



## **KENYA FORESTRY RESEARCH INSTITUTE**

**TENDER NO:** KEFRI/ONT/ 004 /2020-2021 (re-advertisement)

**TENDER NAME:** PROPOSED CHAIN LINK FENCING AT  
TIVA WOODLANDS-KITUI

**RELEASE DATE:** TUESDAY, 1<sup>st</sup> DECEMBER 2020

**CLOSING DATE:** TUESDAY, 15<sup>th</sup> DECEMBER 2020

**DECEMBER, 2020**

## **CONTENTS**

INVITATION TO TENDER .....	3
SECTION I: INVITATION FOR TENDERS (IFT) .....	5
SECTION II: INSTRUCTIONS TO TENDERERS (ITT).....	6
SECTION III: TENDER DATA SHEET .....	26
EVALUATION CRITERIA .....	30
Preliminary/Mandatory Evaluation .....	30
TECHNICAL EVALUATION.....	31
(c) Financial Evaluation and determination of Financially Responsive Tender.....	32
SECTION IV: GENERAL CONDITIONS OF CONTRACT.....	34
SECTION V: CONTRACT DATA SHEET (CDS) .....	54
SECTION VI: TECHNICAL SPECIFICATIONS .....	57
SECTION VII: DRAWINGS .....	58
SECTION VIII:TENDER FORMS .....	59
SECTION IX: FORMS OF SECURITY .....	71
SECTION X: APPLICATION TO PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD .....	77
SECTION XI: BILLS OF QUANTITIES .....	78

# KENYA FORESTRY RESEARCH INSTITUTE



## INVITATION TO TENDER

The Kenya Forestry Research Institute (KEFRI) invites sealed bids from eligible candidates for the below listed tenders;

No	Tender Reference Number	Tender Title	Target Group	Bid Closing Date
1.	KEFRI/ONT/002/2020 2021 (re-advertisement)	-proposed construction of three (3) no. seed stores - Riftvalley eco-region research programme- <b>Londiani &amp; Turbo</b> Sub Centre and central highland eco-region research programme- <b>Muguga</b>	Open/AGPO	Tuesday 15 <sup>th</sup> December 2020 at 11.30am
2.	KEFRI/ONT/003/2020 2021 (re-advertisement)	-Proposed Renovation of Mau Sub Centre – Senetwet	AGPO	Tuesday 15 <sup>th</sup> December 2020 at 11.30am
3	KEFRI/ONT/004/2020 2021 (re-advertisement)	-Proposed Chainlink Fencing at Tiva Woodlands- <b>Kitui</b>	AGPO	Tuesday 15 <sup>th</sup> December 2020 at 11.30am
4	KEFRI/ONT/005/2020 2021	-Proposed Renovation of Roof and Completion of Kitchen and Dining at KEFRI Lamu Sub-Centre	Open/AGPO	Tuesday 15 <sup>th</sup> December 2020 at 11.30am
5	KEFRI/ONT/006/2020 2021	-Supply, Delivery, Installation, Testing and Commissioning of borehole drilling and equipping at KEFRI Taita Taveta Sub Centre	Open/AGPO	Tuesday 15 <sup>th</sup> December 2020 at 11.30am

Tender documents can be downloaded free of charge from KEFRI website [www.kefri.org](http://www.kefri.org) or Public Procurement Information Portal, [www.tenders.go.ke](http://www.tenders.go.ke). All queries quoting the tender number and title should be emailed to : [tenders@kefri.org](mailto:tenders@kefri.org) for the purpose of clarification. Completed bid documents must be submitted in a plain sealed envelope (“**original**” and “**copy**” ) **all** clearly marked with the tender number and name indicated as per instructions in the tender document and addressed to:

**The Director**  
**Kenya Forestry Research Institute**  
**P.O BOX 20412-00200 City Square**  
**Nairobi**

and deposited in the tender box situated at the entrance of the Director's office - KEFRI Headquarters, Muguga, so as to be received on or before the bid closing date of **Tuesday 15<sup>th</sup> December 2020 at 11:30am**. Thereafter the received bids will be open immediately in the presence of the tenderers or their representatives who choose to attend in the Auditorium Hall - KEFRI Headquarters – Muguga.

The process of tender preparation – **pre - tender site visit**, closing and opening shall be undertaken in adherence to COVID – 19 guidelines and protocols from the Ministry of Health.

KEFRI shall not answer to any query relating to the tenders three (3) days or less prior to the submission deadline.

**DIRECTOR - KEFRI**

## SECTION I: INVITATION FOR TENDERS (IFT)

**Tender No:** KEFRI/ONT/004/2020-2021 (re-advertisement)

**Tender Name:** Proposed Chain Link Fencing at Tiva Woodlands-Kitui

**Date:** 1/12/2020

1. The Kenya Forestry Research Institute invites sealed Tenders from eligible registered Contractors for **Proposed Chain link Fencing at Tiva Woodlands-Kitui**. The Procuring Entity has funds for use during the financial year **2020/2021**.
2. Tendering will be conducted through the **Open National Tendering** procedures specified in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulations, 2020 and is open to all Tenderers as defined in the Regulations.
3. Interested eligible Tenderers may obtain Tendering Documents at the offices of the Procurement Unit **Kenya Forestry Research Institute Headquarters, Muguga, Off Nairobi – Naivasha Road, P.O Box 20412-00200, Nairobi** from **8:00 am to 5:00 pm** on Mondays to Fridays inclusive except on public holidays at a cost of Kshs 1000 or on the website [www.kefri.org](http://www.kefri.org) or Public Procurement Information Portal ([www.tenders.go.ke](http://www.tenders.go.ke)) and can be downloaded **free of charge**.
4. A complete set of Tendering Document(s) can be obtained/purchased by interested Tenderers at the address given under paragraph 3 above and upon payment of a non-refundable fee of **KShs.1,000** Payment should either be by Cash, Banker's Draft, or Banker's Cheque, payable to the Cashier at the Accounts Department **Kenya Forestry Research Institute Headquarters, Muguga, Off Nairobi – Naivasha Road, P.O Box 20412-00200, Nairobi** from **8:00 am to 5:00 pm** on Mondays to Fridays except on public holidays.
5. Completed Tender document(**ORIGINAL and COPY**) are to be enclosed in plain sealed envelopes, marked with the tender number and name and be deposited in the Tender Box situated at the office of the **Director, Kenya Forestry Research Institute** or be addressed to the **Director, Kenya Forestry Research Institute Headquarters, Muguga, Off Nairobi – Naivasha Road, P.O Box 20412-00200, Nairobi** so as to be received on or before **Tuesday 15<sup>th</sup> December, 2020 at 11:30 am**

Late Tenders shall not be accepted.

**Director**

## SECTION II: INSTRUCTIONS TO TENDERERS (ITT)

### 1.0 Scope of Tender

- 1.1 KEFRI invites Tenders for the construction of works as specified in the **Tender Data Sheet** and Sections VI (Technical Specifications) and VII (Drawings).
- 1.2 The successful Tenderer will be expected to complete the works by the required completion date specified in the **Tender Data Sheet**.
- 1.3 The objectives of the works are listed in the **Tender Data Sheet**. These are mandatory requirements. Any subsequent detail is offered to support these objectives and must not be used to dilute their importance

### 2.0 Source of Funds

- 2.1 The Government of Kenya/KEFRI has set aside funds for the use of KEFRI named in the **Tender Data Sheet** during the Financial Year indicated in the **Tender Data Sheet**. It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the works as described in the **Tender Data Sheet**.
- 2.2 Payments will be made directly by KEFRI and will be subject in all respects to the terms and conditions of the resulting contract placed by KEFRI.

### 3.0 Eligible Tenderers

- 3.1 A Tenderer may be a natural person, private or public company, government-owned institution, subject to sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the **Tender Data Sheet**, all parties shall be jointly and severally liable.
- 3.2 The Invitation for Tenders is open to all suppliers as defined in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Asset Disposal Regulations, 2020 except as provided hereinafter.
- 3.3 National Tenderers shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya, such as the Ministry of Public Works or the Energy Regulatory Commission.
- 3.4 A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if they:
  - a) Are associated or have been associated in the past directly or indirectly with employees or agents of KEFRI or a member of a board or committee of KEFRI;
  - b) Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by KEFRI to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the works under this Invitation for Tenders;
  - c) Have controlling shareholders in common; or
  - d) Receive or have received any direct or indirect subsidy from any of them; or
  - e) Have the same legal representative for purposes of this Tender; or

- f) Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of KEFRI regarding this Tendering process; or
- g) Submit more than one Tender in this Tendering process, However, this does not limit

the participation of subcontractors in more than one Tender, or as Tenderer and subcontractor simultaneously.

- 3.5 A Tenderer will be considered to have a conflict of interest if they participated as a consultant in the preparation of the design or technical specification of the project and related services that are the subject of the Tender.
- 3.6 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the Government of Kenya in accordance with GCC sub-Clause 3.2.
- 3.7 Government owned enterprises in Kenya may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration board or authorities and if they are not a dependent agency of the Government.
- 3.8 Tenderers shall provide such evidence of their continued eligibility satisfactory to KEFRI, as KEFRI shall reasonably request.

#### **4.0 One Tender per Tenderer**

- 4.1 A firm shall submit only one Tender, in the same Tendering process, either individually as a Tenderer or as a partner in a joint venture pursuant to ITT Clause 5.
- 4.2 No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process.
- 4.3 A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity.
- 4.4 A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.

#### **5.0 Alternative Tenders by Tenderers**

- 5.1 Tenderers shall submit offers that comply with the requirements of the Tendering documents, including the basic Tenderer's technical design as indicated in the specifications and Drawings and Bill of Quantities.
- 5.2 Alternatives will not be considered, unless specifically allowed for in the Tender Data Sheet. If so allowed, sub-Clause 5.2 and 5.3 shall govern.
- 5.3 When alternative times for completion are explicitly invited, a statement to that effect will be included in the Tender Data Sheet as will the method of evaluating different times for completion.
- 5.4 If so allowed in the Tender Data Sheet, Tenderers wishing to offer technical alternatives to the requirements of the Tendering documents must also submit a Tender that complies with the requirements of the Tendering documents, including the basic technical design as indicated in the specifications.
- 5.5 In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by KEFRI, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by KEFRI.

## **6.0 Cost of Tendering**

6.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and KEFRI shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

## **7.0 Site Visit and Pre-Tender Meeting**

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is advised to visit and examine the Site of 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.

7.2 KEFRI will conduct a site visit and a pre-Tender meeting. The purpose of 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's designated representative is invited to attend a site visit and pre-Tender meeting which, if convened, will take place at the venue and time stipulated in the Tender Data Sheet.

7.4 The Tenderer is requested as far as possible, to submit any questions in writing or by electronic means to reach KEFRI before the pre-Tender meeting. It may not be practicable at the meeting to answer all questions, but questions and responses will be transmitted in accordance with sub-Clause 7.5.

7.5 Minutes of the pre-Tender meeting, including the text of the questions raised and the responses given together with any responses prepared after the pre-Tender meeting will be transmitted within the time stated in the Tender Data Sheet to all purchasers of the Tendering documents. Any modification of the Tendering documents listed in sub-Clause 8.1 that may become necessary as a result of the pre-Tender meeting shall be made by KEFRI exclusively through the issue of an Addendum pursuant to ITT sub Clause 10.2 and not through the minutes of the pre-Tender meeting.

7.6 Non-attendance during the site visit or pre-Tender meeting will not be a cause for disqualification of a Tenderer unless specified to the contrary in the Tender Data Sheet.

## **8.0 Content of Tendering Documents**

8.1 The works required, Tendering procedures, and contract terms are prescribed in the Tendering Documents. In addition to the Section I Invitation for Tenders, Tendering documents which should be read in conjunction with any addenda issued in accordance with ITT sub Clause 10.2 include:

Section II	Instructions to Tenderers
Section III	Tender Data Sheet
Section IV	General Conditions of Contract
Section V	Contract Data Sheet
Section VI	Specifications
Section VII	Drawings
Section VIII	Bill of Quantities
Section IX	Forms of Tender
	<input type="checkbox"/> Form of Tender

- Appendix to Tender
- Confidential Business Questionnaire
- Integrity Declaration
- Letter of Acceptance
- Form of Contract Agreement

Section X Forms of Security

- Tender Security Form
- Tender Securing Declaration
- Performance Bank or Insurance Guarantee
- Advance Payment Guarantee

Section XI Form RB1 Application to Public Procurement Administrative Review Board

**8.2** The number of copies to be completed and returned with the Tender is specified in the **Tender Data Sheet**.

8.3 The Invitation for Tenders (Section I) issued by KEFRI is not part of the Tendering Documents and is included for reference purposes only. In case of discrepancies between the Invitation for Tenders and the Tendering Documents listed in sub-Clause 8.1 above, the said Tendering Documents will take precedence.

8.4 KEFRI is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from the authorized staff of KEFRI.

**8.5** The Tenderer is expected to examine all instructions, forms, terms and specifications in the Tendering documents. Failure to furnish all information required by the Tendering Documents or to submit a Tender substantially responsive to the Tendering documents in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

**9.0 Clarification of Tendering Documents**

9.1 A prospective Tenderer requiring any clarification of the Tendering documents may notify KEFRI in writing, e-mail or facsimile at KEFRI's address indicated in the Tender Data

9.2 KEFRI will within the period stated in the Tender Data Sheet respond in writing to any request for clarification provided that such request is received no later than the period indicated in the Tender Data Sheet prior to the deadline for the submission of Tenders prescribed in sub-Clause 22.1.

9.3 Copies of KEFRI's response will be forwarded to all Purchasers of the Tendering documents, including a description of the inquiry, but without identifying its source.

9.4 Should KEFRI deem it necessary to amend the Tendering documents as a result of a clarification, it shall do so following the procedure under ITT Clause 10.

**10.0 Amendments of the Tendering Documents**

**10.1** Before the deadline for submission of Tenders, KEFRI may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, modify the Tendering documents by issuing addenda

10.2 Any addendum issued shall be part of the Tender documents pursuant to sub-

Clause 8.1 and shall be communicated in writing, by e-mail or facsimile to all who have obtained the Tendering documents directly from KEFRI. In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, KEFRI at its discretion shall extend, as necessary, the deadline for submission of Tenders, in accordance with sub-Clause 22.2

## **11.0 Preparation of Tenders**

### **Language of Tender**

11.1 The Tender, and all correspondence and documents related to the Tender exchanged by the Tenderer and KEFRI shall be written in the Tender language stipulated in the **Tender Data Sheet**. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the above stated language, in which case, for purposes of interpretation of the Tender, the translation shall prevail.

## **12.0 Documents Constituting the Tender**

12.1 The Tender submitted by the Tenderer shall consist of the following components:

- a) The Form of Tender (in the format indicated in Section IX) completed in accordance with ITT Clause 15, 16 and 17;
- b) Information requested by Instructions to Tenderers ITT sub-Clause 13.2; 13.3 and 13.4;
- c) Tender Security or Tender Securing Declaration in accordance with Instructions to Tenderers ITT Clause 19;
- d) Priced Bill of Quantities;
- e) Qualification Information Form and Documents;
- f) Alternative offers where invited in accordance with Instructions to Tenderers ITT Clause 5;
- g) Written confirmation authorizing the signatory of the Tender to commit the Tenderer in accordance with Instructions to Tenderers ITT sub Clause 19.2; and
- h) And any information or other materials required be completing and submitting by Tenderers, as specified in the **Tender Data Sheet**.

### 13.0 Documents Establishing Eligibility and Qualifications of the Tenderer

13.1 Pursuant to ITT Clause 13, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.

13.2 In the event that pre-qualification of potential Tenderers has been undertaken, only Tenders from pre-qualified Tenderers will be considered for award of contract. These qualified Tenderers should submit their Tenders with any information updating the original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission. The update or confirmation should be provided in Section IX.

13.3 If KEFRI has not undertaken pre-qualification of potential Tenderers, to qualify for award of the contract, Tenderers shall meet the minimum qualifying criteria specified in the **Tender Data Sheet**:

13.4 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **Tender Data Sheet**:

- a) The Tender shall include all the information listed in the **Tender Data Sheet** pursuant to sub-Clause 13.3 above for each joint venture partner;
- b) The Tender shall be signed so as to be legally binding on all partners;
- c) One of the partners will be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
- d) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of a joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
- e) All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms and a statement to this effect shall be included in the authorization mentioned under (c) above as well as in the Tender and in the Agreement (in case of a successful Tender); and
- f) A copy of the joint venture agreement entered into by all partner shall be submitted with the Tender. Alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful Tender shall be signed by all partners and submitted with the Tender, together with a copy of the proposed Agreement.
- g) The Tender Security and Tender Securing Declaration as stated in accordance with ITT Clause 19, and in case of a successful Tender, the Agreement, shall be signed so as to be legally binding on all partners.

### 14.0 Lots Package

14.1 When Tendering for more than one contract under the lots arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being tendered in regard to:

- a) Average annual turnover;
- b) Particular experience including key production rates;
- c) Financial means, etc;
- d) Personnel capabilities; and

e) Equipment capabilities.

14.2 In case the Tenderer fail to fully meet any of these criteria, it may be qualified only for those lots for which the Tenderer meets the above requirement.

#### 15.0 **Form of Tender**

15.1 The Tenderer shall fill the Form of Tender furnished in the Tendering Documents. The Form of Tender must be completed without any alterations to its format and no substitute shall be accepted.

#### 16.0 **Tender Prices**

16.1 The Contract shall be for the whole Works, as described in sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Tenderer.

16.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Tenderer will not be paid for by KEFRI when executed and shall be deemed covered by the other rates and prices in the Bill of quantities.

16.3 All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 15 days prior to the deadline for submission of Tenders, shall be included in the rates, prices and total Tender price submitted by the Tenderer.

16.4 The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if provided for in the **Tender Data Sheet** and the provisions of the Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the **Contract Data Sheet**.

#### 17.0 **Tender Currencies**

17.1 The unit rates and prices shall be quoted by the Tenderer in the currency as specified in the **Tender Data Sheet**.

17.2 Tenderers shall indicate details of their expected foreign currency requirements in the Tender, if any. The rates of exchange to be used by the Tenderers in arriving at the local currency equivalent shall be the selling rates for similar transactions established by the authority specified in the **Tender Data Sheet** prevailing on the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Tenderer. In any case, payments will be computed using the rates quoted in the Tender.

17.3 Tenderers may be required by KEFRI to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices and in the Contract Data Sheet are reasonable and responsive to sub-Clause 17.1.

#### 18.0 **Tender Validity Period**

18.1 Tenders shall remain valid for the period specified in the **Tender Data Sheet** after the Tender submission deadline prescribed by KEFRI, pursuant to ITT Clause

18.2 A Tender valid for a shorter period shall be rejected by KEFRI as non-responsive.

18.3 In exceptional circumstances, prior to expiry of the original Tender validity period, KEFRI 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 or by cable. A Tenderer may refuse the request without forfeiting its Tender Security or causing to be executed its Tender Securing declaration. A Tenderer agreeing to the request will not be required or permitted to otherwise modify the Tender, but will be required to extend the validity of its Tender Security or Tender Securing declaration for the period of the extension, and in compliance with ITT Clause 19 in all respects.

**18.4** In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial Tender validity period, the contract price will be increased by a factor specified in the request for extension. The Tender evaluation shall be based on the Tender price without taking into consideration on the above correction.

**19.0 Tender Security and Tender Securing Declaration**

19.1 Pursuant to ITT Clause 12, where required in the **Tender Data Sheet**, the Tenderer shall furnish as part of its Tender, a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet**.

19.2 A Tender Securing Declaration as specified in the **Tender Data Sheet** in the format provided in section X shall be provided as a mandatory requirement.

19.3 The Tender Security or Tender Securing Declaration is required to protect KEFRI against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to ITT sub-Clause 19.9.

19.4 The Tender Security shall be denominated in the currency of the Tender and shall be in one of the following forms:

- a) Cash;
- b) A Bank Guarantee;
- c) An Insurance Bond issued by an insurance firm approved by the PPRA located in Kenya;
- d) An irrevocable letter of credit issued by a reputable bank.

19.5 The Tender Security shall be in accordance with the Form of the Tender Security included in Section X or another form approved by KEFRI prior to the Tender submission.

19.6 The Tender Security shall be payable promptly upon written demand by KEFRI in case any of the conditions listed in sub-Clause 19.8 are invoked.

19.7 Any Tender not accompanied by a Tender Security in accordance with sub-Clauses 19.1 or 19.3 shall be rejected by KEFRI as non-responsive, pursuant to ITT Clause 28.

19.8 KEFRI shall immediately release any Tender Security if:

- a) The procuring proceedings are terminated;

- b) KEFRI determines that none of the submitted Tenders is responsive;
- c) A contract for the procurement is entered into.

19.9 The Tender Security shall be forfeited and the Tender Securing Declaration executed if the Tenderer:

- a) Withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which Tenders must remain valid;
- b) Rejects a correction of an arithmetic error pursuant to sub-Clause 29.2;
- c) Refuse to enter into a written contract in accordance with ITT Clause 40;
- d) Fails to furnish the Performance Security in accordance with ITT Clause 41.

19.10 The Tender Security and Tender Securing Declaration of a joint venture must be in the name of the joint venture submitting the Tender.

19.11 A Tenderer shall be suspended from being eligible for Tendering in any contract with KEFRI for the period of time indicated in the Tender Securing Declaration:

- a) If the Tenderer withdraws its Tender, except as provided in ITT sub-Clauses 18.2 and 29.2; or
- b) In the case of a successful Tenderer, if the Tenderer fails within the specified time limit to:
  - (i) Sign the contract; or
  - (ii) Furnish the required Performance Security.

## 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 Clause 12 of these Instructions to Tenderers, with the Form of Tender, and clearly marked “**ORIGINAL**”. In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **Tender Data Sheet**, and clearly marked as “**COPIES**”. In the event of discrepancy between them, the original shall prevail.

20.2 The original and all copies of the Tenders 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. This authorization shall consist of a written confirmation as specified in the **Tender Data Sheet** 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, except for un-amended printed literature, shall be initialled by the person or persons signing the Tender.

20.3 Any interlineations, erasures, or overwriting shall be valid only if they are initialled by the person or persons signing the Tender.

20.4 The Tenderer shall furnish information as described in the Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to contract execution if the Tenderer is awarded the contract

## **21.0 Submission of Tenders**

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

21.1 The Tenderer shall seal the original and each copy of the Tender in separate envelopes, duly marking the envelopes as “**ORIGINAL**” and “**COPY**”. The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.

21.2 The inner and outer envelopes shall:

- a) Be addressed to KEFRI at the address given in the **Tender Data Sheet**; and
- b) Bear the Project name indicated in the **Tender Data Sheet**, the Invitation for Tenders (IFB) title and number indicated in the **Tender Data Sheet**, and a statement: “**DO NOT OPEN BEFORE,**” to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to ITT sub-Clause 22.1.

21.3 In addition to the identification required in sub-Clause 21.2, the inner envelopes shall also indicate the name and address of the Tenderer to enable the Tender be returned unopened in case it is declared late, pursuant to sub-Clause 22.1 and for matching purpose under ITT Clause 23

**21.4** If the outer envelope is not sealed and marked as required by ITT sub clause 21.2, KEFRI shall assume no responsibility for misplacement or premature opening of the Tender.

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

**22.1** Tenders shall be received by KEFRI at the address specified under ITT sub-Clause 21.2 no later than the date and time specified in the **Tender Data Sheet**.

**22.2** KEFRI may, in exceptional circumstances and at its discretion, extend the deadline for the submission of Tenders by amending the Tendering documents in accordance with ITT Clause 9, in which case all rights and obligations of KEFRI and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.

**22.3** The extension of the deadline for submission of Tenders shall not be made later than the period specified in the **Tender Data Sheet** before the expiry of the original deadline.

## **23.0 Late Tenders**

**23.1** KEFRI shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 22.

**23.2** Any Tender received by KEFRI after the deadline for submission of Tenders shall be declared late, rejected and returned unopened to the Tenderer

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

24.1 A Tenderer may modify or substitute or withdraw its Tender after it has been submitted, provided that written notice of the modification, including substitution or withdrawal of the Tender, is received by KEFRI prior to the deadline prescribed for submission of Tenders prescribed under ITT sub-Clause 22.1.

24.2 The Tenderer’s modification or substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 20 and 21 with the outer and inner envelopes additionally marked —**MODIFICATION** or **SUBSTITUTION** or —**WITHDRAWAL** as appropriate.

The notice may also be sent by electronic mail and facsimile, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders.

- 24.3 No Tender may be withdrawn, replaced 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 Tender Form. Withdrawal of a Tender during this interval shall result in the Tenderer's forfeiture of its Tender Security or execution of Tender Securing Declaration, pursuant to the ITT sub-Clause 19.9.
- 24.4 Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the Tender Data Sheet or as extended pursuant to sub-Clause 22.2 shall result in the forfeiture of the Tender Security and execution of Tender Securing Declaration pursuant to ITT sub-Clause 19.9.
- 24.5 Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the Tender Data Sheet or as extended pursuant to sub-Clause 22.2 shall result in the forfeiture of the Tender Security and execution of Tender Securing Declaration pursuant to ITT sub-Clause 19.9.
- 24.6 Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender modifications in accordance with this Clause, or included in the original Tender submission

## **25.0 Opening and Evaluation of Tenders**

### **Opening of Tenders**

- 25.1 KEFRI will open all Tenders including modifications, substitution or withdraw notices made pursuant to ITT Clause 24, in public, in the presence of Tenderers or their representatives who choose to attend and other parties with legitimate interest and Tender proceedings, at the place on the date and at time specified in the **Tender Data Sheet**. The Tenderers' representatives who are present shall sign a register as proof of their attendance.
- 25.2 Envelopes marked "**WITHDRAWAL**" shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 24 shall not be opened but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the —Power of Attorney‖ confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. Subsequently, all envelopes marked "**MODIFICATION**" shall be opened and the submissions therein read out in appropriate detail. Thereafter all envelopes marked or "**SUBSTITUTION**" opened and the submissions therein read out in appropriate detail.

### **25.3**

All other envelopes shall be opened one at a time. The Tenderers' names, the Tender prices, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, the presence or absence of Tender security, and such other details as the appropriate tender opening committee may consider appropriate, will be announced by the Secretary of the Tender Opening Committee at the opening.

### **25.4**

Tenders or modifications that are not opened and not read out at Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In

particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.

### **25.5**

Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer's representative shall indemnify KEFRI against any claim or failure to read out the correct information contained in the Tenderer's Tender.

### **25.6**

No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 23.

### **25.7**

The Secretary of the appropriate tender opening committee shall prepare minutes of the Tender opening. The record of the Tender opening shall include, as a minimum: the name of the Tenderers and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security or Tender Securing Declaration.

### **25.8**

The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and affect the record.

### **25.9**

A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request.

## **26.0 Confidentiality**

### **26.1**

Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a 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.

### **26.2**

Any effort by a Tenderer to influence KEFRI's processing of Tenders or award decisions may result in the rejection of his Tender.

### **26.3**

Notwithstanding sub-Clause 26.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact KEFRI on any matter related to the Tendering process, it should do so in writing.

## **27.0 Clarification of Tenders**

### **27.1**

To assist in the examination, evaluation, comparison of Tenders and post-qualification of the Tenderer, KEFRI may, at its discretion, ask a Tenderer for clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by KEFRI shall not be considered.

**27.2**

The request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by KEFRI in the evaluation of Tenders in accordance with ITT Clause 29.

**27.3**

From the time of Tender opening to the time of Contract award if any Tenderer wishes to contact KEFRI on any matter related to the Tender it should do so in writing.

**28.0 Preliminary Examination of Tenders****28.1**

Prior to the detailed evaluation of Tenders, KEFRI will determine whether:

- a) The Tender has been submitted in the required format;
- b) Any Tender Security submitted is in the required form, amount and validity period;
- c) The Tender has been signed by the person lawfully authorized to do so;
- d) The required number of copies of the Tender have been submitted;
- e) The Tender is valid for the period required;
- f) All required documents and information have been submitted; and
- g) Any required samples have been submitted.

**28.2**

KEFRI will confirm that the documents and information specified under ITT Clause 12 and ITT Clause 13 have been provided in the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected.

**28.3**

KEFRI may waive any minor informality, nonconformity, or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer

**28.4**

A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tendering documents, without material deviation or reservation. A material deviation or reservation is one that:

- a) Affects in any substantial way the scope, quality, or execution of the Works;
- b) Limits in any substantial way, inconsistent with the Tendering documents, KEFRI's rights or the Tenderer's obligations under the Contract; or
- c) If rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

**28.5**

If a Tender is not substantially responsive, it will be rejected by KEFRI, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

## **29.0 Correction of Errors**

### **29.1**

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

- a) If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of KEFRI there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;
- b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- c) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.

### **29.2**

The amount stated in the Tender will, be adjusted by KEFRI in accordance with the above procedure for the correction of errors and, with, the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and the Tender Security may be forfeited and the Tender Securing Declaration may be executed in accordance with sub-Clause 19.9.

## **30.0 Conversion to Single Currency**

### **30.1**

To facilitate the evaluation and comparison, KEFRI will convert all Tender prices expressed in the amounts in various currencies in which the Tender prices are payable to Kenya Shillings at the selling exchange rate established for similar transactions by the Central Bank of Kenya ruling on the date specified in the **Tender Data Sheet**.

## **31.0 Comparison of Tenders**

### **31.1**

KEFRI shall evaluate and compare only the Tenders determined to be substantially responsive in accordance with ITT Clause 28.

### **31.2**

In evaluating the Tenders, KEFRI will determine for each Tender the evaluated Tender price by adjusting the Tender price as follows:

Making any correction for errors pursuant to ITT Clause 29;

Excluding provisional sums and the provision, if any for contingencies in the Bill of Quantities, but including Day work, where priced competitively; and

Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with sub-Clause 24.5.

### **31.3**

KEFRI may waive any minor informality or non-conformity, which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative standing of any Tenderer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the Tendering documents or otherwise result in unsolicited benefits for KEFRI will not be taken into account in Tender evaluation.

## **32.0 National Preference**

### **32.1**

In the evaluation of Tenders KEFRI shall apply exclusive preference to citizens of Kenya where:

- a) The funding is 100% from the Government of Kenya or a Kenyan body
- b) The amounts are below the prescribed threshold of KShs.200 million;

### **32.2**

To qualify for the preference the candidate shall provide evidence of eligibility by:

- a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or
- b) Providing proof of being a —citizen contractor in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya

### **32.3**

The Minister of Finance may prescribe additional preference and/or reservation schemes, for example for procurements above these thresholds. If such additional preference schemes apply, details will be given in the **Tender Data Sheet**.

## **33.0 Determination of the Lowest Evaluated Tender**

### **33.1**

The Tender with the lowest evaluated price from among those which are eligible, compliant and substantially responsive shall be the lowest evaluated Tender.

## **34.0 Post-qualification of Tenderer**

### **34.1**

If specified in the **Tender Data Sheet**, post-qualification shall be undertaken.

### **34.2**

KEFRI will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in sub-Clause 13.3.

### **34.3**

The determination will take into account the Tenderer's financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to sub-Clause 13.3, as well as such other information as KEFRI deems necessary and appropriate. Factors not included in these Tendering documents shall not be used in the evaluation of the Tenderer's qualifications.

### **34.4**

An affirmative determination will be a prerequisite for award of the contract to the Tenderer. A negative determination will result in rejection of the Tenderer's Tender, in which event KEFRI will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

## **35.0 Award of Contract**

### **Criteria of Award**

#### **35.1**

Subject to ITT Clause 35 and 36, KEFRI will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tendering documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:

Eligible in accordance with the provisions of ITT Clause 3;

- a) Is determined to be qualified to perform the Contract satisfactorily;
- b) Successful negotiations have been concluded.

#### **35.2**

If, pursuant to sub-Clause 14.1, this Contract is being awarded on a —lot and packagel basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderer for award of more than one Contract.

## **36.0 Clarifications**

#### **36.1**

Clarifications may be undertaken with the lowest evaluated Tenderer relating to the following areas:

- a) A minor alteration to the technical details of the statement of requirements;
- b) Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the Tendering documents;
- c) A minor amendment to the Contract Data Sheet;
- d) Finalizing payment arrangements;
- e) Mobilization arrangements;
- f) Agreeing final delivery or work schedule to accommodate any changes required by KEFRI;
- g) The methodology or staffing; or
- h) Clarifying details that were not apparent or could not be finalized at the time of Tendering.

#### **36.2**

Clarifications shall not change the substance of the tender.

## **37.0 Procuring Entity"s Right to Accept any Tender and to Reject any or all Tenders**

#### **37.1**

Notwithstanding ITT Clause 35, KEFRI 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.

### **37.2**

Notice of the rejection of all Tenders shall be given promptly within 14 days to all Contractors that have submitted Tenders.

### **37.3**

KEFRI shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds.

## **Procuring Entities Right to Vary Quantities at the Time of Award**

### **38.1**

KEFRI reserves the right at the time of contract award to increase or decrease the quantity of goods or related services originally specified in these Tendering documents (schedule of requirements) provided this does not exceed by the percentage indicated in the **Tender Data Sheet**, without any change in unit price or other terms and conditions of the Tender and Tendering documents.

## **39.0 Notification of Award**

### **39.1**

The Tenderer whose Tender has been accepted will be notified of the award by KEFRI prior to expiration of the Tender validity period by e-mail or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that KEFRI will pay the Contractor in consideration of the provision and maintenance of the Work(s) as prescribed by the Contract (hereinafter and in the Contract called the —Contract Pricell).

### **39.2**

The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security in accordance with ITT Clause 41 and signing the Contract in accordance with sub-Clause 40.2

### **39.3**

At the same time as the person submitting the successful Tender is notified, KEFRI will notify each unsuccessful Tenderer, the name of the successful Tenderer and the Contract amount and will discharge the Tender Security and Tender Securing Declaration of the Tenderer pursuant to ITT sub Clause 19.7.

### **39.4**

If, after notification of award, a Tenderer wishes to ascertain the grounds on which it's Tender or application for pre-qualification was unsuccessful, it should address its request to the secretary of the Tender Committee that authorized the award of contract. The secretary of the Tender Committee shall, within fourteen days after a request, provide written reasons as to why the Tender, proposal or application to be pre-qualified was unsuccessful. However, failure to take this opportunity to clarify the grounds for rejection does not affect the Tenderer's right to seek immediate review by the Public Procurement Administrative Review Board under Clause 45.

## **40.0 Signing of Contract**

### **40.1**

Promptly, and in no case later than 14 days, after notification, Procuring Entity shall send the successful Tenderer the Agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.

## **40.2**

Within the period specified in the notification or Tender Data Sheet but not earlier than fourteen (14) days since notification of award of contract, the successful Tenderer shall sign and date the contract and return it to KEFRI.

## **41.0 Performance Security**

### **41.1**

Within thirty (30) days but after 14 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to KEFRI a Performance Security in the amount and in the form stipulated in the Tender Data Sheet and the Contract Data Sheet, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.

### **41.2**

If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee or Insurance Bond, it shall be issued either:

- a) At the Tenderer's option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm through a correspondent bank or insurance firm located in Kenya;
- b) With the consent of KEFRI, directly by a foreign bank acceptable to KEFRI.

### **41.3**

Failure of the successful Tenderer to comply with the requirement of sub-Clause 41.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security, in which event KEFRI may make the award to the next lowest evaluated Tenderer or call for new Tenders.

## **42.0 Advance Payment**

### **42.1**

KEFRI will provide an Advance Payment as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the Tender Data Sheet.

### **42.2**

The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section X. For the purpose of receiving the Advance Payment, the Tenderer shall make an estimate of, and include in its Tender, the expenses that will be incurred in order to commence work. These expenses will relate to the purchase of equipment, machinery, materials, and on the engagement of labour during the first month beginning with the date of KEFRI's —Notice to Commence as specified in the Contract Data Sheet.

## **43.0 Adjudicator**

### **43.1**

KEFRI proposes the person named in the Tender Data Sheet to be appointed as Adjudicator under the Contract, at an hourly fee specified in the Tender Data Sheet, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, KEFRI has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data Sheet at the request of either party.

## **44.0 Review of Procurement Decisions**

### **Right to Review**

#### **44.1**

A Tenderer who claims to have suffered or risk suffering, loss or damage or injury as a result of breach of a duty imposed on a Procuring Entity or an Approving Authority by the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Asset Disposal Regulations 2020, the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:

- a) The choice of procurement method;
- b) a decision by KEFRI to reject all Tenders, proposals or quotations;
- c) Where a contract is signed in accordance to Section 68 of the Public Procurement and Asset Disposal Act,2015;
- d) Where an appeal is frivolous.

## **45.0 Time Limit on Review**

#### **45.1**

The Tenderer shall submit an application for review in the number of copies and pay fees as prescribed by the Public Procurement and Asset Disposal Regulations 2020 within fourteen (14) days of the time the Tenderer became or should have become aware of the circumstances giving rise to the complaint or dispute.

### **Submission of Applications for Review by the Public Procurement**

#### **46.0 Administrative Review Board**

##### **46.1**

Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 at the address shown in the Tender Data Sheet. The secretary to the review board shall immediately after filing of the request, serve a copy thereof on KEFRI or Director-General as the case may be.

##### **46.2**

The application for administrative review shall be in accordance with the requirements of Regulation 73 of the Public Procurement and asset Disposals Regulations,2020, including:

- a) Reasons for the complaint, including any alleged breach of the Act or Regulations;
- b) An explanation of how the provisions of the Act and or Regulation has been breached or omitted, including the dates and name of the responsible public officer, where known;
- c) Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request;
- d) Remedies sought;
- e) Any other information relevant to the complaint.

## **47.0 Decision by the Public Procurement Administrative Review Board**

### **47.1**

The Administrative Review Board shall within thirty days after receipt of an application for administrative review deliver a written decision which shall indicate:

- a) Annuling anything KEFRI has done in the procurement proceedings, including annulling the procurement proceedings in their entirety;
- b) Giving directions to KEFRI with respect to anything to be done or redone in the procurement proceedings
- c) Substituting the decision of the Review Board for any decision of KEFRI in the procurement proceedings;
- d) Order the payment of costs as between parties to the review.

### **47.2**

The decision made by the Review Board shall, be final and binding on the parties unless judicial review thereof commences within fourteen (14) days from the date of the Review Board's decision.

## **48.0 Appeal on the decision of the Review Board**

### **48.1**

Any party to the review aggrieved by the decision of the Review Board may appeal to the High Court and the decision of the High Court shall be final.

## SECTION III: TENDER DATA SHEET

### Tender Data Sheet (TDS)

#### (A) Instructions to Tenderers Clause Reference

TDS Reference Number	ITT Clause Number	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
<b>A. Introduction</b>		
1.	1.1	The Procuring Entity is <b>Kenya Forestry Research Institute</b>
2.	1.1	Name of Project is <b>Proposed Chain link Fencing at Tiva Woodlands- Kitui</b>
3.	1.2	The construction works shall be expected to be completed within 6 months after Contract signing
4.	1.3	The Objectives of the Project are to <b>Fence experimental plots</b>
5.	2.1	Name of financing institution is <b>KEFRI</b> Name of the Procuring is <b>Kenya Forestry Research Institute</b> Financial Year <b>2020/2021</b> Describe works under the contracts: <b>Proposed Chain link Fencing at Tiva Woodlands - Kitui</b>
6.	2.2	The loan/ credit number is <b>N/A</b>
7.	5.1	Alternative Tenders are <i>Not allowed</i> in this Tender.
8.	5.2	Alternative time for completion <b>to be advised</b>
9.	3.1	Only Tenderers registered as Civil Engineering or Building Contractors or equivalent in class <b>NCA 6, 7 &amp; 8</b> This Tender is restricted to <b>AGPO REGISTERED</b> firms.
10.	7.2	Pre - tender site visit is mandatory
11.	7.3	<b>Pre-Tender meeting will take place at Tiva Kitui on Monday 7/12/2020 from 10:00 am to 12:00 pm</b>
12.	7.5	The minutes of the pre-Tender meeting will be transmitted within 1day after the pre – tender site visit meeting
13	7.6	Non-attendance at the pre-tender meeting will result in <b>DISQUALIFICATION</b>

<b>B. Tendering Documents</b>		
<b>14.</b>	<b>8.2</b>	The number of copies to be completed and returned with the Tender <b>One original and a copy</b>
	<b>8.5</b>	The Tenderer is expected to meet mandatory/preliminary, technical and financial evaluation stage
<b>15.</b>	<b>9.1</b>	Address for clarification of Tendering Document is through email address: <i>tenders@kefri.org</i>
<b>16.</b>	<b>9.2</b>	Period to Respond to request for clarification by tenderers: The Procuring Entity will not answer to any query from tenderers <b>five days</b> prior to the deadline for submission of Tenders.
<b>C. Preparation of Tenders</b>		
<b>15.</b>	<b>11.1</b>	Language of Tender and all correspondence shall be <i>English</i>
<b>16.</b>	<b>13.3</b>	Other information or materials required to be completed and submitted by Tenderers: a) Mandatory/preliminary evaluation requirements b) Technical evaluation requirements The essential equipment to be made available for the Contract by the successful Tenderer (proposals for timely acquisition or own, lease, hire, etc) shall be;  (i) Crowbar  (ii) Strainer
<b>17.</b>	<b>13.4</b>	In the case of joint venture each partner shall submit information required under Clause ITT Clause 13.4.
<b>18.</b>	<b>16.4</b>	The price shall be <i>fixed unless agreed by both parties in writing for adjustment</i>
<b>19.</b>	<b>17.1</b>	Information to be submitted with the Tender are: (state if any). The currency in which the prices shall be quoted shall be: <i>Kenya shilling</i>
<b>20.</b>	<b>17.2</b> <b>30.2</b>	The authority for establishing the rates of exchange shall be Central Bank of Kenya.  The applicable date for exchange rates for tendering and evaluation purposes is <u>28 days earlier than the final deadline for the submission of tenders</u> .
<b>21.</b>	<b>18.1</b>	The Tender validity period shall be <b>120</b> days After the Tender

		closing date
22.	19.1	No Tender security is required, bidders must fill Tender securing declaration form
23.	20.1	In addition to the original tender the tenderer shall submit a copy of the original tender
24.	20.2	Written confirmation of authorization are; The Power of attorney is provided

<b>D. Submission of Tenders</b>		
25.	21.2 a)	Tenders shall be submitted/dropped at the <b>Tender Box situated at the office of the Director - Kenya Forestry Research Institute Headquarters, Muguga, Off Nairobi – Naivasha Road, P.O Box 20412-00200, Nairobi</b>
26.	21.2 b)	Tender title: <b>Proposed Chain link Fencing at Tiva woodlands-Kitui</b> Tender number: <b>KEFRI/ONT/004/2020-2021</b> Time and date for submission: <b>Tuesday 15<sup>th</sup> December,2020</b>
27.	22.1	The deadline for Tender submission is a) Day: <b>Tuesday</b> b) Date: <b>15/12/2020</b> c) Time <b>11:30 am</b>
28.	22.3	The extension of the deadline for submission of Tenders shall be made not later than 3 <b>days</b> prior to the expiry of the original deadline.
29	24.4	Expiry of Tender validity is <b>150</b> days after tender opening

<b>E. Opening and Evaluation of Tenders</b>		
29.	25.1	The Tender opening shall take place at:  <b>Kenya Forestry Research Institute Headquarters - Muguga</b> <b>Street address:</b> Off Nairobi-Naivasha Highway  <b>Auditorium Hall</b>  <b>Date:</b> Tuesday, 15/12/2020 <b>Time</b> 11:30 am

30.	32.3	No additional preference
31.	34.1	Post- qualification will be undertaken
32.	38.1	<b>Percentage for quantities increase shall not be more than 15%</b>
<b>F. Award of Contract</b>		
33.	41.1	The amount of Performance Security shall be 1% of the contract price
34.	42.1	<b>No advance payment for this contract</b>
<b>G. Review of Procurement Decisions</b>		
37.	46.1	The address for submitting appeals to Administrative Review Board : The Secretary, Public Procurement Administrative Review Board , The Public Procurement Regulatory Authority, 10 <sup>th</sup> Floor ,National Bank House, P.O. Box 58583-00200, NAIROBI, Kenya. Tel: +254 (0) 20 3244000 Email: <a href="mailto:info@ppra.go.ke">info@ppra.go.ke</a> Website: <a href="http://www.ppra.go.ke">www.ppra.go.ke</a>

## EVALUATION CRITERIA

### Preliminary/Mandatory Evaluation

Bidders must meet all the Mandatory Requirements below to proceed to Technical Evaluation

MR	MANDATORY REQUIREMENT (MR)
MR1	Submit a copy of certificate of Incorporation / Registration from the Registrar of Companies / Businesses;
MR2	Submit a copy of current CR12/CR13 for the firm,
MR3	Submit valid copy of AGPO Certificate i.e current Youth, Women, or PWD certificate.
MR4	Submit a copy of current Category of Registration with National Construction Authority (NCA) in the relevant category; (NCA 6, 7 & 8 in Building Works and valid annual practice licence.
MR5	Provide Dully filled, signed and stamped Tender Securing Declaration Form in the format provided herein - <i>Tender security/Bid bond as stated in tender notice addressed and bound to the procuring entity that is in the required format and amount, from a reputable bank or insurance company approved by PPRA and valid for 150 days from tender opening date</i>
MR6	Submit duly filled, signed and stamped Form of Tender
MR7	Submit valid, relevant and current copy of Single Business Permit from county Government;
MR8	Submit valid Tax Compliance Certificates;
MR9	Submit a dully filled, Signed and Stamped Confidential Business Questionnaire;
MR10	Provide Power of Attorney of Form of Tender Signatory where signatory is not a director of the firm as provided in the firm's CR12/CR13
MR11	The Majority shareholder of firms, MUST not transfer the management of the company through power of attorney or any other means to minority shareholder. Such transfer will lead to automatic disqualification.
MR 12	Join Ventures: The information in MR 1/2/3/4/7/8&9 above shall be provided for all partners
MR13	Declaration that the firm/person/tenderer and his/her subcontractors, if any have not been debarred from participating in public procurement proceedings
MR14	Declaration that the firm is not guilty of any serious violation of fair employment laws and practices
MR15	Declaration that the firm has <b>not been convicted</b> of corrupt or fraudulent practices and that it <b>will not engage</b> in any corrupt or fraudulent practice
MR16	Tender documents to be downloaded as issued and submitted filled in <b>INK</b> without altering the format. Alteration of the format and failure to submit any part of the tender document as issued will lead to automatic disqualification.
MR17	The tender document - Original and Copy MUST be <b>TAPE BOUND</b> (Spiral Binding and use of Spring or box files will be deemed as non-responsive)
MR18	The entire/complete tender document (all pages including attachments) must be paginated using a numbering machine. (Hand written pagination will be deemed non – responsive)
MR 19	Attach a dully filled pre – tender site visit form signed by KEFRI authorized staff/project manager

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

## TECHNICAL EVALUATION

Bidders who comply with all the mandatory requirements shall proceed to technical evaluation.

No.	Parameters	Max. score	Score
1.	<p><b>a) Experience of the firm in similar services: -</b></p> <p>Provide Three (3) Assignments of Building and Construction of similar nature: Attach copies of LSOs or contracts of Building and Construction Works with other corporate clients between the Period 2017/2018, 2018/2019, 2019/2020 and 2020/2021 – marks prorated as follows:</p> <ul style="list-style-type: none"> <li>• Each with Kshs. 8 Million and above - (9 Mks each max of 27)</li> <li>• Each with Kshs. 5M – to below 8Million Per Lot (each 7 Marks)</li> <li>• Below 5 Million but not less than 2.5 Million - 3.5 Marks each</li> </ul>	27	
	a) Attach recommendation letters in official client’s letter head or completion/practical Certificate from each of the 3 corporate clients submitted above in (a) above (4 mks each - max of 12)	12	
2.	<p><b>Qualification and Experience of the Staff</b></p> <p><b>Academic Qualification (attach copies of certificates)</b></p> <p>a) Director/Project Manager</p> <ul style="list-style-type: none"> <li>□ Degree in Civil/Construction/Social sciences or equivalent– 10 marks</li> <li>□ Diploma/ in Civil/Construction or equivalent 7.5 mks</li> </ul> <p><b>Two foremen/clerk of works -Technical Staff</b></p> <ul style="list-style-type: none"> <li>✓ Diploma in Civil/Construction or equivalent- 5 Marks each x 2</li> <li>✓ Certificate Civil/Construction or equivalent – 3.5 Marks each X 2</li> </ul> <p>c) <b>Experience – (Attach Signed and Stamped CV by the CEO or equivalent)</b></p> <p><b>Director/Project Manager</b></p> <ul style="list-style-type: none"> <li>✓ Over 4 years - 5 Marks</li> <li>✓ Less than 4 years – 3 Marks</li> </ul> <p><b>Two foremen/clerk of works</b></p> <ul style="list-style-type: none"> <li>✓ Over 3 years – 2.5 Marks each</li> <li>✓ Less than 3 years – 1.5 marks each</li> </ul>	20	
3.	<p><b>Methodology</b></p> <p>Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Tendering documents (5 marks)</p>	5	
4.	<p><b>Adequacy of tools and equipment</b></p> <p>List 5 major relevant equipment that are vital for effective execution of the proposed works- proof of ownership or leasing- Must be attached (3 marks each to a max of 15)</p>	15	
5.	<p><b>Financial capability of the firm</b></p> <p>Provide stamped bank statement for the last 3 months clearly indicating the current bank balance or letter of credit financing from your banker (10 Marks)</p> <p><b>Liquidity ratio for the two financial year 2019- attach Audited accounts</b></p> <ul style="list-style-type: none"> <li>□ Greater than 2:1 (3 marks)</li> <li>□ Equal to 2:1( 2 mark each)</li> <li>□ Less than 2:1( 0 mark)</li> </ul>	5	
	<b>TOTAL MARKS</b>	<b>100</b>	
	<b>PASS MARK</b>	<b>70%</b>	

Any bidder who scores 70% and above at the technical evaluation stage will be considered technically responsive and will proceed to the financial evaluation stage

## (c) Financial Evaluation and determination of Financially Responsive Tender

Upon completion of the technical evaluation a detailed financial evaluation shall follow.

The evaluation shall be in **three stages**

- a) Determination of Arithmetic errors
- b) Comparison of Rates; and
- c) Consistency of the Rates.
- d) Determination of Financially Responsive Tender

### **a) Determination of Arithmetic Errors**

Arithmetic Errors will be corrected by KEFRI as follows:

- i. 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 Bills of Quantities, the amount as stated in the Form of Tender shall prevail. Pursuant to Section 82 of the Public Procurement and Asset Disposal Act 2015, 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;
- ii. If, in the opinion of the Tender Evaluation Committee, the arithmetic error is substantial and is to the disadvantage of the bidder under consideration, then the bidder under consideration shall be notified in writing for concurrence of such an error. If such a bidder does not concur with the error, then the bidder shall be considered financially non-responsive and disqualified from further analysis.
- iii. Error correction factor shall be computed by expressing the difference between the amount and the corrected tender sum as a percentage of the corrected contract works (i.e. corrected tender sum less P.C; and Provisional Sums);
- iv. The Error correction factor shall be applied to all contract works (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.

### **b) Comparison of rates**

Items that are underpriced or overpriced may indicate potential for non-delivery and front loading respectively. The committee shall promptly write to the tenderer asking for detailed breakdown of costs for any of the quoted items, relationship between those prices, proposed construction/installation methods and schedules.

The evaluation committee shall evaluate the responses and make an appropriate recommendation to KEFRI giving necessary evidence. Such recommendations may include but not limited to:

- i) Recommend no adverse action to the tenderer after a convincing response;

ii) KEFRI requiring that the amount of the performance bond be raised at the expense of the successful tenderer to a level sufficient to protect the KEFRI against potential financial losses;

iii) Recommend non-award based on the response provided and the available demonstrable evidence that the scope, quality, completion timing, administration of works to be undertaken by the tenderer, would adversely be affected or the rights of the KEFRI or the tenderers obligations would be limited in a substantial way.

**c) Consistency of the Rates**

The evaluation committee will compare the consistency of rates for similar items and note all inconsistencies of the rates for similar items.

**d) Determination of Financially Responsive Tender**

Section 79(2) (b) of the PPADA 2015 shall apply as per the regulation 74 (2) which states;

Subject to section 79 (2)(b) of the act any errors in the submitted tender arising from a miscalculation of unit price, quantity, sub total 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.

**STAGE 4 - RECOMMENDATION FOR AWARD**

The successful bidder shall be the tenderer with the lowest evaluated tender price subject to the KEFRI right to exercise due diligence relating to confirmation of information submitted by the bidder before the award of the tender in pursuant to Section 83 of the Public Procurement and Asset Disposal Act 2015

## SECTION IV: GENERAL CONDITIONS OF CONTRACT

### A. General

#### 1.0 Definitions

1.1 Boldface type is used to identify defined terms.

The **Adjudicator** is the person appointed jointly by KEFRI and the Contractor to resolve disputes in the first instance, as provided for in Clauses 27 and 28 hereunder.

**Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Tender.

**Compensation Events** are those defined in Clause 47 hereunder.

The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 58.1.

The **Contract** is the Contract between KEFRI and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3 below.

The **Contractor** is a person or corporate body whose Tender to carry out the Works has been accepted by KEFRI.

The **Contractor's Tender** is the completed Tendering document submitted by the Contractor to KEFRI.

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

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

**Dayworks** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

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

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

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

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

KEFRI 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 to construct the Works.

The **Initial Contract Price** is the Contract Price listed in KEFRI's Letter of Acceptance.

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

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

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

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

The **Site** is the area defined as such in the **Contract Data Sheet**.

**Site Investigation Reports** are those that were included in the Tendering documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

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

The **Start Date** is given in the **Contract Data Sheet**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

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 that are needed for construction or installation of the Works.

A **Variation** is an instruction given by the Project Manager that varies the Works.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to KEFRI, as defined in the **Contract Data Sheet**.

—**Force Majeure** means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

## **2.0 Interpretation**

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way round. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the **Contract Data Sheet**, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the order of priority given in the

### **Contract Data Sheet:**

- (1) Agreement;
- (2) Letter of Acceptance;
- (3) Contract Data Sheet;
- (4) Conditions of Contract;
- (5) Technical Specifications;
- (6) Contractor's Tender;
- (7) Drawings;
- (8) Bill of Quantities; and
- (9) Any other document listed in the **Contract Data Sheet** as forming part of the Contract.

## **3.0 Language, Law, Fraud and Corruption**

3.1 The language of the Contract and the law governing the Contract are stated in the Contract Data Sheet.

3.2 The Government requires that Procuring Entities (including beneficiaries of Government funded projects) as well as Tenderers/Suppliers/Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. It is the responsibility of KEFRI to ensure that Tenderers, suppliers, and contractors and their subcontractors observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy:

For the purpose of this provision, the following definitions are provided:

(i).—**Corruption** has the meaning assigned to it in the Anti-Corruption and Economic Crime Act 2003 and includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;

(ii).—Fraudulent Practice<sup>l</sup> includes a misrepresentation of fact in order to influence a procurement or disposal process or the execution of a contract to the detriment of KEFRI and includes collusive practices amongst Tenderers prior to or after Tender submission designed to establish Tender prices at artificial non competitive levels and deprive KEFRI of the benefits of free and open competition;

(iii).—Collusive Practice<sup>l</sup> means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of KEFRI prior to or after Tender submission , designed to establish Tender prices at artificial non competitive levels and to deprive KEFRI of the benefit of free and open competition;

(iv).—Coercive Practice<sup>l</sup> means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of any of them to influence improperly the actions of a Procuring Entity;

(v).—Obstructive Practice<sup>l</sup> means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation 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.

A Procuring Entity has the right to require that Tenderers, suppliers, and contractors and their subcontractors permit persons duly appointed by EACC/PPRA/OAG to inspect their accounts and records and other documents relating to the Tender submission and contract performance;

KEFRI will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt, fraudulent practices or others stated under Clause 44.1.a in competing for the contract;

In pursuit of the policy defined in sub-Clause 44.1 KEFRI will cancel the portion of the funds allocated to a contract for goods, works, or services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of KEFRI or Approving Authority or of a beneficiary of the funds during the procurement or the execution of that contract;

In the event that KEFRI or Approving Authority does not take timely and appropriate action satisfactory to the Government of Kenya to remedy the situation, then the Director-General may order an investigation of procurement proceedings for the purpose of determining whether there has been a breach of the Public Procurement and Asset Disposal Act, 2015.

3.3 The Director-General may, on the advice of the Advisory Board, debar a person from participating in procurement proceedings on the ground that the person has committed an offence under the Public Procurement and Asset Disposal Act, 2015. A debarment shall be for a period of time of not less than five years. Before a person is so debarred, he/she will be given an opportunity to make representations to the Director-General and may request the Review Board to review the debarment.

3.4 Any communication between the Tenderers and KEFRI related to matters of alleged fraud or corruption must be made in writing.

#### **4.0 Confidentiality**

- 4.1 The Service Providers, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or KEFRI's business or operations without the prior written consent of KEFRI.

#### **5.0 Project Manager's Decisions**

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

#### **6.0 Delegation**

- 6.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

#### **7.0 Communications**

- 7.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

#### **8.0 Subcontracting**

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

#### **9.0 Other Contractors**

- 9.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and KEFRI between the dates given in the Schedule of Other Contractors, as referred to in the **Contract Data Sheet**. The Contractor shall also provide facilities and services for them as described in the Schedule. KEFRI may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification

#### **10.1 Personnel**

- 10.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the **Contract Data Sheet**, who shall be appropriately qualified and registered with the appropriate bodies to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

- 10.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

#### **11.0 Procuring Entity's and Contractor's Risks**

- 11.1 KEFRI carries the risks which this Contract states are Procuring Entity's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

#### **12.0 Procuring Entity's Risks**

12.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Procuring Entity's risks:

- a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:
  - (i) Use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or
  - (ii) Negligence, breach of statutory duty, or interference with any legal right by KEFRI or by any person employed by or contracted to him except the Contractor.
- b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of KEFRI or in KEFRI's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

12.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Procuring Entity's risk except loss or damage due to:

- (a) A Defect which existed on the Completion Date;
- (b) An event occurring before the Completion Date, which was not itself an Procuring Entity's risk; or
- (c) The activities of the Contractor on the Site after the Completion Date.

### **13.0 Contractor's Risks**

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

### **14.0 Insurance**

14.1 The Contractor shall provide, in the joint names of KEFRI and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the **Contract Data Sheet** for the following events which are due to the Contractor's risks:

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

14.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

14.3 If the Contractor does not provide any of the policies and certificates required, KEFRI may effect the insurance which the Contractor should have provided and recover the premiums KEFRI has paid from payments otherwise due to the

Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

14.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.

14.5 Both parties shall comply with any conditions of the insurance policies.

### **15.0 Site Investigation Reports**

15.1 The Contractor, in preparing the Tender, shall rely on any Site Investigation Reports referred to in the **Contract Data Sheet**, supplemented by any information available to the Tenderers.

### **16.0 Queries about the Contract Data Sheet**

16.1 The Project Manager will clarify queries on the **Contract Data Sheet**.

### **17.0 Contractor to Construct the Works**

17.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

### **18.0 Commencement and Completion**

18.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

### **19.0 Approval by the Project Manager**

19.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.

19.2 The Contractor shall be responsible for the design of Temporary Works.

19.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

19.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

19.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before their use.

### **20.0 Protection of the Environment**

20.1 The Contractors shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

20.2 The Contractors shall ensure that emissions, surface discharges and effluent from his activities shall not exceed prescribed values in the environmental laws.

## **21.0 Labour Laws**

- 21.2 The Contractor shall comply with all the relevant labour laws applicable in the Country, including laws relating to workers employment, working hours, health, safety, welfare, and immigration, and shall allow them all their legal rights.
- 21.2 The Contractor shall require his employees to obey all applicable laws, including those concerning safety at work.

## **22.1 Health and Safety**

- 22.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of his personnel.
- 22.2 The Contractor shall ensure that first aid facilities are available at all times at the site and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- 22.3 The Contractor shall notify KEFRI 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 the property, as KEFRI may reasonably require.
- 22.4 The Contractor shall conduct an HIV-Aids awareness programme, and shall take other such measures as specified in the **Contract Data Sheet** to reduce the risk of transfer of HIV virus between and among Contractor personnel, KEFRI's Staff and the surrounding community.

## **23.1 Discoveries**

- 23.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of KEFRI. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

## **24.1 Possession of the Site**

- 24.1 KEFRI shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the **Contract Data Sheet**, KEFRI will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.

## **25.1 Access to the Site**

- 25.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

## **26.0 Instructions, Inspections and Audits**

- 26.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 26.2 The Contractor shall permit the Kenya Government to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Kenya Government, if so required by the Kenya Government

## **27.0 Disputes**

27.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.

### **28.0 Procedure for Disputes**

28.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

28.2 The Adjudicator shall be paid by the hour at the rate specified in the **Tender Data Sheet** and **Contract Data Sheet**, together with reimbursable expenses of the types specified in the **Contract Data Sheet**, and the cost shall be divided equally between KEFRI and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

28.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the **Contract Data Sheet**.

### **29.0 Replacement of Adjudicator**

29.1 Should the Adjudicator resign or die, or should KEFRI and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by KEFRI and the Contractor. In case of disagreement between KEFRI and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the **Contract Data Sheet** at the request of either party, within 14 days of receipt of such request.

### **Time Control**

### **30.0 Programme**

30.1 Within the time stated in the **Contract Data Sheet**, the Contractor shall submit to the Project Manager for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works.

30.2 An update of the Programme shall be a programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

30.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the **Contract Data Sheet**. If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the **Contract Data Sheet** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.

30.4 The Project Manager's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the

Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events

### **31.1 Extension of the Intended Completion Date**

31.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

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

### **32.0 Acceleration**

32.1 When KEFRI wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If KEFRI accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both KEFRI and the Contractor.

32.2 If the Contractor's priced proposals for acceleration are accepted by KEFRI, they shall be incorporated in the Contract Price and treated as a Variation.

### **33.1 Delays Ordered by the Project Manager**

33.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

### **34.1 Management Meetings**

34.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

34.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to KEFRI. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

### **35.0 Early Warning**

35.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

35.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be

avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

## **Quality Control**

### **36.0 Identifying Defects**

36.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

### **37.0 Tests**

37.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

### **38.0 Correction of Defects**

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

38.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

38.3 If the Contractor has not corrected a defect within the time specified in KEFRI's notice, a penalty for lack of performance will be paid by the Contractor. The amount to be paid will be calculated as a percentage of the cost of having the defect correct, assessed as described in Clause 39.

### **39.0 Uncorrected Defects**

39.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

## **Cost Control**

### **40.0 Bill of Quantities**

40.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

40.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

### **41.0 Changes in the Quantities**

41.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.

41.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of KEFRI.

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

#### **42.0 Variations**

42.1 All Variations shall be included in the updated Programmes produced by the Contractor.

#### **43.0 Payments for Variations**

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

43.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work is above the limit stated in Sub-Clause 41.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

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

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

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

#### **44.0 Cash Flow Forecasts**

44.1 When the Programme is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

#### **45.0 Payment Certificates**

45.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

45.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor within twenty eight 28 days of receipt of the certificate from the contractor.

45.3 The value of work executed shall be determined by the Project Manager.

45.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.

- 45.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 45.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 45.7 The Project Manager shall not be bound to certify any payment, if the net amount, after all retentions and deductions would be less than minimum amount of Interim Payment Certificate stated in the **Contract Data Sheet**.

#### **46.0 Payments**

- 46.1 Payments shall be adjusted for deductions for advance payments and retention. KEFRI shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If KEFRI makes a late payment, the Contractor shall be paid interest on the late payment in the next payment Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made as indicated in the **Contract Data Sheet**.
- 46.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 46.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.
- 46.4 Items of the Works for which no rate or price has been entered in will not be paid for by KEFRI and shall be deemed covered by other rates and prices in the Contract.

#### **47.0 Compensation Events**

- 1 The following shall be Compensation Events:
- (a) KEFRI does not give access to a part of the Site by the Site Possession Date stated in the **Contract Data Sheet**.
  - (b) KEFRI modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
  - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
  - (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
  - (e) The Project Manager unreasonably does not approve a subcontract to be let.
  - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.

- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by KEFRI, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or KEFRI does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of KEFRI's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.
- (l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.

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

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

47.4 The Contractor shall not be entitled to compensation to the extent that KEFRI's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

#### **48.0 Taxes**

48.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 50.

#### **49.0 Currencies**

49.1 Where payments are made in currencies other than the Kenya Shillings, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Tender.

#### **50.0 Price Adjustment**

50.1 The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 45.1, shall be adjusted in respect of the rise or fall in the cost of labour, Contractor's Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause based on the

prevailing consumer price index obtained from the Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya.

50.2 To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

50.3 The adjustment to be applied to amount payable to the Contractor as certified in Payment Certificates shall be determined 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 as follows;

$$P_n = a + \frac{b \cdot L_n - L_o}{L_o} + \frac{c \cdot M_n - M_o}{M_o} + \frac{d \cdot E_n - E_o}{E_o} \text{ etc.}$$

where;

**P<sub>n</sub>** is a price adjustment factor to be applied to the amount in each specific currency for the payment of the work carried out in the subject month, where such variations and daywork are not otherwise subject to adjustment;

**a** is a constant, specified in the **Appendix to Tender**, representing the nonadjustable portion in contractual payments;

**b, c, d, etc.**, are weightings or coefficients representing the estimated proportion of each cost element (labour, materials, equipment usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the **Appendix to Tender**; the sum of a, b, c, d, etc., shall be one;

**L<sub>n</sub>, M<sub>n</sub>, E<sub>n</sub>, etc.**, are the current cost indices or reference prices of the cost elements in the specific currency of origin for month —**n**, determined pursuant to Sub-Clause 50.5, applicable to each cost element; and

**L<sub>o</sub>, M<sub>o</sub>, E<sub>o</sub>, etc.**, are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 50.5

The value of net work done, certified by the Project Manager, in any monthly Interim or Final Certificate as payable by KEFRI to the Contractor before deduction of any retention money shall be increased or decreased by an amount of „**F**“.

$$F = P_n \times P_c$$

where;

The effective value **P<sub>c</sub>** of work done which is to be subjected to increase or decrease shall be the difference between:

- (i) the amount which, in the opinion of the Project Manager, is due to the Contractor under Clause 45 (before deduction of retention money and before deducting sums previously paid on account) less:
  - any amount for payment or repayment of any advance payment;
  - any amount for materials on site (if any);
  - any amounts for nominated sub-contractors (if any)
  - any amounts for any other items based on actual cost or current prices; or
  - any sums for increase or decreases in the Contract Price paid under this Sub-Clause and
- (ii) the amount calculated in accordance with (i) above of this Sub-clause and included in the last preceding statement.

- 50.4 The sources of indices shall be those listed in the **Appendix to Tender**, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor's proposed source of supply of inputs on the basis of which his Contract Price and expected foreign currency requirements shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his Tender the tabulation of Weightings and Source of Indices in the **Appendix to Tender**, which shall be subject to approval by the Engineer.
- 50.5 The base cost indices or prices shall be those prevailing on the day 28 days prior to the latest date for submission of Tenders. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.
- 50.6 If the Contractor fails to complete the Works within the time for completion prescribed under Clause 58 adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favourable to KEFRI, provided that if an extension of time is granted pursuant to Clause 28, the above provision shall apply only to adjustments made after the expiry of such extension of time.
- 50.7 The weightings for each of the factors of cost given in the **Appendix to Tender** shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced, or inapplicable as a result of varied or additional work already executed or instructed under Clause 43 or for any other reason.

### **51.1 Retention**

- 51.1 KEFRI shall retain from each payment due to the Contractor the proportion stated in the **Contract Data Sheet** until Completion of the whole of the Works.
- 51.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the other half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.
- 51.3 On completion of the whole Works, the Contractor may substitute retention money with an —on demand Bank guarantee.

### **52.0 Liquidated Damages**

- 52.1 The Contractor shall pay liquidated damages to KEFRI at the rate per day stated in the **Contract Data Sheet** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the **Contract Data Sheet**. KEFRI may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.
- 52.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages

by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 46.1.

- 52.3 If the Contractor has not corrected a defects within the time specified in KEFRI's notice, KEFRI will assess the cost of having the defect corrected, the Contractor will pay this amount, and a penalty for lack of performance calculated as described in Clause 38.

### **53.0 Bonus**

- 53.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the **Contract Data Sheet** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

### **54.0 Advance Payment**

- 54.1 KEFRI shall make advance payment to the Contractor of the amounts stated in the **Contract Data Sheet** by the date stated in the **Contract Data Sheet**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to KEFRI in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.
- 54.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 54.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

### **55.1 Performance Securities**

- 55.1 The Performance Security shall be provided to KEFRI no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to KEFRI, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

### **56.0 Dayworks**

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

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

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

### **57.0 Cost of Repairs**

57.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

## **Finishing the Contract**

### **58.0 Completion Certificate**

58.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.

### **59.0 Taking Over**

59.1 KEFRI shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

### **60.1 Final Account**

60.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

### **61.0 Operating and Maintenance Manuals**

61.1 If —as built Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **Contract Data Sheet**.

61.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **Contract Data Sheet**, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the **Contract Data Sheet** from payments due to the Contractor.

### **62.0 Termination**

62.1 KEFRI or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

62.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Project Manager;

- (b) The Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) KEFRI or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) A payment certified by the Project Manager is not paid by KEFRI to the Contractor within 84 days of the date of the Project Manager's certificate;
- (e) The Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) The Contractor does not maintain a Security, which is required; and
- (g) The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the **Contract Data Sheet**.
- (h) If the Contractor, in the judgment of KEFRI has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph:

—corrupt practice<sup>ll</sup> means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution and includes inter alia, bribery and extortion or coercion which involves threats of injury to person, property or reputation, and.

—fraudulent practice<sup>ll</sup> means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KEFRI, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive KEFRI of the benefits of free and open competition.

62.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 62.2 above, the Project Manager shall decide whether the breach is fundamental or not.

62.4 Notwithstanding the above, KEFRI may terminate the Contract for convenience.

62.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

## **62.0 Payment upon Termination**

63.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the **Contract Data Sheet**. Additional Liquidated Damages shall not apply. If the total amount due to KEFRI exceeds any payment due to the Contractor, the difference shall be a debt payable to KEFRI.

63.2 If the Contract is terminated for KEFRI's convenience or because of a fundamental breach of Contract by KEFRI, the Project Manager shall issue a

certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

#### **64.0 Property**

64.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of KEFRI if the Contract is terminated because of the Contractor's default.

#### **65.0 Release from Performance**

65.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either KEFRI or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

#### **66.0 Suspension of Financing**

66.1 In the event that the source of financing is suspended to KEFRI, from which part of the payments to the Contractor are being made:

- (a) KEFRI is obligated to notify the Contractor of such suspension within 7 days of having received the financing agency's suspension notice.
- (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 46.1, the Contractor may immediately issue a 14-day termination notice.

## SECTION V: CONTRACT DATA SHEET (CDS)

### Contract Data Sheet

#### Instructions for completing the Contract Data Sheet

CDS	GCC	Description
		<b>General</b>
1	1.1	<p><b>(Itemise Definitions to take the same numbering as per the General Conditions)</b>  KEFRI is <b>Kenya Forestry Research Institute</b></p> <p>The Defects Liability Period is 6 Months</p> <p>The Project Manager is:- Works Secretary -<b>State Department of public Works</b>  <b>P.O. Box 30743-00100 Nairobi</b></p> <p>The name and identification number of the Contract is - <b>Proposed Chainlink Fencing at Tiva Woodlands Kitui</b></p> <p><b>KEFRI/ONT//004/2020-2021 (re-advertisement)</b></p> <p>The Works consist of summary <b>Proposed Renovation of Mau Sub Center-Sinendet</b></p> <p>The objectives of the contract are <i>to fence experimental plots-Tiva Kitui</i></p> <p>The Start Date shall be <i>as Agreed with the Project Manager</i></p> <p>The Intended Completion Date for the whole of the Works shall be <b>6 months</b> from the date of Contract signing.</p> <p>The Site is located as follows;</p> <p><b>Tiva-Woodlands</b></p>
2.	2.2	
3.	2.3(9)	
4.	3.1	The language of the Contract documents is <b>ENGLISH</b> The law that applies to the Contract is the Kenyan Law.
5.	9.1	Include the Schedule of Other Contractors, if any.
6.	10.1	
7.	14.1	The minimum insurance covers shall be: (a) loss of or damage to property Kshs 100,000; and

		(b) personal injury or death Kshs 100,000
8.	15.1	
9.	22.4	The other measures include: a . Minimising the number of migrant workers employed on the project and household in the site camp b . Providing access to voluntary counselling and testing (VCT) c . Providing psychological support and health care including prevention and treatment of opportunistic infections for workers infected and affected, as well as their families d . Providing condoms (male and female) to workers
10.	24.1 & 47.1	The Site Possession Date shall be <i>As Agreed with the Project Manager</i>

11.	28.2	
12.	28.3	
13.	29.1	

#### **B. Time Control**

14.	30.1	The Contractor shall Submit a Programme for the Works within 7 days of delivery of the Letter of Acceptance.
15.	30.3	.
16.	30.3	The amount to be withheld by the Project Manager in the case the contractor does not submit an updated programme on time 10% of the contract price

#### **C. Quality Control**

17.	38.1	The Defects Liability Period is <b>6 Months</b>
-----	------	---

#### **D. Cost Control**

18.	45.7	Minimum Amount of Interim Payment Certificate will be Kshs <b>2,500,000</b>
19.	46.1	No advance payment for this contract
20.	47.1(a)	The Site Possession Date shall be as Agreed with the project Manager
21.	50	The contract is not subject to price adjustment in accordance with Clause 50 of the General Conditions of Contract. unless agreed by both parties in writing
22.	51.1	The amount of retention is 5% of interim certificates Limit of retention will be 5% of contract price.
23.	52.1	
	52.1 62.2 (g)	The maximum amount of liquidated damages is 5%

24.	53.1	
25.	54.1	
		.
26.	55.1	The Performance Security shall be 1%
		<b>E. Finishing the Contract</b>
27.	61.1	Operating manual shall be supplied by the contract during the project Hand over
28.	61.2	The amount to be withheld by the Project Manager in the case the contractor does not submit operating manual is <b>10%</b>
29.	63.1	The percentage to apply to the value of the work not completed, representing KEFRI's additional cost for completing the Works, is <b>50%</b> .

## SECTION VI: TECHNICAL SPECIFICATIONS

**As specified in the bills of quantities**

## SECTION VII: DRAWINGS

**No drawing for this procurement**

SECTION VIII: TENDER FORMS

**Form of Tender**

*Date:* .....

To: Kenya Forestry Research Institute,  
P.O.Box 20412-00200,  
Nairobi.

We offer to execute **The Proposed Chain Link Fencing at Tiva Woodlands - Kitui** in accordance with the Conditions of Contract accompanying this Tender for the Contract Price of Amount in Numbers

..... Amount in words .....

.....

The Contract shall be paid in **Kshs**

We are not participating, as Tenders, in more than one Tender in this Tendering process other than alternative Tenders in accordance with the Tendering documents.

Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the contract has not been declared ineligible by the Kenya Government under Kenya’s laws or any other official regulations.

This Tender and your written acceptance of it shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any Tender you receive.

We hereby confirm that this Tender complies with the Tender validity and Tender Security required by the Tendering documents and specified in the Tender Data Sheet.

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

Name and Title of Signatory: \_\_\_\_\_

Name of Tenderer: \_\_\_\_\_

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

**TENDER-SECURING DECLARATION (MANDATORY)**

Date:  
.....

Tender No.: ..... Lot .....

To: **Kenya Forestry Research Institute**

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for Tendering in any contract with KEFRI for the period of time of *one year* starting on *30/09/2020* 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) Having been notified of the acceptance of our Tender by KEFRI 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;

- 1) Our receipt of your notification to us of the name of the successful Tenderer; or
- 2) Thirty days after the expiration of our Tender.

Signed:.....

Name: ..... Designation.....

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Corporate Seal/Stamp (where appropriate)

**CONFIDENTIAL BUSINESS QUESTIONNAIRE**  
**1.0 Individual Tenderer or Individual Members of joint Ventures**

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

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

Part \_\_\_\_\_ General:

Business Name .....

Location of business premises .....

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

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

Nature of business .....

Registration Certificate No. ....

Maximum value of business which you can handle at any one-time Kshs. ....

Name of your bankers ..... Branch .....

Part 2(a) – Sole Proprietor:

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

Nationality ..... Country of origin .....

Citizenship details.....

Party 2(b) – Partnership

Give details of partners as follows

Name	Nationality	Citizenship Details	Shares
1.....			
2.....			
3.....			
4.....			

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	Nationality	Citizenship Detail	Shares
1.....			
2.....			
3.....			
4.....			

**Address .....** **code .....**

**Email address .....**

**Telephone number .....**

**Signature .....** **Stamp**

## **INTEGRITY DECLARATION**

### **UNDERTAKING BY TENDERER ON ANTI – BRIBERY POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME**

1. Each Tenderer must submit a statement, as part of the Tender documents, in either of the two given formats which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the Tendering company and, where relevant, of its subsidiary in the Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
2. Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the Tenderer may cover the subcontractors and consortium partners in its own statement, provided the Tenderer assumes full responsibility.
3.
  - a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
  - b) Each Tenderer will make full disclosure in the Tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the Tender and, if successful, the implementation of the contract.
  - c) The successful Tenderer will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract.
  - d) Within six months of the completion of the performance of the contract, the successful Tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that they are sufficient to establish the legitimacy of the payments made.
  - e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
4. Tenders which do not conform to these requirements shall not be considered.
5. If the successful Tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
  - a) Cancellation of the contract;
  - b) Liability for damages to the public authority and/or the unsuccessful competitors in the Tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated).
6. Tenderers shall make available, as part of their Tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.
7. The Government of Kenya has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by Tenderers for

this contract, and to which in turn all Tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a Tenderer may be disclosed to another Tenderer or to the public).

**ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE**

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We .....

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No .....

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

**SELF DECLARATION FORM**

**SELF-DECLARATION FORM**

Date    ▯

To:  
The Director  
Kenya Forestry Research Institute  
P.O. Box 20412-00200  
Nairobi

The tenderer i.e. (name and address)

declare the following:

- a) Has not been debarred from participating in public procurement.
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

Name.....  
Title.....  
Signature.....  
Date.....  
Official Stamp.....

**(To be signed by authorized representative and officially stamped)**



**Project Title: Proposed Chainlink Fencing at Tiva Woodlands - Kitui**

**Project Number: TENDER NO- KEFRI/ONT/004/2020– 2021**

**Project Details**

Site Visit Details		
	Project Name	TENDER NO- <del>KEFRI/ONT/004/2020– 2021</del>
	Client Company	KEFRI
	Client Contact (KEFRI)	ADMINISTRATION
	Department	ADMINISTRATION
	Contact Details	
	Contractor	
	Date of Visit	
	Time of Visit	

- Location for Site Visit
- Hours/Days Job
- Duration

For Tenderer:

For KEFRI

Name: .....

Name: .....

Sign: ..... Date: .....

Sign: ..... Date: .....

**LETTER OF ACCEPTANCE**

*[Letter head paper of KEFRI]*

[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 Sheet]* for the Contract Price of the equivalent of *[amount in numbers and works] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us.

We confirm that *[insert name proposed by KEFRI]* to be the Adjudicator.

We accept that *[name proposed by Tenderer]* be appointed as Adjudicator.

Or

We do not accept that *[name proposed by Tenderer]* be appointed as adjudicator, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the adjudicator in accordance with Clause 44.1 of the Instructions to Tenderers.

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

Please return the contract dully signed.

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

Name and Title of Signatory: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Attachment: Form of Contract

### Form of Contract Agreement

This Agreement, made the [day] day of [month], [year] between [name and address of Procuring Entity] (hereinafter called —KEFRI) and [name and address of Contractor] (hereinafter called —the Contractor) of the other part.

Whereas KEFRI is desirous that the Contractor execute [name and identification number of contract] (hereinafter called —the Works) with the objectives of [insert functional objectives of the works] and KEFRI has accepted the Tender by the Contractor for the execution and completion of such works and the remedying of any defects therein in the sum of [contract price in words and figures] (hereinafter called —Contract Price).

#### NOW THIS AGREEMENT WITNESSES 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, and they shall be deemed to form and be read and construed as part of this Agreement;
2. In consideration of the payments to be made by KEFRI to the Contractor as hereinafter mentioned, the Contractor hereby covenants with KEFRI to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract;
3. KEFRI hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein 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 \_\_\_\_\_

In the presence of: \_\_\_\_\_

Tendering Signature of Procuring Entity \_\_\_\_\_

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

## SECTION IX: FORMS OF SECURITY

### B. Tender Security (Bank or Insurance Guarantee)(Optional)

*[If required, the **Bank or Insurance Company/Tenderer** shall fill in this Guarantee form in accordance with the instructions indicated in brackets.]*

*[insert bank's or insurance company's name, and address of issuing branch or office] **Beneficiary:** [insert name and address of Procuring Entity] **Date:** [insert date]*

**TENDER GUARANTEE No.:** *[insert number]*

We have been informed that *[insert name of the Tenderer; if a joint venture, list complete legal names of partners]* (hereinafter called "the Tenderer") has submitted to you its Tender dated *[insert date]* (hereinafter called "the Tender") for the execution of *[insert name of Contract]* under Invitation for Tenders No. *[insert IFT number]* (—the IFT).

Furthermore, we understand that, according to your conditions, Tenders must be supported by a Tender Guarantee.

At the request of the Tenderer, we *[insert name of bank or insurance company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in the currency of the Purchaser's Country or the equivalent amount in an international freely convertible currency]* (*[insert amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer;

- a) Has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender; or
  - b) Does not accept the correction of errors in accordance with the Instructions to Tenderers (hereinafter —the ITT) of the IFT; or
  - c) Having been notified of the acceptance of its Tender by KEFRI during the period of Tender validity;
- (i). Fails or refuses to execute the Contract Form, if required, or
  - (ii). Fails or refuses to furnish the Performance Security, in accordance with the ITT.  
This Guarantee shall expire;
    - a) If the Tenderer is the successful Tenderer, upon our receipt of copies of the Contract signed by the Tenderer and of the Performance Security issued to you by the Tenderer; or
    - b) If the Tenderer is not the successful Tenderer, upon the earlier of;
- (i) Our receipt of a copy of your notification to the Tenderer that the Tenderer was unsuccessful, or
  - (ii) Thirty days after the expiration of the Tenderer's Tender.  
Consequently, any demand for payment under this Guarantee must be received by us at the office on or before that date.

---

*[signature(s) of authorized representative(s) ]*

**Performance Bank or Insurance Guarantee [Unconditional]**

[The **Bank or Insurance Company/successful Tenderer** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if KEFRI requires this type of security.]

*[insert bank's or insurance company's name, and address of issuing branch or office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

**Date:** *[insert date]*

**PERFORMANCE GUARANTEE No.:***[insert Performance Guarantee number]*

We have been informed that *[insert name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Contractor, we *[insert name of Bank or Insurance Company]* hereby irrevocably

undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures]*

*([insert amount in words])*, such sum being payable in the types and proportions of currencies in which

the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written

statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your

needing to prove or to show grounds for your demand or 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 there under 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 expire not later than thirty days from the date of issuance of the Taking-Over Certificate.

*[signature(s) of an authorized representative(s) of the Bank or Insurance Company]*

**Bank or Insurance Guarantee for Advance Payment**

*[Bank's or Insurance Company's Name and Address of Issuing Branch or Office]*

**Beneficiary:** \_\_\_\_\_ *[Name and Address of Procuring Entity]*

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

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_

We have been informed that *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the contract]* dated \_\_\_\_\_ with you, for the execution of *[name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the

sum *[amount in figures]* ( \_\_\_\_\_ ) *[amount in words]* is to be made against an advance payment guarantee.

At Contractor, \_\_\_\_\_ *of Bank or Insurance* irrevocably undertake to pay you \_\_\_\_\_ sum exceeding in total an amount *[amount in any or sums not of t figures]* \_\_\_\_\_ ) *[amount in words]* upon receipt by us of your first demand in writing accompanied ( \_\_\_\_\_ ) by a

written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

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 Procuring Entity]* 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.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated 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 eighty (80) percent of the Contract Price has been certified for payment, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_.

whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

Yours truly,

Signature and seal: \_\_\_\_\_

Name of Bank or Insurance Company: \_\_\_\_\_

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

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

**SECTION X: APPLICATION TO PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**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 KEFRI*) 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.

By this memorandum, the Applicant requests the Board for an order/orders that: - 1.

- 2.
- etc

SIGNED ..... (Applicant)

---

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

---

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on ..... day of

.....20.....

SIGNED

---

Board Secretary

## **SECTION XI: BILLS OF QUANTITIES**

Particular Preliminaries

ITEM	DESCRIPTION	AMOUNT
	<p style="text-align: center;"><b>PARTICULAR PRELIMINARIES</b></p> <p><b>A PRICING ITEMS OF PRELIMINARIES</b>            Prices will be inserted against items of Preliminaries in the Contractor's priced Bills of Quantities and Specification.</p> <p>The Contractor shall be deemed to have included in his prices or rates for the various items in the Bills of Quantities or Specification for all costs involved in complying with all the requirements for the proper execution of the whole of the works in the Contract.</p> <p>Failure to price an item shall not exempt the contractor from carrying out works described therein.</p> <p>Should the contractor fail to carry out works which he/she did not price and after having received a written instruction from the Project Manager, then the value of such works shall be deducted from the very immediate certificate issued to the contractor.</p> <p><i>Preliminaries to the contract are mandatory conditions and responsibilities, the contractor is required to observe and fulfill for complete and proper execution of the contract. The contractor is advised to read and understand all his obligations under preliminaries. Should he find that fulfilment of any of the items will lead to him incurring any cost not covered under measured works or any other part of these bills of Quantities, he shall price such items.</i></p> <p><b>A BID BOND</b>            A bid bond shall be required in terms of clause 3.7 of instructions to tenderers or the amount stated in the invitation to tender or advertisement</p> <p>The Bid bond shall be from EITHER an approved insurance company or bank.</p> <p><b>B CLEARING AWAY</b>            The Contractor shall remove all temporary works, rubbish, debris and surplus materials from the site as they accumulate and upon completion of the works, remove and clear away all plant, equipment, rubbish, unused materials and stains and leave in a clean and tidy state to the reasonable satisfaction of the Project Manager</p>	
	<b>Total carried to collection</b>	

Particular Preliminaries

ITEM	DESCRIPTION	AMOUNT
<p><b>A</b></p> <p><b>B</b></p> <p><b>C</b></p> <p><b>D</b></p>	<p><b>WORKING CONDITIONS</b></p> <p>This is a rented site with other occupants. The contractor must allow for compliance with all County &amp; Civic Authority laws &amp; regulations</p> <p><b>CLAIMS</b></p> <p>It shall be a condition of this contract that upon it becoming reasonably apparent to the Contractor that he has incurred losses and/or expenses due to any of the contract conditions, or by any other reason whatsoever, he shall present such claim or intent to claim notice to the PROJECT MANAGER within the contract period. No claims shall be entertained upon the expiry of the said contract period.</p> <p><b>LABOUR CAMPS</b></p> <p>The Contractor shall not be allowed to house labour on site. Allow for transporting workers to and from the site during the tenure of the contract.</p> <p><b>PRICING RATES</b></p> <p>i The tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities.</p> <p>ii Items for which no rate or price is entered by the tenderer shall be deemed to be covered in the rates and prices of the priced items in the Bill of Quantities.</p> <p>iii The tenderer shall include for all costs in executing the whole of the works, including transport, replacing damaged items, fixing, all to comply with the Conditions of Contract. <i>The contract is broken down to work item that in total describes all that is required to have the contract works satisfactorily completed. The rate for any item of the works described shall therefore include executing the item to the final fixed and working state including material purchase and transport, fixing in position, replacing damaged items, all statutory levies and taxes (including VAT) and site and head office overheads.</i></p> <p>iv Prices quoted must be in Kenya shillings .</p> <p>v Prices shall remain valid for one hundred and fifty (150) days from the closing date of tender.</p> <p>vi The rates and prices quoted by the tenderer shall only be subject to adjustment during the performance of the Contract if provided for in the Appendix to Conditions of Contract and provisions made in the Conditions of Contract.</p>	
	<b>Total carried to collection</b>	

Particular Preliminaries

ITEM	DESCRIPTION	AMOUNT
A	<p><b>MATERIALS FROM DEMOLITIONS</b> Any materials arising from demolitions SHALL NOT BE re-used and shall become the property of the client unless otherwise advised.</p>	
B	<p><b>URGENCY OF THE WORKS</b> The Contractor is notified that these “works are urgent” and should be completed within the period stated in Particular Preliminaries. The Contractor shall allow in his rates for any costs he/she may incur by having to complete the works within the stipulated contract period.</p>	
C	<p><b>PAYMENT FOR MATERIALS ON SITE</b> Valuation for interim payment certificates shall be based on work done and materials delivered to site in accordance with clause 23 of the Conditions of contract. However, in certain circumstances the Project manager may allow for payment of materials procured purposely for the project but stored either at the contractor's yard or workshop. Such circumstances include where materials are used for fabrication of components for the project or a material or equipment is bought in advance but has to await the completion of some portion of the works necessary for their installation.</p>	
D	<p><b>EXISTING SERVICES</b> Prior to the commencement of any work, the Contractor is to ascertain from the relevant authority the exact position, depth and level of all existing services in the area and shall make whatever provisions may be required by the authorities for the support, maintenance and protection of such services.</p>	
E	<p><b>MEASUREMENTS</b> In the event of any discrepancies arising between the Bills of Quantities and the actual works, the site measurements shall take precedence. However, such discrepancies between any contract documents shall immediately be referred to the PROJECT MANAGER in accordance with Clause 22 of the Conditions of Contract. The discrepancies shall then be treated as a variation and be dealt with in accordance with Clause 22 of the said Conditions.</p>	
	<b>Total carried to collection</b>	-

Particular Preliminaries

ITEM	DESCRIPTION	AMOUNT
	<p><b><u>AIR TIME</u></b></p>	
A	Allow PROVISIONAL SUM of Kenya Shillings FIFTY THOUSAND only for Air time to be expended as directed by the Project Manager	
B	Allow for profits and overheads (%)	
	<p><b><u>STATIONERY</u></b></p>	
C	Allow PROVISIONAL SUM of Kenya Shillings ONE HUNDRED AND FIFTY THOUSAND only for Stationery to be expended as directed by the Project Manager	
D	Allow for profits and overheads (%)	
	<b>Carried to collection</b>	

Particular Preliminaries

ITEM	DESCRIPTION	AMOUNT
	<b><u>COLLECTION</u></b>	
	Brought forward from page PP/1	
	Brought forward from page PP/2	
	Brought forward from page PP/3	
	Brought forward from page PP/4	
	Brought forward from page PP/5	
	Brought forward from page PP/6	
	Brought forward from page PP/7	
<b>TOTAL PARTICULAR PRELIMINARIES CARRIED TO GRAND SUMMARY</b>		

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
	<p><b>GENERAL PRELIMINARIES</b></p> <p><b>A ABBREVIATIONS</b></p> <p>Throughout these Bills units of measurement and terms are abbreviated and shall be interpreted as follows:-</p> <p>CM or Cm                      Shall mean cubic meter</p> <p>SM     or Sm                    Shall mean square meter</p> <p>LM     or Lm                    Shall mean linear meter</p> <p>MM or mm                      Shall mean Millimeter</p> <p>KG or Kg.                      Shall mean Kilogramme</p> <p>No or Nr                        Shall mean Number</p> <p>PRS or Prs.                     Shall mean Pairs</p> <p>B.S.                              Shall mean the British Standard Specification Published by the British Standards Institution, 2 Park Street, London W.I England</p> <p>M.S.                              Shall mean measured separately</p> <p>Ditto                              shall mean the whole of the preceding description except as qualified in the description in which it occurs.</p> <p>Do                                shall mean the whole of the preceding description except as qualified in the description in which it occurs.</p> <p>a.b.                                Shall mean as above</p> <p>a.b.d.                              Shall mean as before described</p> <p><b>B FORM OF CONTRACT</b></p> <p><i>The Form of Contract shall be as stipulated in the Republic of Kenya's Standard Tender Document for Procurement of Building Works (2007 Edition) included herein. The Conditions of Contract are also included herein.</i></p>	
	<b>Total carried to collection</b>	

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
A	<p><b>FIRM PRICE CONTRACT</b></p> <p>Unless otherwise specifically stated in the Contract Data and/or Particular preliminaries this is a firm price contract and the contractor must allow in his tender rates for any increase in the cost of labour and/or materials during the execution of the contract.</p>	
B	<p><b>PERFORMANCE BOND</b></p> <p>The contractor shall within 14 days after receipt of letter of acceptance in accordance with clause 6.5 of instructions to tenderers (as amended in Appendix to instructions to tenderers) submit a Bond from an approved bank in the required amount for the due performances of the contract up to the date of the issuance of the certificate of practical completion by the Project Manager. The format of the Bond shall be as per the standard form of performance security form annexed hererein (without the addition of any limitations) In case the Bond submitted is not acceptable to the Employer, the contractor shall submit acceptable bond within seven days.</p>	
C	<p><b>EXCEPTION TO THE STANDARD METHOD OF MEASUREMENT</b></p> <p><b>Attendance ;</b> Clause B19(a) of the Standard Method of Measurement is deleted and the following clause is substituted:-</p> <p>Attendance on nominated Sub-Contractors shall be given as an item in each case shall be deemed to include: allowing use of standing scaffolding, mess rooms, sanitary accommodation and welfare facilities; provision of special scaffolding where necessary; providing space for office accommodation and for storage of plant and materials; providing light and water for their work: clearing away rubbish; unloading checking and hoisting: providing electric power and removing and replacing duct covers, pipe casings and the like necessary for the execution and testing of Sub- Contractors' work and being responsible for the accuracy of the same.</p>	
	<b>Total carried to collection</b>	



ITEM	DESCRIPTION	AMOUNT
<b><u>PARTIES TO THE CONTRACT</u></b>		
A	<p><b>EMPLOYER</b>                      The “Employer” is  <b>Kenya Forestry Research Institute</b>                      Address CITY SQUARE,                      P.O. Box 20412–00200, NAIROBI</p>	
B	<p><b>PROJECT MANAGER shall be -:</b>                      The term "P.M." wherever used in these Bills of Quantities shall be deemed to imply the                      Project Manager as defined in Condition 1 of the Conditions of Contract or such person                      or persons as may be duly authorised to represent him on behalf of the Government.</p> <p>In this Project, the Project Manager shall be -:  <b>COUNTY WORKS OFFICER (SDPW) -KITUI</b></p>	
C	<p><b>ARCHITECT</b></p> <p>The term "Architect" shall be deemed to mean "The P.M." as defined above whose address unless otherwise notified is as above</p>	
D	<p><b>QUANTITY SURVEYOR</b></p> <p>The term "Quantity Surveyor" shall be deemed to mean "The P.M." as defined above whose address unless otherwise notified is as above</p>	
<b>Total carried to collection</b>		

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
A	<p><b>ELECTRICAL ENGINEER</b></p> <p>The term "Electrical Engineer" shall be deemed to mean "The P.M." as defined above whose address unless otherwise notified is as above</p>	
B	<p><b>MECHANICAL ENGINEER</b></p> <p>The term "Mechanical Engineer" shall be deemed to mean "The P.M." as defined above whose address unless otherwise notified is as above</p>	
C	<p><b>STRUCTURAL ENGINEER</b></p> <p>The term "Structural Engineer" shall be deemed to mean "The P.M." as defined above whose address unless otherwise notified is as above</p>	
<b>Total carried to collection</b>		

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
A	<p><b>PLANT, TOOLS AND VEHICLES</b></p> <p>Allow for providing all scaffolding, plant, tools and vehicles required for the works except in so far as may be stated otherwise herein and except for such items specifically and only required for the use of nominated Sub-Contractors as described herein. No timber used for scaffolding, formwork or temporary works of any kind shall be used afterwards in the permanent work.</p>	
B	<p><b>MATERIALS AND WORKMANSHIP.</b></p> <p>All materials and workmanship used in the execution of the work shall be of the best quality and description unless otherwise stated. The Contractor shall order all materials to be obtained from overseas immediately after the Contract is signed and shall also order materials to be obtained from local sources as early as necessary to ensure that they are onsite when required for use in the works. The Bills of Quantities shall not be used for the purpose of ordering materials.</p>	
C	<p><b>SIGN FOR MATERIALS SUPPLIED.</b></p> <p>The contractor will be required to sign for all items, including Drawing, Bills of Quantities and site instructions, supplied by the PROJECT MANAGER at the time of taking delivery thereof, as prove of receipt in good time and order.</p>	
	<b>Total carried to collection</b>	

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
<p>A</p>	<p><b>STORAGE OF MATERIALS</b>                      The Contractor shall provide at his own risk and cost where directed on the site weather proof lock-up sheds and make good damaged or disturbed surfaces upon completion to the satisfaction of the PROJECT MANAGER Nominated Sub-Contractors are to be made liable for the cost of any storage accommodation provided especially for their use.</p>	
<p>B</p>	<p><b>SAMPLES</b>                      The Contractor shall furnish at his own cost any samples of materials or workmanship including concrete test cubes required for the works that may be called for by the PROJECT MANAGER for his approval until such samples are approved by the PROJECT MANAGER and the PROJECT MANAGER, may reject any materials or workmanship not in his opinion to be up to approved samples. The PROJECT MANAGER shall arrange for the testing of such materials as he may at his discretion deem desirable, but the testing shall be made at the expense of the Contractor and not at the expense of the PROJECT MANAGER PROVIDED THEY PASS THE TEST. The Contractor shall pay for the testing in accordance with the current scale of testing charges laid down by the Ministry of Public Works.                      The procedure for submitting samples of materials for testing and the method of marking for identification shall be as laid down by the PROJECT MANAGER The Contractor shall allow in his tender for such samples and tests except those in connection with nominated sub-contractors' work.                       Samples of paint, carpets, curtains &amp; covers, tiles &amp; timber shall be required for approval by the PM together with the employer.                       No alternte rate shall be offered on account that the employer has chosen a superior finish unless the bidder had attached the sample he priced.</p>	
	<p><b>Total carried to collection</b></p>	

ITEM	DESCRIPTION	AMOUNT
A	<p><b>PUBLIC AND PRIVATE ROADS.</b></p> <p>Maintain as required throughout the execution of the works and make good any damage to public or private roads arising from or consequent upon the execution of the works to the satisfaction of the local and other competent authority and the PROJECT MANAGER</p>	
B	<p><b>EXISTING PROPERTY.</b></p> <p>The Contractor shall take every precaution to avoid damage to all existing property including roads, cables, drains and other services and he will be held responsible for and shall make good all such damage arising from the execution of this contract at his own expense to the satisfaction of the PROJECT MANAGER</p>	
C	<p><b>ACCESS TO SITE AND TEMPORARY ROADS.</b></p> <p>Means of access to the Site shall be agreed with the PROJECT MANAGER prior to commencement of the work and Contractor must allow for building any necessary temporary access roads for the transport of the materials, plant and workmen as may be required for the complete execution of the works including the provision of temporary culverts, crossings, bridges, or any other means of gaining access to the Site. Upon completion of the works, the Contractor shall remove such temporary access roads; temporary culverts, bridges, etc., and make good and reinstate all works and surfaces disturbed to the satisfaction of the PROJECT MANAGER</p>	
D	<p><b>AREA TO BE OCCUPIED BY THE CONTRACTOR</b></p> <p>The area of the site which may be occupied by the Contractor for use of storage and for the purpose of erecting workshops, etc., shall be defined on site by the PROJECT MANAGER</p>	
	<b>Total carried to collection</b>	

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
A	<p><b>SECURITY OF WORKS ETC.</b>                      The Contractor shall be entirely responsible for the security of all the works stores, materials, plant, personnel, etc., both his own and sub-contractors' and must provide all necessary watching, lighting and other precautions as necessary to ensure security against theft, loss or damage and the protection of the public.</p>	
B	<p><b>PROGRESS CHART.</b>                      The Contractor shall provide within two weeks of Possession of Site and in agreement with the PROJECT MANAGER a Progress Chart for the whole of the works including the works of Nominated Sub-Contractors ; one copy to be handed to the PROJECT MANAGER and a further copy to be retained on Site. Progress to be recorded and chart to be amended as necessary as the work proceeds.</p>	
C	<p><b>INSURANCE</b>                      The Contractor shall insure as required in Conditions No. 30 of the Conditions of Contract. No payment on account of the work executed will be made to the Contractor until he has satisfied the PROJECT MANAGER either by production of an Insurance Policy or and Insurance Certificate that the provision of the foregoing Insurance Clauses have been complied with in all respects. Thereafter the PROJECT MANAGER shall from time to time ascertain that premiums are duly paid up by the Contractor who shall if called upon to do so, produce the receipted premium renewals for the PROJECT MANAGER's inspection.</p>	
D	<p><b>CONTRACTOR'S SUPERINTENDENCE/SITE AGENT</b>                      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 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>	
	<b>Total carried to collection</b>	

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
<p>A</p>	<p><b>PROVISIONAL WORK</b>                      All work described as "Provisional" in these Bills of Quantities is subject to remeasurement in order to ascertain the actual quantity executed for which payment will be made. All "Provisional" and other work liable to adjustment under this Contract shall left uncovered for a reasonable time to allow all measurements needed for such adjustment to be taken by the PROJECT MANAGER Immediately the work is ready for measuring, the Contractor shall give notice to the PROJECT MANAGER. If the Contractor makes default in these respects he shall if the PROJECT MANAGER so directs uncover the work to enable all measurements to be taken and afterwards reinstate at his own expense.</p>	
<p>B</p>	<p><b>PROVISIONAL SUMS.</b>                      The term "Provisional Sum" wherever used in these Bills of Quantities shall have the meaning stated in Section A item A7(i) of the Standard Method of Measurement. Such sums are net and no addition shall be made to them for profit.</p>	
<p>C</p>	<p><b>ADJUSTMENT OF PROVISIONAL SUMS.</b>                      In the final account all Provisional Sums shall be deducted and the value of the work properly executed in respect of them upon the PROJECT MANAGER's order added to the Contract Sum. Such work shall be valued , but should any part of the work be executed by a Nominated Sub-Contractor, the value of such work or articles for the work to be supplied by a Nominated Supplier, the value of such work or articles shall be treated as a P.C. Sum and profit and attendance comparable to that contained in the priced Bills of Quantities for similar items added.</p>	
	<p><b>Total carried to collection</b></p>	

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
<p>A</p>	<p><b>PRIME COST (OR P.C.) SUMS.</b>                      The term "Prime Cost Sum" or "P.C. Sum" wherever used in these Bills of Quantities shall have the meaning stated in Section A item A7 (ii) of the Standard Method of Measurement . Persons or firms nominated by the PROJECT MANAGER to execute work or to provide and fix materials or goods are described herein as Nominated Sub-Contractors. Persons or firms so nominated to supply goods or materials are described herein as Nominated Suppliers.</p>	
<p>B</p>	<p><b>ADJUSTMENT OF P.C. SUMS.</b>                      In the final account all P.C. Sums shall be deducted and the amount properly expended upon the PROJECT MANAGER'S order in respect of each of them added to the Contract sum. The Contractor shall produce to the PROJECT MANAGER such quotations, invoices or bills, properly receipted, as may be necessary to show the actual details of the sums paid by the Contractor. Items of profit upon P.C. Sums shall be adjusted in the final account pro-rata to the amount paid. Items of "attendance" (as previously described) following P.C. Sums shall be adjusted pro-rata to the physical extent of the work executed (not pro-rata to the amount paid) and this shall apply even though the Contractor's priced Bill shows a percentage in the rate column in respect of them. Should the Contractor be permitted to tender and his tender be accepted of any work for which a P.C. Sum is included in these Bill of Quantities profit and attendance will be allowed at the same rate as it would be if the work were executed by a Nominated Sub-Contractor.</p>	
<p>C</p>	<p><b>NOMINATED SUB-CONTRACTORS</b>                      When any work is ordered by the PROJECT MANAGER to be executed by nominated sub-contractors, the Contractor shall enter into sub-contracts and shall thereafter be responsible for such sub-contractors in every respect. Unless otherwise described the Contractor is to provide for such Sub-Contractors any or all of the facilities described in these Preliminaries. The Contractor should price for these with the nominated Sub-contract Contractor's work concerned in the P.C. Sums under the description "add for Attendance".</p>	
	<p><b>Total carried to collection</b></p>	

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
A	<p><b>DIRECT CONTRACTS</b></p> <p>Notwithstanding the foregoing conditions, the Government reserves the right to place a "Direct Contract" for any goods or services required in the works which are covered by a P.C. Sum in the Bills of Quantities and to pay for the same direct. In any such instances, profit relative to the P.C. Sum the priced Bills of Quantities will be adjusted as described for P.C. Sums and allowed.</p>	
B	<p><b>ATTENDANCE UPON OTHER TRADESMEN, ETC.</b></p> <p>The Contractor shall allow for the attendance of trade upon trade and shall afford any tradesmen or other persons employed for the execution of any work not included in this Contract every facility for carrying out their work and also for use of his ordinary scaffolding. The Contractor, however, shall not be required to erect any special scaffolding for them. The Contractor shall perform such cutting away for and making good after the work of such tradesmen or persons as may be ordered by the PROJECT MANAGER and the work will be measured and paid for to the extent executed at rates provided in these Bills.</p>	
	<b>Total carried to collection</b>	

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
	<p><b>OFFICE FOR THE PROJECT MANAGER</b></p> <p>A The Contractor shall provide on site site office, complete with Furniture. He shall also provide a strong metal trunk complete with strong hasp and staple fastening and two keys. He shall provide, erect and maintain a lock-up type water or bucket closet for the sole use of the PROJECT MANAGER including making temporary connections to the drain where applicable to the satisfaction of Government and shall provide services of cleaner and pay all conservancy charges and keep both office and closet in a clean and sanitary condition from commencement to the completion of the works and dismantle and make good disturbed surfaces. The office and closet shall be completed before the Contractor is permitted to commence the works. The Contractor shall make available on the Site as and when required by the "PROJECT MANAGER" a modern and accurate level together with levelling staff, ranging rods and 50 metre metallic or linen tape.</p> <p>B <b>WATER AND ELECTRICITY SUPPLY FOR THE WORKS</b> The Contractor shall provide at his own risk and cost all necessary water, electric light and power required for use in the works. The Contractor must make his own arrangements for connection to the nearest suitable water main and for metering the water used. He must also provide temporary tanks and meters as required at his own cost and clear away when no longer required and make good on completion to the entire satisfaction of the PROJECT MANAGER . The Contractor shall pay all charges in connection herewith. No guarantee is given or implied that sufficient water will be available from mains and the Contractor must make his own arrangements for augmenting this supply at his own cost. Nominated Sub--contractors are to be made liable for the cost of any water or electric current used and for any installation provided especially for their own use.</p> <p>C <b>SANITATION OF THE WORKS</b> The Sanitation of the works shall be arranged and maintained by the Contractor to the satisfaction of the Government and/or Local Authorities, Labour Department and the PROJECT MANAGER</p> <p>D <b>SUPERVISION AND WORKING HOURS</b> The works shall be executed under the direction and to the entire satisfaction in all respects of the PROJECT MANAGER who shall at all times during normal working hours have access to the works and to the yards and workshops of the Contractor and sub-Contractors or other places where work is being prepared for the contract.</p>	
	<b>Total carried to collection</b>	

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
<p>A</p>	<p><b>PROTECTION OF THE WORKS.</b> Provide protection of the whole of the works contained in the Bills of Quantities, including casing, casing up, covering or such other means as may be necessary to avoid damage to the satisfaction of the PROJECT MANAGER and remove such protection when no longer required and make good any damage which may nevertheless have been done at completion free of cost to the Government.</p>	
<p>B</p>	<p><b>WORKS TO BE DELIVERED UP CLEAN</b>  Clean and flush all gutters, rainwater and waste pipes, manholes and drains, wash (except where such treatment might cause damage) and clean all floors, sanitary fittings, glass inside and outside and any other parts of the works and remove all marks, blemishes, stains and defects from joinery, fittings and decorated surfaces generally, polish door furniture and bright parts of metalwork and leave the whole of the buildings watertight, clean, perfect and fit for occupation to the approval of the PROJECT MANAGER</p>	
<p>C</p>	<p><b>GENERAL SPECIFICATION.</b>  For the full description of materials and workmanship, method of execution of the work and notes for pricing, the Contractor is referred to the Ministry of Roads and Public Works and Housing General Specification dated 1976 or any subsequent revision thereof which is issued as a separate document, and which shall be allowed in all respects unless it conflicts with the General Preliminaries, Trade Preambles or other items in these Bills of Quantities.</p>	
<p>D</p>	<p><b>MATERIALS ON SITE</b> All materials for incorporation in the works must be stored on or adjacent to the site before payment is effected unless specifically exempted by the PROJECT MANAGER. This includes the materials of the Main Contractor, Nominated Sub-Contractors and Nominated Suppliers.</p>	
	<p><b>Total carried to collection</b></p>	

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
A	<p><b>ALTERATIONS TO BILLS, PRICING, ETC.</b>            Any unauthorised alteration or qualification made to the text of the Bills of Quantities may cause the Tender to be disqualified and will in any case be ignored. The Contractor shall be deemed to have made allowance in his prices generally to cover any items against which no price has been inserted in the priced Bills of Quantities. All items of measured work shall be priced in detail and the Tenders containing Lump Sums to cover trades or groups of work must be broken down to show the price of each item before they will be accepted.</p>	
B	<p><b>MATERIALS ARISING FROM EXCAVATIONS</b>            Materials of any kind obtained from the excavations shall be the property of the Government. Unless otherwise provided for in the particular preliminaries. Such materials shall only be used in the works, in substitution of materials which the Contractor would otherwise have had to supply with the written permission of the PROJECT MANAGER Should such permission be given, the Contractor shall make due allowance for the value of the materials so used at a price to be agreed.</p>	
C	<p><b>PREVENTION OF ACCIDENT, DAMAGE OR LOSS</b>            The Contractor is notified that these works are to be carried out on a restricted site where the client is going on with other normal activities. The Contractor is instructed to take reasonable care in the execution of the works as to prevent accidents, damage or loss and disruption of normal activities being carried out by the Client. The Contractor shall allow in his rates any expense he deems necessary by taking such care within the site.</p>	
	<b>Total carried to collection</b>	

ITEM	DESCRIPTION	AMOUNT
<p>A</p>	<p><b>GOVERNMENT ACTS REGARDING WORKPEOPLE ETC.</b></p> <p>Allow for complying with all Government Acts, Orders and Regulations in connection with the employment of Labour and other matters related to the execution of the works. In particular the Contractor's attention is drawn to the provisions of the Factory Act 1950 and his tender must include for all costs arising or resulting from compliance with any Act, Order or Regulation relating to Insurances, pensions and holidays for workpeople or so the safety, health and welfare of the workpeople. The Contractor must make himself fully acquainted with current Acts and Regulations, including Police Regulations regarding the movement, housing, security and control of labour, labour camps , passes for transport, etc. It is most important that the Contractor, before tendering, shall obtain from the relevant Authority the fullest information regarding all such regulations and/or restrictions which may affect the information regarding all such regulations and/or restrictions which may affect the organisation of the works, supply and control of labour, etc., and allow accordingly in his tender.</p> <p>No claim in respect of want of knowledge in this connection will be entertained.</p>	
<p>B</p>	<p><b>BLASTING OPERATIONS</b></p> <p>Blasting will only be allowed with the express permission of the PROJECT MANAGER 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 PROJECT MANAGER governing the use and storage of explosives.</p>	
<p>C</p>	<p><b>SIGNBOARD</b></p> <p>Allow for providing, erecting, maintaining throughout the course of the Contract and afterwards clearing away a signboard as designed, specified and approved by the Project Manager.</p>	
	<p><b>Total carried to collection</b></p>	

General Preliminaries

ITEM	DESCRIPTION	AMOUNT
	<b><u>COLLECTION</u></b>	
	Brought Forward From Page GP/1	
	Brought Forward From Page GP/2	
	Brought Forward From Page GP/3	
	Brought Forward From Page GP/4	
	Brought Forward From Page GP/5	
	Brought Forward From Page GP/6	
	Brought Forward From Page GP/7	
	Brought Forward From Page GP/8	
	Brought Forward From Page GP/9	
	Brought Forward From Page GP/10	
	Brought Forward From Page GP/11	
	Brought Forward From Page GP/12	
	Brought Forward From Page GP/13	
	Brought Forward From Page GP/14	
	Brought Forward From Page GP/15	
	Brought Forward From Page GP/16	
	<b>TOTAL GENERAL PRELIMINARIES CARRIED TO GRAND SUMMARY</b>	

PROPOSED CHAINLINK FENCING FOR KEFRI AT TIVA WOODLANDS

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	<b><u>CHAINLINK FENCING</u></b>				
	<b><u>Supply, Deliver and Fix 2.4 metres overall High chainlink fencing compriseng of cranked concrete posts, struts, chainlink wire barbed ans steel wire stands as detailed below - all provisional</u></b>				
A	Clear site along the fencing area(average 2000mm both ways) of all vegetation and shrubs and small trees average girth 600mm and dispose off as directed	2000	Lm		
B	Excavate pits starting from ground level and not exceeding 1.50metres deep and cart away excavate soil	30	Cm		
C	1:3:6 mix mass concrete for Pits surround and at the base of the chainlink 200mm wide x 200mm thick for anchorage	20	Cm		
D	2000mm high x 12.5gauge galvanized chain link fence wire with hole size 50 x 50mm	4000	Sm		
E	16gauge galvanized barbed wire 3 strands	6000	Lm		
F	4mm galvanized steel wire 4 strands	8000	Lm		
G	100x125mm double cranked precast concrete fencing posts with 4No. Rebars and from an approved supplier	2002	Lm		
H	Ditto 100 x 125mm precast concrete struts at every tenth post and corner posts	210	Lm		
	<b>TOTAL FOR CHAINLINK FENCING CARRIED TO SUMMARY</b>				

**PROPOSED CHAINLINK FENCING FOR KEFRI AT TIVA WOODLANDS**

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
A	<p><b><u>PROVISIONAL SUMS</u></b></p> <p>Allow Provisional Sum of Kenya Shillings Three Hundred Thousand (Kshs.300,000.00) only for Contigencies</p>		SUM		300,000.00
	<b>Total for provisional sums CARRIED TO SUMMARY</b>				300,000.00

**PROPOSED CHAINLINK FENCE FOR KEFRI AT TIVA WOODLANDS-  
KITUI**

**GRAND SUMMARY**

ITEM	DESCRIPTION	TENDERER'S AMOUNT	OFFICIAL USE ONLY
A	<u>Preliminaries</u> i Particular Preliminaries From pg PP/5  ii General Preliminaries From pg gp/17  B Chainlink Fence From pg BW/1  C Provisional Sums from page BW/2		
	<b>TOTAL CARRIED TO FORM OF TENDER KSHS</b>		0.00

Amount of tender in words: Kenya Shilings.....

Tenderer's signature and stamp.....

Address.....

Date.....

Witness: Name and signature.....

Description.....

Address.....

Date.....