 kg)	t		

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 shall be measured from the commencing surface to the excavated surface, as defined.

(c) Daywork Schedule

A Day work Schedule should be included if the probability of unforeseen work, outside the items included in the Bills 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:

- 1. A list of the various classes of labour, and materials for which basic Daywork 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 Daywork basis;

and

- 2. A percentage to be entered by the tenderer against each basic Daywork Subtotal for labour, materials and plant representing the Contractor's profit, overheads, supervision and other charges.

(d) Provisional Quantities and Provisional Sums

- (i) Provisional Sums to cover specialized works normally carried out by Nominated Sub Contractors in the Bills of Quantities as specialized Works have been included in a section of the main Bill of Quantities to be priced by the Main Contractor.

The Main Contractor should be required to indicate the names(s) of the specialized 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 Bill of Quantities.

(ii) The Provisional Sums included in the Bills of Quantities will be expended in whole or in part at the discretion of the Engineer after full consultation with the Employer.

(e) Summary

The Summary should contain a tabulation of the separate parts of the Bills of Quantities carried forward, with Provisional Sums for Dayworks, Physical (quantity) contingencies, and price contingencies (upward price adjustment where applicable and 16% VAT).

Note: Prices Quoted should be net inclusive of taxes.

The grand total tender sum shall be entered in the Form of Tender for this tender to be valid.