

**REPUBLIC OF KENYA**



**MANDERA COUNTY GOVERNMENT**

**PROPOSED CONSTRUCTION OF 20,000 CUBIC METRE  
EARTH PAN AT BOLOWLE IN MANDERA WEST SUB-  
COUNTY**

**IN**

**MANDERA COUNTY**

**TENDER DOCUMENTS**

**TENDER NO: .....MCG/OT/52/2018-2019.....**

**FEBRAURY, 2019**

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## **INTRODUCTION**

- 1.1 This standard tender document for procurement of works has been prepared for use by procuring entities in Kenya in the procurement of works (e.g. Buildings, Roads, Bridges, Repairs and Maintenance) which the procuring entity considers to be small and where it is not required to be open tendering.
- 1.2 The following guidelines should be observed when using the document:-
  - (a) Specific details should be furnished in the tender notice and in the special conditions of contract (where applicable). The tender document issued to tenderers should not have blank spaces or options.
  - (b) The instructions to tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through Appendix to instructions to tenderers and special conditions of contract respectively.
- 1.3 (a) Information contained in the invitation to tender shall conform to the data and information in the tender documents to enable prospective tenderers to decide whether or not to participate in the tender and shall indicate any important tender requirements
  - I. The invitation to tender shall be as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have been prequalified following a request for prequalification.
- 1.4 The cover of the tender document should be modified to include:-
  - II. Tender number.
  - III. Tender name.
  - IV. Name of procuring entity.
  - V. Delete name and address of PPOA.

## SECTION I

### INVITATION FOR TENDERS

Tender reference no. : **MCG/OT/52/2018-2019**

**Tender Name: PROPOSED CONSTRUCTION OF 20,000 CUBIC METRE EARTH PAN AT BOLOWLE IN MANDERA WEST SUB-COUNTY**

1.1 The Mandera *County Government* invites sealed PROPOSED CONSTRUCTION OF 20,000 CUBIC METRE EARTH PAN AT BOLOWLE IN MANDERA WEST SUB-COUNTY

1.2 Interested eligible candidates may obtain and inspect tender documents from our website [www.mandera.go.ke](http://www.mandera.go.ke). For any more information/clarification interested applicants can visit the office of the **Director of Supply Chain Management Office, next to Read sea resort of - Mandera**, during normal working hours.

1.3 Prices quoted should be net inclusive of all taxes, must be in Kenya shillings and shall remain valid for the contract period.

1.4 Original and a copy of tender documents are to be enclosed in plain sealed envelopes marked with Tender name and reference number and deposited in the Tender Box located at the supply chain management office in Mandera or to be addressed to  
**County Chief Officer Accounting and financial services**  
**P.O. Box 13**  
**Mandera**

So as to be received on or before **Wednesday, 20<sup>TH</sup> FEBRUARY 2019 at 10.00 Am**

1.6 Tenders will be opened immediately thereafter in the presence of the candidates or their representatives who choose to attend at a location as will be designated.

**Director Supply Chain Management**

**For COUNTY Chief Officer Accounting and financial services**

SECTION II  
INSTRUCTIONS TO TENDERERS  
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## INSTRUCTIONS TO TENDERERS.

1. General
  - 1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful Tenderer will be expected to complete the Works by the Intended Completion Date specified in the said Appendix.
  - 1.2 Tenderers shall include the following information and documents with their tenders, unless otherwise stated:
    - (a) copies of certificates of registration, and principal place of business;
    - (b) total monetary value of construction work performed for each of the last five years;
    - (c) experience in works of a similar nature and size for each of the last five years, and clients who may be contacted for further information on these contracts;
    - (d) major items of construction equipment owned;
    - (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
    - (f) reports on the financial standing of the Tenderer, such as profit and loss statements and auditor's reports for the last five years;
    - (g) authority to seek references from the Tenderer's bankers.
  - 1.3 The Tenderer shall bear all costs associated with the preparation and submission of his tender, and the Employer will in no case be responsible or liable for those costs.
  - 1.4 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Tenderer's own expense.
  - 1.5 The procurement entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
  - 1.6 The price to be charged for the tender document shall not exceed Kshs.1,000/=
  - 1.7 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.
2. Tender Documents

- 2.1 The complete set of tender documents comprises the documents listed here below and any addenda issued in accordance with clause 2.4 Here below:-
- (a) These instructions to Tenderers
  - (b) Form of Tender
  - (c) Conditions of Contract and Appendix to Conditions of Contract
  - (d) Specifications
  - (e) Drawings
  - (f) Bills of Quantities/Schedule of Rates (whichever is applicable)
  - (g) Other materials required to be filled and submitted in accordance with these Instructions and Conditions
- 2.2 The Tenderer shall examine all instructions, forms and specifications in the tender documents. Failure to furnish all information required by the tender documents may result in rejection of his tender.
- 2.3 A prospective Tenderer making inquiries of the tendering documents may notify the Employer in writing or by cable, telex or facsimile at the address indicated in the letter of invitation to tender. The Employer will respond to any request for clarification received earlier than seven [7] days prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.
- 2.4 Before the deadline for submission of tenders, the Employer may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all Tenderers. Prospective Tenderers shall acknowledge receipt of each addendum in writing to the Employer.
- 2.5 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders in accordance with clause 4.2 here below.

### 3. Preparation of Tenders

- 3.1 All documents relating to the tender and any correspondence shall be in English Language.
- 3.2 The tender submitted by the Tenderer shall comprise the following:-
- (a) The Tender;

- (b) Tender Security;
- (c) Priced Bill of Quantities/Schedule of Rates for lump-sum Contracts
- (d) Any other materials required to be completed and submitted by Tenderers.

- 3.3 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities/Schedule of Rates. Items for which no rate or price is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities/Schedule of Rates. All duties, taxes and other levies payable by the Contractor under the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the Tenderer.
- 3.4 The rates and prices quoted by the Tenderer shall not be subject to any adjustment during the performance of the Contract.
- 3.5 The unit rates and prices shall be in Kenya Shillings.
- 3.6 Tenders shall remain valid for a period of sixty (60) days from the date of submission. However in exceptional circumstances, the Employer may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing.
- 3.7 The Tenderer shall prepare one original and a copy of the documents comprising the tender documents as described in these Instructions to Tenderers.
- 3.8 The original shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. All pages of the tender where alterations or additions have been made shall be initialed by the person or persons signing the tender.
- 3.9 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 3.10 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

#### 4. Submission of Tenders

- 4.1 The tender duly filled and sealed in an envelope shall;-



- (a) be addressed to the Employer at the address provided in the invitation to tender;
- [b] bear the name and identification number of the Contract as defined in the invitation to tender; and
- [c] provide a warning not to open before the specified time and date for tender opening.

4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender.

4.3 The tenderer shall not submit any alternative offers unless they are specifically required in the tender documents.

Only one tender may be submitted by each tenderer. Any tenderer who fails to comply with this requirement will be disqualified.

4.4 Any tender received after the deadline for opening tenders will be returned to the tenderer un-opened.

4.5 The Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with sub-clause 2.5 in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will then be subject to the new deadline.

## 5. Tender Opening and Evaluation

5.1 The tenders will be opened in the presence of the Tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender.

5.2 The Tenderers' names, the total amount of each tender and such other details as may be considered appropriate, will be announced at the opening by the Employer. Minutes of the tender opening, including the information disclosed to those present will also be prepared by the Employer.

5.3 Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of the Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Employer's officials, processing of tenders or award

decisions may result in the rejection of his tender.

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

- (a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer's representative, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.
- (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities/Quotation, the amount as stated in the Form of Tender shall prevail.
- (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the Corrected Builder's Work (i.e. corrected tender sum less P.C. and Provisional Sums).
- (e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.
- (f) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and with concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security forfeited.

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

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

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

5.8 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request. Preference where allowed in

the evaluation of tenders shall not exceed 15%

- 5.9 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may request [in writing] any Tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the tender price or substance of the tender shall be sought, offered or permitted.
- 5.10 The Tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.

## 6. Award of Contract

- 6.1 The award of the Contract will be made to the Tenderer who has offered the lowest evaluated tender price.
- 6.2 Notwithstanding the provisions of clause 6.1 above, the Employer reserves the right to accept or reject any tender and to cancel the tendering process and reject all tenders at any time prior to the award of Contract without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the action.
- 6.3 The Tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum [hereinafter and in all Contract documents called the "Contract Price" which the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. The contract shall be formed on the parties signing the contract. At the same time the other tenderers shall be informed that their tenders have not been successful.
- 6.4 The Contract Agreement will incorporate all agreements between the Employer and the successful Tenderer. It will be signed by the Employer and sent to the successful Tenderer, within 30 days following the notification of award. Within 21 days of receipt ,the successful Tenderer will sign the Agreement and return it to the Employer.
- 6.5 Within 21 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Employer a Performance Security amount

stipulated in the Appendix to Conditions of Contract.

- 6.6 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 6.7 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 6.8 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

## 7. Corrupt and fraudulent practices

- 7.1 The procuring entity requires that the tenderer observes the highest standard of ethics during the procurement process and execution of the contract. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.
- 7.2 The procuring entity will reject a tender if it determines that the tenderer recommended for award has engaged in corrupt and fraudulent practices in competing for the contract in question.
- 7.3 Further a tenderer who is found to have indulged in corrupt and fraudulent practices risks being debarred from participating in public procurement in Kenya.

## **Appendix to Instructions to Tenderers**

### **Notes on the Appendix to the Instruction to Tenderers**

1. The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to the corresponding clause in the instructions to Tenderers and has to be prepared for each specific procurement.
2. The procuring entity should specify in the appendix information and requirements specific to the circumstances of the procuring entity, the goods to be procured and the tender evaluation criteria that will apply to the tenders.
3. In preparing the Appendix the following aspects should be taken into consideration;
  - (a) The information that specifies and complements provisions of Instruction to tenderers to be incorporated
  - (b) Amendments and/or supplements if any, to provisions of Section 2.0 as necessitated by the circumstances of the goods to be procured to be also incorporated
4. Section II should remain unchanged and can only be amended through the Appendix.
5. Clauses to be included in this part must be consistent with the public procurement law and the regulations.

### **Appendix to Instructions to Tenderers/General information**

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

<b>INSTRUCTIONS TO TENDERERS REFERENCE</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
	<i>The Bidder shall submit original and a copy of the tender document, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER” on or before Wednesday, 20<sup>TH</sup> FEBRUARY 2019 at 10.00 Am Both documents (Original &amp; Copy) shall bear all the attachments required.</i>
	<i>The bidder shall submit a minimum bid security of 2% of the tender sum from a reputable bank or recognized insurance company.</i>
	<i>Bidders shall attach three original recommendation letters from three different reputable clients not older than one month from the date of submission of this tender.</i>

#### **PRELIMINARY REQUIREMENTS**

1. All entries must be typed or written in ink. Mistakes must not be erased but should be crossed out and corrections made and initialed by the persons signing the tender.
2. The form of bid **shall** be duly filled, signed and stamped by an individual entrusted with the powers of attorney.
3. Each bid should be submitted in a plain sealed envelope with the Tender Number and Name endorsed on the outside.
4. The bidder shall attach a duly filled, signed and stamped confidential business questionnaire by an individual entrusted with the powers of attorney.
5. The form of power of attorney shall be duly filled, signed and stamped.
6. **The tender document shall be submitted complete, intact with no page alterations.**
7. Tenderers shall ensure that the submitted bid (documents) is (are) serialized .i.e (each page in the submitted bid shall have serial identification).
8. All submitted forms and documents shall be duly filled, signed (where applicable) and stamped.

**Bidders shall attach copies of the under listed documents endorsed (signed and stamped) by commissioner of oaths/advocate registered in Kenya.**

9. Valid current year business permit.
10. Valid current year tax compliance certificate.
11. Certificate of incorporation.
12. PIN/VAT certificate from KRA.
13. Registration with NCA for water works
14. Financial audited accounts for the previous three years endorsed, signed and stamped by a registered external auditor.

**Bidders that will not comply with the above criteria shall be considered non-responsive.**

**MINIMUM REQUIREMENTS**

In the technical requirements tables, bidders should indicate their capacity bearing in mind that these tables bear the minimum requirements for this tender.

:

No.	KEY personnel Position	Total Work Experience (years)	In Similar Works Experience (years)
1	Project Director (Key Partner/Director)	10	8
2	One Site Agent / Contract manager (Registered hydro-geologist/registered civil engineer)	8	5
3	Environmentalist	8	5
4	Plant operator	5	3
5	2 No. Water Inspector of Works/Pipeline Foreman (must be holders of at least Diploma in water engineering or equivalent).	8	5
6	1 No. Surveyor (must be holders of at least Ordinary National Diploma (OND) in water engineering or equivalent).	5	3

**TECHNICAL REQUIREMENTS**

In the technical requirements below, bidders shall fill the tables appropriately failure to which the bids will be considered non-responsive. All the attached proof/copies of documents shall be endorsed, signed and stamped by Commissioner of Oaths/Advocate to ensure validity.

**15.** Bidders shall List and attach valid proof of at least three similar projects of similar magnitude undertaken in the last three years in table below with a valid proof of award and completion of the projects.

Serial No.	Projects	Clients Name, Address & Telephone No.	Value of the project (Kshs.)	Year(s) the Project was
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				<b>undertaken</b>
<b>1.</b>				
<b>2.</b>				
<b>3.</b>				

#### **16. SCHEDULE OF RELEVANT PLANT AND EQUIPMENTS**

Bidders shall state below the key relevant plant/Equipment that will be immediately available for this works what plants will be available and what further plant/equipment will be acquired or hired for the works should the contractor be judged qualified by the County and awarded the contract. Bidders shall attach proof for the under listed plant and equipment. The equipments stated below must be more than those indicated in the minimum requirements.



Description, Size, Capacity	No.	Present Location	Remarks

Signed by Bidder  
.....  
Name of Signatory  
.....  
  
Date.....

**17. SCHEDULE OF KEY PERSONNEL WITHIN YOUR ESTABLISHMENT**

Bidders shall insert in the spaces below at least five key personnel to be engaged in this contract if awarded. State qualification and experience of each personnel and also attach their credentials/CV and supportive documents for reference.

Category (to Work as)	Name of Person	Qualification	Number of Persons

Bidders must fill in the various categories in the minimum requirements table for key personnel. For unskilled labour, only the total number is required to be entered in the form above. Qualifications will be verified prior to award of the contract. Where personnel are substituted during the contract or before the award of the contract, only substitute person with equivalent or higher qualifications will be approved or accepted by the County.

All attached copies shall be endorsed, signed & stamped by commissioner of oaths/advocate.

Sign.....

Date.....

Bidders who shall not meet the above technical requirement will be considered non-responsive.

## EVALUATION AND COMPARISON OF TENDERS

Evaluation and comparison of Tenders: the following evaluation criteria shall be applied notwithstanding any other requirement in the tender documents.

### a) Mandatory requirements(MR)

The following requirements must be met by the tenderer

#### ***PRELIMINARY EVALUATION CRITERIA***

S/No	REQUIREMENTS	Score Mandatory	B1	B2	B3	B4	B5	B6
1	Dully filled confidential business questionnaire	Mandatory (Yes/No)						
2	Form of tender duly filled, signed and stamped	Mandatory (Yes/No)						
3	Tenderers shall ensure that the submitted bid (documents) is (are) serialized .i.e (each page in the submitted bid shall have serial identification).	Mandatory (Yes/No)						
4	The form of power of attorney shall be duly filled, signed and stamped.	Mandatory (Yes/No)						
5	The form of bid shall be duly filled, signed and stamped by an individual entrusted with the powers of attorney.	Mandatory (Yes/No)						
6	All entries must be typed or written in ink. Mistakes must not be erased but should be crossed out and corrections made and initialed by the persons signing the tender.	Mandatory (Yes/No)						
7	The bidder shall attach a duly filled, signed and stamped confidential business questionnaire by an individual entrusted with the powers of attorney.	Mandatory (Yes/No)						
8	Bid Security	Mandatory (Yes/No)						
9	<b>Bidders shall attach copies of the under listed documents endorsed (signed and stamped) by commissioner of oaths/advocate registered in Kenya.</b>							
10	Valid current year business permits.	Mandatory (Yes/No)						
11	Valid current year tax compliance certificate.	Mandatory (Yes/No)						
12	Certificate of incorporation.	Mandatory (Yes/No)						
13	PIN/VAT certificate from KRA	Mandatory (Yes/No)						
14	Registration with NCA for water works	Mandatory (Yes/No)						

#### KEY

Bidder 1: B1  
 Bidder 2: B2  
 Bidder 3: B3  
 Bidder 4: B4  
 Bidder 5: B5  
 Bidder 6: B6  
 Bidder 7: B7  
 Bidder 8: B8

**NB:** At this stage, the tender's submission will either be responsive or non-responsive. The non-responsive submission will be eliminated from the entire evaluation process and will not be considered further.

NO	<b>Technical Evaluation</b>				
	<b>Criteria</b>				
1	<b>Experience</b>	<b>Marks</b>	<b>Score</b>		
	a) Experience of construction of at least three earth dams/pans of the same capacity or above (Attach awards and completion letters and any other relevant documents relating).	15			
2	b) Experience of five similar works in water and sewerage in the last five years (Attach award and completion letters and other relevant documents)	15			
	<b>Equipment</b>				
	Dozer, excavator, water bowser, Bulldozer with Hydraulic Scraper, Caterpillar, Concrete Mixers, Cranes, Crusher, Crusher Loaders Dumpers, Sheepsfoot Roller and pick up	Owned	15		
		100% leased			
3	<b>Key Personnel</b>				
	a) Site Agent	<b>Qualification</b>			
		Civil Engineer	Degree	5	
			HND	3	
			Diploma	2	
		<b>Relevant Experience</b>			
			3 to 5 years	3	

			1 to 2 years	2	
	b) Plant operator	<b>Qualification</b>			
		Certificate / licenses		3	
				2	
		<b>Experience</b>	3 to 5 years	2	
			1 to 2 years	1	
	c) Driver				
		License		1	
		<b>Experience</b>			
			2 to 3 years	1	
6	<b>Financial Evaluation criteria</b>				
	<b>Audited Accounts</b>				
	a) Provide and attach Financial audited accounts for the Last 3 Years (2015-2016-2017-2018) duly certified by commissioner of oath.			15	
	a) Provide and attach bank statement for the last six (6) month, duly certified with the bank.			5	
	b) Provide and attach Liquid assets and or/ credit facilities by a bank.			5	
	c) Provide and attach work methodology on execution of works duly signed and stamped by the person holding power of attorney.			5	

- i) ***Bidder who scores less than 75% of the combined technical and financial score would be considered to be non-responsive and would not proceed for further evaluation.***

## SECTION III – CONDITIONS OF CONTRACT

### 1. Definitions

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

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

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

“The Completion Date” means the date of completion of the Works as certified by the Employer’s Representative.

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

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

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

“The Contract Price” is the price stated in the Letter of Acceptance.

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

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

“The Defects Liability Certificate” is the certificate issued by Employer’s Representative upon correction of defects by the Contractor.

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

“Drawings” include calculations and other information provided or approved by the Employer’s Representative for the execution of the Contract.

“Employer” Includes Central or Local Government administration, Universities, Public Institutions and Corporations and is the party who employs the Contractor to carry out the Works.

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

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

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

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

“Specification” means the Specification of the Works included in the Contract.

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

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

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

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

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

## 2. Contract Documents

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

- (1) Agreement,
- (2) Letter of Acceptance,
- (3) Contractor’s Tender,
- (4) Conditions of Contract,
- (5) Specifications,
- (6) Drawings,
- (7) Bills of Quantities or Schedule of Rates [whichever is applicable]



### 3. Employer's Representative's Decisions

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

### 4. Works, Language and Law of Contract

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

### 5. Safety, Temporary works and Discoveries

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

### 6 Work Program and Sub-contracting

- 6.1 Within seven days after Site possession date, the Contractor shall submit to the Employer's Representative for approval a program showing the general methods, arrangements, order and timing for all the activities in the Works.
- 6.2 The Contractor may sub-contract the Works (but only to a maximum of 25 percent of the Contract Price) with the approval of the Employer's Representative. However, he shall not assign the Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor's obligations.

### 7 The site

- 7.1 The Employer shall give possession of all parts of the Site to the Contractor. The Contractor shall allow the Employer's Representative and any other person authorised by the Employer's Representative, access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

## 8 Instructions

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

## 9 Extension of Completion Date

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

Delay by:-

- (a) force majeure, or
- (b) reason of any exceptionally adverse weather conditions, or
- (c) reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
- (d) reason of the Employer's Representative's instructions issued under these Conditions, or
- (e) reason of the contractor not having received in due time necessary instructions, drawings, details or levels from the Employer's Representative for which he specifically applied in writing on a date which having regard to the date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under this clause was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- (f) delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or

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

## 10 Management Meetings

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

## 11 Defects

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

any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract.

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

## 12 Bills of Quantities/Schedule of Rates

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

## 13 Variations

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

Contractor's costs.

#### 14 Payment Certificates and Final Account

- 14.1 The Contractor shall be paid after each of the following stages of Work listed herebelow (subject to re-measurement by the Employer's Representative of the Work done in each stage before payment is made). In case of lump-sum Contracts, the valuation for each stage shall be based on the quantities so obtained in the re-measurement and the rates in the Schedule of Rates.
- (i) Advance payment\_  
(percent of Contract Price,  
[after Contract execution] *to be inserted by the Employer*).
  - (ii) First stage (*define stage*) \_
  - (iii) Second stage (*define stage*) \_
  - (iv) Third stage (*define stage*) \_
  - (v) After defects liability period .
- 14.2 Upon deciding that Works included in a particular stage are complete, the Contractor shall submit to the Employer's Representative his application for payment. The Employer's Representative shall check, adjust if necessary and certify the amount to be paid to the Contractor within 21 days of receipt of the Contractor's application .The Employer shall pay the Contractor the amounts so certified within 30 days of the date of issue of each Interim Certificate.
- 14.3 The Contractor shall supply the Employer's Representative with a detailed final account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Employer's Representative shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Employer's Representative shall issue within 21 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Employer's Representative shall decide on the amount payable to the Contractor and issue a Final Payment Certificate. The Employer shall pay the Contractor the amount so certified within 60 days of the issue of the Final Payment Certificate.

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

15. Insurance

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

16. Liquidated Damages

- 16.1 The Contractor shall pay liquidated damages to the Employer at the rate 0.001 per cent of the Contract price per day for each day that the actual Completion Date is later than the Intended Completion Date except in the case of any of the occurrences listed under clause 9.2. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

17. Completion and Taking Over

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

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

18. Termination

- 18.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;
- (a) the Contractor stops Work for 30 days continuously without reasonable cause or authority from the Employer's Representative;
  - (b) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

- (c) a payment certified by the Employer's Representative is not paid by the Employer to the Contractor within 30 days after the expiry of the payment periods stated in sub clauses 14.2 and 14.3 hereinabove.
- (d) the Employer's Representative gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time.

18.2 If the Contract is terminated, the Contractor shall stop Work immediately, and leave the Site as soon as reasonably possible. The Employer's Representative shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

## 19. Payment Upon Termination

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

19.2 The Contractor shall, during the execution or after the completion of the Works under this clause, remove from the Site as and when required within such reasonable time as the Employer's Representative may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to him, and in default thereof, the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

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

## 20. Corrupt Gifts and Payments of Commission

20.1 The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the Employer any gifts or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract with the Employer.
- (b) Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the Laws of Kenya.

## 21. Settlement of Disputes

- 21.1 Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.



## SECTION IV – APPENDIX TO CONDITIONS OF CONTRACT

### THE EMPLOYER IS

Name: **GOVERNOR - Mandera County Government**  
 Address: **P.O Box 13, MANDERA**

Name of Authorized Representative: **County Executive Committee Member – WATER, ENERGY & NATURAL RESOURCES.**

Cell phone: .....  
 E-mail:/Fax: .....

Name of Alternative Representative: **Chief Officer - Water.**

Cell phone: .....  
 E-mail:/Fax: .....

The Project Manager is: **County Director – Water, Mandera County.**  
 Address: **P.O. BOX 49, MANDERA**  
 Cell phone: .....

**1.2 The name (and identification number) of the Contract is: PROPOSED CONSTRUCTION OF 20,000 CUBIC METRE EARTH PAN AT BOLOWLE IN MANDERA WEST SUB-COUNTY**

**1.3 The works consist of: PROPOSED CONSTRUCTION OF 20,000 CUBIC METRE EARTH PAN AT BOLOWLE IN MANDERA WEST SUB-COUNTY**

The Start Date shall be **AGREED WITH THE PROJECT MANAGER**

The Intended Completion Date for the whole of the Works shall be **fifty two weeks (52)** from the **commencement date as agreed with the Project Manager.**

The following documents also form part of the Contract:  
**AS LISTED IN CLAUSE 2.3 OF CONDITIONS OF CONTRACT**

The Contractor shall submit a revised program for the Works within **fourteen days(14)** days of delivery of the Letter of Acceptance.

The Site Possession Date shall be **AGREED WITH THE PROJECT MANAGER**

The Defects Liability period is **180** days

The minimum insurance covers shall be; “ALL RISKS INSURANCE”

The following events shall also be Compensation Events:

**1. NONE (ONLY AS LISTED IN CLAUSE 24 OF THE CONDITIONS OF CONTRACT**

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

The period between Program updates is **15** days.

The amount to be withheld for late submission of an updated Program is **FULL CERTIFICATE**

The proportion of payments retained is **10%** percent.

The Price Adjustment Clause **SHALL NOT** apply

The liquidated damages for the whole of the Works is Kshs. **1,000.00** (per week)

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

The Completion Period for the Works is **fifty two weeks (52)**

The rate of exchange for calculation of foreign currency payments is **not applicable**

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

Advance Payment **SHALL NOT be** granted.

The Bidder should submit **ONLY ONE (1 NO.) ORIGINAL AND A COPY** of the Bills of Quantities as indicated in Clause 4.1 of the Instruction to Tenderers.

**This Tender must be accompanied by a Bid Bond or else the tender shall be disqualified.**

**SECTION V– STANDARD FORM**

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

## FORM OF TENDER

TO: MANDERA COUNTY GOVERNMENT

\_\_\_\_\_ [Date]

1.4 **REF:** TENDER FOR PROPOSED CONSTRUCTION OF 20,000 CUBIC METRE EARTH PAN AT BOLOWLE IN MANDERA WEST SUB-COUNTY

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs. \_\_\_\_\_ [Amount in Shillings \_\_\_\_\_ figures/Kenya Shillings \_\_\_\_\_] [Amount in words]
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender for 120 days from the date of submission, and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_

duly authorized to sign tenders for and on behalf of  
 \_\_\_\_\_ [Name of Employer]  
 of \_\_\_\_\_ [Address of Employer]

Witness; Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**LETTER OF ACCEPTANCE****[letterhead paper of the Employer]**

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

To: \_\_\_\_\_  
[name of the Contractor]\_\_\_\_\_  
[address of the Contractor]

Dear Sir,

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

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

Authorized Signature .....

Name and Title of Signatory .....

Attachment : Agreement

## FORM OF AGREEMENT

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between **MANDERA COUNTY GOVERNMENT** of[or whose registered office is situated at] **P.O BOX 13, MANDERA,KENYA** (hereinafter called “the Employer”) of the one part AND \_\_\_\_\_ of[or whose registered office is situated at]\_\_\_\_\_ (hereinafter called “the Contractor”) of the other part.

WHEREAS THE Employer is desirous that the Contractor executes PROPOSED CONSTRUCTION OF 20,000 CUBIC METRE EARTH PAN AT BOLOWLE IN MANDERA WEST SUB-COUNTY

MCG/OT/52/2018-2019

(*name and identification number of Contract* ) (hereinafter called “the Works”) located at **Mandera County**[*Place/ location of the Works*]and the Employer has accepted the tender submitted by the Contractor for the execution and completion of such Works and the remedying of any defects therein for the Contract Price of

Kshs \_\_\_\_\_[*Amount in figures*],Kenya

Shillings \_\_\_\_\_[*Amount in words*].

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.
  - (i) Letter of Acceptance
  - (ii) Form of Tender
  - (iii) Conditions of Contract Part I
  - (iv) Conditions of Contract Part II and Appendix to Conditions of Contract
  - (v) Specifications
  - (vi) Drawings
  - (vii) Priced Bills of Quantities
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby

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

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

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

The common Seal of \_\_\_\_\_

Was hereunto affixed in the presence of \_\_\_\_\_

Signed Sealed, and Delivered by the said \_\_\_\_\_

Binding Signature of Employer \_\_\_\_\_

Binding Signature of Contractor \_\_\_\_\_

In the presence of (i) Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

[ii] Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

**FORM OF TENDER SECURITY**

WHEREAS .....(hereinafter called “the Tenderer”) has submitted his tender dated ..... for the construction of .....  
 ..... (name of Contract)

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

THE CONDITIONS of this obligation are:

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

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

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

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

\_\_\_\_\_  
 [signature of the Bank]

\_\_\_\_\_  
 [witness]

\_\_\_\_\_  
 [seal]



**TENDER-SECURING DECLARATION**

[The Tenderer shall fill in this Form in accordance with the instructions indicated.]

Date: .....

TENDER No.: .....

To: **MANDERA COUNTY GOVERNMENT**

We, the undersigned, declare that:

We understand that, according to your conditions, tenders must be supported by a Tenders-Securing Declaration.

We accept that we will automatically be suspended from being eligible for tendering in any contract with the Procuring Entity for the period of time as determined by the Authority if we are in breach of our obligation(s) under the tender conditions, because we:

- (a) have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- (b) does not accept the Procuring Entity's corrections of arithmetic errors in accordance with the Instructions to Tenderers; or
- (c) having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender 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 ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight (28) days after the expiration of our Tender validity period.

Signed: .....

Name: .....

In the capacity of .....

Duly authorized to sign the Tender for and on behalf of:

.....

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [insert date of signing]

Corporate Seal (where appropriate)

*[Note: In case of a Joint Venture, the Tender Securing Declaration must be in the name of all partners to the Joint Venture that submits the tender.]*

**PERFORMANCE BANK GUARANTEE**

To: \_\_\_\_\_ (Name of Employer) \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Address of Employer)

Dear Sir,

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

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

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

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

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

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

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

SIGNATURE AND SEAL OF THE GUARANTOR \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

**BANK GUARANTEE FOR ADVANCE PAYMENT**

To: \_\_\_\_\_ *[name of Employer]* \_\_\_\_\_ *(Date)*  
 \_\_\_\_\_ *[address of Employer]*

Gentlemen,

Ref: \_\_\_\_\_ *[name of Contract]*

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

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

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between \_\_\_\_\_ *[name of Employer]* and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

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

Yours faithfully,

Signature and Seal \_\_\_\_\_

Name of the Bank or financial institution \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

Witness:     Name: \_\_\_\_\_

Address: \_\_\_\_\_

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

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

**CONFIDENTIAL BUSINESS QUESTIONNAIRE**

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

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

*Part 1 – General*

Business Name .....

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

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

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

Nature of Business.....

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

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

Name of your bankers.....

Branch.....

*Part 2 (a) – Sole Proprietor*

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

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

\*Citizenship details .....

*Part 2 (b) – Partnership*

*Give details of partners as follows:*

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

**Part 2(c) – Registered Company:**

Private or public.....

State the nominal and issued capital of the Company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows:

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

1.  
.....

2.  
.....

3.  
.....

4.  
.....

**Part 2(d) – Interest in the Firm:**

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

I certify that the information given above is correct.

.....  
(Title)                      (Signature)                      (Date)

- Attach proof of citizenship

**LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

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To: 

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RE: Tender No. 

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Tender Name 

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

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1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) 

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SIGNED FOR ACCOUNTING OFFICER

**FORM RB 1**

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of  
 .....dated the...day of .....20.....in the matter of Tender No.....of  
 .....20...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
 address.....Fax No.....Tel. No.....Email ....., hereby request the Public  
 Procurement Administrative Review Board to review the whole/part of the above mentioned  
 decision on the following grounds , namely:-

- 1.
- 2.
- etc.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
- 2.
- etc

SIGNED .....(Applicant)

Dated on.....day of ...../...20...

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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 OF POWER OF ATTORNEY

***(All bidders shall complete this form otherwise, their bids shall be considered non-responsive)***

We \_\_\_\_\_ (Name of Bidder)

having our offices located in \_\_\_\_\_ (Name of Town and Building) duly  
authorise

\_\_\_\_\_ (Name of person appointed to act for and on behalf  
of the bidder) to act for and on our behalf on all matters pertaining to the execution of works as stipulated und

Duly signed and delivered:

Name of appointed attorney: \_\_\_\_\_

Signature of appointed attorney: \_\_\_\_\_

Witnessed by:

1. Name of First Company Director: \_\_\_\_\_

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

2. Name of Second Company Director: \_\_\_\_\_

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

Company Seal:

\_\_\_\_\_

## SECTION VI – SPECIFICATIONS, DRAWINGS & BILLS OF QUANTITIES

### SPECIFICATIONS

#### Notes for preparing Specifications

- 1.0 Specifications must be drafted to present a clear and precise statement of the required standards of materials, and workmanship for tenderers to respond realistically and competitively to the requirements of the Employer and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other supplies to be permanently incorporated in the Works be new, unused, of the most recent or current models, and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsible for the design of any part of the permanent Works, the extent of his obligations must be stated.
- 2.0 Specifications from previous similar projects are useful and may not be necessary to re-write specifications for every Works Contract.
- 3.0 There are considerable advantages in standardizing **General Specifications** for repetitive Works in recognized public sectors, such as highways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions, although not necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General Specifications to the particular Works.
- 4.0 Care must be taken in drafting Specifications to ensure they are not restrictive. In the Specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized international standards may also be used.
- 5.0 The Employer should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in tender documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential tenderers.

The Employer should provide a description of the selected parts of the Works with appropriate reference to Drawings, Specifications, Bills of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at

least structurally and functionally equivalent to the basic design parameters and Specifications.

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

## **BILLS OF QUANTITIES**

CONSTRUCTION OF 20,000m3 EARTH PAN AT BOLOWLE MANDERA WEST					
Tender No.: .....					
BILL OF QUANTITIES					
Item	Description	Units	QTY	Rate	Amount
<b>BILL NO.1: PRELIMINARIES AND GENERAL ITEMS</b>					
	<b>CLASS A; GENERAL ITEMS</b>				
	<u><b>Contractual Requirement</b></u>				
A110	Provisional sum for Environmental impact assessment (EIA).	item	LS	60,000.00	60,000.00
A120	Provisional sum for levis (WRMA)	item	LS	20,000.00	20,000.00
A130	Povisional sum for project supervision and administration	item	LS		<b>640,000</b>
	<u><b>Temporary works</b></u>				
A140	Provisional sum for erection of sign board and maintenance over contract period.	item	LS	40,000.00	40,000.00
A150	Provisional sum for setting out of works.	item	LS	50,000.00	50,000.00
A160	Provide provision for keeping site from free running water	item	LS		
A170	Provide provision for temporary site office, store, accommodation, sanitation, clean water and first Aid kit', security etc	item	LS	100,000	100,000
	<b>Mobilization of plant and equipment</b>				
A180	Provide Provision for mobilization and demobilization plant, equipment, personnel to site	KM	310		
A190	<b><i>The Contractor is to describe hereunder in detail and price other works, obligations and things which may be referred to in the conditions of contract and specifications or which may be considered have been omitted from the bills of quantities and for which he desires to enter a separate charge.</i></b>				
I					
II					
III					
	<b>SUB-TOTAL FOR BILL NO 1</b>			KSHS	
<b>BILL NO.2: EARTH WORKS</b>					
2.1	<b>PAN EXCAVATIONS</b>				
2.11	Carry out light Bush clearing within the earth Dam site and along the 200m long stretch around the pan site	M2	36,900		

2.12	Excavate oversight to remove vegetation soil and scrap clean to minimum depth of 150mm and stack for reuse to cover pan embankment.	M2	29,600		
2.13	Excavate including ripping of the pan storage area to measure 105mx80m to depth of NOT EXCEEDING 1.5m, and should have slope of 1:3	M3	10,000		
2.14	Excavate including ripping of the pan storage area to measure 105mx80m to depth from 1.5m to 3.0m and should have slope of 1:3	M3	10,000		
2.2	<b>EMBANKMENT CONSTRUCTION</b>				
2.21	Haul the above excavated material to construct an earthen embankment 22m wide at the base and a 4m wide at the crest with both upstream and down stream slope of 1:3 and a height of 3.0m while depositing soil in layers of 300mm and ensuring proper compaction through out the embankment construction	M3	14,430		
2.22	Dispose the extra excavated material and deposit as directed by the engineer	M3	6,400		
2.3	<b>SILT TRAP CONSTRUCTION</b>				
2.31	Excavate for silt trap formation measuring 50x30m with a depth of 2.0m having 1:3 side slopes	M3	3,000		
2.4	<b>INLET AND SPILLWAY EXCAVATION</b>				
2.41	Excavate for intake channel construction measuring 5m wide, 25m long having a maximum depth of 750mm	M3	63		
2.42	Excavate for spillway channel construction measuring 4.5m wide, 100m long having a maximum depth of 500mm	M3	350		
2.43	Excavate for inlet channel construction measuring 5m wide, 1.5km long having a maximum depth of 1.0m	M3	7,500		
	<b>SUB-TOTAL FOR BILL NO 2</b>				
3	<b>BILL NO.3 AUXILARY WORKS</b>				
3.11	<b>FENCING</b>				
3.11	Excavate pits for angle line fencing poles 350x350mm by 450mm deep 2.4m apart	NO	280		
3.12	Supply and erect angle line steel sections measuring at least 40mmx40mm by 4mm thick and 3,000mm long as instructed on site	NO	280		

3.13	Cover pits with mass concrete 1:4:8 to firmly erect angle line posts in place	M3	10		
3.14	Supply and place 8 strands of 16 gauge Barbed Wire at a uniform spacing of 300mm between strands	LM	5,200		
3.15	Supply and fasten chain link fencing wire 2.5m wide to steel section posts	M2	1,625		
3.16	Fabricate and install a standard steel framed mesh fabric 125 Gate with lockable pedestrian door	NO	1		
<b>3.2 INLET AND SPILLWAY CONCRETE PROTECTION</b>					
3.21	Undertake construction of 25m long by 5m wide reinforced concrete intake chanell while providing protection against erosion using riprap and gabions	M3	19		
3.22	Allow for the supply, preparation and placing of steel reinforcements:				
(i)	Y10 reinforcement bars	Lengths	73		
(ii)	BRC Mesh fabric No 125	M2	40		
3.23	Filled, placed and properly anchored Gabion Wires	NO	20		
3.24	Provision of timber formwork on sides on R.C. spillway protection	M2	15		
(ii)	BRC Mesh fabric No 125	M2	40		
3.25	Undertake construction of 6m long by 4.5m wide Reinforced Concrete spillway to protect against erosion as directed by the Engineer while raising spillway bed by 400mm and providing for construction of concrete walling on spillway sides and stone riprap protection along contact areas with existing earth embankment	item	L/S		
<b>SUB-TOTAL FOR BILL NO3</b>				<b>Kshs</b>	
<b>GRAND TOTAL FOR THE EARTH PAN CONSTRUCTION</b>				<b>KSHS</b>	
<b>SUMMARY</b>					
<b>BILL NO</b>	<b>DESCRIPTION</b>			<b>AMOUNT KSH</b>	
1	<b>PRELIMINARIES AND GENERAL ITEMS</b>				
2	<b>EARTH WORKS</b>				
3	<b>AUXILARY WORKS</b>				
	<b>ADD 5% CONTIGENCY</b>				
	<b>GRAND TOTAL</b>				

Kenya Shillings.....

.....

Contractor: .....

VAT Registration No: .....

Pin No: .....

Address: .....

Signature: ..... Date: .....

Witness: .....

Address: .....

Signature: ..... Date: .....