



**CONSTRUCTION OF 28KM LARIAK FOREST (KAPSIGIO - KERANDI - GITUAMBA)  
ELECTRIC FENCE AND ASSOCIATED WORKS AT LAIKIPIA COUNTY  
(FULL CONTRACT)**

**(YOUTH)**

**KWS/ONT/B&F/58/2023 - 2024**

**CLOSING DATE & TIME:**

**7<sup>TH</sup> DECEMBER, 2023 AT 12.00NOON**

**KENYA WILDLIFE SERVICE**

**P.O. BOX 40241 – 0100 NAIROBI.**

**Email: [hps@kws.go.ke](mailto:hps@kws.go.ke), website [www.kws.go.ke](http://www.kws.go.ke)**

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**KENYA WILDLIFE SERVICE**  
**P. O. Box 40241-00100**  
**NAIROBI**

**TENDER DOCUMENTS FOR CONSTRUCTION OF 28 KM LARIAK FOREST (KAPSIGIRIO - KERANDI - GITUAMBA) ELECTRIC FENCE AND ASSOCIATED WORKS IN LAIKIPIA COUNTY.**

**1) NAME AND CONTACT ADDRESS OF PROCURING ENTITY**

**NAME:** KENYA WILDLIFE SERVICE

**ADDRESS:** PO BOX 40241-00100

**EMAIL:** hps@kws.go.ke

**PHYSICAL ADDRESS:** KENYA WILDLIFE SERVICE HEADQUARTERS LANG'ATA ROAD, OPPOSITE LANG'ATA CEMETRY.

**2) INVITATION TO TENDER (ITT) NO: KWS/ONT/B&F/58/2023-2024**

**CONSTRUCTION OF 28KM LARIAK FOREST (KAPSIGIRIO – KERANDI- GITUAMBA)  
ELECTRIC FENCE**

**AND ASSOCIATED WORKS AT LARIAK IN LAIKIPIA COUNTY**

**(YOUTH)**

## **INVITATION TO TENDER**

### **KENYA WILDLIFE SERVICE**

**P.O. Box 40241- 00100**

**NAIROBI**

**EMAIL: [hps@kws.go.ke](mailto:hps@kws.go.ke)**

### **CONTRACT NAME AND DESCRIPTION**

#### **CONSTRUCTION OF 28 KM LARIAK FOREST (KAPSIGIRIO - KERANDI - GITUAMBA) ELECTRIC FENCE AND ASSOCIATED WORKS IN LAIKIPIA COUNTY**

**TENDER NO: KWS/ONT/B&F/58/20232024**

1. The Kenya Wildlife Service invites sealed tenders for the proposed construction of 28 km Lariak Forest (Kapsigirio - Kerandi - Gituamba) electric fence and associated works in Laikipia County for a period of Six (6) months
2. Tendering will be conducted under open competitive method National using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours 0800 - 17000 *hours* at the address given below.
4. A complete set of tender documents may be obtained free of charge electronically from the website; [www.kws.go.ke](http://www.kws.go.ke) or the Public Procurement Information Portal <https://www.tenders.go.ke>.
5. Tender documents may be viewed and downloaded for free from the website ([www.kws.go.ke](http://www.kws.go.ke) or the Public Procurement Information Portal <https://www.tenders.go.ke>). Tenderers who download the tender document must forward their particulars immediately to [hps@kws.go.ke](mailto:hps@kws.go.ke), Kenya Wildlife Service, P.O Box 40241-00100, Nairobi and Telephone number 0202379407 to facilitate any further clarification or addendum.
6. Tenders shall be quoted in Kenya Shillings and shall include all taxes. Tenders shall remain valid for Hundred and Twenty-Six (126) days from the date of opening of tenders.

7. Tender must be accompanied by a *tender Securing Declaration form duly filled, signed, stamped and dated.*
8. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
9. Completed tenders must be delivered to the address below on or before. **7<sup>th</sup> December 2023** at or before 12.00 Noon. Electronic Tenders *will not* be permitted.
10. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and times pecified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
11. Late tenders will be rejected.  
The addresses referred to above are:

**A. Address for obtaining further information and for purchasing tender documents**

Kenya Wildlife Service Physical address for hand Courier Delivery Shall be the office of Deputy Director Supply Chain Management located at Simba Court 1<sup>st</sup> Floor Kenya Wildlife Service Headquarters located along Lang'ata Road.

Postal address is Kenya Wildlife Service Headquarters located along Lang'ata Road, P. O. Box 40241-00100, NAIROBI, KENYA

The contact person is the Deputy Director Supply Chain Management, Kenya Wildlife Service, Telephone number 0202379407 and Email [hps@kws.go.ke](mailto:hps@kws.go.ke) .

**A. Address for Submission of Tenders.**

Kenya Wildlife Service  
P. O. Box 40241-00100,  
NAIROBI, KENYA  
Physical address for: -

- i. Hand Delivery Shall be deposited in the Tender Box located at, Kenya Wildlife Service Headquarters, Main Reception, along Lang'ata Road
- ii. Courier delivery shall be registered at the office of Deputy Director Supply Chain Management located at Simba Court 1<sup>st</sup> Floor Kenya Wildlife Service Headquarters along Lang'ata Road.

**B. Address for Opening of Tenders.**

Kenya Wildlife Service  
Veterinary Conference Room,  
Kenya Wildlife Service Headquarters located along Lang'ata Road.

Name: **Dr. Erastus Kanga, HSC**

Designation: **DIRECTOR GENERAL**

Signature: -----

Date .....

## **PART<sub>1</sub>: TENDERING PROCEDURES**

## SECTION 1 – INSTRUCTIONS TO TENDER

### A GENERAL PROVISIONS

#### 1.0 Scope of tender

1.1 Kenya Wildlife Service as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The name, identification, and number of lots (contracts) of this Tender Document are specified in the TDS.

1.2 Throughout this tendering document:

- a) The term “inwriting” means communicated in written form (e.g. by mail, e-mail, fax, including if specified in the TDS, distributed or received through the electronic-procurement system used by Kenya Wildlife Service with proof of receipt;
- b) if the context so requires, “singular” means “plural” and vice versa;
- c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of Kenya Wildlife Service. It excludes official public holidays.

#### 2.0 Fraud and corruption

2.1 Kenya Wildlife Service requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.

2.2 Kenya Wildlife Service requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.

2.3 Tenderers shall permit and shall cause their agents (whether declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit Kenya Wildlife Service to inspect all accounts, records and other documents relating to any initial selection process, pre-qualification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by Kenya Wildlife Service

2.4 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, Kenya Wildlife Service shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

### 3.0 Eligible tenderers

- 3.1** A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.8, or an individual or any combination of such entities in the form of a joint venture (JV) under an existing agree mentor with the intent to enter in to such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS**.
- 3.2** Public Officers of Kenya Wildlife Service their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 3.3** A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:
- a) Directly or indirectly controls, is controlled by or is under common control with an other tenderer;
  - b) Receives or has received any director indirect subsidy from another tenderer;
  - c) Has the same legal representative as an other tenderer;
  - d) Has a relationship with an other tenderer, directly or through common third parties, that puts it in a position to influence the tender of an other tenderer, or influence the decisions of the Kenya Wildlife Service regarding this tendering process;
  - e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods or works that are the subject of the tender;
  - f) Any of its affiliates has been hired (or is proposed to be hired) by Kenya Wildlife Service as a consultant for Contract implementation;
  - g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document;
  - h) Has a close business or personal relationship with senior management or professional staff of Kenya Wildlife Service who has the ability to influence the bidding process and:
    - i) Are directly or indirectly involved in the preparation of the Tender document

or specifications of the Contract, and/or the Tender evaluation process of such contract; or

- ii) May be involved in the implementation or supervision of such Contract unless the conflicts stemming from such relationship has been resolved in a manner acceptable to Kenya Wildlife Service throughout the tendering process and execution of the Contract.

- 3.4** A tenderer shall not be involved in corrupt, coercive, obstructive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified
- 3.5** A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. Members of a joint venture may not also make an individual tender, be a sub-contractor in a separate tender or be part of another joint venture for the purposes of the same Tender. A firm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender.
- 3.6** A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.
- 3.7** A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA [www.ppra.go.ke](http://www.ppra.go.ke).
- 3.8** A Tenderer that is a state-owned enterprise or a public institution in Kenya may be eligible to tender and be awarded Contract(s) only if it is determined by Kenya Wildlife Service to meet the following conditions, i.e. if it is:
- i) A legal public entity of Government and/or public administration,
  - ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and;
  - (iii) Operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.
- 3.9** Firms and individuals shall be ineligible if their countries of origin are:
- (a) As a matter of law or official regulations, Kenya prohibits commercial relations with that country;
  - (b) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any

import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.

A tenderer shall provide such documentary evidence of eligibility satisfactory to Kenya Wildlife Service, as Kenya Wildlife Service shall reasonably request.

- 3.10** Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, local sub-contracts and labor) from citizen suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable Kenya Wildlife Service determine if this condition is met shall be provided for this purpose in *"SECTION II - EVALUATION AND QUALIFICATION CRITERIA, Item 9"*.
- 3.11** Pursuant to the eligibility requirements of ITT 3.10, a tender is considered a foreign tenderer, If it is registered in Kenya and has less than 51 percent ownership by nationals of Kenya and if it does not subcontract to foreign firms or individuals more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual member firms registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 3.12** The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before such award and signature of contract. Application for registration with National Construction Authority may be accessed from the website [www.nca.go.ke](http://www.nca.go.ke).
- 3.13** The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).
- 3.14** A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

#### **4.0 Eligible goods, equipment, and services**

- 4.1** Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not ineligible under ITT 3.9. At Kenya Wildlife Service request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.

- 4.2 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

## **5.0 Tenderer's responsibilities**

- 5.1 The tenderer shall bear all costs associated with the preparation and submission of his/her tender, and Kenya Wildlife Service will in no case be responsible or liable for those costs.
- 5.2 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Works and its surroundings and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be the tenderer's own expense.
- 5.3 The Tenderer and any of its personnel or agents will be granted permission by Kenya Wildlife Service to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify Kenya Wildlife Service against all liability arising from death or personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the examination and inspection. The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.

## **B. CONTENTS OF TENDER DOCUMENTS**

### **6.0 Sections of Tender Document**

- 6.1 The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITT 10.

#### **PART 1: Tendering Procedures**

Section I – Instructions to Tenderers

Section II – Tender Data Sheet (TDS)

Section III- Evaluation and

Qualification Criteria Section IV –

Tendering Forms

#### **PART 2: Works'**

#### **Requirements**

Section V - Bills of Quantities

Section VI Specifications

Section VII – Drawings

## **PART 3: Conditions of Contract and Contract Forms**

### Section VIII - General Conditions (GCC)

### Section IX - Special Conditions of Contract

### Section X- Contract Forms

- 6.2** The Invitation to Tender Notice issued by Kenya Wildlife Service is not part of the Contract documents. Unless obtained directly from Kenya Wildlife Service, Kenya Wildlife Service is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of a pre-arranged site visit and those of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 10. In case of any contradiction, documents obtained directly from Kenya Wildlife Service shall prevail.
- 6.3** The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document and to furnish with its Tender all information and documentation as is required by the Tender document.

### **7.0 Clarification of Tender Document, Site Visit, Pre-tender Meeting**

- 7.1** A Tenderer requiring any clarification of the Tender Document shall contact Kenya Wildlife Service in writing at Kenya Wildlife Service address specified in the **TDS** or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 7.2. Kenya Wildlife Service will respond in writing to any request for clarification, provided that such request is received not later than..... the period specified in the **TDS** prior to the deadline for submission of tenders. Kenya Wildlife Service shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 7.4, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, Kenya Wildlife Service shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, Kenya Wildlife Service shall amend the Tender Documents following the procedure under ITT 8 and ITT 22.2.
- 7.2** The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information that may be necessary for preparing a tender. The costs of visiting the Site shall be at the Tenderer's own expense. Kenya Wildlife Service shall specify in the **TDS** if a pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

- 7.3 The Tenderer is requested to submit any questions in writing, to reach Kenya Wildlife Service not later than the period specified in the **TDS** before the meeting.
- 7.4 Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.
- 7.5 Kenya Wildlife Service shall also promptly publish anonymized (*no names*) Minutes of the pre-arranged site visit and those of the pre-tender meeting at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-arranged site visit and those of the pre-tender meeting shall be made by Kenya Wildlife Service exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.

## **8.0 Amendment of Tender Documents**

- 8.1 At any time prior to the deadline for submission of Tenders, Kenya Wildlife Service may amend the Tender Documents by issuing addenda.
- 8.2 Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents from Kenya Wildlife Service. Kenya Wildlife Service shall also promptly publish the addendum on Kenya Wildlife Service website in accordance with ITT 7.5.
- 8.3 To give Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, Kenya Wildlife Service should extend the dead line for the submission of Tenders, pursuant to ITT 22.2.

## **C. PREPARATION OF TENDERS**

### **9. Cost of Tendering**

The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and Kenya Wildlife Service shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

### **10.0 Language of Tender**

The Tender, as well as all correspondence and documents relating to the tender exchanged by the tenderer and Kenya Wildlife Service, shall be written in the English Language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate and

notarized translation of the relevant passages into the English Language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

## **11.0 Documents Comprising the Tender**

### **11.1** The Tender shall comprise the following:

- a) Form of Tender prepared in accordance with ITT 12;
- b) Schedules including priced Bill of Quantities, completed in accordance with ITT 12 and ITT 14;
- c) Tender Security or Tender-Securing Declaration, in accordance with ITT 19.1;
- d) Alternative Tender, if permissible, in accordance with ITT 13;
- e) **Authorization**: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 20.3;
- f) **Qualifications**: documentary evidence in accordance with ITT 17 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
- g) **Conformity**: a technical proposal in accordance with ITT 16;
- h) Any other document required in the **TDS**.

### **11.2** In addition to the requirements under ITT 11.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed JV Agreement. Change of membership and conditions of the JV prior to contract signature will render the tender liable for disqualification.

## **12.0 Form of Tender and Schedules**

### **12.1** The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize all pages of the tender documents submitted.

### **12.2** The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

## **13 Alternative Tenders**

### **13.1** Unless otherwise specified in the TDS, alternative Tenders shall not be considered.

### **13.2** When alternative times for completion are explicitly invited, a statement to that effect will be included in the **TDS**, and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification

Criteria.

- 133 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price Kenya Wildlife Service design as described in the Tender Documents and shall further provide all information necessary for a complete evaluation of the alternative by Kenya Wildlife Service, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by Kenya Wildlife Service.
- 134 When specified in the **TDS**, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the **TDS**, as will the method for their evaluating, and described in Section VII, Works' Requirements.

#### **14.0 Tender Prices and Discounts**

- 14.1** The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements specified below.
- 14.2** The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by Kenya Wildlife Service . An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.
- 14.3** The price to be quoted in the Form of Tender, in accordance with ITT 12.1, shall be the total price of the Tender, including any discounts offered.
- 14.4** The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT 12.1.
- 14.5** It will be specified in the **TDS** if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, except incases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and Kenya Wildlife Service may require the Tenderer to justify its proposed indices and weightings.
- 14.6** Where tenders are being invited for individual lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than

one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 14.4, provided the Tenders for all lots (contracts) are opened at the same time

14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

### **15.0 Currencies of Tender and Payment**

15.1 The currency (ies) of the Tender and the currency (ies) of payments shall be the same.

15.2 Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer in the Bill of Quantities, entirely in Kenya shillings.

- a) A Tenderer expecting to incur expenditures in other currencies for inputs to the Works supplied from outside Kenya (referred to as "the foreign currency requirements") shall (if so allowed in the **TDS**) indicate in the Appendix to Tender the percentage(s) of the Tender Price (excluding Provisional Sums), needed by the Tenderer for the payment of such foreign currency requirements, limited to no more than two foreign currencies.
- b) The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Tenderer in the Appendix to Tender and shall be based on the exchange rate provided by the Central Bank of Kenya on the date 30 days prior to the actual date of tender opening. Such exchange rate shall apply for all foreign payments under the Contract.

15.3 Tenderers may be required by Kenya Wildlife Service to justify, to Kenya Wildlife Service satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data in the Appendix to Tender are reasonable, in which case a detailed break down of the foreign currency requirements shall be provided by Tenderers.

### **16.0 Documents Comprising the Technical Proposal**

The Tenderer shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Tender Forms and sufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.

### **17.0 Documents Establishing the Eligibility and Qualifications of the Tenderer**

17.1 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance with ITT 4.

17.2 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Tender Forms.

- 17.3** If a margin of preference applies as specified in accordance with ITT 33.1, national tenderers, individually or in joint ventures, applying for eligibility for national preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.
- 17.4** Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by Kenya Wildlife Service, a particular contractor or group of contractor's qualifies for a margin of preference. Further the information will enable Kenya Wildlife Service identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 17.5** The purpose of the information described in ITT 17.4 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by Kenya Wildlife Service as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 17.6** The Tenderer shall provide further documentary proof, information or authorizations that Kenya Wildlife Service may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.4. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 17.7** All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to Kenya Wildlife Service. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to Kenya Wildlife Service.
- 17.8** If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if Kenya Wildlife Service is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 17.9** If information submitted by a tenderer pursuant to these requirements, or obtained by Kenya Wildlife Service (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) If the procurement process is still ongoing, the tenderer will be disqualified from the

procurement process,

- ii) if the contract has been awarded to that tenderer, the contract award will be set as depending on the outcome of (iii),
- iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other person has committed any criminal offence.

**17.10** If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences of ITT 17.8 will ensue unless the tenderer can show to the reasonable satisfaction of Kenya Wildlife Service that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

## **18.0 Period of Validity of Tenders**

**18.1.** Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by Kenya Wildlife Service in accordance with ITT 22). A tender valid for a shorter period shall be rejected by Kenya Wildlife Service as non-responsive.

**18.2** In exceptional circumstances, prior to the expiration of the Tender validity period, Kenya Wildlife Service may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 19, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

## **19.0 Tender Security**

**19.1** The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the **TDS**, in original form and, in the case of a Tender Security, in the amount and currency **specified** in the **TDS**. A Tender-Securing Declaration shall use the form included in Section IV, Tender Forms.

**19.2** If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:

- i) cash;
- ii) a bank guarantee;
- iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority;
- (iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya, from a reputable source, and an eligible country.

**19.3** If an unconditional bank guarantee is issued by a bank located outside Kenya, the

issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.

**19.4** If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by Kenya Wildlife Service as non-responsive.

**19.5** If a Tender Security is specified pursuant to ITT 19.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the TDS. Kenya Wildlife Service shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.

**19.6** The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security, and any other documents required in the TDS.

**19.7** The Tender Security may be forfeited or the Tender-Securing Declaration executed:

- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension there to provided by the Tenderer; or
- b) if the successful Tenderer fails to: -
  - i) sign the Contract in accordance with ITT47; or
  - ii) Furnish a Performance Security and if required in the TDS, and any other documents required in the TDS.

**19.8** Where tender securing declaration is executed, Kenya Wildlife Service shall recommend to the PPRA to debar the Tenderer from participating in public procurement as provided in the law.

**19.9** The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.

**19.10** A tenderer shall not issue a tender security to guarantee itself.

## **20.0 Format and Signing of Tender**

**20.1** The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted

in accordance with ITT 13, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

- 20.2** Tenderers shall mark as "CONFIDENTIAL" all information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 20.3** The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 20.4** Incase the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 20.5** Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

## **D. SUBMISSION AND OPENING OF TENDERS**

### **21.0 Sealing and Marking of Tenders**

- 21.1** The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to Kenya Wildlife Service and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
  - a) in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and
  - b) in an envelope or package or container marked "COPIES", all required copies of the Tender; and
  - c) if alternative Tenders are permitted in accordance with ITT 13, and if relevant:
    - i) in an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", the alternative Tender; and
    - ii) in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) bear the name and address of Kenya Wildlife Service,
- b) bear the name and address of the Tenderer; and

c) bear the name and Reference number of the Tender.

**21.2** If an envelope or package or container is not sealed and marked as required, Kenya Wildlife Service will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

## **22.0 Deadline for Submission of Tenders**

**22.1** Tenders must be received by Kenya Wildlife Service at the address specified in the **TDS** and not later than the date and time also specified in the **TDS**. When so specified in the **TDS**.

**22.2** Kenya Wildlife Service may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of Kenya Wildlife Service and Tenderers previously subject to the deadline shall there after be subject to the deadline as extended.

## **23.0 Late Tenders**

Kenya Wildlife Service shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT 22. Any Tender received by Kenya Wildlife Service after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## **24.0 Withdrawal, Substitution, and Modification of Tenders**

**24.1** A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- a) prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and
- b) Received by Kenya Wildlife Service prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

**24.2** Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the Tenderers.

**24.3** No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

## **25. Tender Opening**

**25.1** Except in the cases specified in ITT 23 and ITT 24.2, Kenya Wildlife Service shall

publicly open and read out all Tenders received by the deadline, at the date, time and place specified **in the TDS**, in the presence of Tenderers' designated representatives who chooses to attend.

- 252 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the corresponding Tender shall not be opened but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.
- 253 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 254 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at tender opening.
- 255 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as Kenya Wildlife Service may consider appropriate.
- 256 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bill of Quantities (to be decided on by the tender opening committee) are to be initialed by the members of the tender opening committee attending the opening.
- 257 At the Tender Opening, Kenya Wildlife Service shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 23.1).
- 258 Kenya Wildlife Service shall prepare minutes of the Tender Opening that shall include, as a minimum: -
- a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
  - b) The Tender Price, per lot (contract) if applicable, including any discounts;
  - c) Any alternative Tenders;
  - d) Any presence or absence of a Tender Security, if new as required;
  - e) Number of pages of each tender document submitted.
- 259 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall

be distributed to all Tenderers.

## **E. EVALUATION AND COMPARISON OF TENDERS**

### **26 Confidentiality**

- 26.1 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 43.
- 26.2 Any effort by a Tenderer to influence Kenya Wildlife Service in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.
- 26.3 Notwithstanding ITT 26.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact Kenya Wildlife Service on any matter related to the tendering process, it shall do so in writing.

### **27.0 Clarification of Tenders**

- 27.1 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, Kenya Wildlife Service may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by Kenya Wildlife Service shall not be considered. Kenya Wildlife Service request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by Kenya Wildlife Service in the evaluation of the tenders, in accordance with ITT 31.
- 27.2 If a tenderer does not provide clarifications of its tender by the date and time set in Kenya Wildlife Service request for clarification, its Tender may be rejected.

### **28.0 Deviations, Reservations, and Omissions**

- 28.1 During the evaluation of tenders, the following definitions apply: -
- a) "*Deviation*" is a departure from the requirements specified in the tender document;
  - b) "*Reservation*" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tender document; and
  - c) "*Omission*" is the failure to submit part or all of the information or documentation required in the Tender document.

### **29.0 Determination of Responsiveness**

- 29.1 Kenya Wildlife Service determination of a Tender's responsiveness is to be based on the contents of the tender itself, as defined in ITT 11.
- 29.2 A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:
- a) Affect in any substantial way the scope, quality, or performance of the Works specified

in the Contract;

- b) limit in any substantial way, inconsistent with the tender document, Kenya Wildlife Service rights or the tenderer's obligations under the proposed contract;
- c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.

**29.3** Kenya Wildlife Service shall examine the technical aspects of the tender submitted in accordance with ITT 16, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.

**29.4** If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by Kenya Wildlife Service and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

### **30.0 Non-material Non-conformities**

**30.1** Provided that a tender is substantially responsive, Kenya Wildlife Service may waive any non-conformities in the tender.

**30.2** Provided that a Tender is substantially responsive, Kenya Wildlife Service may request that the tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformities in the tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to comply with the request may result in the rejection of its tender.

**30.3** Provided that a tender is substantially responsive, Kenya Wildlife Service shall rectify quantifiable non-material non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the TDS.

### **31.0 Arithmetical Errors**

**31.1** The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

**31.2** Provided that the Tender is substantially responsive, Kenya Wildlife Service shall handle errors on the following basis: -

- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
- b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, and subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the

tender as non-responsive. and

c) if there is a discrepancy between words and figures, the amount in words shall prevail

**31.3** Tenderers shall be notified of any error detected in their bid during the notification of award.

### **32.0 Conversion to Single Currency**

For evaluation and comparison purposes, the currency (ies) of the Tender shall be converted in to a single currency as specified in the **TDS**.

### **33.0 Margin of Preference and Reservations**

**33.1** A margin of preference may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.

**33.2** A margin of preference shall not be allowed unless it is specified so in the **TDS**.

**33.3** Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 33.4.

**33.4** Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the **TDS**, Kenya Wildlife Service shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

### **34.0 Nominated Subcontractors**

**34.1** Unless otherwise stated in the **TDS**, Kenya Wildlife Service does not intend to execute any specific elements of the Works by subcontractors selected/nominated by Kenya Wildlife Service. In case Kenya Wildlife Service nominates a subcontractor, the subcontract agreement shall be signed by the Subcontractor and Kenya Wildlife Service. The main contract shall specify the working arrangements between the main contractor and the nominated subcontractor.

**34.2** Tenderers may propose sub-contracting up to the percentage of total value of contracts or the volume of works as specified in the **TDS**. Subcontractors proposed by the Tenderer shall be fully qualified for their parts of the Works.

**34.3** Domestic subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works unless their specialized parts of the Works were previously designated so by Kenya Wildlife Service in the **TDS** a scan be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Tenderer may be added to the

qualifications of the Tenderer.

### **35. Evaluation of Tenders**

- 35.1 Kenya Wildlife Service shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies Kenya Wildlife Service shall determine the Lowest Evaluated Tender in accordance with ITT 40.
- 35.2 To evaluate a Tender, Kenya Wildlife Service shall consider the following:
- a) Price adjustment in accordance with ITT 31.1 (iii); excluding provisional sums and contingencies, if any, but including Daywork items, where priced competitively;
  - b) Price adjustment due to discounts offered in accordance with ITT 14.4;
  - c) Converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 32;
  - d) Price adjustment due to quantifiable non material non-conformities in accordance with ITT 30.3; and
  - e) Any additional evaluation factors specified in the **TDS** and Section III, Evaluation and Qualification Criteria.
- 35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.
- 35.4 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 35.2. The methodology to determine the lowest evaluated tenderer or tenderers base done lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

### **36.o Comparison of tenders**

Kenya Wildlife Service shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

### **37.o Abnormally low tenders and abnormally high tenders**

#### **Abnormally Low Tenders**

- 37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract

for the offered Tender Price or that genuine competition between Tenderers is compromised.

- 37.2** In the event of identification of a potentially Abnormally Low Tender, Kenya Wildlife Service shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.
- 37.3** After evaluation of the price analyses, in the event that Kenya Wildlife Service determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, Kenya Wildlife Service shall reject the Tender.

### **Abnormally high tenders**

- 37.4** An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that Kenya Wildlife Service is concerned that it (Kenya Wildlife Service) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

- 37.5** In case of an abnormally high price, Kenya Wildlife Service shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. Kenya Wildlife Service may also seek written clarification from the tenderer on the reason for the high tender price. Kenya Wildlife Service shall proceed as follows:

- i) If the tender price is abnormally high based on wrong estimated cost of the contract, Kenya Wildlife Service may accept or not accept the tender depending on Kenya Wildlife Service budget considerations.
- ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, Kenya Wildlife Service shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

- 37.6** If Kenya Wildlife Service determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), Kenya Wildlife Service shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

### **38.0 Unbalanced and/ or front-loaded tenders**

- 38.1** If in Kenya Wildlife Service opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or frontloaded, Kenya Wildlife Service may require the Tenderer to provide written clarifications. Clarifications may include

detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

**38.2** After the evaluation of the information and detailed price analyses presented by the Tenderer, Kenya Wildlife Service may as appropriate:

- a) Accept the Tender;
- b) Require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price;
- c) Agree on a payment mode that eliminates the inherent risk of Kenya Wildlife Service paying too much for undelivered works;
- d) Reject the Tender,

### **39.0 Qualifications of the tenderer**

**39.1** Kenya Wildlife Service shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

**39.2** The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 17. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Sub-contractors if permitted in the Tender document), or any other firm(s) different from the Tenderer.

**39.3** An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event, Kenya Wildlife Service shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

### **40.0 Lowest evaluated tender**

Having compared the evaluated prices of Tenders, Kenya Wildlife Service shall determine the Lowest Evaluated Tender. The Lowest Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined to be:

- a) Most responsive to the Tender document; and
- b) The lowest evaluated price.

### **41.0 Kenya Wildlife Service right to accept any tender, and to reject any or all tenders.**

Kenya Wildlife Service reserves the right to accept or reject any Tender and to annul the Tender process and reject all Tenders at any time prior to Contract Award, without there by incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the

Tenderers.

## **F. AWARD OF CONTRACT**

### **42.0 Award criteria**

Kenya Wildlife Service shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

### **43.0 Notice of Intention to Enter into a Contract/Notification of Award**

Upon award of the contract and Prior to the expiry of the Tender Validity Period Kenya Wildlife Service shall issue a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

- a) the name and address of the Tenderer submitting the successful tender;
- b) the Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
- d) the expiry date of the Standstill Period; and
- e) instructions on how to request a debriefing and/ or submit a complaint during the stand still period;

### **44.0 Stand still Period**

**44.1** The Contract shall not be signed earlier than the expiry of a Stand still Period of Fourteen (14) days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

**44.2** Where a Standstill Period applies, it shall commence when Kenya Wildlife Service has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer

### **45.0 Debriefing by Kenya Wildlife Service**

**45.1** On receipt of Kenya Wildlife Service Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to Kenya Wildlife Service for a debriefing on specific issues or concerns regarding their tender. Kenya Wildlife Service shall provide the debriefing within five days of receipt of the request.

**45.2** Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

### **46.0 Letter of Award**

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed with in the Standstill Period, Kenya Wildlife Service shall transmit the Letter of Award to the

successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

#### **47.0 Signing of Contract**

- 47.1** Upon the expiry of the fourteen days of the Notification of Intention to enter in to contract and upon the parties meeting their respective statutory requirements, Kenya Wildlife Service shall send the successful Tenderer the Contract Agreement.
- 47.2** Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to ), Kenya Wildlife Service
- 47.3** The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

#### **48.0 Performance Security**

- 48.1** Within twenty-one (21) days of the receipt of the Letter of Award from Kenya Wildlife Service, the successful Tenderer shall furnish the Performance Security and, any other documents required in the **TDS**, in accordance with the General Conditions of Contract, subject to ITT 38.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to ), Kenya Wildlife Service. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless Kenya Wildlife Service S has agreed in writing that a correspondent bank is not required.
- 48.2** Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the **TDS** or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event Kenya Wildlife Service may award the Contract to the Tenderer offering the next Best Evaluated Tender.
- 48.3** Performance security shall not be required for contracts estimated to cost less than the amount specified in the Regulations.

#### **49.0 Publication of Procurement Contract**

Within fourteen days after signing the contract, Kenya Wildlife Service shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

- a) name and address of the Procuring Entity;
- b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Tenderer, the final total contract price, the contract duration;
- d) dates of signature, commencement and completion of contract;
- e) names of all Tenderers that submitted Tenders, and their Tender prices as readout at Tender opening.

**50.0 Procurement related Complaints and Administrative Review**

50.1 The procedures for making Procurement-related Complaints are as specified in the **TDS**.

50.2 A request for administrative review shall be made in the form provided under contract forms.

## **SECTION II - TENDER DATA SHEET (TDS)**

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>A. General</b>	
ITT 1.1	<p>The name of the contract is <b>PROPOSED CONSTRUCTION OF 28 KM LARIAK FOREST (KAPSIGIRIO - KERANDI - GITUAMBA) ELCTRIC FENCE AND ASSOCIATED WORKS IN LAIKIPIA COUNTY.</b></p> <p>The reference number of the Contract is KWS/ONT/B&amp;F/58/2023-2024</p>
ITT 2.4	<p>The Information made available on competing firms is as follows: <b>NONE.</b></p>
ITT 2.4	<p>The firms that provided consulting services for the contract being tendered for are:</p> <p><b>NOT APPLICABLE.</b></p>
ITT 3.1	<p>Maximum number of members in the Joint Venture (JV) shall be: <b>NOT APPLICABLE/ALLOWED</b></p>
<b>B. Contents of Tender Document</b>	
ITT 7.1	<p>(i) The Tenderer will submit any request for clarifications in writing at the Address:</p> <p style="padding-left: 40px;">Director General Kenya Wildlife Service P.O BOX 40241- 00100 NAIROBI <a href="mailto:hps@kws.go.ke">hps@kws.go.ke</a></p> <p>To Kenya Wildlife Service not later than <b>5days</b> prior to the deadline for submission of Tender</p> <p>(ii) Kenya Wildlife Service shall publish its response at the website <a href="http://www.kws.go.ke">www.kws.go.ke</a></p>
ITT 7.2	<p>(A) A pre – Bid meeting shall not take place</p> <p>(B) A Site Visit conducted by the Employer shall be organized:</p> <p><b>Date:</b> 28<sup>th</sup> November 2023. <b>Time:</b> 9.00AM</p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<b>Place:</b> Forest Managers Office, Lariak Forest Station
ITT 7.3	The Tenderer will submit any questions in writing, to reach Kenya Wildlife Service not later than <b>3 days</b> prior to pre-site meeting.
ITT 7.5	The Minutes of the pre-site meeting will be published on <a href="http://www.kws.go.ke">www.kws.go.ke</a> N/A
<b>C. Preparation of Tenders</b>	
ITT 11.1 (h)	<p>The Tender shall submit the following additional documents in its tender.</p> <ul style="list-style-type: none"> <li>i) Copy of Certificate of Incorporation/Business Registration name under the Companies Act. or Partnership Deed duly Certified by a Commissioner of Oaths</li> <li>(ii) A current copy of Form CR12 for limited companies issued by the Registrar of Companies that indicates the ownership of the company (not older than 12 months, as at the time of the tender Closing). Form CR12 shall be duly certified by the Advocate. This should be provided with Identification documents of all directors listed on the CR12 (ID or Passport).</li> <li>(iii) Copy of a valid Tax Compliance Certificate from Kenya Revenue Authority (KRA) as at the time of tender opening/closing.</li> <li>(iv) Valid current annual NCA as general building or Civil Contractor practising licence for either <b>category NCA 6 and 5</b> respectively or above and specialist contractor (Electrical) <b>category NCA 7</b> or above</li> <li>(v) Valid Single Business permit for respective County Government.</li> <li>(vi) All the pages of bid document must be book or tape bound.</li> <li>(vii) Submission of samples of all materials as per the specifications.</li> <li>(viii) Duly signed filled and stamped form of tender.</li> <li>(ix) Valid AGPO certificate</li> </ul>
ITT 12.1	<ul style="list-style-type: none"> <li>i) All alterations made on the Form of tender and Schedules in the tender document must be signed by authorized person(s).</li> <li>ii) All the pages of the bid document <b>MUST</b> be chronologically serialized. Tenderers who fail to comply with this criterion will be disqualified</li> </ul>
ITT 13.1	Alternative <b>Tenders SHALL NOT</b> be considered.
ITT 13.2	Alternative times for completion <b>SHALL NOT be permitted</b> .
ITT 13.4	Alternative technical solutions <b>SHALL NOT</b> be permitted.
ITT 14.1	The price estimate of works Ksh <b>23,800,000.00</b>

Reference to ITC Clause	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
ITT 14.5	The prices quoted by the Tenderer shall <b>be fixed</b> .
ITT 15.2 (a)	Foreign currency requirements <b>not allowed</b> .
ITT 18.1	The Tender validity period shall be Hundred and Twenty-Six ( <b>126</b> ) <b>days</b> .
ITT 18.2	(a) The Number of days beyond the expiry of the initial tender validity period will be 30 days.  (b) The Tender price <b>shall not be adjustable</b> .
ITT 19.1	A Tender security <b>shall be required</b>  A Tender Security Declaration shall be required.  Tender Security is not <b>applicable</b>
Reference to ITT Clause	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
ITT 20.1	The Tenderers <b>MUST</b> submit Nil copy of the bid document in addition to the original.
ITT 20.3	The written confirmation of authorization to sign on behalf of the Tenderer shall be Written Power of Attorney.
ITT 20.5	Any inter-lineation, erasures, or overwriting <b>MUST</b> be signed or initiated by the person authorized to sign the Tender.
<b>D. Submission and Opening of Tenders</b>	
ITT 21.2	A tender package or Container that cannot fit in the tender box <b>SHALL</b> be received and registered at the Kenya Wildlife Service Supply Chain Office.
ITT 22.1	For <u>Tender submission purposes</u> only, the address is:  Director General Kenya Wildlife Service P.O BOX 40241- 00100 NAIROBI.  Physical address for: -  i. Hand Delivery Shall be deposited in the Tender Box located at, Kenya Wildlife Service Headquarters, Main Reception, along Lang'ata Road  ii. Courier delivery shall be registered at the office of Head Supply

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p>Chain Management located at Simba Court 1<sup>st</sup> Floor Kenya Wildlife Service Headquarters along Lang'ata Road.</p> <p>Date and time for submission of Tenders 1200hrs on or before <b>7<sup>th</sup> December 2023</b></p> <p>Tenders <b>shall not be submitted</b> electronically.</p>
ITT 25.1	<p>The Tender opening <i>shall</i> take place as follows:</p> <p>Venue: Kenya Wildlife Service, Veterinary Conference Room, Kenya Wildlife Service Headquarters, located along Lang'ata Road</p> <p>Date: <b>As stipulated on tender notice</b></p> <p>Time: <b>As stipulated in tender notice</b></p>
ITT 25.1	Tenderers are <b>Not Allowed</b> to submit Tenders electronically
ITT 28.1 (C)	Tenderers shall comply with all the instructions of the tender and submit a complete set of tender documents as per <b>ITT 29.2</b> and ensure that all the forms required and Bill of quantities are properly filled for completeness.
<b>E. Evaluation, and Comparison of Tenders</b>	
ITT 30.3	The adjustment shall be based on the average price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, Kenya Wildlife Service shall use its lowest estimate.
ITT 31.2 (b)	The error shall be considered a major deviation that leads to disqualification of the tender if the percentage of the error (Error over the tender price quoted) <b>is more than 0%.</b>
TT 32.1	The currency that shall be used for Tender evaluation and comparison purposes shall be in Kenya Shillings.
ITT 33.2	A margin of preference shall not apply.
ITT 33.4	The invitation to tender is for interested and eligible <b>YOUTH</b> tenderers
ITT 34.1	At this time, Kenya Wildlife Service does not intend to execute certain specific parts of the Works by subcontractors selected in advance.
ITT 34.2	<b>NO</b> Subcontracting shall allowed by Kenya Wildlife Service.
ITT 34.3	Proposal of permittance of specialized Sub contractors by the Tenderers <b>NOT APPLICABLE.</b>
ITT 35.2 (e)	<p>Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.</p> <p><b>The submitted document MUST be book or tape bound.</b></p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 48.1	<p>Within twenty-one (21) Calendar days of the receipt of the Letter of Award, the successful Tenderer shall (a) furnish KWS with the Performance Security of <b>1%</b></p>
ITT 48.2	<p>Additional requirements are: as provided</p> <ul style="list-style-type: none"> <li>• An Acceptance Letter within fourteen (14) days from the date of notification of award.</li> <li>• An irrevocable and unconditional Performance Bank Guarantee equivalent to One Percent (1%) of the contract price awarded as per the format stipulated in the tender document;</li> <li>• Contractors All Risk Policy and other relevant insurance policies necessary during the execution of the works;</li> <li>• Programme of works showing the general methods, order timing and sequence for all activities of the works;</li> <li>• Detailed Cash Flow projection for the entire contract period.</li> <li>• Work methodology</li> </ul>
ITT 50.1	<p>The procedures for making a Procurement-related Complaint are available from the PPRA website <a href="mailto:info@ppra.go.ke">info@ppra.go.ke</a> or <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a>. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email) to:</p> <p>For the attention: <b>Leah Naisoi</b></p> <p>Title/position: <b>Ag. Senior Assistant Director Supply Chain Management</b></p> <p>Procuring Entity: <b>Kenya Wildlife Service</b></p> <p>Email address: <a href="mailto:hps@kws.go.ke">hps@kws.go.ke</a></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <p>(i) The terms of the Tender Documents; and</p> <p>(ii) Kenya Wildlife Service decision to award the contract.</p>

## **SECTION III - EVALUATION AND QUALIFICATION CRITERIA**

### **1.0 GENERAL PROVISIONS**

- 1.1** This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms.
- 1.2** Kenya Wildlife Service shall use the Standard Tender Evaluation Document for Goods and Works for evaluating Tenders.
- 1.3** Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate it in Kenya Shilling.

### **1.4 EVALUATION AND CONTRACT AWARD CRITERIA**

Kenya Wildlife Service shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

### **2.0 PRELIMINARY EXAMINATION FOR DETERMINATION**

#### **RESPONSIVENESS.**

Kenya Wildlife Service will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

S/ N	Mandatory Eligibility criteria	responsiveness	
		Yes	No
1	Copy of Certificate of Incorporation/Business Registration name under the Companies Act or Partnership Deed duly Certified by commissioner of oath.		
2	A current copy of Form CR12 for limited companies issued by the Registrar of Companies that indicates the ownership of the company (not older than 12 months, as at the time of the tender Closing). Form CR12 shall be duly certified by the Advocate. This should be provided with Identification documents of all directors listed on the CR12 (ID or Passport).		
3	Copy of a valid Tax Compliance Certificate from Kenya Revenue Authority (KRA) as at the time of tender opening/closing.		
4	Valid current annual NCA as general building or Civil Contractor practising licence for either <b>category NCA 6 and 5</b> respectively or above and specialist contractor (Electrical) <b>category NCA 7</b> or above		
5	Valid single business permit for respective county Government		
6	All the pages of bid document must be book or tape bound		
7	Submission of samples of all materials as per the specifications(posts 1meter long, wire 2meters long and remaining samples to be submitted 1 pc each)		
8	Duly filled signed and stamped form of tender.		
9	The written confirmation of authorization to sign on behave of the tenderer shall consist of a power of attorney		
10	The tender is valid for the required number of days, 126 days		
11	Tenderes shall provide an original form of Tender securing declaration duly filled ,signed stamped and dated .The form of tender decleration securing declaration is provided in the tender documents		
12	All the pages of bid document must be chronologically serialized.		
13	Duly complete, signed and staped, confidential business questionnaire		
14	Duly complete signed and stamped self declarations of the tenderer form (SD1)		
15	Duly complete signed and stamped self declaration indicating that the person/tenderer will not engange in corrupt or fraudulent practice form(SD2)		

S/ N	Mandatory Eligibility criteria	responsiveness	
		Yes	No
16	Duly prepared signed and stamped form of tender in Company's letter head.		
17	Duly complete signed and stamped declaration and commitment code of ethics form.		
18	Duly complete signed and stamped form CON 2		
19	Valid AGPO certificate		

**Note.** The bidder who does not qualify at preliminary examination will not proceed to the next Stage.

### 3.0 TENDER EVALUATION (ITT 35)

Price evaluation: in addition to the criteria listed in ITT 35.2 (a) – (d) the following criteria shall apply:

- i) **Alternative Completion Times**, if permitted under ITT13.2, will be evaluated as follows: **Not applicable.**
- ii) Alternative Technical Solutions for specified parts of the Works, if permitted under ITT 13.4, will be evaluated as follows: **Not applicable.**
- iii) Other Criteria; if permitted under ITT 35.2(j): **Not applicable.**

### 4.0 MULTIPLE CONTRACTS

- 4.1 Multiple contracts will be permitted in accordance with ITT 35.4. Tenderers are evaluated on basis of Lots and a lowest evaluated tenderer identified for each Lot. Kenya Wildlife Service will select one Option of the two Options listed below for award of Contracts.

#### **OPTION 1**

- i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.
- ii) If a tenderer wins more than one Lot, the tender will be awarded a contract for all won Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots. The tenderer will be awarded only the combinations for which the tenderer qualifies and the others will be considered for award to second lowest the tenderers.

iii)

## **OPTION2**

KWS will consider all possible combinations of won Lots [contract(s)] and determine the combination with the lowest evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the combination provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots.

### **5.0 ALTERNATIVE TENDERS (ITT 13.1)**

#### **Alternative Tenders (ITT 13.1)**

*An alternative if permitted under ITT 3.1, will be evaluated as follows:*

Kenya Wildlife Service shall consider Tenders offered for alternatives as specified in Part 2 - Works requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the procuring Entity.

### **6.0 MARGIN OF PREFERENCE (NOT APPLICABLE)**

6.1 The TDS so specifies, Kenya Wildlife Service will grant a margin of preference of fifteen percent (15%) to be loaded on evaluated prices of the foreign tenderers, where the percentage of share holding of Kenyan citizens is less than fifty-one percent (51%).

6.2 Contractors shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by Kenya Wildlife Service, a particular contractor or group of contractor's qualifies for a margin of preference.

6.3 After Tenders have been received and reviewed by Kenya Wildlife Service, responsive Tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into the following groups:

6.4 *i) Group A:* tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of

6.4.1 Over fifty one percent (51%).

6.4.2 *Group B:* tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of

6.4.3 Less than fifty one percent (51%).

6.5 All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award of contract. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 6.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each tender from Group B. All tenders shall then be compared using new prices with added prices to Group B and the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected forward. If not, the lowest evaluated tender from Group B based on the first evaluation price shall be selected.

**7.0 Post qualification and Contract award (ITT 39), more specifically**

- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.
- b) At least 2 contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings 19.0 Million equivalent.
- c) Contractor's Representative and Key Personnel, which are specified as
  - i) Contractors key equipment listed on the table "Contractor's Equipment"

***Table 1 Contractors Equipment***

S/No	Details of Equipment required by the Tender	Minimum Number Required for the Contract Execution
1.	Lorries minimum capacity of 7 Tones or Equivalent	1
2.	Pick up truck 1 ton	1
3.	Tractor and trailer	1
4.	Mixer and Packer vibrator	1

5.	Power Saw	1
6.	Soil Auger	1

(ii) Other conditions depending on their seriousness.

a) **History of non-performing contracts:**

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non- performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last five years The required information shall be furnished in the appropriate form.

b) **Pending Litigation**

Financial position and prospective long-term profit ability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) **Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last  
Three (3) years All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or on going under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.



## QUALIFICATION FORM

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Documents To be Completed and Submitted by the Tenderer	For KWS Use (Qualification met or Not Met)
<b>A. PRELIMINARY EVALUATION CRITERIA</b>				
1.	Nationality	Nationality in accordance with ITT 3	<ul style="list-style-type: none"> <li>- <u>Form ELI-1.1.</u></li> <li>- Attach additional information;               <ul style="list-style-type: none"> <li>• Certified Copy of National Identification Card / Passport (Full clear copy showing all the required details)</li> <li>• A current copy of Form CR12 for limited companies issued by the Registrar of Companies that indicates the ownership of the company (not older than 12 months, as at the time of the tender Closing). Form CR12 shall be duly certified by a Commissioner for oaths. This should be provided with Identification documents of all directors listed on the CR12 (ID or Passport).</li> </ul> </li> </ul> <p><b>Note</b> All documents above shall be certified by a Commissioner for oaths must be signed, stamped and the date stipulated</p>	
2.	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by Kenya Revenue Authority in accordance with <u>ITT 11.1</u> (h) and 3.14.	Valid Tax Compliance Certificate (Must be valid as at the date of tender Closing / Opening)	
3.	Conflict of Interest	No conflicts of interest in accordance with <u>ITT 11.1</u> (h) and 3.3	Part A of <u>Form of Tender</u>	

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Documents To be Completed and Submitted by the Tenderer	For KWS Use (Qualification met orNot Met)
4.	PPRA Eligibility	Not having been declared ineligible by the PPRA as described in <u>ITT 11.1</u> (h and 3.7	Form SD1 of the Form of Tender,	
5.	History of Non-Performing Contracts	Non-performance of a contract did not occur as a result of contractor default in the last 3years.as per <u>ITT 11.1</u> (h)	Form CON-2	
6.	Suspension Based on Execution of Tender / Proposal Securing Declaration by the Procuring Entity	Not under suspension based on-execution of a Tender / Proposal Securing Declaration pursuant to ITT 19.9	<u>Form of Tender</u>	
7.	Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer.	<u>Form CON – 2</u>	
8.	Litigation History	No consistent history of court/arbitral award decisions against the Tenderer since last 3years.	<u>Form CON – 2</u>	
9.	Tender Security	<u>ITT 11.1</u> (h), ITT 15, ITT 19	Form of Tender Security  Provide original Tender Security in the format given. E-Tender securities are acceptable and shall be authenticated by the QR scanner	
10.	NCA practicing license	ITT 11.1 (h)	Current annual NCA Practicing License as general building or civil contractors for NCA Category 6 and 5 respectively or above, and specialist contractor(electrical) category NCA 7 OR above. Valid as at the date of tender opening.	

11.	Certificate of Incorporation	ITT 11.1 (h)	Provide a duly Certified Copy of Incorporation Certificate / Registration of Business Name or Partnership Deed	
12.	Power of Attorney	Form of Tender & ITT 20.3	Duly Executed Power of Attorney-	
13.	Form of Tender	ITT 17.2	<p>Properly fill, sign and stamp the Form of Tender on company's letter head.</p> <p>In addition the following forms should be properly filled, signed and stamped</p> <ul style="list-style-type: none"> <li>Confidential Business Questionnaire.</li> <li>Certificate of Independent Tender Determination.</li> <li>Self-Declaration of the Tenderer.</li> </ul>	
14.	Number of participation	As per Section I: Invitation To tender Clause (ii)	Tenderers will not be allowed to participate in more than one tender.	
15.	Completeness of the tender Document	ITT 11.1 (h)	Submit a complete set of tender documents as per the instruction to Tenderers and also ensure that all the forms BOQ and Schedules provided in the tender documents are properly filled for completeness	
16.	Serialization of Tender Document	ITT 11.1 (h) and ITT 20.1	<p>The Tenderer shall chronologically serialize all pages of the tender documents from cover page to the last page submitted in the format 1, 2, 3..... Following the same logical sequence.</p> <p>The submitted document <b>MUST</b> be book or tape bound</p>	
17.	Alterations on Form of tender and schedules	ITT 11.1 (h), and ITT 12	All alterations made on the Form of tender and schedules must be signed by authorized person(s).	
18.	Samples		Submit samples of all the materials as per the specifications	
19.	Site visit		Site visit certificate <b>not mandatory</b>	
<p>Note</p> <ul style="list-style-type: none"> <li>All the above requirements must Be Met by the tenderer in order to proceed to the Technical stage of the evaluation Process</li> <li>The certifications by the commissioner for oaths <b>MUST</b> be original bearing the original stamp, original signature and date of certification. The certifications should not be older than one month from date of tender opening.</li> <li>And all forms <b>MUST</b> be properly filled as required, signed and stamped.</li> </ul>				

3. Assessment of adequacy of Technical Proposal with Requirements

Kenya Wildlife Service will evaluate the Technical Proposals of all responsive tenders using the following criteria, sub-criteria, and assessment system for the evaluation of the Technical Proposals:

TECHNICAL EVALUATION CRITERIA Part A

Item No	Qualification Subject	Qualification Requirement	Documents To be Completed and Submitted by the Tenderer	For KWS Use (Qualification met or Not Met)
(i) Financial Evaluation Criteria				
1	Financial Capabilities	<p>The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as 20% of The Tender Sum equivalent for the subject contract(s) net of the Tenderer's other commitments.</p> <p>The Tenderers shall also demonstrate, to the satisfaction of Kenya Wildlife Service, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.</p> <p>i) The audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to Kenya Wildlife Service, for the last 3 years shall be submitted and must demonstrate the</p>	<p>Form FIN – 3.1, with attachments</p> <p>The tenderer to provide sources of funding meeting the requirements in the form of:-</p> <p>i) <b>Sources of Finance</b></p> <p>The tenderer to provide sources of funding meeting the requirements in the form of:-</p> <ul style="list-style-type: none"> <li>Line of Credit (The document shall be original, referenced to the tender and signed on the financial institution's letterhead containing addresses and contact information.)</li> <li>Bank Statement (Current last 6 Months from date of tender Opening/Closing and authenticated by the issuing financial institution)</li> <li>Unencumbered real assets (evidence in the form of duly certified (by registered valuer / realtors) copy of: - title deed, recent Search and valuation report within the last 6 months). The real asset should be in the name of the tenderer or at least one of the directors.</li> <li>Any other authorized credit facility accredited by relevant laws in Kenya (e.g. Youth fund, Sacco, Women Enterprise Fund etc.)</li> </ul> <p><b>The above sources of funding should either be cumulatively or individually equivalent to at least 20% of the Tender Sum, net of the Tenderer's other commitments.</b></p> <p>ii) <b>Financial Ratio</b></p> <p>Provide fully filled signed and stamped computations of the financial ratios in Form FIN – 3.1. The form to be signed by the auditor registered with ICPAK and one of the directors.</p> <p>Computation shall be made for the following ratios and marks awarded to each of the ratios:</p> <ul style="list-style-type: none"> <li>Liquidity Ratio (<math>\geq 1</math>)</li> <li>Return on Capital Employed (ROCE) <math>\geq 5\%</math></li> </ul> <p>iii) <b>Audited Accounts.</b></p>	Met/Not Met

		<p>current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.</p>	<p>a) Provide the above with all pages initialized and stamped by a practicing auditor registered with ICPAK and One of the directors.</p> <p>b) Auditor's practicing membership number must be indicated and a copy of the valid practicing license attached.</p>	
--	--	---	--	--

TECHNICAL EVALUATION CRITERIA Part A Cont'				
Item No.	Qualification Subject	Qualification Requirement	Documents To be Completed and Submitted by the Tenderer	For KWS Use (Qualification met or Not Met)
2	Average Annual Construction Turnover	Minimum average annual construction turnover of Kenya Shillings <u>59 Million</u> equivalent calculated as total certified payments received for contracts in progress and/or completed within the last 3 years, divided by 3 years	Properly fill, sign and stamp Form <u>FIN – 3.2</u> Attach duly certified copies of letters of Award and Completion Certificates/ Taking over Certificates for each project	Met/Not Met
<b>(ii) Past Experience Evaluation Criteria</b>				
1	General Construction Experience	Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last 3 years, starting 1 <sup>st</sup> January 2020.	Fully fill sign and stamp Form <u>EXP – 4.1</u> Attach duly certified copies of letters of Award and Completion Certificates/ Taking over Certificates for each project Experience	Met/Not Met
2	Specific Construction & Contract Management Experience	A minimum number of Three (3) similar contracts each of minimum value Kenya shillings <u>19 Million</u> equivalent that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1 <sup>st</sup> January 2020 and tender submission deadline 15 <sup>th</sup> December 2023	Fully fill sign and stamp Form <u>EXP – 4.2</u> Attach duly certified copies of letters of Award and Completion Certificates/ Taking over Certificates for each project	Met/Not Met

TECHNICAL EVALUATION CRITERIA Part A Cont'					
Item No.	Qualification Subject	Qualification Requirement	Documents To be Completed and Submitted by the Tenderer	For KWS Use (Qualification met or Not Met)	
(iii) Equipment Evaluation Criteria					
	Contractors key equipment	<p>The bidder shall provide the major plants and equipment's by filling Form EQU.</p> <p>Bidder must attach evidence of ownership, Lease agreement or any rent / hiring arrangements.</p>	<p>Properly fill, sign and stamp <u>Form EQU</u> and submit</p> <ul style="list-style-type: none"><li>For Owned Equipment-Provide proof of Ownership in form of copies of NTSA TIMs Account Print Out including Log books or</li><li>For Leased equipment - Provide Lease Agreements with copies of NTSA TIMs Account Print Out including Log books.</li><li>For Rented/Hired equipment-Provide Rent/Hire Agreements referenced to the tender with copies of NTSA TIMs Account Print Out including Log books.</li></ul> <p>For Hired equipment from Mechanical and Transport Department (MTD) of MoTIHUD-Provide a <b>VALID</b> letter of commitment from MTD referenced to the tender including list of specific equipment relevant to the scope of works. ... ..</p>		
The table below shall be the minimum Equipment requirement for this tender;					
Details of Equipment required by the Tender		Minimum Number Required for the ContractExecution	No. of equipment to be made available		Date of Arrival on Project (Days after commencement.)
Mobile Concrete Mixers and Vibrator		1			
Lorry minimum capacity 7 tones		1			
Pickup capacity 1 tone		1			
Tractor with trailer		1			
Soil auger		1			

TECHNICAL EVALUATION CRITERIA Part B						
(i) Contractors Representative/ Key Personnel						
S/No	Completeness and Responsiveness Criteria	Qualification Requirement	Key Staff			Max Scores
1	Contractor's Representative and Key Personnel	Duly filled signed and stamped Form <u>PER.1</u> and <u>PER. 2</u> in the format provided containing the following attachments: <ul style="list-style-type: none"><li>Curriculum Vitae (CVs) of the Proposed Key Staff</li><li>Duly stamped and signed certified copies of Academic/Professional certificates and relevant testimonials.</li></ul> Note The Certification Must be original with the date of certification stipulated	Duly fill sign and stamp Form Form <u>PER. 1</u> and <u>PER. 2</u> and attach:- <ul style="list-style-type: none"><li>copies of Academic/Professional certificates and relevant testimonials for each of the staff</li><li>Curriculum Vitae</li></ul>			3 Marks
			Site Agent meets criteria	Minimum Qualification Dip in Civil / Building Eng.	5 Marks	11 Marks
				Exp. 7Yrs and above	6 Marks	
			Site Foreman meets criteria	Minimum Dip in Civil/Building Eng.	4 Marks	9 Marks
				Exp.5Yrs and above	5 Marks	
			Site Surveyor meets criteria	Minimum Dip. in Survey and above	3 Marks	7 Marks
				Exp.3Yrs and above	4 Marks	
(ii) Work Methodology Evaluation Criteria						
2	Work Execution Programme	Mobilization Management Plan	Site Lay Out Plan		2 Marks	10 Marks
			Material Mobilization		2 Marks	
			Site Organization Chart		2 Marks	
			Equipment Management Plan		2 Marks	
			Personnel Mobilization		2 Marks	

TECHNICAL EVALUATION CRITERIA Part B						
(ii) Work Methodology Evaluation Criteria						
S/No	Completeness and Responsiveness Criteria	Qualification Requirement		Key Staff	Max Scores	
		Quality and Quantity Management	Methodology Statement	12 Marks	26 Marks	
			Proposals on Material Testing	8 Marks		
			Proposals on Measurements	4 Marks		
			Photographic Plan	2 Marks		
		Work Scheduling	Work Programme Charts	8 Marks	14 Marks	
			Cash Flow Plan	6 Marks		
		Work Safety Management	Traffic Control, and Accident Prevention	6 Marks	12 Marks	
			Workers Safety	6 Marks		
		Environmental and Social Management			8 Marks	8 Marks
		Score Summary				
Contractors Representative, Key personnel and Declaration					30 Marks	
Work Execution Programme					70 Marks	
Total Score					100 Marks	
NOTE: Tenderers who do not attain the set minimum required pass mark of 70% in the TECHNICAL EVALUATION CRITERIA part B (above) will be deemed non Responsive Any additional information pertaining to this tender that does not fit in the standard tender forms may be printed in indelible ink on the tenderer’s stationery on its letterhead as long as it does not distort the information therein						

## SECTION IV - TENDERING FORMS

### 1.0. QUALIFICATION FORMS

#### 1.1. FOREIGN TENDERERS 40%RULE

Pursuant to ITT 3.9, a foreign tenderer must complete this form to demonstrate that the tender fulfils this condition.

ITEM	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
A	Local Labor			
1				
2				
3				
4				
5				
B	Sub contracts from Local sources			
1				
2				
3				
4				
5				
C	Local materials			
1				
2				
3				
4				
5				
D	Use of Local Plant and Equipment			
1				
2				
3				
4				
5				
E	Add any other items			
1				
2				

ITEM	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
3				
4				
5				
6				
	TOTAL COST LOCAL CONTENT		XXXXX	
	PERCENTAGE OF CONTRACT PRICE			

## 1. FORM EQU: OF EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Tenderer.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

## 2. FORM PER -1

### Contractor's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

#### Contractor' Representative and Key Personnel

1.	<b>Title of position:</b>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	..... (insert the whole period (start and end dates) for which this position will be engaged)
	<b>Time commitment for this position:</b>	..... [insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	..... [insert the expected time schedule for this position (e.g. attach high level Gantt chart)]...
2.	<b>Title of position:</b> [.....]	
	<b>Name of candidate:</b> .....	
	<b>Duration of appointment:</b>	..... [insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment for this position:</b>	..... [insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	..... [insert the expected time schedule for this position (e.g. attach high level Gantt chart]
3.	<b>Title of position:</b> [.....]	
	<b>Name of candidate:</b> .....	
	<b>Duration of appointment:</b>	..... [insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment for this position:</b>	..... [insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	..... [insert the expected time schedule for this position (e.g. attach high level Gantt chart]

4.	Title of position: [_____]	
	Name of candidate:	
	Duration of appointment:	..... [insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	..... [insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	..... [insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
5.	Title of position: [insert title].....	
	Name of candidate	
	Duration of appointment:	..... insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	..... [insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	..... . [insert the expected time schedule for this position (e.g. attach high level Gantt chart)]

### 3. FORM PER - 2:

Resume and Declaration - Contractor's Representative and Key Personnel.

Name of Tenderer
------------------

Position [#1]: <i>[title of position from Form PER-1]</i>		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
Details	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present Procuring Entity:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>


## Declaration

I, the undersigned [.....], certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

Commitment	Details
Commitment to duration of contract:	<i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i>
Time commitment:	<i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

- (a) be taken into consideration during Tender evaluation;
- (b) result in my disqualification from participating in the Tender;
- (c) Result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel: *[insert name]*

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Tenderer:

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

**(NB- Attach certified (by advocate) copies of academic and professional certificates and other credentials)**

Name of Tenderer
------------------

Position [#1]: <i>[title of position from Form PER-1]</i>		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
Details		
	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present Procuring Entity:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

**Declaration**

I, the undersigned [.....], certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

Commitment	Details
Commitment to duration of contract:	<i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i>
Time commitment:	<i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

- (d) be taken into consideration during Tender evaluation;
- (e) result in my disqualification from participating in the Tender;
- (f) Result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel: *[insert name]*

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Tenderer:

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

**(NB- Attach certified (by Advocate) copies of academic and professional certificates and other credentials)**

Position [#2]: [ <b>SITE FOREMAN</b> ]		
Personnel information	Name: ----- -----	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
Details		
	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present Procuring Entity:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

## DECLARATION

I, the under signed [-----], certify that to the Lowest of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

Commitment	Details
Commitment to duration of contract:	<i>[insert period (start and end dates) for which the Site Foreman is available to work on this contract]</i>
Time commitment:	<i>[insert period (start and end dates) for which the Site Foreman is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

- a) be taken into consideration during Tender evaluation;
- b) result in my disqualification from participating in the Tender;
- c) Result in my dismissal from the contract.

Name of **Site Foreman**: *[insert name]*

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Tenderer:

Signature: \_\_ Date: (day month year):

**(NB- Attach certified (by Advocate) copies of academic and professional certificates and other credentials)**

Position [#3]: <b>[SITE SURVEYOR]</b>		
Personnel information	Name: ----- -----	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
Details		
	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	



in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

Commitment	Details
Commitment to duration of contract:	<i>[insert period (start and end dates) for which the site surveyor is available to work on this contract]</i>
Time commitment:	<i>[insert period (start and end dates) for which the site surveyor is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

- a) be taken into consideration during Tender evaluation;
- b) result in my disqualification from participating in the Tender;
- c) Result in my dismissal from the contract.

Name of Site Surveyor: *[insert name]*

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Tenderer:

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

**(NB- Attach certified (Advocate) copies of academic and professional certificates and other credentials)**

## 6. TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

## 6.1 FORM ELI -1.1 Tenderer Information

Fom

Date: \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Tenderer's name
In case of Joint Venture (JV), name of each member: <b>NOT APPLICABLE</b>
Tenderer's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Tenderer's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.6 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing: <ul style="list-style-type: none"><li>• Legal and financial autonomy</li><li>• Operation under commercial law<ul style="list-style-type: none"><li>• Establishing that the Tenderer is not under the supervision of Kenya Wildlife Service</li></ul></li></ul> 1. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## 6.2 FORM ELI-1.2

### Tenderer's JV Information Form

(To be completed for each member of Tenderer's JV)

Date: \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Tenderer's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
<p>1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 43.6. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 3.8.</p> <p>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.</p>

### 6.3 FORM CON – 2

#### Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name: **Not Applicable** \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

#### Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria

☐ Contract non-performance did not occur since 1<sup>st</sup> January \_\_\_\_\_ *[insert year]* specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.

☐ Contract(s) not performed since 1<sup>st</sup> January \_\_\_\_\_ *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1

Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	<p>Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i></p> <p>Name of Procuring Entity: <i>[insert full name]</i></p> <p>Address of Procuring Entity: <i>[insert street/city/country]</i></p> <p>Reason(s) for nonperformance: <i>[indicate main reason(s)]</i></p>	<i>[insert amount]</i>

#### Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria

☐ No pending litigation in accordance with Section III, Evaluation and Qualification

Criteria, Sub-Factor 2.3.

☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria <input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. <input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			

Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	<p>Contract Identification: [indicate complete contract name, number, and any other identification]</p> <p>Name of Procuring Entity: <i>[insert full name]</i></p> <p>Address of Procuring Entity: <i>[insert street/city/country]</i></p> <p>Matter in dispute: <i>[indicate main issues in dispute]</i></p> <p>Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i></p> <p>Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i></p>	<i>[insert amount]</i>

## 6.4 FORM FIN –3.1:

### Financial Situation and Performance

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name **Not Applicable** \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

#### 6.3.1 Financial Data

Type of Financial information in _____	Historic information for previous 5 years, _____ (amount in Kenya Shillings)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					
Financial Ratios	Current Ratio				.
	Liquidity Ratio				
	Return on Capital Employed (ROCE)				

Registered Auditor Name: \_\_\_\_\_

Director Name: \_\_\_\_\_

\_\_\_\_\_  
**Practising Number:** \_\_\_\_\_

**Stamp:** \_\_\_\_\_

**Signature & Stamp:** \_\_\_\_\_

\_\_\_\_\_  
**Date:** \_\_\_\_\_

**Signature &**

**Date:**

### 6.3.2 Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

No.	Source of finance	Amount (Kenya Shilling equivalent)
1.		
2.		
3.		
4.		
5.		
6.		

### Financial documents

The Tenderer and its parties shall provide copies of financial statements for 5 years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- Reflect the financial situation of the Tenderer, and not an affiliated entity (such as parent company or group member).
- Be independently audited or certified in accordance with local legislation.
- Be complete, including all notes to the financial statements.
- Correspond to accounting periods already completed and audited.

Attached are copies of financial statements <sup>1</sup> for the    years required above; and complying with the requirements

FORM FIN – 3.2:

### Average Annual Construction Turnover

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name **Not Applicable** \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

		Annual turnover data (construction only)	
Year	Amount Currency	Exchange rate	Kenya Shilling equivalent
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Construction Turnover *			

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

## 6.5 FORM FIN –3.3:

### Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cashflow demands of the subject contractor contracts as specified in Section III, Evaluation and Qualification Criteria.

Financial Resources		
No.	Sources of Financing	Amount (Kenya Shillings Equivalent)
1		
2		
3		
4		
5		
6		

Note

For Line of Credit attach a recent (**Not older than 6 months**) from

## 6.6 FORM FIN-3.4:

### Current Contract Commitments / Works in Progress

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Current Contract Commitments					
No.	Name of Contract	Procuring Entity's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month)]
1					
2					
3					
4					
5					

## 6.7 FORM EXP -4.1

### General Construction Experience

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Starting Year	Ending Year	Contract Identification	Role of Tenderer
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	

## 6.8 FORM EXP -4.2(a)

### Specific Construction and Contract Management Experience

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount				<b>Kenya Shilling</b>
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address:				
Telephone/fax number				
E-mail:				

## Specific Construction and Contract Management Experience

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name: \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount	Kenya Shilling			
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address:				
Telephone/fax number				
E-mail:				

## 6.9 FORM EXP -4.2(b)

### Construction Experience in Key Activities

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

Tenderer's JV Member Name: **Not Applicable**\_\_

Sub-contractor's Name<sup>2</sup> (as per ITT<sub>34</sub>): \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: \_

	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount	<b>Kenya Shilling</b>			
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				

	Information
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III.	

## 2 Activity No. Two

	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount				Kenya Shilling
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				

	<b>Information</b>		
Year 4			
Procuring Entity's Name:			
Address: Telephone/fax number E-mail:			

	<b>Information</b>
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	

3 .

.....

## OTHER FORMS

### 7. FORM OF TENDER

#### INSTRUCTIONS TO TENDERERS

- i) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.*
- ii) *All italicized text is to help Tenderer in preparing this form.*
- iii) *Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.*
- iv) *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*
  - *Tenderer's Eligibility-Confidential Business Questionnaire.*
  - *Certificate of Independent Tender Determination.*
  - *Self-Declaration of the Tenderer.*

**Date of this Tender submission:** *[insert date (as day, month and year) of Tender submission]* **Request for Tender No.:** *[insert identification]* **Name and description of Tender** *[Insert as per ITT]*

**To:** *[insert complete name of*

*Procuring Entity]*

Dear Sirs,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct and complete the Works and remedy any defects therein for the sum of Kenya Shillings *[[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 Engineer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Particular Conditions of Contract.
3. We agree to adhere by this tender until \_\_\_\_\_ *[Insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us. We further understand that you are not bound to accept the lowest or any tender you

may receive.

5. We, the undersigned, further declare that:

- i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 8;
- ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;
- iii) Tender-Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's Country in accordance with ITT 19.8;
- (iv) Conformity: We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: *[insert a brief description of the Works]*;
- (v) Tender Price: The total price of our Tender, excluding any discounts offered in item 1 above is: *[Insert one of the options below as appropriate]*
- (vi) **Option1**, in case of one lot: Total price is: *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]*; Or  
**Option2**, in case of multiple lots: **NOT APPLICABLE**
  - a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]*; and
  - b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]*;
- vii) Discounts: The discounts offered and the methodology for their application are:
- viii) The discounts offered are: *[Specify in detail each discount offered.]*
- ix) The exact method of calculations to determine the net price after application of discounts is shown below: *[Specify in detail the method that shall be used to apply the discounts]*;
- x) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1(as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- xi) Performance Security: If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;
- xii) One Tender Per Tender: We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture

member or as a subcontractor, and meet the requirements of ITT3.4, other than alternative Tenders submitted in accordance with ITT 13.3;

- xiii) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, Engineer, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.
- xiv) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state- owned enterprise or institution]/[We are a state-owned enterprise or institution but meet the requirements of ITT 3.7];*
- xv) **Commissions, gratuities, fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount

*(If none has been paid or is to be paid, indicate "none.")*

- xvi) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- xvii) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other. Tender that you may receive;
- xviii) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption;
- xix) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.
- xx) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from <http://ntnt.treasury.go.ke> during the procurement process and the execution of any resulting contract.

xxi) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:

- a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
- b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
- c) Self-Declaration of the Tenderer– to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
- d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in

**"Appendix 1- Fraud and Corruption"** attached to the

Form of Tender. **Name of the Tenderer:** *\*[insert complete*

*name of person signing the Tender]*

**Name of the person duly authorized to sign the Tender on behalf of the Tenderer:**

*\*\*[insert complete name of person duly authorized to sign the Tender]*

**Title of the person signing the Tender:** *[insert complete title of the person signing*

*the Tender]* **Signature of the person named above:** *[insert signature of person*

*whose name and capacity are shown above]* **Date signed** *[insert date of signing]* day

of *[insert month]*, *[insert year]*

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

### **Notes**

*\* In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer*

*\*\* Person signing the Tender shall have the power of attorney given by the Tenderer to be attached with the Tender,*

## A. TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Tenderer

Tender is instructed to complete the particulars required in this Form, Tenderer is further reminded that it is an offence to give false information on this Form.

#### i) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	

10	State if Tenders Company is listed in stock exchange, give name and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of state which stock exchange	
----	--	--

## General and Specific Details

ii) **Sole Proprietor**, provide the following details.

Name in full \_\_\_\_\_ Age \_\_\_\_\_  
Nationality \_\_\_\_\_ Country of Origin \_\_\_\_\_  
Citizenship \_\_\_\_\_

iii) **Partnership**, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(iv) **Registered Company**, provide the following details.

i) Private or public Company \_\_\_\_\_

ii) State the nominal and issued capital of the Company

Nominal Kenya Shillings  
(Equivalent).....

Issued Kenya Shillings  
(Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

(v) **DISCLOSURE OF INTEREST- Interest of the Firm in the Procuring Entity.**

i) Are there any person/persons in..... (*Name of Procuring Entity*) who has/have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

ii) **Conflict of Interest Disclosure**

	<b>Type of Conflict</b>	<b>Disclosure YES OR NO</b>	<b>If YES provide details of the relationship with Tenderer</b>
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract?		

## Certification

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name\_\_\_\_\_

Title or Designation\_\_\_\_\_

\_\_\_\_\_

*(Signature)*

\_\_\_\_\_

*(Date)*

\_\_\_\_\_

## **B. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION**

I, the undersigned, in submitting the accompanying Letter of Tender to the \_\_\_\_\_  
\_\_\_\_\_[Name of Procuring  
Entity] for: \_\_\_\_\_[Name and number of  
tender] in response to the request for tenders made by: \_\_\_\_\_[Name of Tenderer]  
do hereby make the following statements that I certify to be true and complete in every  
respect:

I certify, on behalf of \_\_\_\_\_[Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) has been requested to submit a Tender in response to this request for tenders;
  - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
  - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs (5) (a) or (5) (b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a) prices;
  - b) methods, factors or formulas used to calculate prices;
  - c) the intention or decision to submit, or not to submit, a tender; or
  - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5) (b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5) (b) above;

8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name\_\_\_\_\_

Title\_\_\_\_\_

Date\_\_\_\_\_

*[Name, title and signature of authorized agent of Tenderer and Date]*

## SELF-DECLARATION FORMS

**FORM SD<sub>1</sub>**

**SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.**

I, ....., of Post Office Box ..... being a resident of  
..... in the Republic of ..... do hereby make a  
statement as follows: -

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of ..... *(insert name of the Company)* who is a Bidder in respect of Tender No. ....  
..... for ..... *(insert tender title/description)* for .....  
*(insert name of the Procuring entity)* and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

.....

(Title)                      (Signature)                      (Date)

Bidder Official Stamp

## FORM SD<sub>2</sub>

### SELF DECLARATION THAT THE TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE

I, ..... of P. O. Box ..... being a resident of..... in the Republic of... \_\_\_\_..... .do hereby make a statement as follows:

-

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of ..... (*insert name of the Company*) who is a Bidder in respect of Tender No. .... for ..... (*insert tender title/description*) for ..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*insert name of the Procuring entity*) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*name of the procuring entity*)
4. THAT the aforesaid Bidder will not engage/has not engaged in any corrosive practice with other bidders participating in the subject tender
5. THAT what is deposed to herein above is true to the best of my knowledge, information and belief.

.....

..... (Title)

(Signature)

(Date)

Bidder's Official Stamp

## DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I ..... (person) on behalf of (*Name of the Business/Company/Firm*)

.....declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name ..... of ..... Authorized  
signatory.....

Sign.....  
.....

Position.....  
.....

Office ..... address.....

Telephone.....

E-  
mail.....  
.....

Name ..... of ..... the

Firm/Company.....

Date.....

(Company Seal/Rubber Stamp where

applicable) Witness

Name.....

Sign.....

Date.....

## **D. APPENDIX 1-FRAUD AND CORRUPTION**

*(Appendix 1 shall not be modified)*

### **1. Purpose**

- 1.1 The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

### **2. Requirements**

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.
- 2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:
  - 1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
  - 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
  - 3) Without limiting the generality of the subsection (1) and (2), the person shall be—
    - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
    - b) if a contract has already been entered into with the person, the contract shall be voidable;
  - 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
  - 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a

procurement—

- a) shall not take part in the procurement proceedings;
- b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
- c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a director indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

23 In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:

- i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v) "obstructive practice" is:
    - deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
    - acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:
- "fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- c) Rejects a proposal for award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
  - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
  - e) Requires that a clause be included in Tender documents and Request for Proposal

documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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*<sup>1</sup>For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.*

*<sup>2</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

## **FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]**

**Beneficiary:** \_\_\_\_\_

**Request for Tenders No:**

\_\_\_\_\_

**Date:** \_\_\_\_\_

**TENDER GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** \_\_\_\_\_

1. We have been informed that \_\_\_\_\_ (here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called "the Tender") for the execution of \_\_\_\_\_ under Request for Tenders No.

("the ITT").

2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_ (\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
  - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
  - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

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*[signature (s)]*

## FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: \_\_\_\_\_

1. Whereas ..... [*Name of the tenderer*] (hereinafter called “the tenderer”) has submitted its tender dated ..... [*Date of submission of tender*] for the ..... [*Name and/or description of the tender*] (hereinafter called “the Tender”) for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ (“the ITT”).
2. KNOW ALL PEOPLE by these presents that WE ..... of ..... [**Name of Insurance Company**] having our registered office at ..... (hereinafter called “the Guarantor”), are bound unto ..... [*Name of Procuring Entity*] (hereinafter called “the Procuring Entity”) in the sum of ..... (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
  - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
  - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (“ITT”) of the Procuring Entity's Tendering document.

then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the

occurrence of any of the above events, specifying which event(s) has occurred.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

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*[Date]*

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*[Signature of the Guarantor]*

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*[Witness]*

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*[Seal]*

## **FORM OF TENDER-SECURING DECLARATION**

[The Bidder shall complete this Form in accordance with the instructions indicated]

Date:..... *[Insert date (as day, month and year) of Tender Submission]*

Tender No.:..... *[Insert number of tendering process]*

To:..... *[Insert complete name of Purchaser]* I/We, the undersigned, declare

that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we—(a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
  - a) our receipt of a copy of your notification of the name of the successful Tenderer; or
  - b) thirty days after the expiration of our Tender.
4. I/We understand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:.....

.. Capacity / title (director or partner or sole proprietor, etc.)

.....

Name:.....

Duly authorized to sign the bid for and on behalf of: *[insert*

*complete name of Tenderer]* Dated on..... day

of..... *[Insert date of signing]*

Seal or stamp

## Appendix to Tender

### Schedule of Currency requirements

Summary of currencies of the Tender for \_\_\_\_\_ *[insert name of Section of the Works]*

<b><i>Name of currency</i></b>	<b><i>Amounts payable</i></b>
Local currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	
Provisional sums expressed in local currency _____ _____	[To be entered by the Procuring Entity]

## 5. TECHNICAL PROPOSAL

### WORK EXECUTION PROGRAMME

Give a brief description of how you plan to carry out the works within the contract period. The Works Execution Programme should include all relevant information to the project. The information given should be clear, not flawed description and compliance to standard and special specification.

Note: Works Execution programme is different from form “programme of works referred in FIDIC and Standard Specification for Roads and Bridge Construction. The said “programme of works” is but part of Works Execution Programme (WEP). The WEP will be used hand in hand with Supervision Check-list Manual and the Supervision Check-list sheet documents may be obtained electronically from the Website [www.krb.go.ke](http://www.krb.go.ke) for evaluation of the contractors’ performance and scoring during works execution. .

The Contents of Works Execution Programme shall include:

#### 1.1 General information

##### a) Project data

Project name, employer, implementing agency contract period, date of completion, defects liability period, date of submission of Works Execution Programme,

##### b) Scopes of works

A brief description of the project which includes major work items

#### 1.2 Mobilization Schedule

Site office Plan and site organization chart, Material mobilization plan Personnel management plan Equipment management plan

Note:

#### 1.3 Work execution schedule

##### a) Signed Programme of works

##### b) Signed cash flow plan during the contract period

It is desirable that work execution schedule includes time frame of each activity such as in bar chart format.

#### 1.4 Quality and Quantity Management

##### • Method statement

This includes Work procedures, order and methods for execution.

- Proposal on material testing.
- Proposal on measurements
- Photograph plan

The bidder shall provide a photograph plan to record the progress and proof of quality control, measurement and any event that may arise

#### 1.5 Safety management plan

This includes but not limited compliance with safety rules and regulation, traffic control and detour plans, emergency contact list

1.6 Environmental and social management plan

When the negative impacts on third parties during the execution are predicted, the management and mitigation plans should be included in WEP.

Works Execution Programme to be submitted by the bidder shall not be less 3 pages and not more than five (5) pages covering all the above stated items



**PART II WORKS REQUIREMENTS**

## SECTION V- BILL OF QUANTITIES

### **PREAMBLES**

1. The method of measurement of completed work for payment shall be in accordance with British Standard specifications and the following abbreviations will be useful. .

Unit	Abbreviation	Unit	Abbreviation
cubic meter	m <sup>3</sup> or cu m	millimetre	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m <sup>2</sup> or sq m
lump sum	ls	square millimeter	mm <sup>2</sup> or sq mm
meter	m	week	wk
metric ton	t	Number	No.
Linares Metres	Lm	Pieces	Pc
Pairs	Prs	British Standard specification published by British standard institution, 2 pack street London W, 1 London	B.S
Measured separately	M.S		
As before described	a.b.s		
Whole of preceding description except as qualified in the description in which it occurs	Ditto		

2. The Site is situated at Lariak Forest (Kapsigirio - Kerandi - Gituamba) in Laikipia West Sub -County It is approxima Thirty-Five (35) Kilometers from Rumuruti town. Access to the site shall be through Rumuruti Junction Karandi road,

Any damage caused to the surfaces of road shall be made good at the Contractor's expense. The Contractor shall visit the site and acquaint itself with its nature and position, the nature of the ground, substrata and other local conditions, positions of existing power, water and other services, access

roads or any other limitations that might affect his cost or progress. No claim for extras shall be considered on account of lack of knowledge in this respect.

3. The Contractor shall obtain the Engineers approval on the siting of all temporary buildings, spoil heaps, temporary access path, and storage of materials. The Contractor shall also obtain the Engineer approval and direction regarding the use of any materials found on the Site.
4. The drawings used in the preparation of these Bills of Quantities can be inspected at the offices of Kenya Wildlife Service or Kenya Wildlife Service Representative during normal working hours. Two sets of the Working Drawings shall be provided to the contractor but additional copies shall be provided at a cost to be determined by the Engineer.
5. The Contractor shall allow for the payment of all bank charges in connection with the procurement of Bank Guarantees and stamp charges in connection with this contract Agreement.
6. The Contractor shall carry out the various sections of the Works in such an order as the Engineer May direct. Kenya Wildlife Service reserves the right to occupy the Works by sections on completion provided that such occupation is considered to be both practical and reasonable and will not interfere with the Works. The Contractor shall allow any costs associated with such occupation.
7. The main Contractor will be fully responsible for paying his Sub-Contractor but Kenya Wildlife Service reserves the right in very exceptional circumstances to make such payments direct in the interests of the project where the completion thereof might be jeopardized by any dispute or vicariousness between the Contractor and the Sub- Contractor involve.
8. The Contractor shall complete and deliver the Works in the period inserted in the Form of Tender as his time for completion of the Works from the date for Possession, to be agreed with the Engineer. The Contract Period is presumed to have been calculated making due allowance for seasonal inclement weather conditions. No claim for extension of time due to the normal inclement weather for this area shall be entertained.
9. The Contractor shall, upon receiving instructions to proceed with the Works, draw up a Programme and Progress Chart setting out the order in which the Works are to be carried out, with the appropriate dates there of. This Chart shall be agreed with the Engineer and no deviation from the order set out in it will be permitted without the written consent of the Engineer. The Contractor will be responsible for arranging the above programme with all his sub-Contractors and Specialties. The Contractor shall allow in his rates

for carrying out this exercise, and for updating it as required.

10. The Contractor shall submit to the Engineer on the first day of each week or such longer period as the Engineer from time to time direct, a Progress Report and any information for the proceeding period, showing the progress during the period and the up-to-date cumulative progress on all important items of each section or portion of the Works.
11. The Contractor shall arrange for photographs of the Site to be taken by a professional photographer approved by the Engineer. The Photographs shall provide a record of the Site and adjacent areas as prior to the commencement of the Works and shall cover such portion of the works in progress and completion as the Engineer shall direct. All prints shall be full plate size, unmounted, and marked on the reverse side with the date of exposure, identification reference and brief description. The copyright of all photographs shall be vested in the Procuring Entity. The negatives and four prints from each negative shall be delivered to the Engineer within two weeks of exposure.
12. Figured dimensions are to be followed in preference to dimensions scaled from the Drawings, but whenever possible dimensions are to be taken on the Site or from the buildings. Before any work is commenced by Sub-Contractors or Specialist Firms, dimensions must be checked on the site comparable dimensions shown on the drawings. The Contractor shall be responsible for the accuracy of such dimensions.
13. Prior to commencement of any work the Contractor is to ascertain from the relevant Authorities the exact position, depth and level of all existing electric cables, waterpipes or other services in the area and he shall make whatever provisions may be required by the Authorities concerned for the support and protection of such services. Any damage or disturbance caused to any services shall be reported immediately to the Engineer and the relevant Authority and shall be made good to their satisfaction at the Contractor's expense. Where appropriate the Contractor shall open up the ground in advance of the main work by hand digging if necessary, to locate precisely the position and details of the services which are likely to affect his operations.
14. The Contractor shall include in his prices for the transport of materials, workmen, etc./, to and from the site of the proposed works, at such hours and by such route as are permitted by the Authorities.
15. The Contractor will be required to make good, at his own expense and

damage he may cause to the present road surface and pavements within or beyond the boundary of the Site, during the period of the works. All existing paths, storm water channels, etc., that may be destroyed or damaged during the progress of the Works shall be reinstated by the Contractor to the satisfaction of the Engineer.

16. The Contractor is to allow for complying with all instructions and regulations of the Police Authorities.
17. All water shall be fresh, clean and pure, free from earthly, vegetable or organic matter, acid or alkaline substance in solution. The Contractor shall provide at his own risk and cost all water for use in connection with the Works, (including works of sub-contractors). If need be, he shall make arrangements with the Local Water Authority for the installation of a separate meter for all water used by him throughout the Contract and pay all cost and fees in connection therewith. He shall also provide temporary storage tanks and tubing, etc., as may be necessary, and clear away at completion.
18. The Contractor shall provide all artificial lighting and power for his own use on the Works, (including Sub – Contractor's) including all temporary connections, wiring, fittings, etc., and clearing away on completion. The Contractor shall pay all fees and obtain all permits in connection there with.
19. The Contractor shall constantly keep on the Works a Literate English-speaking Agent or Representative, competent and experienced in the kind of work involved, who shall give his whole time to the superintendence of the works. (Including works of sub – contractors). Such Agent or Representative shall receive on behalf of the Contractor directions and instruction from the Engineer, and such directions and instructions shall be deemed to be given to the contractor in accordance with the Conditions of Contract. The Agent shall not be replaced without the specific approval of the Engineer.
20. The Contractor shall ensure that the safety of his work people and all authorized visitors to the site are protected at all times. In particular, there shall be the proper provision of guard-rails to scaffolding, protection against falling materials, tools on site, dust, nail and other sharp objects. The site shall be kept tidy and clear of dangerous rubbish. The Engineer shall be empowered to suspend work on site should it be considered this condition is not being observed and no claim arising from such suspension will be allowed.
21. The are as available to the Contractor for workyards, offices and other

facilities shall be directed by the Engineer and any existing features to remain shall be protected from damage throughout the Contract Period and handed back in good condition when they are vacated at the end of the Contract. If additional areas are required, the contractor shall source them at town cost.

22. The Contractor shall give the Engineer reasonable notice of the intention to set out or take levels for any part of the Works so that arrangements may be made for checking the work. The accuracy of setting out and leveling shall be within the tolerances specified in the Specifications or on the Drawings. The checking of setting out or leveling by the Engineer shall not relieve the Contractor of his duties or responsibilities under the Contract.
23. The Contractor must take steps necessary to safe guard and shall be held fully responsible for any damage caused to existing and adjacent property, including buildings that are not a subject of demolition. He shall make good at his own cost damage to persons and property caused there on, and he shall indemnify the Procuring Entity against any loss or claim that may arise.
24. The Contractor shall take such steps and exercise such care and diligence as to minimize nuisance arising from dust, noise or any other cause to the occupiers of the existing and adjacent property. He must provide such temporary and special screens and tarpaulins or gummy bags, hoarding, barriers, warning signs etc. as he considers necessary and sufficient for the protection of the existing and adjacent property and or prevention of nuisance etc. as directed by Engineer.
25. The Contractor's attention is drawn to the standards levy order which was amended on 15<sup>th</sup> October 1998. Legal notice No.154 of 1998. The Contractor is required to pay a monthly level of 0.2% of his factory price of construction works with effect from January 1999. Tenderer shall allow for this in the build-up of his rates.
26. The Contractor shall provide temporary sheds, offices, messrooms, sanitary, accommodation and other temporary buildings for the use of the contractor and sub-contractors, including lighting furniture equipment and attendance.
27. Contractor shall provide/build labor camp sites to be agreed with the Engineer. Labor camps shall be complete with sanitary accommodation and fencing gates.
28. The Contractor must provide the necessary toilet facilities to the

requirement and satisfaction of the Health Authorities and maintain the same in a thoroughly clean and sanitary condition and pay all conservancy fees during the period of the Works and remove when no longer required.

29. The Contractor shall provide at his own risk and cost all watching and lighting as necessary to safeguard the Works, Plant and materials against damage and theft.
30. The Contractor shall provide all necessary hoists, tackle, plant, equipment, vehicles, tools and appliances of every description for the due and satisfactory completion of the Works and shall remove the same on completion. All such plant, tools and equipment shall comply with all regulations in force throughout the period of the Contract and shall be altered or adopted during the Contract period as may be necessary to comply with any amendments in or additions to such regulations.
31. Provide, erect and maintain all necessary scaffolding, sufficiently strong and efficient for the due performance of the works, including Sub-Contract Works, provide special scaffolding as required by Sub-Contractors, alter and adopt all scaffolding as and when required during the Works, and remove on completion. No scaffolding is measured here in after and the Contractor must allow in his rates for this.
32. The Contractor shall take all necessary precautions such as temporary fencing, hoarding fans, planked footways, guard-rails gantries screen, etc., for the safe custody of the Works, materials and public protection and adjacent properties.
33. Cover up all and protect from damage, including damage from inclement weather, all finished work and unfixed materials, including that of Sub-Contractors, etc., to the satisfaction of the Engineer until the completion of the Contract.
34. The Contractor shall, after completion of the works, at his own expense, remove and clear away all surplus excavated demolition materials, plant, rubbish and unused materials and shall leave the whole of the Site and Works in a clean and tidy state to the satisfaction of the Engineer, sheds, camps, etc. Particular care shall be taken to leave clean all floors and windows and to remove all paint and cement all rubbish and dirt as it accumulates. The Contractor is to find his own dump and shall pay all charges in connection therewith.
35. Concrete test cubes shall be prepared in a set of three, as described including

testing fees, labor and materials, making molds, transport, handling, etc. Allow in your rates for making at least four cubes on each occasion, from different batches; the concrete being taken from the point of deposit.

36. The Contractors shall furnish at the earliest possible opportunity before work commences, and at his own cost, any samples of materials and workmanship that may be called for by the Engineer for the approval or rejection, and any further samples in the case of rejection, until such samples are approved by the Engineer. Such samples, when approved, shall be the minimum standard for the work to which they apply. The procedure for submitting samples of materials for testing or approval and the method of marking for identification shall be as laid down by the Engineer. The Contractor shall allow in his Tender for such samples and tests, including those in connection with his Sub-Contractors work.
37. The Contractor's attention is drawn to the Finance Bill of the year 2000/2001 on withholding tax on contractual payment section 35(7)(i)(ii) which became effective on 1<sup>st</sup> July 2000. A 3% withholding tax will be applicable to all interim payments for work done in respect of building or civil works. The contractor shall allow for any costs arising resulting there from in the build-up of rates.
38. Blasting will only be allowed with the express permission of the Engineer in writing. All blasting operations shall be carried out at the Contractor's sole risk and cost, in accordance with any Government regulations in force for the time being, and any special regulations laid down by the Engineer governing the use and storage of explosives.
39. The National Construction Authority is a state corporation established under the national construction authority Act No.14 of 2011. The broad Mandate of the Authority is to oversee the construction industry and coordinate its development. The National Construction Authority Regulations 2014 with an effective date of 6<sup>th</sup> June 2014, regulation 25, - Allow 0.5% of the tender sum/contract sum for construction levy.
40. The Contractor's attention is drawn to Finance Bill of 1993 where VAT was introduced in all contracts for construction services. The tenderer is also drawn to VAT Act Cap 476 clause 19(9). The tenderer must allow for VAT 1.19 as instructed elsewhere.
41. The contractor shall allow and pay for all insurance to cover risks and indemnities required Items 17 and 18 of the Conditions of contract and also specified in the Special Conditions of Contract

**42. BILL No. 2: PRELIMINARY ITEMS**



Item No.	Particular preliminaries can't	<u>KShs.</u>
A.	<p><b><u>Form of Agreement</u></b></p> <p>The Contractor shall be required to enter into a contract which shall be the current Form of Standard bidding document, "the conditions of contract for works of Civil Engineering Construction as published by FIDIC – Fourth Edition (1987)". The Contractor shall be deemed to have read and acquainted himself with the said Conditions.</p>	
B.		
	<p><b>Conditions of Contract</b></p>	
	<p>The contractor's attention is drawn to the text of the said conditions of contract and he is to allow in his prices for any costs arising therefrom or in connection therewith.</p>	
C.		
	<p><b><u>Government taxes</u></b></p>	
	<p>The tender sum <b><u>shall be deemed inclusive</u></b> of all government taxes payable 30 days prior to submission of tender. The employer shall comply with all legal provisions requiring deduction and remittance of such taxes to the Kenya Revenue Authority. <b><u>No</u></b></p>	
D	<p><b><u>claims shall be entertained from the contractor for noncompliance with this clause</u></b></p>	
	<p><b>Measurements</b></p>	
	<p>In the event of any discrepancies arising between the Bills of Quantities and the actual works, the site measurements shall generally take precedence. However, such discrepancies between any contract documents shall immediately be referred to the Engineer. The discrepancies shall then be treated as a variation and be dealt with in accordance with the said Conditions.</p>	
E	<p><b>Sufficiency of tender</b></p>	
	<p>The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for the works and of the rates and prices stated in the priced bills of quantities which rates and prices shall cover all his obligations under the contract and all matters and things necessary for the proper completion and maintenance of the Works.</p>	
	AMOUNT CARRIED TO COLLECTION	

Item No.	<p><b>GENERAL PRELIMINARIES</b></p> <p><b>A. Site works</b></p> <p>The contractor shall allow for among other things the following: -</p> <ul style="list-style-type: none"> <li>- Providing materials (cement, sand and Ballast), tools, plant and scaffolding</li> <li>- Complying with local authority regulations and by-laws</li> <li>- Providing adequate supervision</li> <li>- Transporting materials and workmen etc., to and from the site. No erection of labor camps shall be allowed on site.</li> <li>- Complying with all relevant Acts governing construction works and employment</li> <li>- Security for the works, stores etc.</li> <li>- Cleaning and making good damages to all access roads</li> <li>- Complying with Police regulations</li> <li>- Providing and maintaining a progress schedule</li> <li>- Overtime working</li> <li>- Sanitation of the works</li> <li>- Protecting the works and all plant and materials</li> <li>- Cleaning the site on completion</li> <li>- Training Levy</li> <li>- Maintaining adequate site record and diary</li> <li>- Site safety and first aid facilities</li> <li>- Standards Levy</li> <li>- Site clearance</li> <li>- Contractors all risk policy</li> <li>- Performance Bond</li> <li>- Value added tax (VAT)</li> <li>- Withholding tax</li> </ul> <p><b>Existing Property</b></p> <p><b>D</b> The Contractor shall take every precaution to avoid damage to all if any, existing property including hard and soft landscaping, buildings and access routes. The Contractor will be held responsible for all damage thereto and shall make good all such damage when directed all at his own expense. The Contractor shall satisfy himself prior to commencing the work of the type, location and depth of all existing services and other works not visible and shall allow for providing all necessary protection required.</p> <p>Any damage or disturbance caused shall be reported immediately to the Engineer and made good at the Contractor's expense.</p> <p>Should it be found necessary to interrupt any service, prior approval of the method and timing must be obtained in writing from the Engineer.</p>	KShs
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	<b>Amount Carried to collection</b>	
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Item No.	General preliminaries (CON'T)	<u>KShs</u>
A.	<p><b>Access to the site</b> Means of access to the Site shall be agreed with the Engineer prior to commencement of the work.</p>	
B.	<p><b>Hoarding</b> Where necessary, as identified by the Engineer the Contractor shall provide, maintain and clear away on completion hoarding required for the work areas, access ways and storage areas. The hoarding shall be 3m high G.C.I, or such other material as may be approved by the</p>	
C.	<p>Engineer. Advertisements will not be permitted on the hoarding or any other part of the site.</p>	
	<p><b>Power and Water</b></p>	
D.	<p>The Contractor shall be responsible for the provision of power and water supplies for use in the works. The contractor shall have satisfied himself as to the source and nature of these services and his tender shall be deemed to include for all such requirements and other matters necessary for the completion of the works.</p>	
	<p><b>Provisional works</b></p>	
	<p>All works described as "Provisional "in these bills of quantities is subject to re-measurement in order to ascertain actual quantity executed for which payment will be made</p>	
E	<p>All "provisional" and other works liable to adjustment under this contract shall be left uncovered for a reasonable time to allow for all measurements needed for such adjustment to be taken by the Engineer. Immediately the work is ready for measuring, the contractor shall give notice in writing to the Engineer.</p> <p>If the contractor makes default, in these respects he shall if</p>	
	<p><b>Amount Carried to collection</b></p>	

Item No.	General preliminaries (CON'T)	<u>KShs</u>
A.	<p><b>Contractor's superintendence/site agent</b></p> <p>The Contractor shall constantly keep on the works literate English speaking Agent or Representative, competent and experienced in the kind of work involved who shall give his whole experience in the kind of work involved and shall give his whole time to the superintendence of the works. Such Agent or Representative shall receive on behalf of the Contractor all directions and instructions from the Project Manager and such directions shall be deemed to have been given to the Contractor in accordance with the Conditions of Contract</p> <p>Provide a signboard not less than four (4) square meters in size of a design type, and with lettering and coloring and in a position approved by the Engineer. The signboard shall be for the display of the Main Contractor's name and the names of all his Sub-Contractors, with the Procuring Entity's name painted thereon. All Consultants names be printed in letters not exceeding 50 mm high. No other signboard or advertising shall be allowed. The signboard shall be fully maintained during the Contract Period and shall be pulled down and removed at the end of the contract.</p>	
	<b>Amount Carried to collection</b>	

Item No	General preliminaries (CON'T)	<u>KShs</u>
	<p data-bbox="699 472 863 510"><b><u>Collection</u></b></p> <p data-bbox="715 589 847 627">Page 115</p> <p data-bbox="715 768 847 806">Page 116</p> <p data-bbox="715 947 847 985">Page 118</p> <p data-bbox="715 1126 847 1164">Page 119</p> <p data-bbox="715 1238 847 1276">Page 120</p>	
	<p data-bbox="300 1402 1203 1480"><b>AMOUNT CARRIED TO GRAND SUMMARY- PG. 120 OF THE BILLS OF QUANTITIES</b></p>	

**CONSTRUCTION OF 28 KM ELECTRIC FENCE AND ASSOCIATED WORKS AT LARIAK FOREST (KAPSIGIRIO - KERANDI - GITUAMBA) IN LAIKIPIA COUNTY.**

**BILL NO. 2: WORK ITEMS**

**BILLS OF QUANTITIES**

Item No.	Description	Unit	Quantity	Rate (Ksh)	Amount (Ksh.)
<b>A.</b>	<b>The following shall form costs for construction/installation of 28Km 4No. strands intermediate Wildlife Electric fence and associated works as per the drawings and specifications: <u>Clearing of vegetation; earthworks, cutting of drains, Pegging; Excavation of holes to receive posts; Construction of assemblies: single; double and corner assemblies; Ramming of posts; Tying of Strainers and reels; Fixing of W – Insulators; Straining of wires, Fixing of gate;; Powering; Testing, removal and salvaging of old materials</u>Commissioning; Handing over</b>				
	<b>FENCEWORKS</b>				
A1.	Bush clearing 3m on either side of fence alignment and remove trees, hedges as directed by the engineer	SM.	6,000		
A2.	Line Posts long 10 Ft	Pc	120		
A3.	Strainer Posts Long 11 Ft	Pc	24		
A5.	2.5mm High Tensile Wire (HTS)	Roll	7		
A6.	4.0mm Soft wire	L.m.	1000		
A7.	2" Staple U - Nails	Kg	20		
A8.	5" Straight Nails	Kg.	30		
A9..	Earth Pegs	Pc	5		
A10.	Warning signs	Pc	10		
A11.	W-Insulators.	No.	300		
A12.	Strain End insulator	No.	40		
A13.	Joint Clamps	Pc	50		
A14.	Porcelain Reel Insulator	No.	10		
A15.	Spring gate	No	1		
A16.	Cement	Bags	10		

A17.	Coarse Aggregate	Tons	7		
A18.	Fine Aggregate	Ton	7		
	SUBTOTAL A FOR 1 KM				
	SUBTOTAL FOR 28 KM				
<b>BILL NO.3 FOR 28 ENERGIZER EQUIPMENT KM</b>					
B1	2.5mm Undergate cable	Roll	2		
B2	2.5mm Twin electrical cable	Roll	1		
B3	25mm Electric conduit	Pc	20		
B4	Solar Panel	Pc	2		
B4	Solar Energizer	Pc	2		
B5	Charge Regulator	Pc	2		
B6	Lightening Arrestor	Pc	2		
B7	Solar Battery	Pc	2		
	SUBTOTAL B FOR 28 KM				
<b>BILL NO.4 FOR INFRASTRUCTURE</b>					
C1	Allow for supply and installation of Uni-huts including floor concreting	No	6		
C2	Excuvation and Construct Pit latrin and bathroom as per attached sheet	No	2		
C3	Supply and Instal plastic water tank of 6000Litres capacity including concreting plinth and piping	No	2		
	SUBTOTAL C FOR EVERY 28 KM				

## C. SCHEDULE OF DAYWORK RATES (NOT

### APPLICABLE)

#### General

Reference should be made to Sub-Clause 13.6 of the General Conditions. Work shall not be executed on a day work basis except by written order of the Engineer. Tenderers shall enter basic rates for day work items in the Schedules, which rates shall apply to any quantity of day work ordered by the Engineer. Nominal quantities have been indicated against each item of daywork, and the extended total for Daywork shall be carried forward as a Provisional Sum to the Summary Total Tender Amount. Unless otherwise adjusted, payments for day work shall be subject to price adjustment in accordance with the provisions in the Conditions of Contract.

#### 1. Daywork Labor

- 1.1 In calculating payments due to the Contract or for the execution of day work, the hours for labor will be reckoned from the time of arrival of the labor at the job site to execute the particular item of day work to the time of return to the original place of departure, but excluding meal breaks and rest periods. Only the time of classes of labor directly doing work ordered by the Engineer and for which they are competent to perform will be measured. The time of gangers (charge hands) actually doing work with the gangs will also be measured but not the time of foremen or other supervisory personnel.
- 1.2 The Contractor shall be entitled to payment in respect of the total time that labor is employed on daywork, calculated at the basic rates entered by the Contractor in the **Schedule of Daywork Rates: 1. Labor**, together with an additional percentage payment on basic rates representing the Contractor's profit, overheads, etc., as described below:
  - a) The basic rates for labor shall cover all direct costs to the Contractor, including (but not limited to) the amount of wages paid to such labor, transportation time, overtime, subsistence allowances, and any sums paid to or on behalf of such labor for social benefits in accordance with *[country of Procuring Entity]* law. The basic rates will be payable in local currency only.
  - b) The additional percentage payment to be quoted by the Tenderer and applied to costs incurred under (a) above shall be deemed to cover the Contractor's profit, overheads, superintendence, liabilities, and insurances and allowances to labor, time keeping, and clerical and office work, the use of consumable stores, water, lighting, and power; the use and repair of stagings, scaffolding, workshops, and stores, portable power tools, manual plant, and tools; supervision by the Contractor's staff, foremen, and other supervisory personnel; and charges incidental to the foregoing.

## 2. Day Work Materials

The Contractor shall be entitled to payment in respect of materials used for daywork (except for materials for which the cost is included in the percentage addition to labor costs as detailed hereto fore), at the basic rates entered by the Contractor in the **Schedule of Daywork Rates: 2. Day Work Materials**, together with an additional percentage payment on the basic rates to cover overhead charges and profit, as follows:

- a) the basic rates for materials shall be calculated on the basis of the invoiced price, freight, insurance, handling expenses, damage, losses, etc., and shall provide for delivery to store for stockpiling at the Site. The basic rates shall be stated in local currency, but payment will be made in the currency or currencies expended upon presentation of supporting documentation.
- b) the additional percentage payment shall be quoted by the Tenderer and applied to the equivalent local currency payments made under (a) above. Payments under this item will be made in local currency.
- c) the cost of hauling materials for use on work ordered to be carried out as daywork from the store or stockpile on the Site to the place where it is to be used will be paid in accordance with the terms for Labor and Construction in this schedule.

## 3. Daywork Contractor's Equipment

- 3.1 The Contractor shall be entitled to payments in respect of Contractor's Equipment already on Site and employed on daywork at the basic rental rates entered by the Contractor in the **Schedule of Daywork Rates: 3. Contractor's Equipment**. Said rates shall be deemed to include due and complete allowance for depreciation, interest, indemnity, and insurance, repairs, maintenance, supplies, fuel, lubricants, and other consumables, and all overhead, profit, and administrative costs related to the use of such equipment.
- 3.2 In calculating the payment due to the Contractor for Contractor's Equipment employed on daywork, only the actual number of working hours will be eligible for payment, except that where applicable and agreed with the Engineer, the traveling time from the part of the Site where the Contractor's Equipment was located when ordered by the Engineer to be employed on daywork and the time for return journey thereto shall be included for payment.
- 3.3 The basic rental rates for Contractor's Equipment employed on daywork shall be stated in and payments to the Contractor will be made in local currency.

**BILL No. 3: Schedule of Daywork Rates: 1. Labor**

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Nominal quantity</i>	<i>Rate</i>	<i>Extended amount</i>
1	Support staff				
2	Unskilled				
3	Skilled Overseer				
4	Skilled Operator				
	Subtotal				
	Allow ___ percent <sup>a</sup> of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 3 (b) above.				
	Total for Daywork: Labor (Carried forward to Daywork Summary, p. <u>96</u> )				_____

a. To be entered by the Tenderer.

**Bill No. 3: Schedule of Daywork Rates - Materials**

Item no.	Description	Unit	Nominal quantity	Rate	Extended amount
1	Line Post	Pc	1		
2	Strain Post	Pc	1		
3	2.5mm HTS Wire	Roll	1		
4	4.0mm Softwire	Mtr	1		
5	Line (W) Insulators	No	1		
6	Strain End Insulator	No	1		
7	Reel Insulators	No	1		
8	16Joules Solar Energizer	No	1		
9	58 Joules Main Energizer	No	1		
10	150W Solar Panel	No	1		
11	100Ah Solar Battery	No	1		
12	Charge Regulator	No	1		
13	Lightening Arrestor	No	1		
14	Warning Signs	No	1		
15	Earth Peg	No	1		
16	2,5mm Undergate cable	No	1		
17	Joint Clamps	No	1		
18	Spring gate	No	1		
19	2" staple Unails	No	1		
20	Straight Nails	No	1		
21	Flood gate controler	No	1		
22	Cement	Bag	1		
23	River Sand	Ton	1		
24	Ballast	Ton	1		
25	Ring fasteners	Pkt	1		
26	Maun cutting Plier	No	1		
27	Claw hammer	No	1		
28	Digital Voltmeter	No	1		
29	Single Strainer	No	1		
30	Claw hammer	No	1		
	Subtotal				
	Allow ___ percent a. of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 4 (b) above.				
	Total for Daywork: Materials (carried forward to Daywork Summary, p. 96				

a. To be entered by theTenderer.

**Bill No. 3: Schedule of Daywork Rates - Contractor's Equipment**

<i>Item no.</i>	<i>Description</i>	<i>Nominal quantity (hours)</i>	<i>Basic hourly rental rate</i>	<i>Extended amount</i>
1.	Lorries minimum capacity of 7 Tones or Equivalent	1		
2	1Ton Pick up	1		
3	Tractor & Tractor	1		
4	Porker	1		
5	Concrete mixer with a minimum 2 cubic metres batching plant	1		
	Allow . percent <sup>a</sup> of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 5 above.			
Total for Daywork: Contractor's Equipment (carried forward to Daywork Summary, p. 96)				

a. To be entered by the Tenderer.

**Bill No.5 : Provisional Sums**

<i>Bill no.</i>	<i>Item no.</i>	<i>Description</i>	<i>Amount</i>
	1	Allow a prime cost sum for the REs miscellaneous account	100,000.00
	2	Allow a prime cost sum for HIV/AIDS awareness on site	100,000.00
Total for Specified Provisional Sums (Carried forward to Grand Summary (B), p. 97)			

**GRAND SUMMARY**

<b>SUMMARY ITEMS</b>	<i>Page</i>	<i>Amount</i>
Bill No. 1: Preliminary Items		
Bill No. 2: Work Items		
Bill No. 3. Energizing equipment for 28 Km		
Bill No 4. Infrastructure for 28 Km		
<b>SUBTOTAL</b>		

ADD 5% CONTINGENCY		
SUBTOTAL		
Bill No 5: Provisional Sums		
Allow for any Discounts <sup>i</sup>		
TOTAL TENDER PRICE Carried forward to Form of Tender		

i) All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clause 13.5 of the General Conditions

## SECTION VI – DESIGN AND SPECIFICATIONS

### 1.0. GENERAL SPECIFICATIONS

The following horizontal and vertical change (corner or depression) and at every 200m on a straight line.

The strainer assembly consists of the King posts, 3No. Strainer posts and two struts as shown. They shall all be 150 – 175mm diameter 2150mm in height. The strainer posts shall be connected to the King posts by a 2250mm long 150mm diameter strut (side arms). Fastening shall be by means of ordinary galvanized wire nails 125mm long. 4.0mm heavily galvanized specifications shall apply in this project:

- a) Ministry of Public Works Standard Specification for roads and Bridge construction
- b) MOPW specification for Building construction
- c) Specification for steel wires and wire products used for fencing (KS 06-261-1987)
- d) Specification for preservation of Timber (KS 02-94-1985)
- e) This special specification

### 1.1 CLEARING OF THE FENCE ALIGNMENT

At a corridor of Six (6) m width the fence alignment to be cleared of all vegetation and disposed from the forest boundary.

The ground within the corridor shall be leveled by grading, set so as to leave a 3m width of the corridor to either side of fence to serve as fire break and service road and sloped as is most suitable according to terrain so as to allow for surface drainage.

## **1.2 DRAINAGE AND EARTHWORKS**

Where necessary, catch water, cutoff and side/mitter drains shall be cut with an earth moving equipment or human labor to deviate off run off from the service road. Simple drainage structures (culverts or drifts) shall be constructed where identified by the supervisor.

Where necessary forming the appropriate cross sections shall involve cutting and filling and in such cases the fill shall be compacted in layers to 95% MDD ASHTO T99 in accordance with the Standard Specification for road and Bridge Construction.

## **2.0 FENCE DESIGN.**

### **FENCING**

Lariak Forest (Kapsigirio - Kerandi - Gituamba) is 28 Km. four (4) strand intermediate electric fence.

#### **Fence Design Specification**

The fence shall be of intermediate Design. The electric fence shall consist of four (4) strands over and above the ground. There shall be Three (3) live wires passing through the insulators and one (1) earth running wires on the forest side of the post. At 200m interval, the wire shall be attached to a 2m earth peg with a joint clamp. All live wires shall be attached to strain insulators at strainer assemblies and tied by joint clamps and looped across king post to the next wire tied in the same way. Galvanized staples shall be used to attach earth wires and insulators to the posts. Standard galvanized joint clamps shall be used to join the wire along the main fence line and at corners where looping shall be necessary. All joints shall be tight and of figure 8 or reef knot joint. The posts shall be pressure impregnated eucalyptus of diameter 150mm at 10m spacing as per the detailed drawings and below specifications

## **2.1 POSTS**

### **Line Posts**

All line posts shall have a minimum diameter of 150mm and height of 1350 mm and shall be spaced at 10,000mm on level ground (slope <5%) . The spacing will be reduced to 8000mm on sloppy and undulating terrain (slope of >5%). They shall have a smooth and cylindrical surface free of knots and cracks.

The posts shall be set in holes 450mm wide by 950mm in depth in such a manner that 2100 mm will be above the ground. The posts shall be embedded all round in 1:3:6 concrete with a cover of 150mm in swampy or rock areas.

### **Strainer Posts**

Strainer shall be built where there is change in the fence alignment both horizontal and verticle change (Corner or depression) and every 200 meters on a straight line.

The strainer assembly consists of king post 3 No. strainer post and 2 No. struts. there shall all be 150 – 175 mm dia 3150 mm in height. The strainer post shall be connected to the king post by 2250 mm long 150mm diagonal strut (side arms)

Fastening shall be by means of ordinary, galvanized wire nails 125mm long. 4.0 mm heavily galvanized shall be tied in 4 rounds diagonally from the supporter post from the supporter post to the bottom of the king post and twinned to form a stay wire and held in place 50 mm heavily galvanized staple nails nailed to hold in place. The posts shall all be embedded all round in 1:3:6 concrete in a pre-dug hole measuring 525mm diameter and 1050mm in depth. They shall be set in such a way that 2100 mm is above ground level. A minimum of 4 days will be allowed for the curing of the concrete during which period no external forces shall be exerted on the posts.

## **2.2 WIRE**

### **2.2 WIRE.**

#### **2.2.1 Plain Wire**

##### **i) Live wire**

Plain wire to be used for live wire shall be High Tensile Steel wire 2.5mm diameter heavily galvanized to a zinc coating of not less than 260gm/m<sup>2</sup> and of steel class BS 1044 or BS 1065 and tensile strength of between 1200 and 1400N. The wire shall be strained on each end on porcelain strain insulator and run through W-plastic insulators nailed to posts by use of deep sunk heavily galvanized 2" U-nails.

##### **ii) Earth Wire**

The earth wires shall be as the live wires above.

## **3.0 ELECTRIFICATION**

### **i) Power Source**

Source of power shall be from Kenya power mains grid where available and where not Solar/battery power may be used. One Energizer of at least Solar/ Battery Energizer of at least 58 joules stored energy mains power or solar/battery energizer of at least 16 joules stored energy shall be used. The electrics shall be housed in Uni-hut room built at intervals of 15 km where one room can power two sections running to opposite directions. 2 No. Uni huts will be installed for the provision of accommodation for fence attendants who will take care of the electrics and maintenance of the fence.

### **Double Insulated Lead wires**

Lead Wire (Under gate cable) in PVC pipe will carry power from the energizer house to the fence and the same to be used where there is any crossing like across gates, roads, grids, bridges over pass, under pass. At every passage there will be a cut out switch. The lead out cable shall be of 2.5mm diameter, double insulated in heavy duty polyethylene UV protected

PVC material, put through a 25mm heavy gauge PVC pipe and laid 500mm below ground level. U-bends shall be constructed using bends, elbows and unions at points where the lead out wire goes into or comes out of the ground for the bend to face downwards.

#### **i). Lightning Diverter**

At every energizer installation there will be a set of Lightning diverter installation for protection of the electrics. The diverter shall have a well-constructed loop and choke assembly complete with PVC or unlimber supporter.

#### **ii). Earthing for Energizer**

This shall be identical to earthing for the fence but shall be provided separately using 5No. Earth pegs set at 2m spacing. At the same area there will be earthing for the lightning arrester which will consist of 6No. Pegs also at interval of 2m.

#### **iii). Crossing Gorges**

In Areas with gorges and dry river beds, there shall be a strainer assembly on either side at a height of 6m above the highest water level. The overhead fence across the valley shall be of the six electrified wires only without the mesh wire. In deep gorges and valleys fence chain dangles will be suspended under the fence to stop elephants from crossing. The number and length of the dangles will be determined by the shape and depth of the valley.

A flood gate controller will be installed at every river, gorge or valley crossing.

### **4.0 GATES**

Gates shall be constructed at strategic points to be determined on site.

### **5.0 DETAIL SPECIFICATIONS**

#### **Posts**

##### **Wooden Posts – Strainers**

- i) All wooden posts shall be of hardwood wattle or eucalyptus.
- ii) Pressure treated in cultured copper chrome arsenate {CCA}{tonality}C to the Chemical penetration of at least 1" (25mm)
- iii) Size shall be at least 6-7" diameter, length 11 ft
- iv) Knot free and split free
- v) Bound at top and bottom by a HTS wire 2.5mm four times and stapled by 1" Staple nail.
- vi) Not more than one year's Kenya Bureau of Standards Test Certificate required bearing bidders Name-.

##### **Wooden Posts - Line posts**

- i) All wooden posts shall be of hardwood wattle or eucalyptus.
- ii) Pressure treated in copper chrome arsenate {CCA}{tonality}C to the chemical penetration of at least 1" (25mm)

- iii) Size shall be at least 5-6" diameter, length 10 ft.
- iv) Knot free and split free
- v) Bound at top and bottom by a HTS wire 2.5mm four times and stapled by 1" staple nail.
- vi) Not more than one year's Kenya Bureau of Standards Test Certificate required bearing bidders Name

### **Plain Wire 2.5mm HTS**

- i) High tensile steel wire of steel class BS 1044 or BS 1065
- ii) Size for live and earth wires shall be 2.5mm diameter with a tolerance
- iii) of 0.02mm.
- iv) Shall have a tensile strength of 1200-1400N
- v) Shall have a weight of zinc coating of not less than 260gm/m<sup>2</sup>
- vi) Not more than one year Kenya Bureau of Standards Test Certificate required.

### **Soft Wire/stay wire**

- i) Shall be of mild steel wire.
- ii) Shall have weight of zinc coating of not less than 260gm/m<sup>2</sup>
- iii) Kenya Bureau of Standards Test Certificate required
- iv). Size shall be **4.0mm** diameter mainly used for stay and cross wire on Strainer Assembly.
- iv) Shall have tensile strength of not less than 500N

### **Staples Nails (U-nails**

- i) Heavily galvanized wire nails
- ii) Long shank
- iii) 2 inches
- iv) Hot dipped.
- v) 4mm wire gauge.

### **Wire Nails ( 5" Building nails)**

- (i) Heavily galvanized wire nails
- (ii) Long shank
- (iii) 5 inch long.
- (iv) Hot dipped.

### **Line Insulators**

- i) W-Insulators
- ii) Polyethylene material
- iii) Open-face for good drainage
- iv) With holes for anchoring staples
- v) Made of UV protected polythene material
- (vi) Strong jaws to withstand large horizontal and vertical movements.

### **Strain end Insulators**

- (i) Bull nose type

- (ii) Porcelain material
- (iii) Fire resistant
- (iv) Long tracking distance
- (v) High quality white glaze finish

#### **Corner and Line Insulator**

- (i) Reel round Insulator
- (ii) Porcelain material
- (iii) Fire resistant
- (iv) High quality glaze finish
- (v) 41mm (1.5") diameter

#### **Solar Powered energizers**

- i) Shall be fully modular
- ii) 16 joules stored energy
- iii) In built lightening protection

#### **Solar Panel**

- (i) Shall be mono crystalline type.
- (ii) Not less than 150 Watts.

#### **Solar battery**

- (i) 12 Volts.
- (ii) Heavy duty.
- (iii) Deep cycle.
- (iv) Rechargeable/maintenance free/Tabular

#### **Charge controller.**

- (i) Not less than 30amps.
- (ii) LCD display / Digital Meter that will display;  
Charging/Load Current, Battery/Solar Voltage At least 40 joules stored energy

#### **Lightning Diverter/ Arrester**

- (i) Standard lightening diverter is completed with spiral wire earthing system connection.
- (ii) Adjustable to suit any module.
- (iii) Shall be able to divert multiple lightening strikes to the ground(earth)
- (iv) Size 90x100x60mm

#### **Flood gate Controller**

- i) Should be able to automatically switch powered flood gate off when the river is in flood.

#### **Earth peg**

- (i) 2mx20mm diameter GI pipe class C
- (ii) With a heavily galvanized Joint clamp 200mm below the upper tip

### **Hatari/Warning/Danger signs**

- (i) Shall be made of UV protected material
- (ii) Size 247mmx147mmx3mm
- (iii) Color shall be bright yellow
- (iv) Inscription written in black "**ELECTRIC FENCE**"
- (v) Eligible with lettering not less than 25mm in height
- (vi) A legal requirement for all electric installations

### **Joint Clamp**

- (i) Shall be made of Aluminum or Mild steel.
- (ii) Shall have zinc coating of not less than 500gm/Sqm)
- (iv) With space for wire grip

### **Lead wire (Under gate cables)**

- (i) Shall be double insulated in tough polyethylene insulating material
- (ii) Shall have a lead wire of 2.5mm diameter
- (iii) Shall have a lead wire of copper or aluminum.
- (iv) Shall have resistance of less than 350 ohms per km
- (v) Insulator should be greater than 20Kv

### **Twin 2.5mm electric cable**

- i) Twin 2.5mm cable
- ii) Length 90 m long roll

### **25mm dia electrical Pipe**

- (i) PVC Made
- (ii) Heavy gauge.

### **Cement**

- (i) 50Kg per bag
- (ii) Ordinary cement

### **FineAggregate**

- (i) Should be clean medium river sand free from silt.

### **Coarse Aggregate**

- (i) Machine cut ¾" x 1½" ballast.

### **Uni-hut**

- (i) Hut diameter- 3.6metres with variance of + or -5%.
- (ii) Hut height at centre- 3.0Metres

- (iii) Hut height at Eaves – 1.9 Metres
- (iv) Alluminium coated zinc alloy galvanized.
- (v) Side sheets – gauge 24 and resistant to corrosion
- (vi) Roof panel - gauge 24 resistant to corrosion.
- (vii) The hut to have one external door complete with iron mongery bolts,,nuts and accompaniment to match one steel galvanized window with glazing and putty.

### **Toilets**

- I. Brochure required
- II. 1.06 M wide by 1.06 M long X 2.1 m eaves height with one door and three ventilated side panels. Side panels of 0.5 mm and roof panel 0.4 mm thick galvanized sheet.

### **Bathroom**

- I. Brochure required
- II. 1.06 m wide by 1.06 M long by 2.1 M eaves, height with one door and 3 ventilated side panels. Side panels of 0.5 mm and roof panel 0.4 mm thick galvanized sheets.

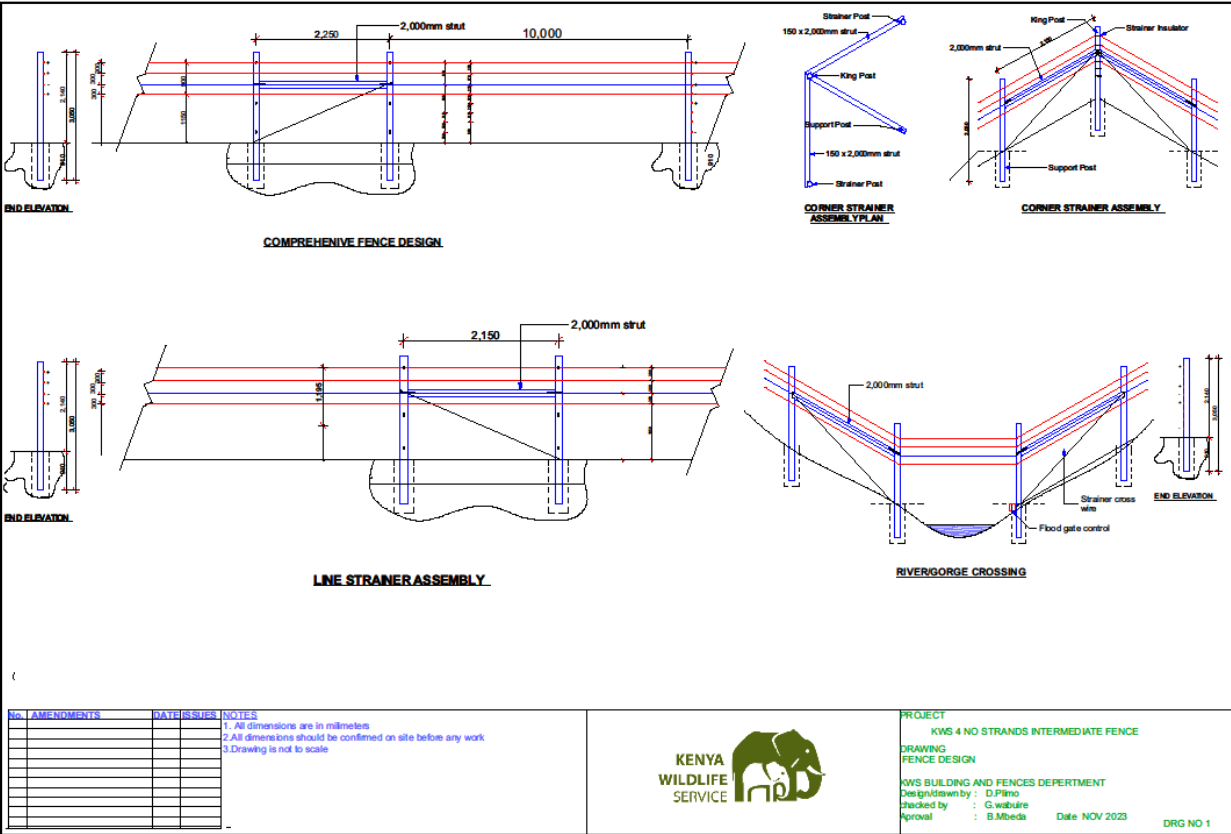
## **6.0 FENCE CODE OF ETHICS AND PRACTICE.**

- a. Electric fences shall be so installed and operated and they cause no danger to persons, animals or surroundings.
- b. Electric fences shall not be supplied from more than one energizer.
- c. For any two different electric fences the distance between the wires and the connecting leads shall be at least 2m apart. If the gap is to be closed then a non- conductive insulating material shall be used.
- d. Barbed wire shall not be used in electric fences.
- e. All installed electric fences shall be visibly identified warning signs securely fastened to posts of firmly clamped to the fence wire at frequent intervals of at least 100m. (The size of the plate shall be at least 200mmx100mm. the inscription shall be legible and any lettering shall have a height of at least 25mm).
- f. If it is necessary to cross a public pathway, the cornered road authority shall be advised and in any case the lead wire across shall be at least 5.45m high.
- g. Fence wires and connecting leads shall not be fixed to poles used for overhead power lines, telephone, or telegraph lines, and in any case if such poles are to be interfered with, the relevant electricity supply utility company or controlling authority must provide permission.
- h. Inside buildings, connecting lead wires shall be placed through PVC pipes and through special insulated lead wires (under gate cables).
- i. The electrode of the earth system of the fence shall preferably be installed at a spot where the soil is damp to ensure good contact. The electrode shall penetrate the ground to a depth of at least 1.0m for mains powered energizers and 2m for solar battery powered energizers.

- j. Energizers shall be installed under cover out of reach of children in a place free from mechanical damage and away from inflammable materials; solar powered energizers are best placed in a secluded area with no shadows on the equator side and the panels to face towards the equator.
- k. All wire connections shall be joined by figure eight or reef knot joints and joint clamps shall be used for all permanent connections.
- l. All wire shall be stored away from corrosives, fertilizer lime, acids and any other chemical and shall not be dropped on any hard materials, to avoid peeling off of the galvanizing material if possible, use wire dispensing during construction.
- m. Keep electrified wires well away from radio aerials.
- n. Local body approval and advice regarding local regulations shall be sought before constructing any electric fence near railways, sock routes, pipelines, telephone lines, telegraphic lines, power lines, etc.
- o. The number of gates to be constructed shall be kept to the minimum. Gates shall only be constructed for (i) operational needs by Kenya Wildlife Service community needs based on management agreement between the community and Kenya Wildlife Service. All gates shall be manned by Kenya Wildlife Service
- p. Because the fence is at Lariak Forest, construction must follow the laid down procedures.

## **SECTION VII - DRAWINGS**

1. FENCE DRAWINGS.



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## **PART III - THE CONDITIONS OF CONTRACT AND CONTRACT**

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## **SECTION VIII. GENERAL CONDITIONS OF CONTRACT (GCC)**

**NAME:** KENYA WILDLIFE SERVICE

**PROJECT:** PROPOSED CONSTRUCTION OF 28 KM LARIAK FOREST (KAPSIGIRIO - KERANDI - GITUAMBA) ELECTRIC FENCE AND ASSOCIATED WORKS IN LAIKIPIA COUNTY (FULL CONTRACT)

**ENGINEER:** Ag. DEPUTY DIRECTOR-INFRASTRUCTURE MANAGEMENT

KENYA WILDLIFE SERVICE

PO BOX 40241-00100

NAIROBI

## General Conditions of Contract

### 1.0 GENERAL PROVISIONS

#### 1.1 Definitions

In this Contract, except where context otherwise requires, the following terms shall be interpreted as indicated below. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

**"Contract Amount"** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works **Accepted** and the remedying of any defects.

**"Base Date"** means a date 30 day prior to the submission of tenders.

**"Bill of Quantities"** means the priced and completed Bill of Quantities forming part of the tender. **"Completion Date"** means the date of completion of the Works as certified by the Engineer.

**"Contract Price"** means the price defined in the contract and there after as adjusted in accordance with the provisions of the Contract.

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

**"Contractor's Documents"** means the calculations, computer programs and other software, progress reports, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

**"Contractor's Equipment"** means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works Kenya Wildlife Service Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

**"Contractor's Personnel"** means the Contractor's Representative and all personnel whom the Contractor utilizes on Site, who may include the staff, labor and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

**"Contractor's Representative"** means the person named by the Contractor in the Contractor appointed from time to time by the Contractor who acts on behalf of the Contractor.

**“Contractor”** means the person(s) named as contractor in the Form of Tender accepted by Kenya Wildlife Service.

**“Cost”** means expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.

**“Day”** means a calendar day and **“year”** means 365 days.

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

**“Defect”** means any part of the Works not completed in accordance with the Contract.

**“Defects Liability Certificate”** means the certificate issued by Engineer upon correction of defects by the Contractor.

**“Defects Liability Period”** means the period named in the Special Conditions of Contract and calculated from the Completion Date, within which the contractor is liable for any defects that may develop in the handed over works.

**“Defects Notification Period”** means the period for notifying defects in the Works or a Section (as the case maybe) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], which extends over the days stated in the Special Conditions of Contract.

**“Drawings”** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) Kenya Wildlife Service in accordance with the Contract.

**“Final Payment Certificate”** means the payment certificate issued under Sub-Clause 14.13 [Issue of Final Payment Certificate].

**“Final Statement”** means the statement defined in Sub-Clause 14.11 [Application for

Final Payment Certificate]. **“Force Majeure”** is defined in Clause 19 [Force Majeure].

**“Foreign Currency”** means a currency of another country (not Kenya) in which part (or all) of the Contract Price is payable, but not the Local Currency.

**“Goods”** means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

**“Interim Payment Certificate”** means a payment certificate issued under Clause 14 [Contract Price and Payment], other than the Final Payment Certificate.

**“Laws”** means all national legislation, statutes, ordinances, and regulations and by-laws of any legally constituted public authority.

**“Letter of Acceptance”** means the letter of formal acceptance of a tender, signed by

Kenya Wildlife Service, including any annexed memoranda comprising agreements between and signed by both Parties.

**"Local Currency"** means the currency of Kenya.

**"Materials"** means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

**"Notice of Dissatisfaction"** means the notice given by either Party to the other under Sub-Clause 20.3 indicating its dissatisfaction and intention to commence arbitration.

**"Special Conditions of Contract"** means the pages completed by Kenya Wildlife Service entitled Special Conditions of Contract which constitute Part A of the Special Conditions.

**"Party"** means Kenya Wildlife Service or the Contractor, as the context requires.

**"Payment Certificate"** means a payment certificate issued under Clause 14 [Contract Price

and Payment]. **"Performance Certificate"** means the certificate issued under Sub-Clause

11.9 [Performance Certificate]. **"Performance Security"** means the security (or securities, if

any) under Sub-Clause 4.2 [Performance Security]. **"Permanent Works"** means the

permanent works to be executed by the Contractor under the Contract.

**"Plant"** means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for Kenya Wildlife Service and relating to the construction or operation of the Works.

**"Kenya Wildlife Service Equipment"** means the apparatus, machinery and vehicles (if any) made available by Kenya Wildlife Service for the use of the Contract or in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by Kenya Wildlife Service.

**"Kenya Wildlife Service Personnel"** means the Engineer, the Engineer, the assistants and all other staff, labor and other employees of the t Engineer and of Kenya Wildlife Service; and any other personnel notified to the Contractor, by Kenya Wildlife Service or the Engineer, as Kenya Wildlife Service Personnel.

**"Procuring Entity"** means the Entity named in the Special Conditions of Contract.

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

**"Engineer"** means the person appointed by Kenya Wildlife Service to act as the Engineer for the purposes of the Contract and named in the Special Conditions of Contract, or other person appointed from time to time by Kenya Wildlife Service and notified to the Contractor

**"Provisional Sum"** means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [Provisional Sums].

**"Retention Money"** means the accumulated retention moneys which Kenya Wildlife Service retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.9 [Payment of Retention Money].

**"Schedules"** means the document(s) entitled schedules, completed by the Contractor and submitted with the Form of Tender, as included in the Contract.

**"Section"** means a part of the Works specified in the Special Conditions of Contract as a Section (if any)

**"Site Investigation Reports"** are those reports that may be included in the tendering documents which are a reflection and interpretative about the surface and sub-surface condition at the Site.

**"Site"** means the places where the Permanent Works are to be executed, including storage and working areas, and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

**"Specification"** means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.

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

**"Statement"** means a statement submitted by the Contractor as part of an application, under Clause 14 [Contract Price and Payment], for a payment certificate.

**"Subcontractor"** means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works.

**"Taking-Over Certificate"** means a certificate issued under Clause 10 [Kenya Wildlife Service Taking Over].

**"Temporary Works"** means all temporary works of every kind (other than Contractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

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

**"Tender"** means the Form of Tender and all other documents which the Contractor submitted with the Form of Tender, as included in the Contract.

**"Tests after Completion"** means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification after the Works or a Section (as the case may be) are taken over by Kenya Wildlife Service.

**"Tests on Completion"** means the tests which are specified in the Contractor agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by Kenya Wildlife Service.

**"Time for Completion"** means the time for completing the Works or a Section (as the case may be) as stated in the Special Conditions of Contract (with any extension calculated from the Commencement Date.

**"Unforeseeable"** means not reasonably foreseeable by an experienced contractor by the Base Date.

**"Variation"** means any change to the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].

**"Works"** means the items requires the Contractor to undertake as defined in the Appendix to Conditions of Contract. **"Works" may** also mean the Permanent Works and the Temporary Works, or either of them as appropriate.

## 1.2 Interpretation

In the Contract, except where the context requires otherwise:

- a) Words indicating one gender include all genders;
- b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

## 1.3 Communications

1.3.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- a) In writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Special Conditions of Contract; and
- b) Delivered, sent or transmitted to the address or the recipient's communications as stated in the Special Conditions of Contract. However:

- i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
- ii) If the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

1.3.2 Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.

#### **1.4 Law and Language**

1.4.1 The Contract shall be governed by the laws of **Kenya**.

1.4.2 The ruling language of the Contract shall be **English**.

#### **1.5 Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a) The Contract Agreement,
- b) The Letter of Acceptance,
- c) The Special Conditions – Part A,
- d) the Special Conditions – Part B
- e) the General Conditions of Contract
- f) the Form of Tender,
- g) the Specifications and Bills of Quantities
- h) the Drawings, and
- i) The Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

#### **1.6 Contract Agreement**

The Parties shall enter into a Contract Agreement within 14 days after the Contractor receives the Contract Agreement, unless the Special Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Special Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by Kenya Wildlife Service.

#### **1.7 Assignment**

The Contractor shall not assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, the contractor:

- a) May assign the whole or any part with the prior consent of Kenya Wildlife Service, and
- b) may, as security in favor of a bank or financial institution, assign its right to moneys due, or to become due, under the Contract.

## **1.8 Care and Supply of Documents**

- 1.8.1 The Specifications and Drawings shall be in the custody and care of Kenya Wildlife Service. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawings and Bills of Quantities shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.
- 1.8.2 Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by Kenya Wildlife Service. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer two copies of each of the Contractor's Documents.
- 1.8.3 The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. Kenya Wildlife Service Personnel shall have the right of access to all these documents at all reasonable times.
- 1.8.4 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

## **1.9 Timely provision of Drawings or Instructions**

- 1.9.1 The Contractor shall give notice to the Engineer t whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and the nature and amount of the delay or disruption likely to be suffered if it is late.
- 1.9.2 If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
  - a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) Payment of any other associated costs accrued, which shall be included in the Contract Price.
- 1.9.3 After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 1.9.4 However, if and to the extent that the Engineer failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, or costs accrued.

### **1.10 Kenya Wildlife Service Use of Contractor's Documents**

- 1.10.1 As agreed between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.
- 1.10.2 The Contractor shall be deemed (by signing the Contract) to give to Kenya Wildlife Service a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This license shall:
- a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
  - b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
  - c) In the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.
- 1.10.3 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) Kenya Wildlife Service for purposes other than those permitted under Sub-Clause 1.10.2.

### **1.11 Contractor's Use of Kenya Wildlife Service Documents**

As agreed between the Parties, Kenya Wildlife Service shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) Kenya Wildlife Service. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without Kenya Wildlife Service consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

### **1.12 Confidential Details**

- 1.12.1 The Contractor's and Kenya Wildlife Service Personnel shall ensure confidentiality at all times. The confidentiality shall survive termination or completion of the contract. They shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.
- 1.12.2 The Contractor's and Kenya Wildlife Service Personnel shall also treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the

Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

### **1.13 Compliance with Laws**

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Special Conditions of Contract:

- a) Kenya Wildlife Service shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions described in the Specifications as having been (or to be) obtained by Kenya Wildlife Service; and Kenya Wildlife Service shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
- b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold Kenya Wildlife Service harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.

### **1.14 Joint and Several Liability**

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:

- a) These persons shall be deemed to be jointly and severally liable to Kenya Wildlife Service for the performance of the Contract;
- b) these persons shall notify Kenya Wildlife Service of their leader who shall have authority to bind the Contractor and each of these persons; and
- c) the Contractor shall not alter its composition or legal status without the prior consent of Kenya Wildlife Service.

### **1.15 Inspections and Audit by Kenya Wildlife Service**

Pursuant to paragraph 2.2(e). of Appendix B to the General Conditions, the Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, the Public Procurement Regulatory Authority, Kenya Wildlife Service and/or persons appointed or designated by the Government of Kenya to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by Kenya Wildlife Service if requested by Kenya Wildlife Service. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 15.6 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of Kenya Wildlife Service inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to Kenya Wildlife Service prevailing sanctions procedures).

## 2 THE PROCURING ENTITY: KENYA WILDLIFE SERVICE

### 2.0 Right of Access to the Site

- 201 Kenya Wildlife Service shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the **Special Conditions of Contract**. The right and possession may not be exclusive to the Contractor. If, under the Contract, Kenya Wildlife Service is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, Kenya Wildlife Service shall do so in the time and manner stated in the Specification. However, Kenya Wildlife Service may withhold any such right or possession until the Performance Security has been received.
- 202 If no such time is stated in the Special Conditions of Contract, Kenya Wildlife Service shall give the Contractor right of access to, and possession of, the Site within such times as required to enable the Contractor to proceed without disruption in accordance with the programme submitted under Sub-Clause 8.3 [Programme].
- 203 If the Contractor suffers delay and/or incurs Cost as a result of a failure by Kenya Wildlife Service to give any such right or possession within such time, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) Payment of any such Cost-plus profit, which shall be included in the Contract Price.
- 204 After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 205 However, if and to the extent that Kenya Wildlife Service failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

## **2.1 Permits, Licenses or Approvals**

2.1.1 Kenya Wildlife Service shall provide, at the request of the Contractor, such reasonable assistance as to allow the Contractor to obtain properly:

- a) Copies of the Laws of Kenya which are relevant to the Contract but are not readily available, and
- b) any permits, licenses or approvals required by the Laws of Kenya:
  - i) which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws],
  - ii) for the delivery of Goods, including clearance through customs, and
  - iii) For the export of Contractor's Equipment when it is removed from the Site.

## **2.2 Procuring Entity's Personnel**

The Procuring Entity shall be responsible for ensuring that Kenya Wildlife Service Personnel and Kenya Wildlife Service other contractors on the Site:

- a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and
- b) Take action similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].

## **2.3 Kenya Wildlife Service Financial Arrangements**

Kenya Wildlife Service shall make and maintain all necessary financial arrangements which will enable Kenya Wildlife Service to pay the Contract Price punctually (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment].

# **3 THE ENGINEER**

## **3.0 Engineer Duties and Authority**

3.0.1 Kenya Wildlife Service shall appoint the Engineer who shall carry out the duties as signed to him in the Contract. The Engineer staff shall include suitably qualified Assistants and other professionals who are competent to carry out these duties. The Engineer Name and Address shall be provided in the **Special Conditions of Contract**.

3.0.2 The Engineer shall have no authority to amend the Contract.

3.0.3 The Engineer May exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of Kenya Wildlife Service before exercising a specified authority, the requirements shall be as stated in the **Special Conditions of Contract**. Kenya

Wildlife Service shall promptly inform the Contractor of any change to the authority attributed to the Engineer.

3.04 However, whenever the Engineer exercises a specified authority for which Kenya Wildlife Service approval is required, then (for the purposes of the Contract) the contractor shall require the Engineer to provide evidence of such approval before complying with the instruction.

3.05 Except as otherwise stated in these Conditions:

- a) Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for Kenya Wildlife Service;
- b) the Engineer shall have no authority to relieve either Party of any duties, obligations or responsibilities under the Contract;
- c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; and
- d) Any act by the Engineer in response to a Contractor's request shall be notified in writing to the Contractor within 14 days of receipt.

3.06 The following provisions shall apply:

The Engineer shall obtain the specific approval of Kenya Wildlife Service before taking action under the following Sub-Clauses of these Conditions:

- a) Sub-Clause 4.12: agreeing or determining an extension of time and/or additional cost.
- b) Sub-Clause 13.1: instructing a Variation, except;
  - i) In an emergency situation as determined by the Engineer, or
  - ii) If such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the **Special Conditions of Contract**.
- c) Sub-Clause 13.3: Approving a proposal for Variation submitted by the Contractor in accordance with Sub Clause 13.1 or 13.2.
- d) Sub-Clause 13.4: Specifying the amount payable in each of the applicable three currencies.

3.07 Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of Kenya Wildlife Service, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in

respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to Kenya Wildlife Service

### **3.1 Delegation by the Engineer**

- 3.1.1 The Engineer may from time to time assign duties and delegate authority to assistants and may also revoke such assignment or delegation. These assistants may include a resident Engineer, and/or independent inspectors appointed to inspect and/ or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [Determinations].
- 3.1.2 Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:
- a) Any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;
  - b) If the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

### **3.2 Instructions of the Engineer**

- 3.2.1 The Engineer may issue to the Contractor (at anytime) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under Clause 3.2.1.
- 3.2.2 The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Architect or a delegated assistant:
- a) Gives an oral instruction,
  - b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and

- c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

Then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

### **3.3 Replacement of the Engineer**

If Kenya Wildlife Service intends to replace the Engineer, Kenya Wildlife Service shall, in not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended person to replace the Engineer.

### **3.4 Determinations**

- 3.4.1 Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavor to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.
- 3.5.1 The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars, within 30 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].

## **4 THE CONTRACTOR**

### **4.0 Contractor's General Obligations**

- 4.0.1 The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Engineer instructions, and shall remedy any defects in the Works.
- 4.0.2 The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.
- 4.0.3 All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country.
- 4.0.4 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.
- 4.0.5 The Contractor shall, whenever required by the Engineer, submit details of the

arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

4.06 If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Special Conditions:

- a) The Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;
- c) the Contractor shall be responsible for this part and it shall, when the Works are completed, befit for such purposes for which the part is intended as are specified in the Contract; and
- d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for Kenya Wildlife Service to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Engineer.

#### **4.1 Performance Security**

4.1.1 The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the **Special Conditions of Contract** and denominated in the currency (ies) of the Contract or in a freely convertible currency acceptable to Kenya Wildlife Service. If an amount is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.

4.1.2 The Contractor shall deliver the Performance Security to Kenya Wildlife Service within 30 days after receiving the Notification of Award and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank selected by the Contractor and shall be in the form annexed to the Special Conditions, as stipulated by Kenya Wildlife Service in the Special Conditions of Contract, or in another form approved by Kenya Wildlife Service.

4.1.3 The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

- 4.14 Kenya Wildlife Service shall not make a claim under the Performance Security, except for amounts to which Kenya Wildlife Service is entitled under the Contract.
- 4.15 Kenya Wildlife Service shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which Kenya Wildlife Service was not entitled to make the claim.
- 4.16 Kenya Wildlife Service shall return the Performance Security to the Contractor within 14 days after receiving a copy of the Taking-Over Certificate.
- 4.17 Without limitation to the provisions of the rest of this Sub-Clause, whenever the determines an addition or a reduction to the Contract Price as a result of a change in cost and/ or legislation, or as a result of a Variation, amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor shall at the Engineer request promptly increase, or may decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage.

## **4.2 Contractor's Representative**

- 4.21 The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract. The Contractor's Representative's Name and Address shall be provided in the **Special Conditions of Contract**.
- 4.22 Unless the Contractor's Representative **is named in the Contract**, the Contractor shall, prior to the Commencement Date, submit to Engineer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked in terms of Sub-Clause 6.9 [Contractor's Personnel], or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.
- 4.23 The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.
- 4.24 The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Engineer prior consent, and Engineer shall be notified accordingly.
- 4.25 The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [Instructions of the Engineer].
- 4.26 The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until Engineer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

- 4.2.7 The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreter available during all working hours in a number deemed sufficient by the Engineer.

### **4.3 Sub-contractors**

- 4.3.1 The Contractor shall not subcontract the whole of the Works. The contractor may however subcontract the works as provided in Clause 34.2.
- 4.3.2 The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were acts or defaults of the Contractor. Unless otherwise stated in the Special Conditions:
- a) The Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
  - b) The prior consent of Kenya Wildlife Service shall be obtained to other proposed Subcontractors;
  - c) the Contractor shall give Kenya Wildlife Service not less than 14 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
  - d) each subcontract shall include provisions which would entitle Kenya Wildlife Service to require the subcontract to be assigned to Kenya Wildlife Service under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Kenya Wildlife Service].
- 4.3.3 The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidential Details] apply equally to each Subcontractor.
- 4.3.4 Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from Kenya to be appointed as Subcontractors.

### **4.4 Assignment of Benefit of Subcontract**

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to Kenya Wildlife Service, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to Kenya Wildlife Service for the work carried out by the Subcontractor after the assignment takes effect.

### **4.5 Co-operation**

- 4.5.1 The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:
- a) Kenya Wildlife Service Personnel,
  - b) Any other contractors employed by Kenya Wildlife Service, and

- c) The personnel of any legally constituted public authorities, who may be employed in the execution on or near the Site of any work not included in the Contract.

4.52 Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to suffer delays and/or to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

4.53 If, under the Contract, Kenya Wildlife Service is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Engineer in the time and manner stated in the Specification.

#### **4.6 Setting Out the Works**

4.61 The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contractor notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

4.62 Kenya Wildlife Service shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

4.73 If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) payment of any such costs accrued, which shall be included in the Contract Price.

4.7.4 After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to these.

#### **48 Safety Procedures**

The Contractor shall:

- a) Comply with all applicable safety regulations,
- b) Take care for the safety of all persons entitled to be on the Site,
- c) Use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- d) provide fencing, lighting, guarding and watching of the Works until completion

- and taking over under Clause 10 [Kenya Wildlife Service Taking Over], and
- e) Provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

#### **49 Quality Assurance**

4.9.1 The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

4.9.2 Details of all procedures and compliance documents shall be submitted to the Engineer or information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor itself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

#### **4.10 Site Data**

4.10.1 Kenya Wildlife Service shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in Kenya Wildlife Service possession on sub-surface and hydrological conditions at the Site, including environmental aspects. Kenya Wildlife Service shall similarly make available to the Contractor all such data which come into Kenya Wildlife Service possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

4.10.2 To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

- a) The form and nature of the Site, including sub-surface conditions,
- b) the hydrological and climatic conditions,
- c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
- d) the Laws, procedures and labour practices of Kenya, and
- e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

#### **4.11 Sufficiency of the Accepted Contract Amount**

- 4.11.1 The Contractor shall be deemed to:
- a) Have satisfied itself as to the correctness and sufficiency of the Accepted Contract Amount, and
  - b) Have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [Site Data].
- 4.11.2 Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

#### **4.12 Unforeseeable Physical Conditions**

- 4.12.1 In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.
- 4.12.2 If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Engineer as soon as practicable.
- 4.12.3 This notice shall describe the physical conditions, so that they can be inspected by the Engineer and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Engineer may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.
- 4.12.4 If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to notice under Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) Payment of any such Cost, which shall be included in the Contract Price.
- 4.12.5 Upon receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in subparagraphs (a) and (b) above related to this extent.
- 4.12.6 However, before additional Cost is finally agreed or determined under subparagraph (ii), the Engineer may also review whether other physical conditions in

similar parts of the Works (if any) were more favorable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favorable conditions were encountered, the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

- 4.12.7 The Engineer shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence.

#### **4.13 Rights of Way and Facilities**

Unless otherwise specified in the Contract Kenya Wildlife Service shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works.

#### **4.14 Avoidance of Interference**

- 4.14.1 The Contractor shall not interfere unnecessarily or improperly with:
- a) The convenience of the public, or
  - b) The access to and use and occupation of all roads and foot paths, irrespective of whether they are public or in the possession of Kenya Wildlife Service or of others.
- 4.14.2 The Contractor shall indemnify and hold Kenya Wildlife Service harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

#### **4.15 Access Route**

- 4.15.1 The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.
- 4.15.2 Except as otherwise stated in these Conditions:
- a) The Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
  - b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the

- relevant authorities for his use of routes, signs and directions;
- c) Kenya Wildlife Service shall not be responsible for any claims which may arise from the use or otherwise of any access route;
  - d) Kenya Wildlife Service does not guarantee the suitability or a availability of particular access routes; and
  - e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

#### **4.16 Transport of Goods**

Unless otherwise stated in the Special Conditions:

- a) the Contractor shall give the Engineer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- c) the Contractor shall indemnify and hold Kenya Wildlife Service harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods and shall negotiate and pay all claims arising from their transport.

#### **4.17 Contractor's Equipment**

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Engineer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

#### **4.18 Protection of the Environment**

- 4.18.1 The contractor shall comply with the applicable environmental laws, regulations and policies.
- 4.18.2 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.
- 4.18.3 The Contractors shall ensure that emissions, surfaced is charges and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

#### **4.19 Electricity, Water and Gas**

- 4.19.1 The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require for his construction activities and to the extent defined in the Specifications, for the tests.
- 4.19.2 The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Specifications. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.
- 4.19.3 The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [Kenya Wildlife Service Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to Kenya Wildlife Service.

#### **4.20 Kenya Wildlife Service Equipment and Free-Issue Materials**

- 4.20.1 Kenya Wildlife Service make the Procuring Entity's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the Specification. Unless otherwise stated in the Specification:
- a) Kenya Wildlife Service shall be responsible for Kenya Wildlife Service Equipment, except that
  - b) The Contractor shall be responsible for each item of Kenya Wildlife Service Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.
- 4.20.1 The appropriate quantities and the amounts due (at such stated prices) for the use of Kenya Wildlife Service Equipment shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [Kenya Wildlife Service Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to Kenya Wildlife Service
- 4.20.2 Kenya Wildlife Service shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification. Kenya Wildlife Service shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them and shall promptly give notice to the Engineer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, Kenya Wildlife Service shall immediately rectify the notified shortage, defect or default.
- 4.20.3 After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve Kenya Wildlife Service of liability for any shortage, defect or default not apparent from a visual inspection.

#### **4.21 Progress Reports**

- 4.21.1 Unless otherwise stated in the Special Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.
- 4.21.2 Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works. Each report shall include:
- a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [NominatedSubcontractors]),
  - b) photographs showing the status of manufacture and of progress on the Site;
  - c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
    - i) commencement of manufacture,
    - ii) Contractor's inspections,
    - iii) tests, and
    - iv) shipment and arrival at the Site;
  - d) the details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];
  - e) copies of quality assurance documents, test results and certificates of Materials;
  - f) list of notices given under Sub-Clause 2.5 [Kenya Wildlife Service Claims] and notices given under Sub-Clause 20.1 [Contractor's Claims];
  - g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
  - h) Comparison so factual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

#### **4.22 Security of the Site**

Unless otherwise stated in the Special Conditions:

- a) The Contractor shall be responsible for keeping unauthorized persons off the Site, and
- b) authorized persons shall be limited to the Contractor's Personnel and Kenya Wildlife Service Personnel; and to any other personnel notified to the Contractor, by Kenya Wildlife Service or the Engineer, as authorized personnel of Kenya Wildlife Service other contractors on the Site.

#### **4.23 Contractor's Operations on Site**

- 4.23.1 The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Engineer as additional working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.
- 4.23.2 During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.
- 4.23.3 Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

#### **4.24 Fossils**

- 4.24.1 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of Kenya Wildlife Service. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.
- 4.24.2 The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) Payment of any such Cost, which shall be included in the Contract Price.
- After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

### **5 NOMINATED SUBCONTRACTORS**

#### **5.0 Definition of "nominated Subcontractor"**

In this Contract, "nominated Subcontractor" means a Subcontractor:

- a) Who is nominated by Kenya Wildlife Service, or
- b) Contractor has nominated as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

## **5.1 Objection to Nomination**

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to Kenya Wildlife Service as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless Kenya Wildlife Service agrees in writing to indemnify the Contractor against and from the consequences of the matter:

- a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;
- b) the nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or
- c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
  - i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract;
  - ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities, and
  - iii) be paid only if and when the Contractor has received from Kenya Wildlife Service payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors].

## **5.2 Payments to nominated Subcontractors**

The Contractor shall pay to the nominated Subcontractor the amounts shown on the nominated Subcontractor's invoices approved by the Contractor which the Engineer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with subparagraph (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments].

## **5.3 Evidence of Payments**

- 5.3.1 Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Engineer may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor:

- (a) Submits this reasonable evidence to the Engineer, or
- (b) i) Satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and
  - ii) Submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement, then Kenya Wildlife Service may (at his sole discretion) pay, directly to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in subparagraphs (a) or (b) above. The Contractor shall then repay, to Kenya Wildlife Service, the amount which the nominated Subcontractor was directly paid by Kenya Wildlife Service.

## **6 STAFF AND LABOR**

### **6.0 Engagement of Staff and Labor**

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, feeding, transport, and, when appropriate, housing. The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within Kenya.

#### **6.1 Rates of Wages and Conditions of Labor**

- 6.1.1 The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by Kenya Wildlife Service whose trade or industry is similar to that of the Contractor.
- 6.1.2 The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in Kenya in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of Kenya for the time being in force, and the Contractor shall perform such duties in regard to such deductions there of as may be imposed on him by such Laws.

#### **6.2 Persons in the Service of Procuring Entity**

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst Kenya Wildlife Service Personnel.

#### **6.3 Lab or Laws**

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, employment of children, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

## 6.4 Working Hours

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the **Special Conditions of Contract**, unless:

- a) Otherwise stated in the Contract,
- b) The Engineer gives consent, or
- c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer, provided that work done outside the normal working hours shall be considered and paid for as overtime.

## 6.5 Facilities for Staff and Labor

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities on site for the Contractor's Personnel. The Contractor shall also provide facilities for Kenya Wildlife Service Personnel as stated in the Specifications. The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

## 6.6 Health and Safety

- 6.6.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Kenya Wildlife Service Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- 6.6.2 The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide what ever is required by this person to exercise this responsibility and authority.
- 6.6.3 The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.
- 6.6.4 The Contractor shall conduct an awareness programme on HIV and other sexually transmitted diseases via an approved service provider and shall undertake such other measures taken to reduce the risk of the transfer of these diseases between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.

## 6.7 Contractor's Superintendence

- 6.7.1 Throughout the execution of the Works, and as long thereafter as is necessary to

fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

- 6.7.2 Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

## **6.8 Contractor's Personnel**

- 6.8.1 The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Contractor's Key personnel shall be named in the Special Conditions of Contract. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:
- a) Persists in any misconduct or lack of care,
  - b) Carries out duties in competently or negligently,
  - c) fails to conform with any provisions of the Contract,
  - d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment, or
  - e) based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution of the Works.
- 6.8.2 If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

## **6.9 Records of Contractor's Personnel and Equipment**

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

## **6.10 Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

## **6.11 Foreign Personnel**

- 6.11.1 The Contractor shall not employ foreign personnel unless the contractor demonstrates that there are no Kenyans with the required skills.
- 6.11.2 The Contractor shall be responsible for the return of any foreign personnel to the place where they were recruited or to their domicile. In the event of the death in Kenya of any of these personnel or members of their families, the Contractor shall

similarly be responsible for making the appropriate arrangements for their return or burial.

#### **6.12 Supply of Water**

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

#### **6.13 Measures against Insect and Pest Nuisance**

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

#### **6.14 Alcoholic Liquor or Drugs**

The Contractor shall not, otherwise than in accordance with the Laws of Kenya, onsite, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor's Personnel.

#### **6.15 Prohibition of Forced or Compulsory Labour**

The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

#### **6.16 Prohibition of Harmful Child Labor**

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of Kenya have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.

#### **6.17 Employment Records of Workers**

The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].

## **6.18 Workers' Organizations**

The Contractor shall comply with the relevant labor laws that recognize workers' rights to form and to join workers' organizations of their choosing without interference.

## **6.19 Non-Discrimination and Equal Opportunity**

The Contractor shall base the labour employment on the principle of equal opportunity and fair treatment and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment, retirement, and discipline.

# **7. PLANT, MATERIALS AND WORKMANSHIP**

## **7.0 Manner of Execution**

The Contractor shall carry out the manufacture/assemble of plant, the production and manufacture of Materials, and all other execution of the Works:

- a) In the manner (if any) specified in the Contract,
- b) in a proper workman like and careful manner, in accordance with recognized good practice, and
- c) With properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

## **7.1 Samples**

Submission of material samples will be required.

## **7.2 Inspection**

7.2.1 Kenya Wildlife Service Personnel shall at all reasonable times:

- a) Have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- b) During production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

7.2.2 The Contractor shall give Kenya Wildlife Service Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

7.2.3 The Contractor shall give notice to the Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or

testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and there after reinstate and make good, all at the Contractor's cost.

### **7.3 Testing**

- 7.3.1 This Sub-Clause shall apply to all tests specified in the Contract.
- 7.3.2 Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.
- 7.3.3 The Engineer may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.
- 7.3.4 The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Engineer's presence.
- 7.3.5 If the Contractor suffers delay and/ or incurs Cost from complying with these instructions or as a result of a delay for which Kenya Wildlife Service is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) Payment of any such Cost-plus profit, which shall be included in the Contract Price.
- 7.3.6 After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 7.3.7 The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

## **7.4 Rejection**

- 7.4.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.
- 7.4.2 If the Engineer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause Kenya Wildlife Service to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Kenya Wildlife Service Claims] pay these costs to Kenya Wildlife Service.

## **7.5 Remedial Work**

- 7.5.1 Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:
- a) Remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
  - b) remove and re-execute any other work which is not in accordance with the Contract, and
  - c) Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseen able event or otherwise.
- 7.5.2 The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).
- 7.5.3 If the Contractor fails to comply with the instruction, Kenya Wildlife Service shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Kenya Wildlife Service Claims] pay to all costs arising from this failure.
- 7.5.4 If the contractor repeatedly delivers defective work, Kenya Wildlife Service may consider termination in accordance with Clause 15.

## **7.6 Ownership of Plant and Materials**

Except as otherwise provided in the Contract, each item of Plant and Materials shall become the property of Kenya Wildlife Service at whichever is the earlier of the following times, free from liens and other encumbrances:

- a) When it is incorporated in the Works;
- b) When the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

## **7.7 Royalties**

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

- a) Natural materials obtained from outside the Site, and
- b) The disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal are as within the Site are specified in the Contract.

## **8 COMMENCEMENT, DELAYS AND SUSPENSION**

### **8.0 Commencement of Works**

8.01 Except as otherwise specified in the Special Conditions of Contract, the Commencement Date shall be the date at which the following precedent condition have all been fulfilled and the Engineer notification recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:

- a) Signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of Kenya;
- b) except if otherwise specified in the Special Conditions of Contract, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works.
- c) Receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

8.02 If the said Engineer instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [Termination by Contractor].

8.03 The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date and shall then proceed with the Works with due expedition and without delay.

### **8.1 Time for Completion**

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

- a) Achieving the passing of the Test on Completion, and
- b) Completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

## 8.2 Programme

- 8.2.1 The Contractor shall submit a detailed time programme to the Engineer within 14 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:
- a) The order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
  - b) each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
  - c) the sequence and timing of inspections and tests specified in the Contract, and
  - d) a supporting report which includes:
    - i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
    - ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

- 832 Unless the Engineer, within 14 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. Kenya Wildlife Service Personnel shall be entitled to rely upon the programme when planning their activities.
- 833 The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works.
- 834 If, at anytime, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contractor to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

#### **8.4 Extension of Time for Completion**

- 841 The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:
- a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract,
  - b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
  - c) exceptionally adverse climatic conditions,
  - d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
  - e) Any delay, impediment or prevention caused by or attributable to Kenya Wildlife Service, Kenya Wildlife Service Personnel, or Kenya Wildlife Service other contractors.
- 842 If the Contractor considers itself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Architect shall review previous determinations and may increase, but shall not decrease, the total extension of time.

#### **8.5 Delays Caused by Authorities**

If the following conditions apply, namely:

- a) The Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in Kenya,
- b) These authorities delay or disrupt the Contractor's work, and

- c) The delay or disruption was Unforeseeable, then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion]

## 8.6 Rate of Progress

- 8.61 If, at anytime:
- a) Actual progress is too slow to complete within the Time for Completion, and/or
  - b) Progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme], other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Engineer may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.
- 8.62 Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause Kenya Wildlife Service to incur additional costs, the Contractor shall be subject to notice under Sub-Clause 2.5 [Kenya Wildlife Service Claims] pay these costs to Kenya Wildlife Service, in addition to delay damages (if any) under Sub-Clause 8.7 below.
- 8.63 Additional costs of revised methods including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by Kenya Wildlife Service, without generating, however, any other additional payment benefit to the Contractor.

## 8.7 Delay Damages

- 8.71 If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall be subject to notice under Sub-Clause 2.5 [Kenya Wildlife Service Claims] pay delay damages to Kenya Wildlife Service for this default. These delay damages shall be the sum stated in the **Special Conditions of Contract**, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Special Conditions of Contract.
- 8.72 These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Kenya Wildlife Service] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

## 8.8 Suspension of Work

- 8.81 The Engineer may at anytime instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and

secure such part or the Works against any deterioration, loss or damage.

- 8.8.2 The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

## **8.9 Consequences of Suspension**

- 8.9.1 If the Contractor suffers delay and/or incurs Cost from complying with the Engineer instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) Payment of any such Cost, which shall be included in the Contract Price.
- 8.9.2 After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 8.9.3 The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8 [Suspension of Work].

## **8.10 Payment for Plant and Materials in Event of Suspension**

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/ or Materials which have not been delivered to Site, if:

- a) The work on Plant or delivery of Plant and/ or Materials has been suspended for more than 30 days, and
- b) The Contractor has marked the Plant and/or Materials as Kenya Wildlife Service property in accordance with the Engineer instructions.

## **8.11 Prolonged Suspension**

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Engineer permission to proceed. If the Engineer does not give permission within 30 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

## **8.12 Resumption of Work**

After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension after receiving from the Engineers instruction to this effect under Clause 13 [Variations

and Adjustments].

## **9 TESTS ON COMPLETION**

### **9.0 Contractor's Obligations**

- 9.01 The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [Contractor's General Obligations].
- 9.02 The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.
- 9.03 In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by Kenya Wildlife Service on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

### **9.1 Delayed Tests**

- 9.1.1 If the Tests on Completion are being unduly delayed by Kenya Wildlife Service, Sub-Clause 7.4 [Testing] (fifth paragraph) and/ or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.
- 9.1.2 If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.
- 9.1.3 If the Contractor fails to carry out the Tests on Completion within the period of 21 days, Kenya Wildlife Service Personnel may proceed with the Test at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

### **9.2 Retesting of related works**

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

### **9.3 Failure to Pass Tests on Completion**

- 9.3.1 If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Engineer shall be entitled to:

- a) Order further repetition of Tests on Completion under Sub-Clause 9.3; or
- b) if the failure deprives Kenya Wildlife Service of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event Kenya Wildlife Service shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 1.4 [Failure to Remedy Defects].

## **10 KENYA WILDLIFE SERVICE TAKING OVER**

### **10.0 Taking Over of the Works and Sections**

- 10.0.1 Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by Kenya Wildlife Service when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.
- 10.0.2 The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.
- 10.0.3 The Engineer shall, within 30 days after receiving the Contractor's application:
  - a) Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
  - b) Reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.
- 10.0.4 If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 30 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

### **10.1 Taking Over of Parts of the Works**

- 10.1.1 The Engineer may, at the sole discretion of Kenya Wildlife Service, issue a Taking-Over Certificate for any part of the Permanent Works.
- 10.1.2 Kenya Wildlife Service shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part. However, if Kenya Wildlife Service does use any part of the Works before the Taking-Over Certificate is issued:
  - a) The part which is used shall be deemed to have been taken over as from the date on which it is used,

- b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to Kenya Wildlife Service, and
- c) if requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

- 10.1.3 After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.
- 10.1.4 If the Contractor incurs Cost as a result of Kenya Wildlife Service taking over and/or using a part of the Works, other than such use as is specified in the Contractor agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such accrued costs, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this accrued cost.
- 10.1.5 If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages there after for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages] and shall not affect the maximum amount of these damages.

## **10.2 Interference with Tests on Completion**

- 10.2.1 If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which Kenya Wildlife Service is responsible, Kenya Wildlife Service shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.
- 10.2.2 The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.
- 10.2.3 If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed,

under Sub-Clause 8.4 [Extension of Time for Completion], and

- b) Payment of any such accrued costs, which shall be included in the Contract Price.

- 10.24 After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

### **10.3 Surfaces Requiring Reinstatement**

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

## **11. DEFECTS LIABILITY**

### **11.0 Completion of Outstanding Work and Remedying Defects**

- 11.0.1 In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fairwear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable there after, the Contractor shall:

- a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- b) Execute all work required to remedy defects or damage, as may be notified by (or on behalf of) Kenya Wildlife Service on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

- 11.0.2 If a defect appears or damage occurs, the Contractor shall be notified accordingly by the Engineer.

### **11.1 Cost of Remedying Defects**

- 11.1.1 All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- a) Any design for which the Contractor is responsible,
- b) Plant, Materials or workmanship not being in accordance with the Contract, or
- c) Failure by the Contractor to comply with any other obligation.

- 11.1.2 If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) Kenya Wildlife Service, and Sub-Clause 13.3 [Variation Procedure] shall apply.

### **11.2 Extension of Defects Notification Period**

- 11.2.1 Kenya Wildlife Service shall be entitled subject to Sub-Clause 2.5 [Kenya Wildlife Service Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the

Contractor. However, a Defects Notification Period shall not be extended by more than two years.

- 11.2.2 If delivery and/ or erection of Plant and/ or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligations under this Clause shall not apply to any defect or damage occurring more than two years after the Defects Notification Period for the Plant and/ or Materials would otherwise have expired.

### **11.3 Failure to Remedy Defects**

- 11.3.1 If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by the Engineer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.
- 11.3.2 If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], Kenya Wildlife Service may (at his option):
- (a) Carry out the work itself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall be subject to Sub-Clause 2.5 [Kenya Wildlife Service Claims] pay to Kenya Wildlife Service the costs reasonably incurred by Kenya Wildlife Service in remedying the defect or damage;
  - (b) Require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations]; or
  - (c) if the defect or damage deprives Kenya Wildlife Service of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract otherwise, Kenya Wildlife Service shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

### **11.4 Removal of Defective Work**

If the defect or damage cannot be remedied expeditiously on the Site and Kenya Wildlife Service gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

### **11.5 Further Tests**

- 11.5.1 If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 14 days after the defect or damage is remedied.
- 11.5.2 These tests shall be carried out in accordance with the terms applicable to the

previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

#### **11.6 Right of Access**

Until the Completion Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with Kenya Wildlife Service reasonable security restrictions.

#### **11.7 Contractor to Search**

The Contractor shall, if required by the Engineer, search for the cause of any defect on parts of the works that have already accepted, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Cost of the search plus profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.5 [Determinations] and shall be included in the Contract Price.

#### **11.8 Completion Certificate**

- 11.8.1 Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Completion Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.
- 11.8.2 The Engineer shall issue the Completion Certificate within 30 days after the latest of the expiry dates of the Defects Liability Period, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Completion Certificate shall be issued to Kenya Wildlife Service.
- 11.8.3 Only the Completion Certificate shall be deemed to constitute acceptance of the Works.

#### **11.9 Unfulfilled Obligations**

After the Completion Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

#### **11.10 Clearance of Site**

- 11.10.1 Upon receiving the Completion Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

- 11.102 If all these items have not been removed within 30 days after receipt by the Contractor of the Completion Certificate, Kenya Wildlife Service may sell or otherwise dispose of any remaining items. Kenya Wildlife Service shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.
- 11.103 Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than Kenya Wildlife Service costs, the Contractor shall pay the outstanding balance to Kenya Wildlife Service.

## **12 MEASUREMENT AND DEVALUATION**

### **12.0 Works to be Measured**

- 12.0.1 The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shall show in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement on Completion] and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.
- 12.0.2 Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:
- a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and
  - b) Supply any particulars requested by the Engineer.
- 12.0.3 If the Contractor fails to attend or send a representative, the measurement made by the Engineer shall be accepted as accurate.
- 12.0.4 Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.
- 12.0.5 If the Contractor examines and disagrees the records, and/ or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them and certify the payment of the undisputed part. If the Contractor does not so give notice to the Engineer within Fourteen (14) days after being requested to examine the records, they shall be accepted as accurate.

### **12.1 Method of Measurement**

Except as otherwise stated in the Contract:

- a) Measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- b) The method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

## 12.2 Evaluation

- 12.2.1 Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of work one by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.
- 12.2.2 For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contractor, if there is no such item, specified for similar work.
- 12.2.3 Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.
- 12.2.4 However, for a new item of work, a new rate or price shall be appropriate for such item of work if:
- a) The work is instructed under Clause 13 [Variations and Adjustments],
  - b) no rate or price is specified in the Contract for this item, and
  - c) No specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.
- 12.2.5 Each new rate or price shall be derived from any relevant rates or prices in the Contract. If no rates or prices are relevant for the new item of work, it shall be derived from the reasonable Cost of executing such work, prevailing market rates, together with profit, taking account of any other relevant matters.
- 12.2.6 Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned work commences.
- 12.2.7 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: *(corrected tender price – tender price) / tender price X 100*.

## 12.3 Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- a) The Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;
- b) The omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and

- c) This cost is not deemed to be included in the evaluation of any substituted work; then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

## **13 VARIATIONS AND ADJUSTMENTS**

### **13.0 Right to Vary**

13.0.1 Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. No Variation instructed by the Engineer under this Clause shall in any way vitiate or invalidate the Contract.

13.0.2 The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

13.0.3 Each Variation may include:

- a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- b) changes to the quality and other characteristics of any item of work,
- c) changes to the levels, positions and/ or dimensions of any part of the Works,
- d) omission of any work unless it is to be carried out by others,
- e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- f) Changes to the sequence or timing of the execution of the Works.

13.0.4 The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs after obtaining approval of Kenya Wildlife Service.

### **13.2 Variation Order Procedure**

13.2.1 Prior to any Variation Order under Sub-Clause 13.1.4 the Engineer shall notify the Contractor of the nature and form of such variation. As soon as possible after having received such notice, the Contractor shall submit to the Engineer:

- a) A description of work, if any, to be performed and a programme for its execution, and
- b) the Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause 8.3 or to any of the Contractor's obligations under the Contract, and
- c) The Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Engineer shall, after due

consultation with the Employer and the Contractor, decide as soon as possible whether or not the variation shall be carried out. If the Engineer decides that the variation shall be carried out, he shall issue a Variation Order clearly identified as such in accordance with the Contractor's submission or as modified by agreement.

If the Engineer and the Contractor are unable to agree the adjustment of the Contract Price, the provisions of Sub-Clause 13.2.2 shall apply.

### **13.2.2 Disagreement on Adjustment of the Contract Price**

If the Contractor and the Engineer unable to agree on the adjustment of the Contract Price, the adjustment shall be determined in accordance with the rates specified in the Bills of Quantities or Schedule of Daywork Prices. If the rates contained in the Bills of Quantities or Dayworks Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Engineer reflecting the level of pricing in the Dayworks Prices. Where rates are not contained in the said Prices, the amount shall be such as is in all the circumstances reasonable, reflecting a market price. Due account shall be taken of any over-or under-recovery of overheads by the Contractor in consequence of the variation. The Contractor shall also be entitled to be paid:

- a) The cost of any partial execution of the Work rendered useless by any such variation,
- b) The cost of making necessary alterations to Plant already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such a variation,
- c) any additional costs incurred by the Contractor by the disruption of the progress of the Works as detailed in the Programme, and
- d) The net effect of the Contractor's financial costs, including interest, caused by the variation.

The Engineer shall on this basis determine the rates or prices to enable on-account payment to be included in certificates of payment.

### **13.2.3 Contractor to Proceed**

On receipt of a Variation Order, the Contractor shall forthwith proceed to carry out the variation and be bound to these Conditions in so doing as if such variation was stated in the Contract. The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause 13.3.

## **13.3 Value Engineering**

- 13.3.1 The Contractor may, at anytime, submit to the Engineer written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to Kenya Wildlife Service of executing, maintaining or operating the Works, (iii) improve the efficiency or value to Kenya Wildlife Service of the completed Works, or  
(iv) Otherwise be of benefit to Kenya Wildlife Service.

- 13.3.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure].
- 13.2.3 If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:
- a) The Contractor shall design this part,
  - b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply, and
  - c) if this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
    - i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.8 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost], and
    - ii) the reduction (if any) in the value to Kenya Wildlife Service of the varied works, taking account of any improvement in quality, anticipated life or operational efficiencies.
- 13.3.3 However, if the amount established in item 13.2.3 (c) (i) is less than amount established in item 13.2.3 (c) (ii), there shall not be a fee. However, if the amount established in item 13.2.3 (c) (i) is more than amount established in item 13.2.3 (c) (ii), it shall result in a price variation to Kenya Wildlife Service .

#### **13.4 Variation Procedure for Value Engineering proposal**

- 13.4.1 If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:
- a) A description of the proposed work to be performed and a programme for its execution,
  - b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion, and
  - c) The Contractor's proposal for evaluation of the Variation.
- 13.4.2 The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Project Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst waiting a response.
- 13.4.3 Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.
- 13.4.4 Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Engineer instructs or approves otherwise in accordance with this Clause.

## 135 Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

## 136 Provisional Sums

13.6.1 Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer May instruct:

- a) Work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and/or
- b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:
  - i) The actual amounts paid (or due to be paid) by the Contractor, and
  - ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in **the Special Conditions of Contract** shall be applied.

13.6.2 The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

## 137 Dayworks

13.7.1 For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

13.7.2 Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

13.7.3 Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- a) The names, occupations and time of Contractor's Personnel,
- b) the identification, type and time of Contractor's Equipment and Temporary

- c) Works, and the quantities and types of Plant and Materials used.

13.7.4 One copy of each statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [Application for Interim Payment Certificates].

### **13.8 Adjustments for Changes in Legislation**

13.8.1 The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of Kenya (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

13.8.2 If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) Payment of any such Cost, which shall be included in the Contract Price.

13.8.3 After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

13.8.4 Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost].

### **13.9 Adjustments for Changes in Cost**

13.9.1 In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.

13.9.2 If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labor, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included a mounts to cover the contingency of other rises and falls in costs.

13.9.3 The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which

the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type

### Price Adjustment Formula

Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies:

$$P = A + B \frac{I_m}{I_o}$$

where:

**P** is the adjustment factor for the portion of the Contract Price payable.

**A** and **B** are coefficients **specified in the SCC**, representing then on adjustable and adjustable portions, respectively, of the Contract Price payable and

**I<sub>m</sub>** is the index prevailing at the end of the month being invoiced and **I<sub>o</sub>** is the index prevailing 30 days before Bid opening for inputs payable.

**NOTE:** The sum of the two coefficients A and B should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the non adjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.

- 139.4 The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. Forth is purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.
- 139.5 Incases where the "currency of index" is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the Central Bank of Kenya, of this relevant currency on the above date for which the index is required to be applicable.
- 139.6 Until such time as each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.
- 139.7 If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices there after shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favorable to Kenya Wildlife Service. The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or in applicable, as a result of Variations.

## **14 CONTRACT PRICE AND PAYMENT**

### **14.0 The Contract Price**

14.0.1 Unless otherwise stated in the Special Conditions:

- a) The value of the payment certificate shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;
- b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];
- c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
  - i) of the Works which the Contractor is required to execute, or
  - ii) for the purposes of Clause 12 [Measurement and Evaluation]; and
- d) The Contractor shall submit to the Engineer, within 30 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the break down when preparing Payment Certificates but shall not be bound by it.

14.0.2 Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts there for, imported by the Contractor for the sole purpose of executing the Contract shall not be exempt from the payment of import duties and taxes upon importation.

### **14.1 Advance Payment**

14.1.1 Kenya Wildlife Service shall make an advance payment, as an interest-free loan for mobilization and cashflow support, when the Contractor submits a guarantee in accordance with this Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the **Special Conditions of Contract**.

14.1.2 Unless and until Kenya Wildlife Service receives this guarantee, or if the total advance payment is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.

14.1.3 The Engineer shall deliver to Kenya Wildlife Service and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after Kenya Wildlife Service receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by a

reputable bank or financial institutions elected by the Contractor and shall be in the form annexed to the Special Conditions or in another form approved by Kenya Wildlife Service.

- 14.14 The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.
- 14.15 Unless stated otherwise in **the Special Conditions of Contract**, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Engineer in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates], as follows:
- a) Deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and
  - b) deductions shall be made at the amortization rate stated in the **Special Conditions of Contract** of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.
- 14.16 If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Kenya Wildlife Service], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Kenya Wildlife Service], except for Sub-Clause 14.2.7 [Kenya Wildlife Service Entitlement to Termination for Convenience], payable by the Contractor to Kenya Wildlife Service.

## **14.2 Application for Interim Payment Certificates**

- 14.21 The Contractor shall submit a Statement (in number of copies indicated in the **Special Conditions of Contract**) to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers itself to be entitled, together with supporting documents which shall include there portion the progress during this month in accordance with Sub-Clause 4.21 [Progress Reports].
- 14.22 The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the

sequence listed:

- a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);
- b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];
- c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in **the Special Conditions of Contract** to the total of the above amounts, until the amount so retained by the Procuring Entity reaches the limit of Retention Money (if any) stated in **the Special Conditions of Contract**;
- d) any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment];
- e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];
- f) any other additions or deductions which may have become due under the Contractor otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and
- g) the deduction of amounts certified in all previous Payment Certificates.

### **14.3 Schedule of Payments**

- 14.3.1 If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:
- a) The instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates];
  - b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and
  - c) If these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.
- 14.3.2 If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

### **14.4 Plant and Materials intended for the Works**

- 14.4.1 If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates].
- 14.4.2 If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Schedules, this Sub-Clause shall not apply.
- 14.4.3 The Engineer shall determine and certify each addition if the following conditions are satisfied:
- a) The Contractor has:
    - i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
    - (ii) Submitted statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;and either:
  - b) the relevant Plant and Materials:
    - i) are those listed in the Schedules for payment when shipped,
    - ii) have been shipped to Kenya, enroute to the Site, in accordance with the Contract; and
    - iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by Kenya Wildlife Service in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration; or
  - c) the relevant Plant and Materials:
    - i) are those listed in the Schedules for payment when delivered to the Site, and
    - ii) Have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration and appear to be in accordance with the Contract.
- 14.4.4 The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Engineer determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.
- 14.4.5 The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be

equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

#### **14.5 Issue of Interim Payment Certificates**

- 14.5.1 No amount will be certified or paid until Kenya Wildlife Service has received and approved the Performance Security. Thereafter, the Engineer shall, within 30 days after receiving a Statement and supporting documents, deliver to Kenya Wildlife Service and to the Contractor an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Engineer on the Statement if any.
- 14.5.2 However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated **in the Special Conditions of Contract**. In this event, the Engineer shall give notice to the Contractor accordingly.
- 14.5.3 An Interim Payment Certificate shall not be withheld for any other reason, although:
- a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
  - b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.
- 4.6.4 The Engineer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer acceptance, approval, consent or satisfaction.

#### **14.7 Payment**

- 14.7.1 Kenya Wildlife Service shall pay to the Contractor:
- a) The advance payment shall be paid within 60 days after signing of the contract by both parties or within 60 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;
  - b) The amount certified in each Interim Payment Certificate within 60 days after the Engineer Issues Interim Payment Certificate; and
  - c) the amount certified in the Final Payment Certificate within 60 days after the Procuring Entity Issues Interim Payment Certificate; or after determination of any disputed amount shown in the Final Statement in accordance with Sub-Clause 16.2 [Termination by Contractor].
- 14.7.2 Payment of the amount due in each currency shall be made into the bank account,

nominated by the Contractor, in the payment country (forth is currency) specified in the Contract.

#### **14.8 Delayed Payment**

- 14.8.1 If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges (simple interest) monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b) of the date on which any Interim Payment Certificate is issued.
- 14.8.2 These financing charges shall be calculated at the annual rate of three percentage points above the mean rate of the Central Bank in Kenya of the currency of payment, or if not available, the inter bank offered rate, and shall be paid in such currency.
- 14.8.3 The Contractor shall be entitled to this payment without formal notice and certification, and without prejudice to any other right or remedy.

#### **14.9 Payment of Retention Money**

- 14.9.1 When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.
- 14.9.2 Promptly after the latest of the expiry dates of the Defects Liability Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.
- 14.9.3 However, if any work remains to be executed under Clause 11 [Defects Liability], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.
- 14.9.4 When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].
- 14.9.5 Unless otherwise stated in the Special Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a Retention Money Security guarantee, in the form annexed to the Special

Conditions or in another form approved by Kenya Wildlife Service and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money.

- 14.9.6 Kenya Wildlife Service shall return the Retention Money Security guarantee to the Contractor within 14 days after receiving a copy of the Completion Certificate.

#### **14.10 Statement at Completion**

- 14.10.1 Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer three copies of a Statement at completion with supporting documents, in accordance with Sub- Clause 14.3 [Application for Interim Payment Certificates], showing:
- a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
  - b) any further sums which the Contractor considers to be due, and
  - c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.
- 14.10.2 The Engineer shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

#### **14.11 Application for Final Payment Certificate**

- 14.11.1 Within 60 days after receiving the Completion Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:
- a) The value of all work done in accordance with the Contract, and
  - b) Any further sums which the Contractor considers to be due to him under the Contractor otherwise.
- 14.11.2 If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require within 30 days from receipt of said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".
- 14.11.3 However, if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to Kenya Wildlife Service (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining Dispute Board's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit to the Procuring Entity (with a copy to the Engineer) a Final Statement.

#### **14.12 Discharge**

When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the out standing balance of this total, in which event the discharge shall be effective on such date.

#### **14.13 Issue of Final Payment Certificate**

14.13.1 Within 30 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall deliver, to Kenya Wildlife Service and to the Contractor, the Final Payment Certificate which shall state:

- a) The amount which he fairly determines is finally due, and
- b) After giving credit to Kenya Wildlife Service for all amounts previously paid by Kenya Wildlife Service and for all sums to which Kenya Wildlife Service is entitled, the balance (if any) due from Kenya Wildlife Service to the Contractor or from the Contractor to the Procuring Entity, as the case may be.

14.13.2 If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 30 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

#### **14.14 Cessation of Procuring Entity's Liability**

14.14.1 Kenya Wildlife Service shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

- a) in the Final Statement and also,
- b) (Except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

14.14.2 However, this Sub-Clause shall not limit Kenya Wildlife Service liability under his indemnification obligations, or Kenya Wildlife Service liability in any case of fraud, deliberate default or reckless misconduct by Kenya Wildlife Service

#### **14.15 Currencies of Payment**

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is so named, payments shall be made as follows:

- a) If the Accepted Contract Amount was expressed in Local Currency only:
  - i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as

- stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;
- ii) payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and
- iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a) (i) above;
- b) payment of the damages specified in the Special Conditions of Contract, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- c) other payments to Kenya Wildlife Service by the Contractor shall be made in the currency in which the sum was expended by Kenya Wildlife Service , or in such currency as may be agreed by both Parties;
- d) if any amount payable by the Contractor to Kenya Wildlife Service in a particular currency exceeds the sum payable by Kenya Wildlife Service to the Contractor in that currency, Kenya Wildlife Service may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- e) if no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the Central Bank of Kenya.

## **15 TERMINATION BY PROCURING ENTITY**

### **15.0 Notice to correct any defects or failures**

If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within 30 days.

### **15.1 Termination by Procuring Entity**

15.1.1 Kenya Wildlife Service shall be entitled to terminate the Contract if the Contractor breaches the contract based on following circumstances which shall include but not limited to:

- a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct],
- b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- c) without reasonable excuse fails:
  - i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or
  - ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 30 days after receiving it,
- d) subcontracts the major part or whole of the Works or assigns the Contract without the consent of Kenya Wildlife Service,

- e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an induce mentor reward:
- i) for doing or for bearing to do any action in relation to the Contract, or
- ii) for showing or for bearing to show favor or disfavor to any person in relation to the Contract, or
- iii) If any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such induce mentor reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or
- g) If the contract or repeatedly fails to remedy delivers defective work,
- h) Based on reasonable evidence, has engaged in Fraud and Corruption as defined in paragraph 2.2 of the Appendix B to these General Conditions, incompetently for or in executing the Contract.

15.1.2 In any of these events or circumstances, Kenya Wildlife Service may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub- paragraph (e) or (f) or (g) or (h), Kenya Wildlife Service may by notice terminate the Contract immediately.

15.1.3 Kenya Wildlife Service election to terminate the Contract shall not prejudice any other rights of Kenya Wildlife Service, under the Contract otherwise.

15.1.4 The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

15.1.5 After termination, Kenya Wildlife Service may complete the Works and/ or arrange for any other entities to do so. Kenya Wildlife Service and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

15.1.6 Kenya Wildlife Service shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to Kenya Wildlife Service, these items may be sold by Kenya Wildlife Service in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

## **15.2 Valuation at Date of Termination**

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Kenya Wildlife Service] has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

### **15.3 Payment after Termination**

After a notice of termination under Sub-Clause 15.2 [Termination by Procuring Entity] has taken effect, the Kenya Wildlife Service may:

- a) Proceed in accordance with Sub-Clause 2.5 [Kenya Wildlife Service Claims],
- b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by Kenya Wildlife Service, have been established, and/ or
- c) recover from the Contractor any losses and damages incurred by Kenya Wildlife Service and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, Kenya Wildlife Service shall pay any balance to the Contractor.

### **15.4 Kenya Wildlife Service Entitlement to Termination for Convenience**

Kenya Wildlife Service shall be entitled to terminate the Contract, at any time at Kenya Wildlife Service convenience, by giving notice of such termination to the Contractor. The termination shall take effect 30 days after the later of the dates on which the Contractor receives this notice or Kenya Wildlife Service returns the Performance Security. Kenya Wildlife Service shall not terminate the Contract under this Sub-Clause in order to execute the Works itself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor]. After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-Clause 16.4 [Payment on Termination].

### **15.5 Fraud and Corruption**

The Contractor shall ensure compliance with the Kenya Government's Anti-Corruption Laws and its prevailing sanctions.

### **15.6 Corrupt gifts and payments of commission**

#### **15.6.1 The Contractor shall not;**

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

- b) Enter into this or any other contract with Kenya Wildlife Service 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 Kenya Wildlife Service

15.6.2 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 and Asset Disposal Act (2015) and the Anti-Corruption and Economic Crimes Act (2003) of the Laws of Kenya.

## **16 SUSPENSION AND TERMINATION BY CONTRACTOR**

### **16.0 Contractor's Entitlement to Suspend Work**

16.0.1 If the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or Sub-Clause 14.7 [Payment], or not receiving instructions that would enable the contractor to proceed with the works in accordance with the program, the Contractor may, after giving not less than 30 days' notice to Kenya Wildlife Service, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

16.0.2 The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

16.0.3 If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

16.0.4 If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) Payment of any such Cost-plus profit, which shall be included in the Contract Price.

**16.1** After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

### **16.2 Termination by Contractor**

16.2.1 The Contractor shall be entitled to terminate the Contract if:

- a) the Engineer fails, within 60 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,

- b) the Contractor does not receive the amount due under an Interim Payment Certificate within 90 days after the expiry of the time stated in Sub-Clause 4.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Kenya Wildlife Service Claims]),
- c) Kenya Wildlife Service substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- d) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- e) Kenya Wildlife Service becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.
- f) the Contractor does not receive the Engineer instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

16.2.2 In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to Kenya Wildlife Service, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

16.2.3 The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract otherwise.

### **16.3 Cessation of Work and Removal of Contractor's Equipment**

After a notice of termination under Sub-Clause 15.5 [Kenya Wildlife Service Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

- a) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works,
- b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- c) Remove all other Goods from the Site, except as necessary for safety, and leave the Site.

### **16.4 Payment on Termination**

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, Kenya Wildlife Service shall promptly:

- a) Return the Performance Security to the Contractor,
- b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and
- c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

## **17. RISK AND RESPONSIBILITY**

### **17.0 Indemnities**

- 17.0.1 The Contractor shall indemnify and hold harmless Kenya Wildlife Service, Kenya Wildlife Service Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:
- a) Bodily injury, sickness, disease or death, of any person what so ever arising outo for in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, willful actor breach of the Contract by Kenya Wildlife Service, Kenya Wildlife Service Personnel, or any of their respective agents, and
  - b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by Kenya Wildlife Service, Kenya Wildlife Service Personnel, their respective agents, or anyone directly or indirectly employed by any of them.
- 17.0.2 Kenya Wildlife Service shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by Kenya Wildlife Service, Kenya Wildlife Service Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property], unless and to the extent that any such damage or loss is attributable to any negligence, willful actor breach of the Contract by the contractor, the contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

### **17.1 Contractor's Care of the Works**

- 17.1.1 The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to Kenya Wildlife Service. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to Kenya Wildlife Service .
- 17.1.2 After responsibility has accordingly passed to Kenya Wildlife Service, the

Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

17.13 If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Kenya Wildlife Service Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

17.14 The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

## **17.2 Kenya Wildlife Service Risks**

The risks referred to in Sub-Clause 17.4 [Consequences of Kenya Wildlife Service Risks] below, in so far as they directly affect the execution of the Works in Kenya, are:

- a) War hostilities (whether war be declared or not),
- b) rebellion, riot, commotion or disorder, terrorism, sabotage by persons other than the Contractor's Personnel,
- c) explosive materials, ionizing gradiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such explosives, radiation or radio-activity,
- d) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds,
- e) use or occupation by Kenya Wildlife Service of any part of the Permanent Works, except as may be specified in the Contract,
- f) design of any part of the Works by Kenya Wildlife Service Personnel or by others for whom Kenya Wildlife Service is responsible, and
- g) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventive precautions.

## **17.3 Consequences of Kenya Wildlife Service Risks**

17.3.1 If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

17.3.2 If the Contractor suffers delay and/ or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - (b) Payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (e) and (g) of Sub-Clause 17.3 [Kenya Wildlife Service Risks], Accrued Costs shall be payable.
- 17.3.3 After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

#### **17.4 Intellectual and Industrial Property Rights**

- 17.4.1 In this Sub-Clause, "infringement" shall refer to an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" shall refer to a claim (or proceedings pursuing a claim) alleging an infringement.
- 17.4.2 Whenever a Party does not give notice to the other Party of any claim within 30 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.
- 17.4.3 Kenya Wildlife Service shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:
- a) An unavoidable result of the Contractor's compliance with the Contract, or
  - b) A result of any Works being used by Kenya Wildlife Service:
    - i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
    - ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.
- 17.4.4 The Contractor shall indemnify and hold Kenya Wildlife Service harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.
- 17.4.5 If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.
- 17.4.6 For operation and maintenance of any plant or equipment installed, the contractor shall grant a non-exclusive and non-transferable license to the Kenya Wildlife Service under the patent, utility models, or other intellectual rights owned by the contractor or a third party from whom the contractor has received the rights to grant sub-licenses and shall also grant to Kenya Wildlife Service a non-exclusive and non-transferable rights (without the rights to sub-license) to use the know how

and other technical information disclosed to the contract or under the contract. Nothing contained here-in shall be construed as transferring ownership of any patent, utility model, trademark, design, copy right, know-how or other intellectual rights from the contractor or any other third party to Kenya Wildlife Service .

## **17.5 Limitation of Liability**

- 17.5.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contractor for any indirect consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Kenya Wildlife Service Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].
- 17.5.2 The total liability of the Contractor to Kenya Wildlife Service, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Kenya Wildlife Service Equipment and Free-Issue Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in **the Special Conditions of Contract**, or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.
- 17.5.3 This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

## **17.6 Use of Kenya Wildlife Service Accommodation/Facilities**

- 17.6.1 The Contractor shall take full responsibility for the care of Kenya Wildlife Service provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).
- 17.6.2 If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which Kenya Wildlife Service is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

## **18 INSURANCE**

### **18.0 General Requirements for Insurances**

- 18.0.1 In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

- 18.02 Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by Kenya Wildlife Service. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.
- 18.03 Wherever Kenya Wildlife Service is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.
- 18.04 If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that Kenya Wildlife Service shall act for Kenya Wildlife Service Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.
- 18.05 Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.
- 18.06 The relevant insuring Party shall, within the respective periods stated in **the Special Conditions of Contract** (calculated from the Commencement Date), submit to the other Party:
- a) Evidence that the insurances described in this Clause have been effected, and
  - b) Copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].
- 18.07 When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.
- 18.08 Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.
- 18.09 Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.
- 18.10 If the insuring Party fails to effect and keep in force any of the insurances it is

required to effect and maintain under the Contractor fails to provide satisfactory evidence and copies of policies in accordance with this Sub- Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

- 18.0.11 Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or Kenya Wildlife Service , under the other terms of the Contractor otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or Kenya Wildlife Service .
- 18.0.12 Kenya Wildlife Service in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.
- 18.0.13 Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [Kenya Wildlife Service Claims] or Sub- Clause 20.1 [Contractor's Claims], as applicable.
- 18.0.14 The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18) with insurers from any eligible source country.

## **18.1 Insurance for Works and Contractor's Equipment**

- 18.1.1 The insuring Party shall insure the Works, Plant, Material and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under subparagraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.
- 18.1.2 The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).
- 18.1.3 The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.
- 18.1.4 Unless otherwise stated in the Special Conditions, insurances under this Sub-Clause:  
a) Shall be effected and maintained by the Contractor as insuring Party,

- b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage,
- c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Kenya Wildlife Service Risks],
- d) shall also cover, to the extent specifically required in the tendering documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by Kenya Wildlife Service of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Kenya Wildlife Service Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated **in the Special Conditions** of Contract (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- e) may however exclude loss of, damage to, and reinstatement of:
  - i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
  - ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
  - iii) a part of the Works which has been taken over by Kenya Wildlife Service, except to the extent that the Contractor is liable for the loss or damage, and
  - iv) Goods while they are not in Kenya, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

18.15 If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to Kenya Wildlife Service, with supporting particulars. Kenya Wildlife Service shall then (i) be entitled subject to Sub-Clause 2.5 [Kenya Wildlife Service Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

## **18.2 Insurance against Injury to Persons and Damage to Property**

18.21 The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

18.22 This insurance shall be for a limit per occurrence of not less than the amount stated

in the **Special Conditions of Contract**, with no limit on the number of occurrences. If an amount is not stated in the **Special Conditions of Contract**, this Sub-Clause shall not apply.

- 18.2.3 Unless otherwise stated in the Special Conditions, the insurances specified in this Sub-Clause:
- a) Shall be effected and maintained by the Contractor as insuring Party,
  - b) shall be in the joint names of the Parties,
  - c) shall be extended to cover liability for all loss and damage to Kenya Wildlife Service property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract, and
  - d) may however exclude liability to the extent that it arises from:
    - i) Kenya Wildlife Service right to have the Permanent Works executed on, over, under, in or
    - ii) through any land, and to occupy this land for the Permanent Works,
    - iii) damage which is an unavoidable result of the Contractor's obligations to execute the
    - iv) Works and remedy any defects, and
    - v) a cause listed in Sub-Clause 17.3 [Kenya Wildlife Service Risks], except to the extent that cover is available at commercially reasonable terms.

### **18.3 Insurance for Contractor's Personnel**

- 18.3.1 The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.
- 18.3.2 The insurance shall cover Kenya Wildlife Service and the Engineer against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of Kenya Wildlife Service or of Kenya Wildlife Service Personnel.
- 18.3.3 The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

## **19. FORCE MAJEURE**

### **19.0 Definition of Force Majeure**

- 19.0.1 In this Clause, "Force Majeure" means an exceptional event or circumstance:
- a) Which is beyond a Party's control,
  - b) Which such Party could not reasonably have provided against before entering into the Contract,

- c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- d) which is not substantially attributable to the other Party.

19.02 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- c) riot, commotion, disorder, strike or lock out by persons other than the Contractor's Personnel,
- d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

### **19.1 Notice of Force Majeure**

- 19.1.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
- 19.1.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.
- 19.1.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

### **19.2 Duty to Minimize Delay**

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

### **19.3 Consequences of Force Majeure**

- 19.3.1 If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/ or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
  - a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in sub-paragraphs (ii) to

(iv), occurs in Kenya, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub- Clause18.2 [Insurance for Works and Contractor's Equipment].

- 19.3.2 After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

#### **19.4 Force Majeure Affecting Subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

#### **19.5 Optional Termination, Payment and Release**

- 19.5.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].
- 19.5.2 Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:
- a) the amount payable for any work carried out for which a price is stated in the Contract;
  - b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) Kenya Wildlife Service when paid for by Kenya Wildlife Service, and the Contractor shall place the same at Kenya Wildlife Service disposal;
  - c) other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
  - d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
  - e) the Cost of repatriation of the Contractor's staff and lab or employed wholly in connection with the Works at the date of termination

#### **19.6 Release from Performance**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or

their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- a) The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- b) The sum payable by Kenya Wildlife Service to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

## **20. SETTLEMENT OF CLAIMS AND DISPUTES**

### **20.0 Contractor's Claims**

- 20.0.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.
- 20.0.2 If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and Kenya Wildlife Service shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.
- 20.0.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- 20.0.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at an other location acceptable to the Engineer. Without admitting Kenya Wildlife Service liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records and shall (if instructed) submit copies to the Engineer.
- 20.0.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
  - a) This fully detailed claim shall be considered as interim;

- b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/ or amount claimed, and such further particulars as the Engineer may reasonably require; and
- c) The Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

20.0.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars but shall nevertheless give his response on the principles of the claim within the above defined time period.

20.0.7 Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

20.0.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

20.0.9 If the Engineer does not respond within the time frame defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer the dispute for amicable settlement in accordance with Clause 20.3.

20.0.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/ or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 20.3.

## **20.1 Kenya Wildlife Service Claims**

20.1.1 If Kenya Wildlife Service considers itself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, Kenya Wildlife Service or the Engineer shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [Electricity, Water and Gas], under Sub-Clause 4.20 [Kenya Wildlife Service Equipment and Free-Issue Materials], or for other services requested by the Contractor.

20.1.2 The notice shall be given as soon as practicable and no longer than 30 days after

Kenya Wildlife Service became aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

20.1.3 The particulars shall specify the Clause or other basis of the claim and shall include substantiation of the amount and/or extension to which Kenya Wildlife Service considers itself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which Kenya Wildlife Service is entitled to be paid by the Contractor, and/ or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].

20.1.4 This amount may be included as a deduction in the Contract Price and Payment Certificates. Kenya Wildlife Service shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

## **20.2 Amicable Settlement**

Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 20.1 above should move to commence arbitration after 60 days from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

## **20.3 Matters that may be referred to arbitration**

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

- a) Whether or not the issue of an instruction by the Engineer is empowered by these Conditions.
- b) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- c) Any dispute arising in respect risks arising from matters referred to in Clause 17.3 and Clause 19.
- e) All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless Kenya Wildlife Service and the Contractor agree otherwise in writing.

## **20.4 Arbitration**

20.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.3 shall be finally settled by arbitration.

20.4.2 No arbitration proceedings shall be commenced on any claim or dispute where

notice of a claim or dispute 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.

- 20.4.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 20.4.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 20.4.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision require mentor notice had been given.
- 20.4.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.
- 20.4.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.
- 20.5.7 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Engineer shall not be altered by reason of any arbitration being conducted during the progress of the Works.
- 20.5.8 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

## **20.6 Arbitration with National Contractors**

- 20.6.1 If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or 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, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;
- i) Architectural Association of Kenya
  - ii) Institute of Quantity Surveyors of Kenya
  - iii) Association of Consulting Engineers of Kenya

- iv) Chartered Institute of Arbitrators (Kenya Branch)
- v) Institution of Engineers of Kenya

20.6.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

## **20.7 Arbitration with Foreign Contractors**

20.7.1 Arbitration with foreign contractors shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

20.7.2 The place of arbitration shall be a location specified in the **SCC**; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

## **20.8 Alternative Arbitration Proceedings**

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

## **20.9 Failure to Comply with Arbitrator's Decision**

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

20.9.2 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

## **20.10 Contract operations to continue**

Notwithstanding any reference to arbitration herein,

- 1.1.1 the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- 1.1.2 Kenya Wildlife Service shall pay the Contractor any monies due the Contractor.

## Section IX - Special Conditions of Contract

The following Special Conditions shall supplement the GCC. Whenever there is a conflict, the provisions here in shall prevail over those in the GCC.

Conditions	Sub-Clause	Data
<b>Part A - Contract Data</b>		
Procuring Entity's name and address	Heading	KENYA WILDLIFE SERVICE, P.O.BOX 40241 – 00100, NAIROBI. <a href="http://www.kws.go.ke">www.kws.go.ke</a>
Name and Reference No. of the Contract	Heading and 1.1	PROPOSED CONSTRUCTION OF 28 KM LARIAK FOREST (KAPSIGIRIO - KERANDI - GITUAMBA) ELECTRIC FENCE AND ASSOCIATED WORKS <b>TENDER NO.KWS/OT/B&amp;F/58/2023-2024</b>
Engineers Name and address	Heading and 3.1.1	Ag. DEPUTY DIRECTOR INFRASTRUCTURE MANAGEMENT KENYA WILDLIFE SERVICE PO BOX 40241-00100 NAIROBI.
Contractor's Representative's name	4.3.1	<i>[insert the name of the Contractor's Representative agreed by the Procuring Entity prior to Contract signature]</i>
Engagement of Unskilled Labour		<i>Contractor Shall engage unskilled labour from the local communities surrounding the fence</i>
Key Personnel names	16.9.1	<i>[insert the name of each Key Personnel agreed by the Procuring Entity prior to Contract signature]</i>
Time for Completion	1.1.	180 days
Defects Notification Period	1.1	180 days
Sections	1.1	<i>Not Applicable</i>
Electronic transmission systems	1.3	If so allowed the systems of electronic transmission shall be <b>_Not Allowed</b>
Time for the Parties entering into a Contract	1.6	Within <b>30 days</b> after receipt of Letter of Acceptance

Conditions	Sub-Clause	Data
Agreement		
Commencement Date	8.1.1	<i>The commencement of works shall be within 14 days after order to commence</i>
Time for access to the Site	2.1.1	No later than the Commencement Date, and not later than 14 days after Commencement Date
Engineers Duties and Authority	3.1.6 (b) (ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of <u>25</u> % shall require approval of the Kenya Wildlife Service.
Performance Security	4.2.1	The performance security will be in the form of a <i>Cash/Bank Guarantee</i> / a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya, from a reputable source, and an eligible country in the amount(s) of <u>1</u> % of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.
Normal working hours	6.5	0800 to 0500HRS
Delay damages for the Works	8.7 & 14.15(b)	0.05 % of the contract price per day
Maximum amount of delay damages	8.7.1	To a limit of 10% of contract sum.
Provisional Sums	13.6. (b)(ii)	<i>[If there are Provisional Sums, insert a percentage for adjustment of Provisional Sums]</i> _____ %
Adjustments for Changes in Cost	13.9	<b>Not Applicable</b>
Total advance payment	14.2.1	<b>Not Applicable</b>
Repayment amortization rate of advance payment	14.2.5 (b)	<b>Not Applicable</b>
Percentage of Retention	14.3.2 (c)	_____5%
Limit of Retention Money	14.3.2 (c)	_____5% of the Accepted Contract Amount
Plant and Materials	14.5.3(b) (i)	If Sub-Clause 14.5 applies: Plant and Materials for payment Free on Board <b>Not Applicable.</b>

Conditions	Sub-Clause	Data
	14.5.3(c)(i)	Plant and Materials for payment when delivered to the Site. <b>Not Applicable</b>
Minimum Amount of Interim Payment Certificates	14.6.2	10% of the Accepted Contract Amount.
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	Three percentage points above the discount rate given by the Central bank of Kenya. <b>Not Applicable</b>
Maximum total liability of the Contractor to the Procuring Entity	17.6.2	The product of 0.1 times the Accepted Contract Amount
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1.6	14days 14days
Maximum amount of deductibles for insurance of the Procuring Entity's risks	18.2.4 (d)	<b>Not Applicable</b>
Minimum amount of third-party insurance	18.3.2	1% of the Contract Sum
The place of arbitration	20.7.2	The place of arbitration shall be <b>Kenya Wildlife Service Headquarters, along Lang'ata Rd</b>

## SECTION X - CONTRACT FORMS

### **FORM No 1: NOTIFICATION OF INTENTION TO AWARD OF CONTRACT**

This Notification of Award shall be sent to each Tenderer that submitted a Tender and was not successful. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

#### **FORMAT**

1. For the attention of Tenderer's Authorized Representative

- i) Name: *[insert Authorized Representative's name]*.....
- ii) Address: *[insert Authorized Representative's Address]*.....
- iii) Telephone: *[insert Authorized Representative's telephone/fax numbers]*.....
- iv) Email Address: *[insert Authorized Representative's email address]*.....

*[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]*

2. Date of transmission: *[email]* on *[date]* (local time)

This Notification is sent by *(Name and designation)* \_\_\_\_\_

3. Notification of Award

- i) Procuring Entity: *[insert the name of the ProcuringEntity]*
- ii) Project: *[insert name ofproject]*
- iii) Contract title: *[insert the name of thecontract]*
- iv) ITT No: *[insert ITT reference number from ProcurementPlan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

4. Request a debriefing in relation to the evaluation of your tender by submitting a Procurement-related Complaint in relation to the decision to award the contracts.

- a) The successful tenderers

i) Name of successful Tender \_\_\_\_\_

ii) Address of the successful Tender \_\_\_\_\_  
\_\_\_\_\_

iii) Contract price of the successful Tender Kenya Shillings \_\_\_\_\_  
(in words \_\_\_\_\_)

b) The reasons for your tender being unsuccessful are as follows:

c) Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out.

SNo	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why Not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

#### 5. How to request a debriefing

- a) DEADLINE: The dead line to request a debriefing expires at midnight on *[insert date]* (local time).
- b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
  - i) Attention: *[insert full name of person, if applicable]*
  - ii) Title/position: *[insert title/position]*
  - iii) Agency: *[insert name of Procuring Entity]*
  - iv) Email address: *[insert email address]*
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.
- e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

## 6. How to make a complaint

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date]* (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
  - i) Attention: *[insert full name of person, if applicable]*
  - ii) Title/position: *[insert title/ position]*
  - iii) Agency: *[insert name of Procuring Entity]*
  - iv) Email address: *[insert email address]*
- c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.
- d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website [www.ppra.go.ke](http://www.ppra.go.ke).

You should read these documents before preparing and submitting your complaint.

- e) There are four essential requirements:
  - i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process and is the recipient of a Notification of Intention to Award.
  - ii) The complaint can only challenge the decision to award the contract.
  - iii) You must submit the complaint within the period stated above.
  - iv) You must include, in your complaint, all of the information required to support your complaint.

## 7. **Standstill Period**

- i) **DEADLINE:** The Standstill Period is due to end at midnight on [*insert date*] (local time).
- ii) The Standstill Period lasts Fourteen (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5(d) above.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the Kenya Wildlife Service:

**Signature:**\_\_\_\_\_

**Name:**\_\_\_\_\_

**Title/position:**\_\_\_\_\_

\_\_\_\_\_

**Telephone:**\_\_\_\_\_

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FORM FOR REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (Procuring Entity)

Request for review of the decision of the..... (Name of the Procuring Entity of .....dated the...day of .....20.....in the matter of Tender No.....of .....20..... for ..... (Tender description).

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical address.....P. O. Box No..... Tel. No.....Email ....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

1.

2.

By this memorandum, the Applicant requests the Board for an order/orders that:

1.

2.

SIGNED .....(Applicant) Dated on.....day of ...../...20.....

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FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of .....20.....

SIGNED

Board Secretary

**FORM NO 3: LETTER OF AWARD**

*letterhead paper of the Procuring Entity*  
*[date]*

To: *[name and address of the Contractor]*

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amoun tin numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is here by accepted by.....Kenya Wildlife Service.

You are requested to furnish the Performance Security within in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized				Signature:
.....				
Name	and	Title	of	Signatory:
.....				
Name	of	Procuring		Entity:
.....				
Attachment:		Contract		Agreement:
.....				

## FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the day of..... 20.....,  
between.....

.....of..... (hereinafter "the  
Procuring  
Entity"), of the one part, and.....of  
.....(hereinafter "the Contractor"),  
of the other part:

WHEREAS the Procuring Entity desires that the Worksknownas.....should  
be executed by the Contractor, and has accepted a Tender by the Contractor for the  
execution and completion of these Worksand the remedying of any defects there in,

The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - a) theNotification of Award
  - b) the Form of Tender
  - c) the addenda Nos\_\_\_\_(if any)
  - d) the Special Conditions of Contract
  - e) the General Conditions of Contract;
  - f) the Specifications
  - g) the Drawings; and
  - h) the completed Schedules and any other documents forming part of the contract.
3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this Agreement, the Contractor here by covenants with the Procuring Entity to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring Entity here by covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects there in, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

INWITNESS where of the parties here to have caused this Agreement to be executed in accordance with the Laws of Kenya on the day, month and year specified above.

Signed and sealed by.....(for the Procuring Entity)

Signed and sealed by.....(for the Contractor).

## FORM NO. 5 - PERFORMANCE SECURITY

### [Option 1 - Unconditional Demand Bank Guarantee]

*[Guarantor letterhead]*

**Beneficiary:** *Kenya Wildlife Service*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with *(name of Procuring Entity)* \_\_\_\_\_ (the Procuring Entity as the Beneficiary), for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_ *(in words)*,<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the ..... Day of ....., 2.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee." .....

*[Name of Authorized Official, signature(s) and seals/stamps]*

**Note:** *All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product*

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<sup>1</sup>The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup>Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.

## **FORM No. 6- PERFORMANCE SECURITY**

### **[Option 2– Performance Bond]**

*[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee in stead of Performance Bond due to difficulties involved in calling Bond holder to action]*

*[Guarantor letterhead or SWIFT identifier code]*

#### **Beneficiary:**

*[insert name and Address of Procuring Entity]*

**y] Date:** \_\_\_\_\_

\_\_\_\_\_ *[Insert date of issue]* **PERFORMANCE**

**BOND No.:** \_

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond \_\_\_\_\_ as Principal (hereinafter called "the Contractor") and \_\_\_\_\_ as Surety (hereinafter called "the Surety"), are held and firmly bound unto \_\_\_\_\_ as Obligee (hereinafter called "the Procuring Entity") in the amount of \_\_\_\_\_ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the \_\_\_\_ day of \_\_\_, 20\_\_\_\_\_, for \_\_\_\_\_ in accordance with the documents, plans, specifications, and amendments there to, which to the extent here in provided for, are by reference made part here of and are here in after referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, the Surety may promptly remedy the default, or shall promptly:
  - a) Complete the Contract in accordance with its terms and conditions; or
  - b) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest

responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make a vailable as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or

- c) Pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions upto a total not exceeding the amount of this Bond.
- 4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
  - 5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named here in or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.
  - 6. In testimony whereof, the Contractor has here unto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly at tested by the signature of his legal representative, this day \_\_\_\_of\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

## FORM NO. 7 - ADVANCE PAYMENT SECURITY

### [Demand Bank Guarantee]

[Guarantor letterhead]

**Beneficiary:** \_\_\_\_\_ [Insert name and Address of

Procuring Entity] **Date:** \_\_\_\_\_ [Insert date of issue]

**ADVANCE PAYMENT GUARANTEE No.:** [Insert guarantee reference number]

**Guarantor:** [Insert name and address of place of issue, unless indicated in the letterhead]

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ (in words \_\_\_\_\_) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (in words \_\_\_\_\_)<sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
  - a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
  - b) Has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number \_\_\_\_\_ at \_\_\_\_\_.
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the \_\_\_\_\_ day of \_\_\_\_\_, 2,<sup>2</sup> whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the

guarantee.

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7.

*[Name of Authorized Official, signature(s) and seals/stamps]*

**Note:** *All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.*

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<sup>1</sup>*The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

<sup>2</sup>*Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

## **FORM NO. 8 – RETENTION MONEY SECURITY**

### **[Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** \_\_\_\_\_ *[Insert name and Address of Procuring Entity]*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**Advance payment guarantee no.** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that \_\_\_\_\_ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ *[insert reference number of the contract]* dated \_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys upto the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and payment of *[insert the second half of the Retention Money]* is to be made against a Retention Money guarantee.
3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* \_\_\_\_\_ (*[insert amount in words* \_\_\_\_\_ *])*<sup>1</sup> upon receipt by us of the Beneficiary's complying demands supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified there in.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Contractor on its account number \_\_\_\_\_ at \_\_\_\_\_ *[insert name and address of Applicant's bank]*.
5. This guarantee shall expire no later than the ..... Day of .....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to

exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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*[Name of Authorized Official, signature(s) and seals/stamps]*

**Note:** *All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product*

<sup>1</sup>*The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.*

<sup>2</sup>*Insert a date that is twenty-eight days after the expiry of retention period after the actual completion date of the contract. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee*

**INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM**

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:*

- Directly or indirectly holding 25% or more of the shares.*
- Directly or indirectly holding 25% or more of the voting rights.*
- Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

**FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE FOR**

Tender Reference No.: \_\_\_\_\_ *[insert*

*identification no]* Name of the Assignment: \_\_\_\_\_ *[insert name of the*  
*assignment]* to: \_\_\_\_\_ *[insert complete name of Procuring Entity]*

In response to your notification of award dated \_\_\_\_ *[insert date of notification of award]* to furnish additional information on beneficial ownership: *[select one option as applicable and delete the options that are not applicable]*

I) We hereby provide the following beneficial ownership information.

Details of beneficial ownership

Identity of Beneficial Owner	Directly or indirectly holding 25% or more of the shares (Yes / No)	Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)	Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

OR

ii) *We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

OR

*We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]*

*Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights.*

*Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer]*

*Name of the Tenderer: .....\*[insert complete name of the Tenderer]*

*Name of the person duly authorized to sign the Tender on behalf of the Tenderer: \*\* [insert complete name of person duly authorized to sign the Tender]*

*Title of the person signing the Tender: ..... [insert complete title of the person signing the Tender]*

*Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]*

*Date signed ..... [insert date of signing] day of..... [Insert month], [inse*

