



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

**PROPOSED TWO (2 No) YEAR MAINTENANCE OF AIR CONDITIONING
SYSTEM FOR THE NATIONAL TREASURY AND PLANNING DATA CENTER
AT HERUFI HOUSE FOR THE PERIOD 2018 TO 2020**

TECHNICAL BID

TENDER NO.TNT/017/2018-2019

PROJECT MANAGER

CHIEF ENGINEER- MECHANICAL (BS)

State Department for Public Works

P. O. BOX 41191- 00100

Nairobi

MECHANICAL ENGINEER

CHIEF ENGINEER- MECHANICAL (BS)

State Department for Public Works

P.O. BOX 41191- 00100

Nairobi

CLIENT

PRINCIPAL SECRETARY

The National Treasury and Planning

P. O. Box 30007-00100

Nairobi

CLOSING DATE: TUESDAY 6th NOVEMBER, 2018 AT 10.00 AM

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REPUBLIC OF KENYA
INVITATION TO TENDER
THE NATIONAL TREASURY AND PLANNING

The National Treasury invites sealed bids from eligible candidates for the following tenders:

S/No	Tender No.	Description	Bid Security
1.	TNT/017/2018-2019	Proposed two (2) year maintenance of air conditioning system for the National Treasury and Planning data centre at Herufi House for the period 2018 to 2020	300,000.00
2.	TNT/018/2018-2019	Proposed two (2) year maintenance of air conditioning system for the National Treasury and Planning data centre at Treasury Building for the period 2018 to 2020	350,000.00
3.	TNT/019/2018-2019	Proposed two (2) year maintenance of air conditioning system for the National Treasury and Planning offices at Treasury Building for the period 2018 to 2020	120,000.00

Interested bidders may download detailed tender documents from the website www.treasury.go.ke or www.tenders.go.ke and those who download the documents **must forward their particulars immediately for recording and any further clarifications and addenda to procurement@treasury.go.ke.**

Tenders must be accompanied by a **bid Security** valid for an additional 30 days beyond the tender validity period.

There shall be a **mandatory site visit on Friday 26th October, 2018 at 10.00 a.m. on 2nd Floor, Treasury Building.**

Completed tender documents, **BOTH TECHNICAL AND FINANCIAL PROPOSALS IN SEPARATE ENVELOPES**, enclosed in plain sealed envelopes, marked with the tender number should be addressed to:-

**The Principal Secretary,
The National Treasury,
P.O. Box 30007 - 00100,
Nairobi, Kenya**

and be deposited in the tender box provided at the Treasury Building, 6th Floor, Harambee Avenue, Nairobi, so as to be received on or before **Tuesday 6th November, 2018 at 10.00 am.**

Tenders will be opened immediately thereafter in the presence of tenderers or their representatives who choose to attend the opening at The National Treasury, Treasury Building, 6th floor, Conference Room No. 603 on **Tuesday 6th November, 2018 at 10.00 a.m.**

**HEAD, SUPPLY CHAIN MANAGEMENT SERVICES
FOR: PRINCIPAL SECRETARY**

DEFINITIONS

The following terms and expressions used in the contract document shall have the following meanings:

The Employer:	Government of the Republic of Kenya Represented by: The Principal Secretary The National Treasury and Planning P. O. Box 30007-00100 NAIROBI
Project Manager:	Chief Engineer - Mechanical (BS) State Department for Public Works P. O. Box 41191-00100 NAIROBI
Engineer:	Chief Engineer - Mechanical (BS) State Department for Public Works P. O. Box 41191-00100 NAIROBI
Employer's Representative:	This shall mean the Project Manager and shall be Chief Engineer - Mechanical (BS) State Department for Public Works P.O. Box 41191-00100 NAIROBI
Contractor:	The Firm appointed to carry out the works.

(ii)

SPECIAL NOTES

1. These notes shall form part of the Instructions to Tenderers and Conditions of Contract.
2. The tenderer is required to check the number of pages in this document and should he find any missing, or in duplicate, or indistinct he should inform the Chief Engineer - Mechanical (BS), State Department for Public Works.
3. Should the tenderer be in any doubt about the precise meaning of any item or figure, for any reason whatsoever, he must inform the Chief Engineer - Mechanical (BS), State Department for Public Works, in order that the correct meaning may be decided before the date of submission of tender.
4. No liability will be admitted nor claim allowed, in respect of errors in the tender due to mistakes in the specification, which should have been rectified in the manner, described above.
5. All tenderers must make a declaration that they have not and will not make any payment to any person which can be perceived as an inducement to enable them to win this tender.
6. Any tenderer whose firm uses the titles "Engineer" and "Engineers" must produce evidence of registration of at least one of the directors by the Engineers Board of Kenya to avoid disqualification.

FORM OF AGREEMENT

THIS AGREEMENT, made the _____ day of _____ 2018
between **The Principal Secretary - The National Treasury and Planning** of (or whose
registered office is situated at **Treasury Building** (and hereinafter called “the Employer”)
of the one part AND

_____ of (or whose registered office is situated),
_____ (hereinafter called “the Contractor) of the other part.

WHEREAS THE Employer is desirous that the Contractor executes **MAINTENANCE
OF** _____ (*Name and identification number Contract*) (hereinafter
called “the Works”) located at _____ (Place/location of the works) and
the Employer has accepted the tender submitted by the Contractor for the execution and
completion of such works and the remedy of any defects therein in the sum of **Kshs**
_____ (amount in figures) Kenya Shillings
_____ (amount in words) which comprises ___%
labour and ___% **materials** (herein after called “the Contract price”).

NOW THIS AGREEMENT WITNESSETH as follows: -

1. In this Agreement, words and expressions shall have the same meanings as respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.
 - (i) Letter of acceptance
 - (ii) Form of Tender
 - (iii) Conditions of Contract Part I
 - (iv) Conditions of Contract and Appendix to Conditions of Contract
 - (v) Specifications
 - (vi) Drawings
 - (vii) Priced Price Schedules/Priced Schedule of Unit Rates (Whichever is applicable)
3. In consideration of the payments to be made by the Employer to the Contractor as herein after mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the contract.

(v)

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

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

The common Seal of **The Principal Secretary - The National Treasury and Planning**

Was hereunto affixed.

Signed, Sealed and Delivered by the said (Name).....

Binding Signature of Employer

Date.....

Witness of Employer – Name.....

Signature.....Date.....

.

Binding Signature of Contractor.....

Contractor's Seal.....

Date.....

In the presence of (i) Name

Address.....

Signature.....

Date.....

(ii) Name

Address.....

Signature.....

Date.....

(vi)

SECTION A:
INSTRUCTIONS TO TENDERERS

INSTRUCTIONS TO TENDERERS

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INSTRUCTIONS TO TENDERERS

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

GENERAL

1. Definitions

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

2. Eligibility and Qualification Requirements

- 2.1 This invitation to tender is open to all tenderers who have been prequalified.
- 2.2 To be eligible for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility under Sub clause 2.1 above and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to update the following information already submitted during prequalification: -
 - (a) Details of experience and past performance of the tenderer on the works of a similar nature within the past five years and details of current work on hand and other contractual commitments.
 - (b) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site.
 - (c) Major items of construction plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this

schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.

- (d) Details of subcontractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Conditions of Contract.
- (e) A draft Program of Works in the form of a bar chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Engineer.
- (f) Details of any current litigation or arbitration proceedings in which the Tenderer is involved as one of the parties.

2.3 Joint Ventures

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

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

3. Cost of Tendering

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

4. Site Visit

- 4.1 The tenderer is advised to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the Site shall be the tenderer's own responsibility.
- 4.2 The tenderer and any of his personnel or agents will be granted permission by the Employer to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, his personnel or agents, will release and indemnify the Employer from and against all liability in respect of, and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.
- 4.3 The Employer shall organize a site visit at a date to be notified. A representative of the Employer will be available to meet the intending tenderers at the Site.

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

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

TENDER DOCUMENTS

5. Tender Documents

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

- m. Specifications
- n. Price Schedules
- o. Drawings

5.2 The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 22 of Instructions to Tenderers, tenders that are not substantially responsive to the requirements of the tender documents will be rejected.

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

6. Clarification of Tender Documents

6.1 A prospective tenderer requiring any clarification of the tender documents may notify the Employer in writing or by telex, cable or facsimile at the Employer's mailing address indicated in the Invitation to Tender. The Employer will respond in writing to any request for clarification, which he receives earlier than 5 days prior to the expiry of 28 days deadline for the submission of tenders. Written copies of the Employer's response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased the tender documents.

7. Amendment of Tender Documents

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

7.2 Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them.

7.3 If during the period of tendering, any circular letters (tender notices) shall be issued to tenderers by, or on behalf of, the Employer setting forth the interpretation to be placed on a part of the tender documents or to make any change in them, such circular letters will form part of the tender documents and it will be assumed that the tenderer has taken account of them in preparing his tender. The tenderer must promptly acknowledge any circular letters he may receive.

7.4 In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Employer may,

at his discretion, extend the deadline for the submission of tenders.

PREPARATION OF TENDERS

8. Language of Tender

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

9. Documents Comprising the Tender

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

10. Tender Prices

10.1 All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Price Schedules shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialed by the person or persons signing the tender.

10.2 A price or rate shall be inserted by the tenderer for every item in the Price Schedules whether the quantities are stated or not items against which no rate or price is entered by the tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Price Schedules.

10.3 The prices and unit rates in the Price Schedules are to be the full [all-inclusive] value of the work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties and taxes and other levies payable by the Contractor under the Contract or for any other cause as of the date 28 days prior to the deadline for the submission of tenders, shall be included in the rates and prices and the total tender prices submitted by the Tenderer.

- 10.4 Each price or unit rate inserted in the Price Schedules should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.
- 10.5 Every rate entered in the Price Schedules, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Price Schedules, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.
- 10.6 Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Price Schedules for Contingencies and Variation of Prices [V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.
- 10.7 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of unit rates for the supply of items listed in the Conditions of Contract clause 47 where appropriate.
- 10.8 The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the provisions of the Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other supporting information as required under clause 47 of the Conditions of Contract Part II.
11. Currencies of Tender and Payment
- 11.1 Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.
- 11.2 Tenderers are required to indicate in the Statement of Foreign Currency Requirements, which forms part of the tender, the foreign currency required by them. Such currency should generally be the currency of the country of the tenderer's main office. However, if a substantial portion of the tenderer's expenditure under the Contract is expected to be in countries other than his country of origin, then he may state a corresponding portion of the contract price in the currency of those other countries. However, the foreign currency element is to be limited to two (2) different currencies and a maximum of 30% (thirty percent) of the Contract Price.
- 11.3 The rate of rates of exchange used for pricing the tender shall be selling rate or rates of the Central Bank ruling on the date thirty (30) days before the final date for the submission of tenders.

11.4 Tenderers must enclose with their tenders, a brief justification of the foreign currency requirements stated in their tenders.

12. Tender Validity

12.1 The tender shall remain valid and open for acceptance for a period of one hundred and twenty (120) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 7.4 here above) whichever is the later.

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

13. Tender Surety

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

13.2 The unconditional Tender Surety shall be in Kenya Shillings and be in form of a certified cheque, a bank draft, an irrevocable letter of credit or a guarantee from a reputable Bank approved by the Employer located in the Republic of Kenya.

13.3 The format of the Surety shall be in accordance with the sample form of Tender Surety included in these tender documents; other formats may be permitted subject to the prior approval of the Employer. The Tender Surety shall be valid for **twenty-eight (28) days** beyond the tender validity period.

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

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

13.6 The Tender Surety may be forfeited:

(a) If a tenderer withdraws his tender during the period of tender validity: or

- (b) In the case of a successful tenderer, if he fails
 - (i) To sign the Agreement, or
 - (ii) To furnish the necessary Performance Security
- (c) If a tenderer does not accept the correction of his tender price pursuant to clause 23.

14. No Alternative Offers

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

Each tenderer may submit only one tender either by himself or as partner in a joint venture.

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

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

15. Pre-Tender Meeting

15.1 The tenderer's designated representative is invited to attend a pre-tender meeting, which if convened, will take place at the venue and time stated in the Invitation to Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

15.2 The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than seven days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:

- (a) Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in --Clause 9 which may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting.
- (b) Non-attendance at the pre-tender meeting will not be cause for disqualification of a bidder.

16. Format and Signing of Tenders

16.1 The tenderer shall prepare his tender as outlined in clause 9 above and mark appropriately one set "ORIGINAL" and the other "COPY".

- 16.2 The copy of the tender and Price Schedules shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. Proof of authorization shall be furnished in the form of the written power of attorney, which shall accompany the tender. The person or persons signing the tender shall initial all pages of the tender where amendments have been made.
- 16.3 The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

SUBMISSION OF TENDERS

17. Sealing and Marking of Tenders

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

18 Deadline for Submission of Tenders

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

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

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

18.2 The Employer may, at his discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline shall thereafter be subject to the new deadline as extended.

18.3 Any tender received by the Employer after the prescribed deadline for submission of tender will be returned unopened to the tenderer.

19 Modification and Withdrawal of Tenders

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

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

19.3 No tender may be modified subsequent to the deadline for submission of tenders.

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

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

TENDER OPENING AND EVALUATION

20 Tender Opening

20.1 The Employer will open the tenders in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

20.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 19, will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the documents have been properly signed and whether the tenders are generally in order.

- 20.3 At the tender opening, the Employer will announce the tenderer's names, total tender price, tender price modifications and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.
- 20.4 The Employer shall prepare minutes of the tender opening including the information disclosed to those present.
- 20.5 Tenders not opened and read out a tender opening shall not be considered further for evaluation, irrespective of the circumstances.

21 Process to be Confidential

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

22 Clarification of Tenders

- 22.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 24.
- 22.2 No Tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

23 Determination of Responsiveness

- 23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.
- 23.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation and has a valid bank

guarantee. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.

- 23.3 Each price or unit rate inserted in the Price Schedules shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.
- 23.4 A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.

24 Correction of Errors

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

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error.
- (c) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 13.

25 Conversion to Single Currency

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

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

26 Evaluation and Comparison of Tenders

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

26.2 In evaluating tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:

- (a) Making any correction for errors pursuant to clause 24.
- (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Price Schedules, but including Day works where priced competitively.

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

26.4 Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.

26.5 If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 29 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.

26.6 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a non-indigenous contractor.

AWARD OF CONTRACT

27 Award

27.1 Subject to clause 27.2, the Employer will award the Contract to the

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tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works.

27.2 The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.

28 Notification of Award

28.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, telefax or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price"), which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.

28.2 Notification of award will constitute the formation of the Contract.

28.3 Upon the furnishing of a Performance Security by the successful tenderer, the unsuccessful tenderers will promptly be notified that their tenders have been unsuccessful.

28.4 Within twenty-eight [28] days of receipt of the form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.

29 Performance Guarantee

29.1 Within twenty-eight [28] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in an amount stated in the Appendix to Instructions to Tenderers.

29.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by an established and a reputable Bank approved by the Employer and located in the Republic of Kenya and shall be divided into two elements namely, a performance security payable in foreign currencies (based upon the exchange rates determined in accordance with clause 35.4 of the Conditions of Contract) and a performance security payable in Kenya

Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.

- 29.3 Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract the Employer may award the Contract to the next ranked tenderer.

30 Advance Payment

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

APPENDIX TO INSTRUCTIONS TO TENDERERS

1. **Modify Clause 1(a) to read as follows:**

'Tenderer' means any person or persons, partnership firm or company submitting a sum or sums in the Price Schedules in accordance with the instructions to Tenderers, Conditions of Contract, General and Particular Conditions of servicing Air Conditioning systems, Specifications and Price Schedules for the work contemplated, acting directly or through a legally appointed representative.

2. **Modify Clause 2.1 to read:**

This invitation to tender is open to all tenderers in the category specified in the tender invitation.

3. **Add to clause 2.2**

(g) The tenderers shall submit detailed **Curriculum Vitae** for **ALL** the technical personnel involved in the maintenance of Air Conditioning equipment being tendered for. The detail shall include proof of where the experience/training was acquired. The tender evaluation committee may verify the information so submitted.

(h) Tenders submitted without the above information shall be rejected by the employer as non-responsive.

4. **Omit the following Clauses.**

Clauses 5.1(a), (d), (f), (i), (j); (o); 10.3; 10.4; 10.5; 11.2, 11.3; 11.4; 17.3; 17.4 25; 24(c) and 30.

5. **Add to Clause 13.1 the following:**

Amount of Tender Surety will be **Kshs. 300,000.00**

6. **Modify Clause 13.2 as follows:**

The unconditional Tender Surety shall be in Kenya Shillings and be in form of cash, such insurance company guarantee as may be approved by the Public Procurement Regulatory Authority, an irrevocable letter of credit or a guarantee from a reputable Bank approved by the Employer located in the Republic of Kenya.

Tender surety shall be valid for **150 days** from the date of tender opening.

7. **Modify Clause 16.1 as follows: -**

The tenderer shall prepare his tender as outlined in clause 9 above and submit only one set of the tender. A copy of the tender is not required.

8. Modify Clause 17 as follows: -

17.2 The envelope shall be addressed to the employer.

9. Modify Clause 17.1 as follows

The tenderer shall seal the original and copy of the Technical and Financial Bids in separated envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in two separated envelopes clearly marked "**Technical Bid**" and "**Financial Bid**" and an outer envelope.

10. Add to clause 23.1

The tenderer shall provide and demonstrate the following: -

- a) The tenderer shall submit a together with the tender documents copies of the professional/technical certificates for the key personnel on page E-12.
- b) The tenderer shall submit a copy of the firms current License/Certificates from the National Construction Authority (NCA).
- c) They have experience in the maintenance and servicing of similar Air Conditioning equipment being tendered for.

11. Modify Clause 26.6 as follows: -

Firms incorporated in Kenya where Kenyans own 51% or more of the share shall be allowed a 15% preferential bias.

12. Modify Clause 28.4 as follows: -

Within twenty-one [21] days of receipt of the form of contract agreement

13. Modify Clause 29 as follows: -

Insurance Indemnity Cover

29.1 Within twenty-one [21] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with an Insurance Indemnity Cover for the whole of the contract period.

14. Add to Clause 29.2.

Insurance Indemnity Cover shall be in Kenya Shillings only.

15. ADD TO CLAUSE 26

The evaluation criteria as detailed on pages (A-18 to A-25) of this clause shall be applied

TENDER EVALUATION CRITERIA

After tender opening, the tenders will be evaluated in **4 stages**, namely:

1. Preliminary Evaluation;
2. Technical Evaluation;
3. Financial Evaluation; and
4. Recommendation for Award.

STAGE 1: PRELIMINARY EVALUATION

This stage of evaluation shall involve examination of the mandatory requirements as set out in the Tender Advertisement Notice or Letter of Invitation to Tender and any other conditions stated in the bid document.

These conditions shall include the following:

- i) Company Certificate of incorporation/registration;
- ii) Current category of Registration and practicing licence with National Construction Authority (NCA) in the relevant trade;
- iii) Current Class of Licenses with the relevant statutory bodies e.g. Energy Regulatory Commission, Communication Authority of Kenya, County Governments, Water Management Boards etc. where applicable;
- iv) Provision of a tender security that is in the required format, amount and that the tender security is valid for the period required;
- v) Valid Tax Compliance Certificate;
- vi) Duly filled Confidential Business Questionnaire;
- vii) Duly signed Statement of Compliance;
- viii) Duly filled and signed anticorruption declaration commitment/pledge
- ix) Signed Pre-tender site visit form if pre-tender site visit is required;
- x) Proof of authorization shall be furnished in the form of a written power of attorney which shall accompany the tender if the signatory to the tender is not a director of the company (provide name and attach proof of citizenship of the signatory to the Tender).
- xi) Submission of valid CR12 Form from the Registrar of Companies issued within the last one year or national identity card for sole proprietor.
- xii) Submission of originals and copies of tender documents properly **tape bound** and paginated/serialized in the correct sequence

Note:

- a) The bid security shall be in accordance with clauses 13 and 23.2 of Instruction to Tenderers which states as follows:
- **Clause 13.1** of Instruction to Tenderers,” the tenderers shall furnish as part of his tenders a Bid surety in the amount stated in the tender document in the Appendix to Instructions to Tenderers”.
 - **Clause 13.2** of Instruction to Tenderers, “the unconditional Tender surety shall be in Kenya shillings and be in form of a certified cheque, bank draft, an irrevocable letter of credit or a guarantee from a reputable Bank/ Insurance approved by PPRA located in the Republic of Kenya. The format of the surety shall be in accordance with the sample form included in the tender documents and the tender surety shall be valid for **150 days** from the date of tender opening”.
 - **Clause 23.2** of Instruction to Tenderers: “For the purposes of this clause, a substantially responsive tender is one which conforms to all terms and condition and specifications of the tender document without material deviation or reservation and has a valid Bank/Insurance guarantee”.
- b) The employer/procuring entity may seek further clarification/confirmation if necessary to confirm authenticity/compliance of any condition of the tender. Further, in case of a discrepancy between the amounts stated in the appendix to Instructions to Tenderers in Section A of this tender document and the one stated in the tender advertisement or invitation letter, the bid security shall be taken as the amount in the tender advertisement/ letter of invitation.

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.

STAGE 2: TECHNICAL EVALUATION

The tender document shall be examined based on clause 2.2 of the Instructions to Tenderers which states as follows:

In accordance with clause 2.2 of Instruction to Tenderers, the tenderers will be required to provide evidence for eligibility of the award of the tender by satisfying the employer of their eligibility under sub clause 2.1 of Instructions to Tenderers and their capability and adequacy of resources to effectively carry out the subject contract.

In order to comply with provisions of clause 2.2 of Instruction to Tenderers, the tenderers shall be required;

- a) *To fill the Standard Forms* provided in the bid document for the purposes of providing the required information. The tenderers may also attach the required information if they so desire;
- b) *To supply equipment/items which comply with the technical specifications set out in the bid document.* In this regard, the bidders shall be required to submit relevant technical brochures/catalogues with the tender document, highlighting the Catalogue Numbers of the proposed items. Such brochures/catalogues should indicate comprehensive relevant data of the proposed equipment/items which should include but not limited to the following:
 - (i) Standards of manufacture;
 - (ii) Performance ratings/characteristics;
 - (iii) Material of manufacture;
 - (iv) Electrical power ratings; and
 - (v) Any other necessary requirements (Specify)

The bid will then be analyzed, using the information in the technical brochures, to determine compliance with General and Particular technical specifications for the works as indicated in the tender document. The tenderer shall also fill in the Technical Schedule as specified in the tender document for Equipment and Items indicating the Country of Origin, Model/Make/Manufacturer and catalogue numbers of the Items/Equipment they propose to supply.

The award of points considered in this section shall be as shown below:

PARAMETER	MAXIMUM POINTS
(i) Tender Questionnaire -----	3
(ii) Key personnel -----	24
(iii) Contract Completed in the last Five (5) years -----	21
(iv) Schedules of on-going projects -----	15
(v) Schedules of contractor's equipment -----	10
(vi) Audited Financial Report for the last 3 years -----	10
(vii) Evidence of Financial Resources -----	15
(viii) Name, Address and Telephone of Banks (Contractor to provide) ---	3
(ix) Litigation History -----	2
TOTAL	<u>100</u>

The pass-mark under the Technical Evaluation is 70 percent.

The detailed scoring plan shall be as shown in table 1.

TABLE 1: Technical Evaluation

Item	Description	Points Scored	Max. Point
1	Tender Questionnaire Form <ul style="list-style-type: none"> • Completely filled ----- 3 • Not filled ----- 0 		3
2	Key Personnel (Attach CV and relevant certificates as proof)		24
	Director of the firm <ul style="list-style-type: none"> • Holder of degree in relevant Engineering field ----- 4 • Holder of diploma in relevant Engineering field ----- 3 • Holder of certificate in relevant Engineering field----- 2 • Holder of trade test certificate in relevant Engineering field----- 1 • No relevant certificate ----- 0 	4	
	At least 1No. degree/diploma holder of key personnel in relevant field <ul style="list-style-type: none"> • With over 10years relevant experience ----- 10 • With over 5years relevant experience----- 5 • With under 5years relevant experience ----- 2 • No relevant certificate ----- 0 	10	
	At least 1 No certificate holder of key personnel in relevant field <ul style="list-style-type: none"> • With over 10years relevant experience----- 5 • With over 5years but below 10years relevant experience ----- 3 • With under 5years relevant experience ----- 1 • No relevant certificate ----- 0 	5	
	At least 2No. artisan (Trade test certificate in relevant field) <ul style="list-style-type: none"> • Artisan with over 10years relevant experience ----- 5 • Artisan with under 10years relevant experience ----- 2 • Non skilled worker ----- 0 	5	
3	Contracts completed in the last five (5) years (Max of 3No. Projects)- Provide Evidence (Completion certificates) <ul style="list-style-type: none"> • Project of similar nature, complexity or magnitude ----- 7 • Project of similar nature, complexity or magnitude but of lower value than the one in consideration-----5 • No completed project of similar nature ----- 0 		21

Item	Description	Points Scored	Max. Point
4	On-going projects – Provide Evidence (Letters of Award) <ul style="list-style-type: none"> • Four and above Projects of similar nature, complexity and magnitude --- 15 • Three and below Projects of similar, nature complexity and magnitude---10 • No Project of similar nature, complexity and magnitude ----- 6 		15
5	Schedule of contractors equipment and transport (Proof or evidence of ownership/Lease)		10
	a) Relevant Transport <ul style="list-style-type: none"> • Means of transport (Vehicle) ----- 2 • No means of transport ----- 0 	2	
	b) Relevant Equipment <ul style="list-style-type: none"> • Has relevant equipment for work being tendered ----- 8 • No relevant equipment for work being tendered ----- 0 	8	
6	Financial reports		10
	a) Audited financial report (last three (3) years) <ul style="list-style-type: none"> • Average Annual Turn-over equal to or greater than the cost of the project 10 • Average Annual Turn-over above 50% but below 100% of the cost of the project ----- 5 • Average Annual Turn-over below 50% of the cost of the project ----- 2 		
	b) Evidence of Financial Resources (cash in hand, lines of credit, over draft facility etc.) <ul style="list-style-type: none"> • Has financial resources to finance the projected monthly cash flow* for three months -----15 • Has financial resources equal to the projected monthly cash flow*----- 9 • Has financial resources less the projected monthly cash flow*----- 6 • Has not indicated sources of financial resources ----- 0 		
7	Name, Address and Telephone of Banks (Contractor to provide/attach letter of reference from bank(s)) <ul style="list-style-type: none"> • Information Provided----- 3 • No Information Provided----- 0 		3
8	Litigation History <ul style="list-style-type: none"> • Duly Filled ----- 2 • Not filled ----- 0 		2
TOTAL			100

Any bidder who scores 70 points and above shall be considered for further evaluation. Only the Financial Bids of the bidders who make it to this stage of the evaluation shall be opened.

**Monthly Cash Flow =Tender Sum/Contract Period*

STAGE 3 - FINANCIAL EVALUATION

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

The evaluation shall be in **three stages**

- i) Determination of Arithmetic errors
- ii) Comparison of Rates; and
- iii) Consistency of the Rates.

i) Determination of Arithmetic Errors

Arithmetic Errors will be corrected by the Procuring Entity 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 Price Schedules, 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) 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);
- iii) 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.

ii) 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 the procuring entity giving necessary evidence. Such recommendations may include but not limited to:

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

- b) Employer requiring that the amount of the performance bond be raised at the expense of the successful tenderer to a level sufficient to protect the employer against potential financial losses;
- c) 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 employer or the tenderers obligations would be limited in a substantial way.

iii) 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.

STAGE 4 - RECOMMENDATION FOR AWARD

The successful bidder shall be the tenderer with the lowest evaluated tender price.

SECTION B:

CONDITIONS OF CONTRACT

CONDITIONS OF CONTRACT

1.0 Definitions

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

“Price Schedules” means the priced and completed bill of quantities forming part of the tender.

“Compensation Events” are those defined in clause 24 hereunder

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

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

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

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

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

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

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

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

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

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

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

“Employer” or the **“procuring entity”** as defined in the Public Procurement Regulatory Authority Regulations (i.e. Central or Local Authority administration,

Universities, Public Institutions and Corporations, etc is the party who employs the Contractor to carry out the Works.

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

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

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

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

“Project Manager” is the person named in the Appendix to Conditions of Contract (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract and shall be an “Architect” or a “Quantity Surveyor registered under the Architects and Quantity Surveyors Act Cap 525 or an “Engineer” registered under Engineers Act 2011.

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

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

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

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

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

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

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

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

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

2. Interpretation

In interpreting the Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.

If sectional completion is specified in the Appendix to Conditions of Contract, reference in the Conditions of Contract to the Works, the Completion Date and the Intended Completion Date apply to any section of the Works (other than references to the Intended Completion Date for the whole of the Works).

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

- (1) Agreement,
- (2) Letter of acceptance,
- (3) Contractor’s Tender,
- (4) Appendix to Conditions of Contract,
- (5) Conditions of Contract,
- (6) Specifications,
- (7) Drawings,
- (8) Price Schedules,
- (9) Any other documents listed in the Appendix to Conditions of Contract as forming part of the contract.

Immediately after the execution of the contract, the Project Manager shall furnish both the Employer and the Contractor with two copies each of all the Contract documents. Further, as and when necessary the Project manager shall furnish the Contractor {always with a copy to the Employer} with three {{3}} copies of such further drawings or details or descriptive schedules as are reasonably necessary either to explain or amplify the Contract drawings or to enable the Contractor to carry out and complete the Works in accordance with these Conditions.

3. Language and Law

Language of Contract and the law governing the Contract shall be English language and the Laws of Kenya respective unless otherwise stated.

4. Project Manager’s Decisions

Except where otherwise specifically stated, the Project Manager will decide contractual

matters between the Employer and the Contractor in the role representing the Employer.

5. Delegation

The Project manager may delegate any of his duties and responsibilities to others after notifying the Contractor.

6. Communications

Communication between parties shall be effective only when in writing. A notice shall be effective only when it is delivered.

7. Subcontracting

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

8. Other The contractor

The Contractor shall cooperate and share the Site with other the contractor, public authorities, utilities etc. as listed in the Appendix to Conditions of Contract and also with the Employer, as per the directions of the Project Manager. The Contractor shall also provide facilities and services for them. The employer may modify the said List of Other The contractor etc., and shall notify the Contractor of any such modification.

9. Personnel

The Contractor shall employ the key personnel named in the Qualification Information, to carry out the functions stated in the said information or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Qualification Information. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within Seven days and has no further connection with the Work in the Contract.

10. Works

The Contractor shall construct and install the works in accordance with the Specifications and Drawings. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

11. Safety and Temporary Works

The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.

The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent works, shall be subject to prior approval by the Project Manager before they can be used.

The Contractor shall be responsible for the safety of all activities on the Site.

12. Discoveries

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

13. Work Program

Within the time stated in the appendix to Conditions of Contract, the Contractor shall submit to the Project Manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works. An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

The Contractor shall submit to the Project Manager for approval an updated program at intervals no longer than the period stated in the Appendix to Conditions of Contract. If the Contractor does not submit an updated program within this period, the Project Manager may withhold the amount stated in the said Appendix from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue program has been submitted. The Project Manager's approval of the program shall not alter the Contractor's obligations. The Contractor may revise the program and submit it to the Project Manager again at any time. A revised program shall show the effect of Variations and Compensation Events.

14. Possession of Site

The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Appendix to Conditions of Contract, the Employer will be deemed to have delayed the start of the relevant activities, and this will be Compensation Event.

15. Access to Site

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

16. Instructions

The Contractor shall carry out all instructions of the Project Manager which are in accordance with the Contract.

17. Extension of Acceleration of Completion Date

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

No bonus for early completion of the Works shall be paid to the Contractor by the Employer

18. Management Meetings

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

19. Early Warning

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

The Contractor shall cooperate with the Project Manager in making and considering proposals on how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the Work and in carrying out any resulting instruction of the Project Manager.

20. Defects

The Project Manager shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities.

The Project Manager may instruct the Contractor to search for a defect and to uncover and test any work that the Project manager considers may have defects. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor. However, if there is no defect found, the cost of uncovering and making good shall be treated as a

variation and added to the Contract Price.

The Project Manager shall give notice to the Contractor of any defects before the end of the Defect Liability Period, which begins at completion, and is defined in the Appendix to Conditions of contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.

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

21. Price Schedules

The Price Schedules shall contain items for the construction, installation, testing and commissioning of the work to be done by the Contractor. The Contractor will be paid for the quantity of the work done at the rate in the Price Schedules for each item.

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

If requested by the Project Manager, the Contractor shall provide the Project manager with a detailed cost breakdown of any rate in the Price Schedules.

22. Variations

All variations shall be included in updated programs produced by the Contractor.

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

If the work in the variation corresponds with an item description in the Price Schedules and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Price Schedules 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 do not correspond with items in the Price Schedules, the quotation by the contractor shall be in the form of new rates for the relevant items of work.

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

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

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

When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.

23. Payment Certificates, Currency of Payments and Advance Payments

The Contractor shall submit to the Project Manager quarterly applications for payment giving sufficient details of the Work done and materials on Site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the quarterly application and certify the amount to be paid to the Contractor within 14 days. The value of work executed and payable shall be determined by the Project Manager.

The value of work executed shall comprise the value of the quantities of the items in the Price Schedules completed, materials delivered on site, variations and compensation events. Such materials shall become the property of the Employer once the Employer has paid the Contractor for their value. Thereafter, they shall not be removed from site without the Project Manager's instructions except for use upon the works.

Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. If the Employer makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the Central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.

If an amount certified is increased in a later certificate as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

Items of the works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

The Contract Price shall be stated in Kenya Shillings. All payments to the contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Appendix to Conditions of Contract. If the contractor indicated foreign currencies for payment other than the currencies of the countries of

origin of related goods and services. The Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services.

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

In the event that an advance payment is granted, the following shall apply: -

- a) On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 10% (ten percent) of the original amount of the contract. The advance shall not be subject to retention money.
- b) No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.
- c) Reimbursement of the lump sum advance shall be made by deductions from the Interim payments and where applicable from the balance owing to the contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the contract. It shall have been completed by the time 80% of this amount is reached.

The amount to be repaid by way of successive deductions shall be calculated by means of the formula:

$$R = \frac{A(X^1 - X^{11})}{80 - 20}$$

Where:

R = the amount to be reimbursed

A = the amount of the advance which has been granted

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

X¹¹ = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80% but not less than 20%.

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- d) With each reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.

24. Compensation Events

The following issues shall constitute Compensation Events.

- a) The Employer does not give access to a part of the site by the Site Possession Date stated in the Appendix to Conditions of Contract.
- b) The Employer modifies the List of Other The contractor, etc., in a way that affects the Work of the Contractor under the Contract.
- c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the works on time.
- d) The Project Manager instructs the contractor to uncover or to carry out additional tests upon the work, which is then found to have no defects.
- e) The Project Manager unreasonably does not approve a subcontract to be let.
- f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to the contractor (including the site investigation reports), from information available publicly and from a visual inspection of the site.
- g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional works required for safety or other reasons.
- h) Other the contractor, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- i) The effects on the Contractor of any of the Employer's risks.
- j) The Project Manager unreasonably delays issuing a Certificate of Completion.
- k) Other compensation events described in the Contract or determined by the Project manager shall apply

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.

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As soon as information demonstrating the effect of each compensation event upon the Contractor's forecast cost has been provided by the Contract, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly.

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.

The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.

Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.

The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

Provided always that should the event giving rise to the claim of continuing effect, the Contractor shall submit an interim claim within the said thirty days and a final claim within thirty days of the end of the event giving rise to the claim.

25. Price Adjustment

The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.

The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provision in the Contract Price Schedules or Specifications) for permanent incorporation in the Works.

Unless otherwise stated in the Contract, if any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case may be.

Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manner set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified thereunder;

- i) The price contained in the Contract Price Schedules shall be deemed to be based

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

- ii) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour incorporated within the amount of work remaining to be executed at the date of publication of such increase or decrease.
- iii) No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

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

Upon the J.B.C. determining that any of the said basic prices are increased or decreased then the Contract Price shall be increased or decreased by the amount to be assessed by the Project Manager based upon the difference between the price set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 23 of these Conditions issued before the date of publication of such increase or decrease.

No adjustment shall be made in respect of changes in basic prices of materials which occur after the date for Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

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

26. Retention

The Employer shall retain from the payment due to the Contractor the proportion stated in the Appendix to Conditions of Contract until Completion of the whole of the works. On Completion of the whole of the works, half the total amount retained shall be repaid to the

Contractor and the remaining half when the Defects Liability Period has passed and the Project manager has certified that all defects notified to the Contractor before the end of this period have been corrected.

27. Liquidated Damages

The Contractor shall pay liquidated damages to the Employer at the rate stated in the Appendix to Conditions of Contract for each day that the actual Completion Date is later than the Intended Completion Date. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not alter the Contractor's liabilities.

If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rate specified in Clause 23.30.

28. Securities

The Performance Security shall be provided to the Employer not later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a reputable bank acceptable to the Employer, and denominated in Kenya shillings. The Performance Security shall be valid until a date 30 days beyond the date of issue of the Certificate of Completion.

29. Day works

If applicable, the Day works 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.

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.

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

30. Liability and Insurance

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

- a) The risk of personal injury, death or loss of or damage to property (excluding the works, plant, materials and equipment), which are due to;
 - i) use or occupation of the site by the works or for the purpose of the works, which is the unavoidable result of the works, or

- ii) negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.

- b) The risk of damage to the works, plant, materials, and equipment to the extent that it is due to a fault of the Employer or in Employer's design, or due to war or radioactive contamination directly affecting the place where the works are being executed.

From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the works, plant, and materials is the Employer's risk except loss or damage due to;

- a) a defect which existed on or before the Completion Date.

- b) An event occurring before the Completion Date, which was not itself the Employer's risk.

- c) The activities of the Contractor on the Site after the Completion Date.

From the Start Date until the Defects Correction Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the works, plant, materials, and equipment) which are not Employer's risk are contractor's risks.

The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Appendix to Conditions of Contract for the following events;

- a) loss of or damage to the works, plant and materials;
- b) loss of or damage to Equipment;
- c) loss of or damage to property (except the works, plant materials, and equipment) in connection with the Contract, and
- d) personal injury or death.

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

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

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

Manager. Both parties shall comply with any conditions of insurance policies.

31. Completion and Taking over

Upon deciding that the works are complete, the Contractor shall issue a written request to the Project Manager to issue a Certificate of Completion of the works. The Employer shall take over the site and the works within seven (7) days of the Project manager's issuing a Certificate of Completion.

32. Final Account

The Contractor shall issue the Project Manager with a detailed account of the total amount that the Contractor considers payable to him by the Employer under Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete.

If it is not, the Project Manager shall issue within 30 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate.

The Employer shall pay the Contractor the amount due in the Final certificate within 60 days.

33. Termination

The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;

- a) The Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorized by the Project Manager.
- b) The Project Manager instructs the Contractor to delay the progress of the works, and the instruction is not withdrawn within 30 days.
- c) The Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation.
- d) A payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.
- e) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager.

f) the Contractor does not maintain a security, which is required.

When either party to the contract gives notice of Contract to the Project Manager for a cause other than those listed under Clause 33.1 above, the Project Manager shall decide whether the breach is fundamental or not.

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

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

The Project Manager shall immediately thereafter arrange for a meeting for the purpose of taking record of the works executed and materials, goods, equipment and temporary buildings on site.

34. Payment Upon Termination

If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and materials ordered and delivered to site up to the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the contractor.

If the contract is terminated for the Employer's convenience or because of a fundamental breach of contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor's personnel employed solely on the works, and the Contractor's costs of protecting and securing the works.

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

The contractor shall, during the execution or after the completion o the works under this clause remove from the site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary building, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, hold the proceeds less all costs incurred to the credit of the Contractor.

Until after completion of the works under this clause the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Project Manager shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due

completion in accordance with this Contract the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Contractor to the Employer.

35. Release from Performance

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

36. Corrupt gifts and Payment of Commission

The Contractor shall not;

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

Any breach of this Condition by the Contractor or by anyone employed by his or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement Regulations issued under the Exchequer and Audit Act Cap 412 of the Laws of Kenya.

37. Settlement of Disputes

In case any dispute or difference shall arise between the Employer or the Project Manager on his behalf and the Contractor, either during the progress or after the completion or termination of the works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of any of the following professional institutions;

- (i) Architectural Association of Kenya
- (ii) Institute of Quantity Surveyors of Kenya

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(iii) Association of Consulting Engineers of Kenya

(iv) Chartered Institute of Arbitrators (Kenya Branch)

(v) Institution of Engineers of Kenya

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

The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising hereunder or in connection therewith, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

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

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

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

The appointment of a replacement Project Manager upon the said person ceasing to act.

Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.

Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.

Any dispute or difference arising in respect of war risks or war damage.

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

37.7. The Arbitrator shall, without prejudice to the generality of his powers, have powers

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to direct such measurements, computations, tests or valuations as may in his opinion be decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

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

38. Site Visit

The tenderer is advised to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the Site shall be the tenderer's own responsibility.

APPENDIX TO CONDITIONS OF CONTRACT

1. **Clause 1.1 on Definitions.**

The following definitions do not apply to this contract:

- Defects Liability Certificate
- Defects Liability Period
- Drawings
- Day-works
- A Sub-contractor
- Works Programme
- Temporary Works.

2. **Clause 2.3 (7) Drawings – Omit.**

3. **The following Clauses do not apply to this contract:**

Clause 7, 24, 26, 27, 29, 32, 33.1(b) and 33.1(f).

4. **Modify Clause 10.1 to read as follows:**

The Contractor shall execute the service works in accordance with the specifications and conditions of the contract and shall commence the works in accordance with the Letter of Acceptance.

5. **Add to Clause 13.**

Within the contract maintenance period, the Contractor shall provide **quarterly** complete major servicing of the Air Conditioning Machines and to respond to **call-backs** anytime of the day, night, during public holidays or weekends whenever called upon by the Employer to do so.

6. **Modify Clause 14 to read as follows:**

The Employer shall give possession of Air Conditioning equipment to the Contractor for the maintenance services at the commencement date.

7. **Clause 17.1 should be modified as follows:**

The Project Manager shall recommend to the client the extension of the Intended Completion Date within 21 days before its expiry if he can foresee the delay in putting in place the next new contract.

The Project Manager shall decide on how much time is required for the extension of the Intended Completion Date.

Payments for such extension of time shall be based on the Contractor's quarterly charges and no any other claim/claims shall be entertained whatsoever.

8. Modify Clause 18.1 to read as follows:

Management Meetings

The Project Manager or Employer may convene any maintenance meeting or meetings with the contractor to review any technical problem or contractor's performance.

The Project Manager shall record the minutes of the maintenance meetings and provide copies of the same to those who attended the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the maintenance meeting or after the meeting and stated in writing to all who attended the meeting.

9. Modify Clause 19.1 to read as follows:

Early Warning

The Contractor shall inform the Project Manager at the earliest opportunity of any specific likely failure of any components or parameters in the Air Conditioning Machine protection system that may adversely affect the Air Conditioning Machine performance.

The Project Manager may require the Contractor to provide a quotation for the repair or replacement of such an item if not covered by the extent of service works.

The quotation shall be provided by the Contractor as soon as reasonably possible.

10. Modify Clause 20.1 as follows:

The Project Manager shall inspect the Contractor's service maintenance works and notify the contractor of any malfunctioning components and remedies required for the smooth performance of the Air Conditioning Machines.

11. Modify Clause 21 as follows:

Price Schedules wherever used shall also mean Price Schedules.

12. Modify Clause 22 as follows:

Variations shall include additional works not covered by the scope and extent of this Air Conditioning Machine Service Contract and shall also mean exclusion of any Air Conditioning Machine from the contract by the employer.

13. Modify Clause 23.1 as follows:

The Contractor shall submit to the Project Manager quarterly invoices on quarterly basis complete with technical reports on Air Conditioning Machines for payments giving breakdowns on value of work done and value of taxes. The Project Manager shall check the quarterly applications submitted on quarterly basis and certify it for payment to the Contractor within 14 days.

14. Modify Clause 23.3 for the opening sentence to be as follows:

Payments shall be adjusted for deductions for the month or months that the Air

Conditioning Machine has not been in service

15. Add to Clause 27.1

Liquidated and Ascertained damages applicable to non-performance **is at the rate 2% of the contact sum per week or part there of.**

16 Modify Clause 30.1 as follows:

“Defects Correction Certificate” to be replaced with ‘Intended Completion Date’.

17. Modify Clause 30.3 as follows:

‘Defects Correction Certificate’ to be replaced with ‘Intended Completion Date’.

18. Completion and Taking Over.

Modify Clause 31.1 as follows:

Upon expiry of the contract period, the contractor shall prepare a technical status report on the Air Conditioning Machines to be verified by the Project Manager within seven (7) days from the date of the report. The Air Conditioning Machines will then be handed over to the new contractor whose services have been procured by the employer, or in the absence of any new contractor handing over will be to the Employer in the presence of the Project Manager.

19. Modify Clause 33.1(a) to read as follows:

The contractor ceases to perform diligently as required by the contract.

20. FIRM PRICE CONTRACT

This is a firm-price service contract and the quarterly service charge allowed by the contractor for each Air Conditioning Machine shall be deemed to have taken into consideration any increase in labour, materials or spares during the duration of this service contract. No claim for increased costs shall be allowed.

(CONDITIONS OF CONTRACT CLAUSE 1)

The Employer is:

The Principal Secretary
The National Treasury and Planning
P. O. Box 30007 – 00100
NAIROBI

Name of Employer's Representative:

Chief Engineer - Mechanical (BS)
State Department for Public Works
P. O. Box 41191 – 00100
NAIROBI

(CONDITIONS OF CONTRACT CLAUSE 1)

The Project Manager is:

Chief Engineer - Mechanical (BS)
State Department for Public Works
P. O. Box 41191 – 00100
NAIROBI

(CONDITIONS OF CONTRACT CLAUSE 1)

The name (and identification number) of the Contract is:

Proposed 2-Year Maintenance of Air Conditioning System for The National Treasury and Planning Data Center at Herufi House for The Period 2018 to 2020

WP ITEM NO. -

(CONDITIONS OF CONTRACT CLAUSE 1) The Contract Works consist of Air Conditioning Machine Maintenance Services

(CONDITIONS OF CONTRACT CLAUSE 1) The start date shall be as stated in the letter of acceptance

(CONDITIONS OF CONTRACT CLAUSE 1) The Intended Completion Date for the whole of the Works shall be as stated in the Letter of Acceptance.

The Site Possession Date shall be as stated in the Letter of Acceptance.

(CONDITIONS OF CONTRACT CLAUSE 1) The Site is located **at Herufi House – Nairobi City County**

The completion period for the contract works is **as stated in the Letter of Acceptance**

SECTION C:
GENERAL CONDITIONS
FOR
AIR CONDITIONING SYSTEM

GENERAL CONDITIONS FOR AIR CONDITIONING MACHINES SERVICE CONTRACT

1. All work carried out under this contract shall be to the highest standards of workmanship and safety and shall be carried out by competent engineers or technicians with proper supervision.
2. All materials and component parts supplied or used hereunder shall be of the highest quality in conformity with the current specifications of the Air Conditioning Machine manufacturer and obtained from merchants or manufacturers of the highest repute.
3. All work carried out and materials and component parts supplied or used hereunder shall be such as may be approved by the Project Manager and by the Chief Inspector of Factories.
4. The contractor shall in respect of every Air Conditioning Machine provide and approved book in which a history of Air Conditioning Machine maintenance can be recorded and on the occasion of each and every visit the contractor shall enter in the book the date and time of the visit, any defects found, the work carried out and the time spent, such entry being signed by the contractor's representative. An appropriate space shall be provided for the Project Manager's counter signature and also the signature of the caretaker.
5. The contractor shall submit to the Project Manager not more than seven days after each visit a report setting out clearly the work done, any adjustments made, the condition of the electric wiring, control panel and machinery, and details of any further work considered necessary or advisable, including in particular any work necessary or advisable to ensure compliance with any relevant statutory requirement.
6. The contractor shall operate at its premises at all time except on Saturdays, Sundays and Public Holidays, during normal working hours, and at all other times shall operate an emergency service and upon receiving notice of a fault from the Employer shall dispatch a technician without delay to investigate and rectify such fault.
8. The contractor shall provide and maintain sufficient telephone facilities to enable fault reports to be made to it by the Employer at all times.
9. The contractor shall send to the Employer not less than fourteen days before each day appointed for payment or before payment falls due of service charges

an invoice setting out such charge and the period to which it relates together with details of any charges for additional work carried out by the contractor for the Employer which may then be due and payable.

10. Except where otherwise specified in this contract the Contractor shall carry out all examinations and work required hereunder during normal working hours of normal working days of the Employer.
11. The Employer shall be entitled to give to the Contractor notice of its desire to add to the list set out in the price schedule hereto a further Air Conditioning Machine or Air Conditioning Machines at the same or other premises as from a date stated in such notice. The contractor shall upon receiving such notice as soon as practicable inspect such Air Conditioning Machine or Air Conditioning Machines and submit a quotation for extending to the same the services provided hereunder as from the date stated in the Employer's notice and upon such quotation being accepted in writing by the Employer such Air Conditioning Machine or Air Conditioning Machines shall be deemed to be included in the price schedule hereto and the extra service charge agreed shall be deemed to be added to that mentioned in the price schedule hereof as of such date as aforesaid.
12. The Employer shall be entitled to give to the Contractor notice of its desire to delete from the list set out in the price schedule hereto one or more Air Conditioning Machines as from a date stated in such notice. The contractor shall upon receiving such notice provide a terminal report on the Air Conditioning Machine at the terminating date together with a terminal invoice, which shall be in proportion to the expired period of maintenance, for approved work done on it and shall thereafter cease to charge in respect of it or to maintain it.
13. The Contractor shall indemnify the Employer against all claims in respect of damage or injury suffered as a result of his error, negligence or omission in the execution of this contract and shall produce to the Employer on request at any time evidence that it is fully insured with a reputable insurer for all purposes of this contract and against liability under statute in respect of accident or injury to workmen employed on the work whether or not being employees of the contractor.
14. Nothing in this agreement shall preclude the Employer from entering at any time into a direct labour project or a separate contract (whether or not with the Contractor) to take out of use, remove replace or modify any Air Conditioning Machine or Air Conditioning Machines mentioned in the price schedule hereto and during such period as such Air Conditioning Machine or Air Conditioning Machines shall be out of service for that purpose the service charge for such

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period prescribed by clause 2 hereof shall be reduced by the amount attributable to such Air Conditioning Machine or Air Conditioning Machines as shown against it or them respectively in the price schedule hereto adjusted by a reasonable amount for any expired portion of the maintenance period having regard to the reduction in the Contractor's duties thereby occasioned.

15. The Contractor shall not be liable for any loss, damage, injury or delay due to any cause beyond its control including (without prejudice to the generality of the foregoing expressions) acts of Employer strikes, lockouts, fire-fighting aircraft, explosion, flooding, riots, civil commotion, acts of war, malicious mischief or theft PROVIDED that if the services to be rendered hereunder in respect of any Air Conditioning Machine or Air Conditioning Machines shall be interrupted by such cause as aforesaid to a serious degree, the service charge payable in respect of the period of such interruption shall be reduced by such amount as may be reasonable.
16. The Contractor shall not assign the benefit or burden of this contract to any person, firm or company (save to an assignee of the Air Conditioning Machine maintenance business of the Contractor) and shall not without the consent of the Employer sub-contract any of the Contractor's duties hereunder.
17. The Contractor shall supply all tools, test equipment, Air Conditioning Machine tackle, scaffolding, labour, transport and subsistence expenses in connection with the contract.
18. The Contractor shall hold in his store stocks of spare parts adequate for the execution of the contract.
19. The Contractor shall comply with any Employer security regulations and he shall collect keys to Offices from the Caretaker (or any other person appointed by Employer) when required and after completion shall lock the offices and return the keys to the Caretaker.
20. The Air Conditioning Machines in the contract are the product of reputable manufacturers but the employer does not have and does not undertake to supply drawings of all the machines, controls or circuitry. The Contractor shall take proper care of those drawings which may be available but which shall remain the property of the Employer.
21. The Contractor shall not in connection with the carrying out of its obligations hereunder do anything or supply any article in breach or any patent rights and shall indemnify the Employer against the consequences of any neglect or default

of the Contractor in this regard including (without prejudice to the generality of the foregoing) the payment of any royalties or other charges falling to be paid by the Employer which but for such neglect or default would not have been so payable.

22. The Contractor shall not at any time assume or be deemed to have assumed possession of any Air Conditioning Machine or any part thereof unless removed with the Project Manager's permission from the Employer's premises for repair or replacement.
23. Any existing agreement between the Employer and the Contractor with respect to any Air Conditioning Machine mentioned in the price schedule hereto shall notwithstanding anything therein to the contrary but without prejudice to any rights or liabilities then already accrued terminate immediately before the commencement of this agreement.
24. Subject always to the satisfactory execution of the contract works, payment under clause 2 of the Contract Agreement (F.55) shall fall due upon the submission by the contractor to the Project Manager of detailed invoices, at intervals of three (3) calendar months. The first payment shall fall due at the end of the first three (3) calendar months after the commencement of the contract. There shall be no advance payment.
25. It shall be mandatory requirement for the contractor to keep stock of all spares for each Air Conditioning Machine. Keeping the Air Conditioning Machine out of service for a period of more than one week without any proper cause shall be construed to mean the contractor's failure to perform diligently.
The penalty applicable to this non-performance shall be non-payment for that month for that particular Air Conditioning Machine. Further, Liquidated and Ascertained damages applicable to non-performance will be at the rate 2% of the contact sum per week or part there of. This will be followed with a warning notice to the contractor by the Project Manager. If this non-performance continues for a further 30 days, then the contractor shall be served with a "Default Notice" after which the contract may be terminated in accordance with clause 33 of the Conditions of Contract.
27. **SITE LOCATION**
The sites of the proposed service works are located within the buildings scheduled under section F of the price schedules of this document.

The project comprises of servicing of existing Air Conditioning Machine and ensuring that the Air Conditioning Machines are in service 24 hours throughout the 24months contract period.

SECTION D:

PARTICULAR SPECIFICATIONS OF SERVICES

PARTICULAR SPECIFICATIONS OF SERVICES

The Contractor shall undertake:

- 1) The Contractor will inspect and service the equipment every Three months during the term hereof and carry out the following operations:
 - i) Examine and thoroughly clean and oil all driving motors.
 - ii) Check and adjust all driving belts, Indoor/Outdoor Fans and replace where necessary.
 - iii) Check all compressors, refrigerant pressures, filter driers and replace/recharge where necessary.
 - iv) Check all filters and screens and clean/replace as required.
 - v) Check and adjust all water and air temperatures.
 - vi) Examine all evaporators, control valves and auxiliary controls.
 - vii) Test all refrigerant piping and joints for leaks.
 - viii) Check all water and gas piping for leaks and fix where required.
 - ix) Examine the Motherboard, Memory cards, Remote control, fuses, circuit breakers, Capacitors, Overheat controller, Power limit switch and replace where required.
 - x) Check general performance.
 - xi) Clean all air cooled condensers where applicable.
 - xii) Generally clean and lubricate all equipment.
 - xiii) Check and replace broken arm flex insulation where necessary.

- 2) At the end of each **twelve months** of the term hereof the following additional work will be carried out:
 - i) Check all compressors for proper operation.
 - ii) Clean all water passages in shell and tube condensers.
 - iii) Clean and paint all cooling towers.
 - iv) Check all water circulating pumps for efficient operation.
 - v) Check and adjust all drive couplings.

- 3) If called upon by the Employer to do so, to provide attendance by competent personnel to carry out emergency or other necessary work of repair, replacement or adjustment at any time (including night-time and week-ends) between periodical examinations as aforesaid.

- 4) **Major Items listed in the Schedule of Unit rates in Section G** of this document are to be priced separately as stated in Section G pages G-2 and G-3.

- 5) Within the contract maintenance period, the Contractor shall respond to **call-backs** anytime of the day, night, during public holidays or weekends whenever called upon by the Employer to do so.

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- 6) As per clause 5 in Section B page B-1 of this document, on the occasion of each and every visit, the contractor shall enter in the logbook the date and time of the visit, any defects found, the work carried out and the time spent, such entry being signed by the contractor's representative. An appropriate space shall be provided for the caretaker's and Project Manager's counter signatures.

SECTION E:

STANDARD FORMS

CONTENTS OF SECTION H

TITLE	PAGE
1. Statement of Compliance & Anti-Corruption Declaration Commitment	E-1
2. Performance Bank Guarantee	E-2
3. Tender Questionnaire	E-4
4. Site Visit Certification Form	E-5
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6. Confidential Business Questionnaire	E-7
7. Industrial Training Act	E-10
8. Insurance Indemnity Cover	E-12
9. Key Personnel	E-13
10. Contracts Completed in the Last 3years	E-14
11. Schedule of Ongoing Projects	E-15
12. Financial Reports in the Last 3years	E-16
13. Evidence of Financial Resources	E-17
14. Name, Address, Telephone, Telex and Fax of Banks	E-18
15. Schedule of Major Items of Contractor's Equipment	E-19
16. Schedule of spare Parts	E-20
17. Details of Litigation and Arbitrations	E-21
18. End of Maintenance Period Certificate	E-22

NOTE:

- 1.0 Tenderers must duly fill these Standard Forms as a mandatory requirement.
- 2.0 Any tender returned with **unfiled Standard Forms** shall be considered **non - responsive and shall automatically be disqualified.**

STATEMENT OF COMPLIANCE

- (a) I confirm compliance with all clauses in this tender specification.
- (b) I confirm that I have not and will not make any payment to any person which can be perceived as an inducement to enable me win this tender.

Signed: for and on behalf of the Contractor

Date:

Official rubber stamp

ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE

(Sections 62, 65 and 66 of the PPAD Act, 2015)

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.....

PERFORMANCE BANK GUARANTEE

To: The Principal Secretary
The National Treasury and Planning
P. O. Box 30007-00100
Nairobi Kenya

Dear Sir/Madam,

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

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

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

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of:

Kshs. (*amount of Guarantee in figures*)

Kenya Shillings

.....(*amount of Guarantee in words*), and we undertake to pay you, upon your first written demand and without

cavil or argument, any sum or sums within the limits of Kenya Shillings

..... (*amount of Guarantee in words*) as aforesaid

without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

We further agree that no change, addition or other modification of the terms of the Contract or of the Works to be performed 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 be valid until the date of issue of the Certificate of Completion.

SIGNATURE AND SEAL OF THE GUARANTOR

Name of Bank

Address

Date

TENDER QUESTIONNAIRE

Please fill in block letters.

1. Full names of Tenderer:

.....

2. Full address of Tenderer to which tender correspondence is to be sent (unless an agent has been appointed below):

.....

3. Telephone number (s) of Tenderer:

.....

4. Telex/Fax Address of Tenderer:

.....

5. Name of Tenderer's representative to be contacted on matters of the tender during the tender period:

.....

6. Details of Tenderer's nominated agent (if any) to receive tender notices. This is essential if the Tenderer does not have his registered address in Kenya (name, address, telephone, telex):

.....

.....

.....
Signature of Tenderer

SITE VISIT CERTIFICATION FORM

I.....(Name of Client/Client Representative)

of..... (Name of Department) do hereby certify that.....

(Name of tender/tenderers representative)

of..... (Name of bidding firm and address)

Have actually visited the site for the proposed.....

.....
(Name of proposed works for which bids are invited)

This.....day of.....month.....201.....

.....
Signature

.....
Official Stamp

Declaration (by Tenderer)

I..... (Name of tenderer)

Do hereby declare that I have visited the site for the proposed works and that I am satisfied/not satisfied with the (delete as appropriate) information gathered.

.....
Signature

.....
Date

.....
Official Stamp

LETTER OF ACCEPTANCE

[letterhead paper of the Employer]

.....[date]

To:

.....

[Name of the Contractor]

.....[address of the Contractor]

Dear Sir,

This is to notify you that your Tender dated
for the execution of
.....

[name of the Contract and identification number, as given in the Tender documents] for
the Contract Price of Kshs.....[amount in figures]
[Kenya Shillings.....(amount in words)]
in accordance with the Instructions to Tenderers is hereby accepted.

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

Authorized Signature

Name and Title of Signatory

Attachment: Agreement

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part 1 – General

Business Name

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

Plot No..... Street/Road

Postal Address..... Tel/Mob No.....

Nature of Business.....

Current Trade License No..... Expiring date.....

Maximum value of business which you can handle at any time:
Kenya Shillings.....

Name of your bankers.....

Branch.....

Part 2 (a) – Sole Proprietor

Your name in full.....

Age.....

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

Citizenship details

Part 2 (b) – Partnership

Give details of partners as follows:

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

Part 2(c) – Registered Company

Private or Public

State the nominal and issued capital of the company:

Nominal KShs.

Issued KShs.

Give details of all directors as follows:

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

3.

4.

Part 2(d) Interest in the Firm:

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

I certify that the above information is correct.

.....

Title

.....

Signature

.....

Date

- *Attach proof of citizenship*

INDUSTRIAL TRAINING ACT, CAP 237

EMPLOYMENT OF APPRENTICE

In accordance with the Industrial Training Act, CAP 237 Laws of Kenya, you are hereby required to declare the number of apprentices presently engaged or to be engaged in the event of your firm or company being awarded this contract. The said Act authorizes the Director of Industrial Training to make reimbursement of the training costs of apprenticeship together with the payments of annual grants in relation thereto to all employers who have apprentices registered with the Directorate in accordance with the said Act.

An employer becomes liable to pay a training levy at the rate of 4% whenever the total contract amount exceeds Ksh. 50,000/=.

Please indicate as below:-

NAME OF APPRENTICE	TRADE
1.....
2.....
3.....
4.....
5.....

Also indicate the additional number of apprentices you will engage in the event that you are awarded this contract.

NAME OF APPRENTICE	TRADE
1.....
2.....
3.....
4.....
5.....

Name of project (contract) for which you are now tendering.

CONTRACT ITEM NO.

CONTRACT JOB NO.

.....

.....

Value of contract.

Kshs.

.....

Name of Contractor

.....

.....

.....

Address

Signature

Date

NOTE:- The tender shall; not be subject to consideration unless you recruit or have apprentices in your establishment.

INSURANCE INDEMNITY COVER

To: The Principal Secretary
The National Treasury and Planning
P. O. Box 30007-00100
NAIROBI

Dear Sir,

{**Please note:** The contractor is required to submit to the Project Manager an Insurance Indemnity Cover from a reputable insurance company located within the Republic of Kenya to cover the entire maintenance contract.}

This Cover shall be valid until the date of issue of the End of Maintenance Period Certificate.

SIGNATURE AND SEAL OF THE GUARANTOR

Name of Insurance Company

Address

Date

KEY PERSONNEL

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

POSITION	NAME	YEARS OF EXPERIENCE (GENERAL)	YEARS OF EXPERIENCE IN PROPOSED POSITION
Headquarters 1. Director 2. 3. 4. 5. 6. 7.			
Site office 1. Site Superintendent 2. 3. 4. 5. 6. 7. 8.			

I certify that the above information is correct.

.....
Title

.....
Signature

.....
Date

CONTRACTS COMPLETED IN THE LAST THREE (3) YEARS

Work performed on works of a similar nature, complexity and volume over the last 3 years.

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

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

.....
Title

.....
Signature

.....
Date

SCHEDULE OF ON-GOING PROJECTS

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

PROJECT NAME	NAME OF CLIENT	CONTRACT SUM	% COMPLETE	COMPLETION DATE

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

.....
Title

.....
Signature
E-15

.....
Date

FINANCIAL REPORTS FOR THE LAST THREE YEARS
(Balance sheets, Profits and Loss Statements, Auditor's reports, etc.
List below and attach copies)

1. _____.
2. _____.
3. _____.
4. _____.
5. _____.
6. _____.
7. _____.
8. _____.
9. _____.
10. _____.

EVIDENCE OF FINANCIAL RESOURCES TO MEET QUALIFICATION REQUIREMENTS

(Cash in Hand, Lines of credit, e.t.c. List below and attach copies of supportive documents.)

- 1. _____.
- 2. _____.
- 3. _____.
- 4. _____.
- 5. _____.
- 6. _____.
- 7. _____.
- 8. _____.
- 9. _____.
- 10. _____.

NAME, ADDRESS, TELEPHONE, TELEX AND FACSIMILE OF BANKS

(This should be for banks that may provide reference if contacted by the employer)

NAME	ADDRESS	TELEPHONE	TELEX	FACSIMILE

**SCHEDULE OF MAJOR ITEMS OF CONTRACTOR'S EQUIPMENT PROPOSED FOR
CARRYING OUT THE WORKS**

ITEM OF EQUIPMENT	DESCRIPTION, MAKE AND AGE (Years)	CONDITION (New, good, poor) and number available	OWNED, LEASED (From whom?), or to be purchased (From whom?)

**SCHEDULE OF SPARE PARTS AVAILABLE EX-STOCK FOR SIMILAR AIR
CONDITIONING MACHINES BEING CONTRACTED FOR**

ITEM	DESCRIPTION	AIR CONDITIONING MACHINE MAKE	QUANTITY

**DETAILS OF LITIGATIONS OR ARBITRATION PROCEEDINGS IN WHICH THE
TENDERER IS INVOLVED AS ONE OF THE PARTIES**

1. _____.
2. _____.
3. _____.
4. _____.
5. _____.
6. _____.
7. _____.
8. _____.
9. _____.
10. _____.

END OF MAINTENANCE PERIOD CERTIFICATE

Details of Work				
WP Item Number		Description of Work		Ministry/Agency
			PROPOSED 2-YEAR MAINTENANCE OF AIR CONDITIONING SYSTEM FOR THE NATIONAL TREASURY AND PLANNING DATA CENTER AT HERUFI HOUSE FOR THE PERIOD 2018 TO 2020	THE NATIONAL TREASURY AND PLANNING
Vote	Prov	No.		
Contract Number		Name/Address of Contractor		

Handing over	
The above maintenance works were handed over by :	
_____ Date	_____ Signed for Contractor
The above maintenance works were taken over by:	
_____ Date	_____ Signed for Head of Client Department.

Certification	
Certified that the above Works were taken over by the Client Department on. -----	
_____ Date	_____ Departmental Representative,



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

**PROPOSED 2-YEAR MAINTENANCE OF AIR CONDITIONING SYSTEM
FOR THE NATIONAL TREASURY AND PLANNING DATA CENTER AT
HERUFI HOUSE FOR THE PERIOD 2018 TO 2020**

FINANCIAL BID

PROJECT MANAGER

CHIEF ENGINEER- MECHANICAL (BS)

State Department for Public Works

P. O. BOX 41191- 00100

Nairobi

MECHANICAL ENGINEER

CHIEF ENGINEER- MECHANICAL (BS)

State Department for Public Works

P.O. BOX 41191- 00100

Nairobi

CLIENT

PRINCIPAL SECRETARY

The National Treasury and Planning

P. O. Box 30007-00100

Nairobi

OCTOBER 2018

SECTION F:

FORM OF TENDER AND PRICE SCHEDULES

CONTENTS

CLAUSE No.	PAGE
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3. SPECIAL NOTES TO TENDERERS.....	iii
4. PRICE SCHEDULES	F-1 to F-4
5. SUMMARY PAGE.....	F-5

FORM OF TENDER (Failure to dully fill this form shall lead to automatic disqualification)

To: The Principal Secretary
The National Treasury and Planning
P. O. Box 30007-00100
Nairobi

Dear Sir/Madam:

PROPOSED 2-YEAR MAINTENANCE OF AIR CONDITIONING SYSTEM FOR THE NATIONAL TREASURY AND PLANNING DATA CENTER AT HERUFI HOUSE FOR THE PERIOD 2018 TO 2020

1. In accordance with the Instructions to Tenderers, Conditions of Contract, Specifications and Price Schedules for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of:

Kshs..... **[Amount in figures]**

Kenya Shillings.....

.....**[Amount in words]**

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Employer’s Representative’s notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.

3. We agree to abide by this tender for **a period of 150 days from the date of tender opening** and shall remain binding upon us and may be accepted at any time before that date.

4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.

5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this day of20.....

Signature.....in the capacity of

duly authorized to sign tenders for and on behalf of:
.....**[Name of Tenderer]**

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

PIN No.

Witness: Name
Address
Signature

(ii)

SPECIAL NOTES

1. The Price Schedules form part of the contract documents and are to be read in conjunction with the particular specifications of services (Section D) and general specifications of materials and works.
2. The prices quoted shall be deemed to include for all obligations under the sub-contract including but not limited to supply of materials, labour, delivery to site, storage on site, installation, testing, commissioning and all taxes (**including 16% VAT**).

In accordance with Government policy, the 16% VAT and 3% Withholding Tax **shall be deducted** from all payments made to the Tenderer, and the same shall be forwarded to the **Kenya Revenue Authority (KRA)**.

3. All prices omitted from any item, section or part of the Price Schedules shall be deemed to have been included to another item, section or part thereof.
4. The brief description of the items given in the Price Schedules are for the purpose of establishing a standard to which the sub-contractor shall adhere. Otherwise alternative brands of **equal** and **approved** quality will be accepted.

Should the contractor install any material not specified here in before receiving **written approval** from the Project Manager, the contractor shall remove the material in question and, **at his own cost**, install the proper material.

5. The grand total of prices in the price summary page must be carried forward to the **Form of Tender for the tender to be deemed valid**.
6. Tenderers must enclose, together with their submitted tenders, detailed manufacturer's Brochures detailing Technical Literature and specifications on all the equipment they intend to offer.

(iii)

PRICE SCHEDULES

1. The contractor shall before tendering for these works, visit the sites of the proposed service works to ascertain himself with the existing conditions of the Air Conditioning Machines and to establish the extent of works required to maintain or bring back the Air Conditioning Machines into service.
2. The contractor is deemed to have included for all the above requirements in his quarterly service charge for each Air Conditioning Machine.

**AIR CONDITIONING MACHINE MAINTENANCE AT THE DATA CENTRE, HERUFI HOUSE
- NAIROBI FOR THE PERIOD 2018 - 2020**

No.	Location	Type of Air Conditioner	No.	Service Charge per quarter per unit (Kshs.)	Total Amount (Kshs.)
1	Herufi Data Centre	100,000btu/hr Downward flow floor standing data centre air conditioners as Delta Clima	3		
2	Herufi Data Centre	125,000btu/hr Downward flow floor standing data centre air conditioners as Delta Clima	2		
3	Herufi Data Centre	150,000btu/hr ceiling mounted air conditioners as DB HHS 150 HPN	1		
4	Herufi Data Centre	120,000btu/hr ceiling mounted air conditioners as DB HHS 120 HPN	1		
A	Total Service Charge per quarter				
B	Total for 2-year contract period (Item "A" above x 8) carried forward to summary page				

REPLACEMENT ITEMS AND NEW INSTALLATIONS

No	Description	Qty	Unit	Unit Price	Price KShs.
	<p>Supply, deliver, install, test and commission the following equipment complete with all the accessories.</p> <p>(i) The Model and Ref No. indicated is only a guide to the type and quality of equipment.</p> <p>(ii) Equivalent and Approved models may be acceptable.</p>				
1.	<p>Environment Monitoring System Install an environment monitoring system for the split air conditioners at the data center. The system to come complete with the following:</p> <ul style="list-style-type: none"> i. Built-in digital temperature & humidity sensors, power sensor, Device Manager and “PUSH” technology ii. Power Over Ethernet (PoE), a built-in Uninterruptible Power Supply (UPS), and an external Digital Active Power Sensor which monitors both power and temperature of the air conditioners iii. Ports for 8 digital sensors and 16 switch sensors, as well as additional ports to add relays, light towers, and low voltage sensors capability iv. Advanced alerting by email, email-to-SMS, SNMP, webpage update capability v. Built-in web server, Device Manager software, SNMP for monitoring across networks vi. Real-time sensor status, data logging, graphing, advanced alerting, Fahrenheit/Celsius, high/low watermarks capability <p>The system to be as Room alert 32E or approved equivalent</p>	1	No.		
2.	<p>Trunking Galvanised mild steel ductwork for raised floor air recirculation system, 1.2mm thick complete with bends, hangers, supports, sleeves, flexible connectors, branch duct take-offs, flanges, access doors, test reducers, splitters, turning vanes and accessories.</p>	50	m ²		

F-3

No	Description	Qty	Unit	Unit Price	Price KShs.
3.	Relocation of services Allow for relocation of services such as communication cables, power cables, etc to be carried out by specialist contractors for data centres	Item	Sum	500,000	500,000
4.	Any other accessory - list or attach				
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
	Total carried forward to summary page				

PRICE SUMMARY

ITEM	DESCRIPTRION	KSHS	CT
1	Total costs for servicing Air Conditioning Machines for two years brought forward from page F-2		
2	Total costs for replacement parts and new installations brought forward from page F-4		
3	Contingency for service, spare parts and new equipment	8,000,000	
4	Provisional sum for Training of supervision personnel, in maintenance of the machines by the manufacturers and acquisition of relevant tools.	1,000,000	
5	Provisional Sum for Project Administration	500,000	
TOTAL CARRIED FORWARD TO FORM OF TENDER			

TOTAL AMOUNT IN WORDS: - Kenya Shillings.....

Contractor's Name and Stamp.....

Signature.....

Date.....

PIN No.....

Witness..... Address.....

Signature of witness..... Date.....

SECTION G:
SCHEDULE OF COST BREAKDOWN
OF THE
TOTAL SERVICE CHARGE EVERY THREE MONTHS

SCHEDULE OF COST BREAKDOWN OF THE TOTAL QUARTELY SERVICE CHARGE INDICATED ON PAGE F-2

1. The filling of this schedule is mandatory.
2. The contractor is required to give a quarterly itemized Cost Breakdown of the materials the contractor proposes to use in the quarterly maintenance of the Air Conditioning Machines, including quarterly cost breakdowns for labour, transport, administration and any other costs which shall not be included in the material component.
3. The contractor to ensure that the **Total Quarterly Cost Breakdowns** (for materials, labour, transport and any other costs) tallies with **Total Quarterly Service Charge** indicated in the Schedule of Prices page F-2.
4. The contractor will be required to provide the cost breakdowns in the form on page G-2.
5. Prices quoted in this schedule shall include VAT, withholding tax and all other taxes current at the time of tender
6. The cost breakdown of the materials, labour, transport and any other costs will be used in certifying the contractor's quarterly payments.

**SCHEDULE OF COST BREAKDOWN OF THE TOTAL QUARTERLY SERVICE CHARGE
INDICATED ON PAGE F-2**

Item	Description	Qty	Unit	Rate (Kshs)	Amount (Kshs)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
21.					
TOTAL QUARTERLY SERVICE CHARGE					

SECTION H:

**SCHEDULE OF UNIT RATES FOR ANTICIPATED
ITEMS**

SCHEDULE OF UNIT RATES FOR ANTICIPATED ITEMS

1. As and when a certain Air Conditioning Machine item is to be replaced, the contractor shall be instructed to forward a quotation for consideration to the Project Manager. The Project Manager will ask the contractor to supply and install the said item after evaluation and confirming availability of funds from the client.

2. The unit rate shall include supply, installation, testing and commissioning including VAT, withholding tax and all other taxes current at the time of tender. The **VAT** and the **withholding tax** shall be deducted from all payments made to the contractor, and the same shall subsequently be forwarded to the Kenya Revenue Authority (KRA).

SCHEDULE OF UNIT RATES

Item	Description	Qty	Unit	Rate
A	Replacement of Air Conditioning units			
	i. 100,000btu/hr Downward flow floor standing data centre air conditioners.	1	No	
	ii. Ditto but 120,000btu/hr.	1	No	
	iii. Ditto but 125,000btu/hr.	1	No	
	iv. Ditto but 150,000btu/hr.	1	No	