



**TENDER NO.KP1/9AA-2/PT/19-HR/14-15 FOR PROPOSED  
WAJIR & MANDERA PERIMETER WALLS.**

**PUBLIC TENDER  
NOVEMBER 2014**

**ALL TENDERERS ARE ADVISED TO READ CAREFULLY THIS TENDER  
DOCUMENT IN ITS ENTIRETY BEFORE MAKING ANY BID**

**TENDER DOCUMENT FOR SUPPLY OF WORKS  
(ONE ENVELOPE TENDER)**

THE KENYA POWER & LIGHTING COMPANY LIMITED  
CENTRAL OFFICE, STIMA PLAZA,  
KOLOBOT ROAD, PARKLANDS,  
P.O. BOX 30099-00100,  
NAIROBI,  
KENYA.

Telephones: +254-020-3201000; 3644000 Pilot Lines  
Telephones: +254 -720-600070/1-5/; -733-755001/2-3 Cellular  
Facsimile: +254-20-3514485  
E-Mail: [Agatukui@kplc.co.ke](mailto:Agatukui@kplc.co.ke)  
Email 1: [jachuchi@kplc.co.ke](mailto:jachuchi@kplc.co.ke)  
Email 2: [atheuri@kplc.co.ke](mailto:atheuri@kplc.co.ke)

**TABLE OF CONTENTS**

<b>SECTION NO.</b>	<b>CONTENTS</b>	<b>PAGE</b>
SECTION I	INVITATION TO TENDER .....	4
SECTION II	TENDER SUBMISSION CHECKLIST.....	6
	Table of Paragraphs on Instructions To Tenderers.....	8 - 9
SECTION III	INSTRUCTIONS TO TENDERERS (ITT).....	10 - 32
SECTION IV	BID DATA SHEET (Appendix to Instructions To Tenderers) – 34 - 35	
SECTION V	CONDITIONS OF CONTRACT –	36 - 37
SECTION VI	SPECIAL CONDITIONS OF CONTRACT –	59 - 60
SECTION VII	SPECIFICATIONS.....	61
SECTION VIII	DRAWINGS.....	62
SECTION IX	BILLS OF QUANTITIES .....	63 - 65
SECTION X	SUMMARY OF EVALUATION PROCESS .....	66 - 73
SECTION XI	STANDARD FORMS.....	74 - 110

## **ABBREVIATIONS AND ACRONYMS**

<b>1.</b>	BDS	Bid Data Sheet
<b>2.</b>	BQ	Bills of Quantities
<b>3.</b>	CC	Conditions of Contract
<b>4.</b>	ICPAK	Institute of Certified Public Accountants of Kenya
<b>5.</b>	JV	Joint Venture
<b>6.</b>	KSh./ KES	Kenya Shillings
<b>7.</b>	PM	Project Manager
<b>8.</b>	PPDA 2005	Public Procurement and Disposal Act, 2005
<b>9.</b>	PPDR 2006	Public Procurement and Disposal Regulations, 2006
<b>10.</b>	PPOA	Public Procurement and Oversight Authority
<b>11.</b>	VAT	Value Added Tax
<b>12.</b>	KRA	Kenya Revenue Authority
<b>13.</b>	LC	Letter of Credit
<b>14.</b>	TCC	Tax Compliance Certificate
<b>15.</b>	SCC	Special Conditions of Contract

## SECTION I - INVITATION TO TENDER

**DATE: MAY 2014**

**TENDER NO. KP1/9AA-2/PT/19-HR/14-15 FOR PROPOSED WAJIR & MANDERA PERIMETER WALLS.**

- 1.1 The Kenya Power & Lighting Company Ltd (KPLC) invites bids from eligible Tenderers for **Proposed Wajir & Mandera Perimeter Walls**. Interested eligible Tenderers may obtain further information from the General Manager, Supply Chain, The Kenya Power at Stima Plaza, 3<sup>rd</sup> Floor, Kolobot Road, P.O. Box 30099 – 00100 Nairobi, Kenya.
- 1.2 **Obtaining tender documents.**
- 1.2.1 Tender documents detailing the requirements may be obtained from the **General Manager, Supply Chain** on the **3<sup>rd</sup> Floor, Stima Plaza, Kolobot Road, Nairobi**, on normal working days from **Monday to Friday** (excluding any public or gazetted holiday) beginning on **Monday, 1<sup>st</sup> December, 2014** between **9.00 a.m. & 12.30 p.m.** and **2.00 p.m. & 4.30 p.m.** upon payment of a non-refundable fee of Kenya Shillings One Thousand Only (**KSh. 1,000/=**) or the equivalent amount in United States Dollars (USD) using the selling exchange rate ruling at the date of the tender document purchase provided by the Central Bank of Kenya (*See Central Bank of Kenya website-[www.centralbank.go.ke](http://www.centralbank.go.ke).*) Payment shall be made in cash or by Bankers Cheque at the 1<sup>st</sup> Floor of Stima Plaza, Kolobot Road, Nairobi, Kenya.
- 1.2.2 Prospective bidders may also download the tender document from KPLC's website ([www.kenyapower.co.ke](http://www.kenyapower.co.ke)) free of charge.
- 1.2.3 Upon downloading the tender, bidders are required to immediately send/e-mail their Names and contact details to:
1. Manager, Supply Chain, Procurement – [agatukui@kplc.co.ke](mailto:agatukui@kplc.co.ke)
  2. 2<sup>nd</sup> Asst. Superintendent Civil – [dkwinga@kplc.co.ke](mailto:dkwinga@kplc.co.ke)
  3. Snr. Supply Chain Asst. - [atheuri@kplc.co.ke](mailto:atheuri@kplc.co.ke)

1.3 **Submission of Tender documents**

Completed Tenders are to be enclosed in plain sealed envelopes marked **TENDER NO. KP1/9AA-2/PT/19-HR/14-15 FOR PROPOSED WAJIR & MANDERA PERIMETER WALL** and be deposited in the General Manager Corporate Affairs & Company's Secretary Office located at KPLC premises, Stima Plaza, 7<sup>th</sup> Floor, Kolobot Road, Nairobi, Kenya so as to be received on or before **13<sup>th</sup> January, 2015 at 10.00 a.m.**

1.4 Prices quoted should be net inclusive of all taxes and delivery costs to the required site (where applicable) and must be in Kenya Shillings or a freely convertible currency in Kenya and shall remain valid for ninety (90) days from the closing date of the tender.

1.5 Tenders will be opened promptly thereafter in the presence of the Tenderer's or their representatives who choose to attend in KPLC Auditorium at Stima Plaza, Kolobot Road, Parklands, Nairobi.

1.6 There will be a pre – bid/site visit meeting to be held at **Kenya Power Wajir Depot** in Wajir Town **Tuesday, 9<sup>th</sup> December, 2014 at 9.00 a.m.** and at **Kenya Power Mander Depot** in ManderTown **Thursday, 11<sup>th</sup> December, 2014 at 9.00 a.m**

**SECTION II - TENDER SUBMISSION CHECKLIST**

This order and arrangement shall be considered as the Tender Submission Format, Tenderers shall tick against each item indicating that they have provided it in the same order.

<b>No.</b>	<b>Item</b>	<b>Tick Where Provided</b>
1	Tender Security	
2	Company or Firm's Registration Certificate	
3	PIN Certificate or its equivalent for foreign companies	
4	Valid Tax Compliance Certificate or its equivalent for foreign companies	
5	Form of Tender	
6	Priced Bill of Quantities (signed and stamped by bidder)	
7	Declaration Form	
8	Confidential Business Questionnaire (CBQ)	
9	Duly completed Qualification Information Form. This should include the required attachments as per the form	
10	Proposed Work program(Work method & schedule)	
11	Duly completed Site Visit Form	
12	Copy of Contractor's Certificate of Incorporation	
13	Copy of Contractor's Certificate of Registration for the relevant category.	
14*	Copy of Valid Tax Compliance Certificate	
15	List of previous clients of the Contractor for similar works indicating physical addresses.	
16	Reference letters from previous clients of the Contractor for similar works. Four Names with full contact as well as physical addresses of previous clients of similar works together with a letter from each of them confirming completion of the contracts on schedule.	

17	<p>Audited Financial Statements. The audited financial statements Required must be those that are reported within eighteen (18) Calendar months of the date of the tender document.</p> <p>2. For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to The date of the tender document. The copies should be Certified by the Bank issuing the statements. The Certification should be original).</p> <p>3. Youth, Women and Persons with Disability whose Companies or firms have been registered or incorporated recently, they should submit certified copies of bank statements covering The period of existence. The certification should be original.</p>	
18	Any other document or item required by the Tender Document. (The Tenderer shall specify such other documents or items it has submitted)	

**\*NOTES TO TENDERERS**

1. Valid Tax Compliance Certificate shall be one issued by the relevant tax authorities and valid for at least up to the tender closing date. All Kenyan registered Tenderers must provide a valid Tax Compliance Certificate.
2. Foreign Tenderers must provide equivalent documents from their country of origin as regards Tax Compliance Certificate OR statements certifying that the equivalent documentation is not issued in the Tenderer's country of origin. The Statement(s) that equivalent documentation is not issued by the Tenderer's country should be original and issued by the Tax authorities in the Tenderer's country of origin.

**TABLE OF PARAGRAPHS ON INSTRUCTIONS TO TENDERERS**

<b>Paragraph No.</b>	<b>Headings</b>	<b>Page No.</b>
3.1	Definitions.....	10
3.2	Eligible Tenderers.....	11
3.3	Ineligible Tenderers.....	11
3.4	Declarations of eligibility.....	12
3.5	Joint Venture.....	12
3.6	Time for completion of works.....	13
3.7	Source of Funding.....	13
3.8	Conflict of Interest .....	13
3.9	One Tender per Tenderer.....	13
3.10	Site Visit and pre-bid meeting.....	14
3.11	Cost of Tendering .....	14
3.12	Contents of the Tender Document.....	14
3.13	Clarification of Documents.....	15
3.14	Amendment of Documents.....	15
3.15	Language of Tender.....	16
3.16	Documents Comprising the Tender.....	16
3.17	Tender Form.....	17
3.18	Tender Rates & Prices .....	17
3.19	Tender Currencies.....	17
3.20	Tenderer’s Eligibility and Qualifications.....	17
3.21	Conformity of Works to Tender Documents.....	19
3.22	Demonstration(s), Inspection(s) and Test(s).....	19
3.23	Warranty.....	19
3.24	Tender Security.....	20
3.25	Validity of Tenders .....	21
3.26	Alternative Offers.....	21
3.27	Number of Sets and Tender Format.....	21
3.28	Preparation and Signing of The Tender.....	22
3.29	Sealing and Outer Marking of Tenders.....	22
3.30	Deadline for Submission of Tender .....	23
3.31	Modification and Withdrawal of Tenders.....	23
3.32	Opening of Tenders.....	23
3.33	Process to be Confidential.....	24
3.34	Clarification of Tenders and Contacting KPLC.....	25
3.35	Preliminary Evaluation and Responsiveness.....	25
3.36	Minor Deviations, Errors or Oversights.....	26



3.37	Evaluation Criteria – Preliminary, Technical and Financial Evaluation.....	26
3.38	Financial Evaluation.....	28
3.39	Preferences.....	29
3.40	Tender Evaluation Period.....	29
3.41	Debarment of a Tenderer.....	29
3.42	Confirmation of Qualification for Award.....	29
3.43	Award of Contract.....	30
3.44	Termination of Procurement Proceedings.....	30
3.45	Notification of Award.....	30
3.46	Clarifications with lowest evaluated successful Tenderer .....	30
3.47	Signing of Contract .....	31
3.48	Performance Security .....	31
3.49	Corrupt or Fraudulent Practices.....	32

### **SECTION III - INSTRUCTIONS TO TENDERERS (ITT)**

#### **3.1 Definitions**

In this tender, unless the context or express provision otherwise requires: -

- a) *Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under.*
- b) *“Date of Tender Document” shall begin with the first day and end on the last day of the month appearing on the cover page of the Tender Document.*
- c) *“Day” means calendar day and “month” means calendar month.*
- d) *“KEBS” wherever appearing means the Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits.*
- e) *“PPOA” wherever appearing means The Public Procurement Oversight Authority or its successor(s) and assign(s) where the context so admits.*
- f) *Reference to “the tender” or the “Tender Document” includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.*
- g) *“The Procuring Entity” means The Kenya Power and Lighting Company Limited or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KPLC).*
- h) *“The Tenderer” means the person(s) submitting its Tender for the performance of Works in response to the Invitation to Tender. This may include a business name, joint venture, private or public company, government owned institution or any combination of one or more of them.*
- i) *Where there are two or more persons included in the expression the “Tenderer”, any act or default or omission by the Tenderer shall be deemed to be an act, default or omission by any one or more of such persons.*
- j) *words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.*
- k) *words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “Tenderer” the covenants, agreements and obligations expressed to be made or performed by the Tenderer shall be deemed to be made or performed by such persons jointly and severally.*
- l) *“Works” means the construction, repair, renovation or demolition of buildings, roads or other structures and includes the installation of equipment and materials, site preparation and other incidental services.*
- m) *Citizen contractors-a firm shall be qualified as a citizen contractor if its owners and shareholders are Kenyan citizens*

- n) *Local contractors- a firm shall be qualified as a local contractor if it is registered in Kenya.*

### **3.2 Eligible Tenderers**

- 3.2.1 This Invitation to Tender is open to all Tenderers eligible as described in the Bid Data Sheet. Successful Tenderers shall perform the Works in accordance with this tender and the ensuing contract.
- 3.2.2 The classification of eligibility shall be in accordance with that maintained by Kenya's Ministry of Public Works or its successor responsible for the classification of contractors.
- 3.2.3 Government or government owned institutions in Kenya may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration board or authorities and if they are not a dependant agency of the Government.
- 3.2.4 Local Tenderers i.e. Kenyan registered companies whose operations are based in Kenya shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya such as the Ministry of Public Works or the Energy Regulatory Commission.
- 3.2.5 Tenderers shall provide such evidence of their continued eligibility satisfactory to KPLC as KPLC may reasonably request.
- 3.2.6 Tenderers (including all members of a joint venture and subcontractors) shall provide a statement that they are not associated, or have not been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for this project or being proposed as Project Manager for this Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to tender

### **3.3 Ineligible Tenderers**

- 3.3.1 Notwithstanding any other provisions of this tender, the following are not eligible to participate in the tender:-
- a) KPLC's employees, its Board or any of its committee members.
  - b) Any Minister or Assistant Minister of the Government of the Republic of Kenya (GoK)
  - c) Any public servant of GoK.
  - d) Any member of a Board or Committee or any department of GoK.
  - e) Any person appointed to any position by the President of Kenya.
  - f) Any person appointed to any position by any Minister of GoK.
- 3.3.2 For the purposes of this paragraph, any relative i.e. spouse(s) and child(ren) of any person mentioned in sub-paragraph 3.3.1 is also ineligible to participate in the tender.

In addition, a Minister shall include the President, Vice-President or the Attorney General of GoK.

### **3.4 Declarations of Eligibility**

- 3.4.1 Tenderers shall not be under declarations of ineligibility for corrupt, fraudulent practices and are not amongst persons mentioned in sub-paragraphs 3.3.1 and 3.3.2 above.
- 3.4.2 Tenderers who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section XI(v).
- 3.4.3 Those that are under the Declaration for corrupt and fraudulent practices whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances.

### **3.5 Joint Venture**

- 3.5.1 Tenders submitted by a joint venture (JV) of two or more firms (consortium), as partners shall comply with the following requirements: -
- a) The Tender Form and in case of a successful tender, the Contract Agreement Form, shall be signed so as to be legally binding on all partners of the joint venture.
  - b) One of the partners shall be nominated and authorized as being lead contractor. The authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the partners/directors.
  - c) The Power of Attorney which shall accompany the tender, shall be granted by the authorized signatories of all the partners as follows:-
    - (i.) for local and citizen contractors, before a Commissioner of Oaths or a Notary Public or Magistrate of the Kenyan Judiciary.
    - (ii.) for a foreign bidder, before a Notary Public, or the equivalent of a Notary Public, and in this regard the bidder shall provide satisfactory proof of such equivalence.
  - d) The lead contractor shall be authorized to incur liability and receive instructions for and on behalf of any and all the partners of the joint venture and the entire execution of the contract including payment shall be done exclusively with the lead contractor.
- 3.5.2 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 in paragraph 3.5.1 (b) above as well as in the Form of Tender and the Contract Agreement Form (in case of the accepted tender).
- 3.5.3 The JV must be in either of the following forms –
- a) A registered JV agreement. The registration may either be :-
    - (i.) At the Ministry of Lands or,
    - (ii.) At the Office of the Attorney General, or

b) A Letter of Intent to enter into a joint venture including a draft JV Agreement indicating at least the part of the Works to be executed by the respective partners.

a) The JV agreement should be signed by at least two directors from each company or firm that is a party to the JV

b) The JV agreement must be under the company or firm seal

c) The Letter of Intent should be signed by at least one director from each company or firm that is a party to the intended joint venture

3.5.4 A copy of the agreement entered into, or Letter of Intent by the joint venture partners shall be submitted with the tender.

### **3.6 Time for Completion of Works**

The successful Tenderer will be expected to complete the Works by the required completion period as specified in the BDS.

### **3.7 Source of Funding**

KPLC has set aside funds during the present financial year. It is intended that part of the proceeds of funds will be applied to cover the eligible payments under the ensuing contract for these Works.

### **3.8 Conflict of Interest**

3.8.1 A Tenderer (*including all members of a joint venture and subcontractors*) shall not have a conflict of interest. A Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this tendering process if they:-

a) are associated or have been associated in the past directly or indirectly with employees or agents of KPLC or a member of the Board or committee of KPLC

b) are associated or have been associated in the past directly or indirectly with a firm or company or any of their affiliates which have been engaged by KPLC to provide consulting services for the preparation of the design, specifications, and other documents to be used for the execution, completion and maintenance of the Works under this Invitation to Tender

c) have controlling shareholders in common

d) receive or have received any direct or indirect subsidy from any of them

e) have a relationship with each other, either directly or through common third parties, that puts them in a position to have access to information about, or influence on the tender of another Tenderer, or influence the decisions of KPLC regarding this tendering process

f) submit more than one Tender in this tendering process.

- 3.8.2 A Tenderer will be considered to have a conflict of interest if they participated as a consultant in the preparation of the design or technical specification of the Works and related services that are the subject of this Tender.

### **3.9 One Tender per Tenderer**

- 3.9.1 A firm or company shall submit only one Tender in the same tendering process, either individually or as a partner in a joint venture.
- 3.9.2 No firm or company can be a sub-contractor while submitting a Tender individually or as a partner in a joint venture in the same tendering process.
- 3.9.3 A company or firm, if acting in the capacity of sub-contractor in any Tender may participate in more than one Tender but only in that capacity.
- 3.9.4 A Tenderer who submits or participates in more than one tender (*other than as a sub-contractor or in cases of alternatives that have been permitted or requested*) will cause all tenders in which the Tenderer has participated to be disqualified.

### **3.10 Site Visit and Pre-Bid Meeting**

- 3.10.1 The Tenderer, at the Tenderer's own responsibility and risk is advised to visit and examine the site of Works and its surrounding and obtain all information that may be necessary for preparing the tender and entering into a contract for the Works. The cost of visiting the site shall be at the Tenderer's own expense.
- 3.10.2 KPLC may conduct a site visit and pre-bid meeting. The purpose of the pre-bid meeting shall be to clarify issues and answer any questions that may be raised at that stage.
- 3.10.3 The Tenderer's designated representative is invited to attend a site visit and pre-bid meeting which if convened will take place at the venue and time stipulated in the BDS.
- 3.10.4 The Tenderer is requested as far as possible to submit any questions in writing or by electronic means to reach the Project Manager before the pre-bid meeting.
- 3.10.5 Minutes of the pre-bid meeting including the text of the questions raised and the responses given together with any response prepared after the pre-bid meeting will be transmitted within the time stated in the BDS to all purchasers of the Tender Document.
- 3.10.6 Non-attendance during the site visit or the pre-bid meeting will not be a cause of disqualification of the Tender unless specified to the contrary in the BDS.

### **3.11 Cost of Tendering**

- 3.11.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender. KPLC will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.11.2 The price to be charged for the Tender Document shall be as indicated in the Invitation to Tender but in any case not exceeding KSh 5,000/=.

### **3.12 Contents of the Tender Document**

3.12.1 The Tender Document comprises the documents listed below and Addendum (where applicable) issued in accordance with paragraph 3.14 of these Instructions to Tenderers: -

- a) *Invitation to Tender*
- b) *Tender Submission Checklist*
- c) *Instructions to Tenderers*
- d) *Bid Data Sheet*
- e) *Conditions of Contract*
- f) *Special Conditions of Contract*
- g) *Specifications*
- h) *Drawings*
- i) *Bill of Quantities*
- j) *Summary of Evaluation Process*
- k) *Tender Form*
- l) *Confidential Business Questionnaire Form*
- m) *Tender Security Forms*
- n) *Declaration Form*
- o) *Contract Form Agreement*
- p) *Performance Security Forms*
- q) *Evaluation Criteria*

3.12.2 The Tenderer is expected to examine all instructions, forms, provisions, terms and specifications in the Tender Document. Failure to furnish all information required by the Tender Document or to submit a tender not substantially responsive to the Tender Document in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

3.12.3 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".

### **3.13 Clarification of Documents**

A prospective Tenderer requiring any clarification of the Tender Document may notify the Procurement Manager in writing or by post at KPLC's address indicated in the Invitation to Tender. KPLC will respond in writing to any request for clarification of the Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KPLC.

Written copies of KPLC's response (*including an explanation of the query but without identifying the source of inquiry*) will be sent to all prospective Tenderers that have duly received the Tender Document.

### **3.14 Amendment of Documents**

- 3.14.1 At any time prior to the deadline for submission of Tenders, KPLC, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the tender documents by amendment.
- 3.14.2 All prospective Tenderers that have received the tender documents will be notified of the amendment(s) (*hereinafter referred to or otherwise known as addendum*) in writing and will be binding on them.
- 3.14.3 In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, KPLC, at its discretion, may extend the deadline for the submission of Tenders.

### **3.15 Language of Tender**

The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the tender, exchanged between the Tenderer and KPLC, shall be written in English language, provided that any printed literature furnished by the Tenderer may be written in another language provided that they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English translation shall be on the Tenderer's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the Tenderer's stamp.

### **3.16 Documents Comprising the Tender**

The Tender prepared and submitted by the Tenderers shall include but not be limited to all the following components: -

- a) *Declaration Form, Tender Form and Priced Bill of Quantities (BQ) duly completed*
- b) *Documentary evidence that the Works and any ancillary services thereto to be performed by the Tenderer conform to the tender documents*
- c) *Technical Proposal in sufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the Works requirements and the completion time. Those details should include the following:-*
  - (i.) *a statement of work methods i.e. Methodology*
  - (ii.) *major items of equipment proposed to carry out the Contract*
  - (iii) *an undertaking that the items in c (ii) will be available for the execution of the Contract.*
- d) *Tender Security furnished in accordance with the Tender requirements*
- e) *Power of Attorney authorizing the signatory of the Tender to commit the Tenderer in accordance with the Tender requirements.*
- f) *A detailed list of previous clients as prescribed in the BDS for similar Works on tender and their contact addresses including e-mail shall be submitted with the Tender for the purpose of reference, or for evaluation*



- g) *Statement of Deviations, if any, from the tender requirements on a separate sheet of paper clearly indicating –*
  - (i.) *the specific tender document requirement*
  - (ii.) *the deviation proposed by the Tenderer*
  - (iii.) *the technical specifications of the deviation*
  - (iv.) *the design, if any, of the deviation*
  - (v.) *justification or reason for the deviation*
  - (vi.) *the Tenderer’s cost of that deviation and the Tenderer’s estimate of the cost of complying with KPLC’s requirement without the deviation.*
- h) *In case of a tender submitted by a joint venture, either of the following –*
  - (i.) *the registered joint venture agreement, or,*
  - (ii.) *a Letter of Intent to enter into a joint venture including a draft JV agreement indicating at least the part of the Works to be executed by the respective partners.*
- j) *Any information or other materials required to be completed and submitted by Tenderers as specified in the Tender Document*

### **3.17 Tender Form**

The Tenderer shall complete and sign the Tender Form and all other documents furnished in the Tender Document, indicating the Works to be performed, a brief description of the Works, quantities, and prices amongst other information required.

### **3.18 Tender Rates and Prices**

- 3.18.1 The Tenderer shall indicate on the appropriate BQs, the unit rates and prices (where applicable) and total tender price of the Works it proposes to perform under the contract.
- 3.18.2 The Tenderer shall fill in rates and prices for all items of the Works described in the BQs. Items for which no rates or price is entered by the Tenderer will not be paid for by KPLC when executed and shall be deemed covered by other rates and prices in the BQs.
- 3.18.3 Prices and rates indicated on the BQs shall be of all costs for the Works including insurances, duties, Value Added Tax (V.A.T) and other taxes payable. No other basis shall be accepted for evaluation, award or otherwise.
- 3.18.4 BQ rates and prices to be submitted (quoted) by the Tenderer shall remain fixed for the contract duration.

### **3.19 Tender Currencies**

- 3.19.1 For Works that the Tenderer will provide from within or outside Kenya, the prices shall be quoted in Kenya Shillings, or in another freely convertible currency in Kenya. The currency quoted must be indicated clearly on the Price Schedule of Services.

3.19.2 The exchange rate to be used for currency conversion shall be the Central Bank of Kenya selling rate ruling on the Tender closing date. *(Please visit the Central Bank of Kenya website).*

### **3.20 Tenderer's Eligibility and Qualifications**

3.20.1 Pursuant to paragraph 3.16, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to tender and its qualifications to execute, complete and maintain the Works in the contract if its Tender is accepted.

3.20.2 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall be established to KPLC's satisfaction –

- a) *that the Tenderer has the financial capability necessary to perform the contract. The Tenderer shall be required to provide -*
  - (i.) *Audited Financial Statements (Audited Accounts) that are reported within fifteen (15) calendar months of the date of the tender document. The Statements must be stamped and signed. The Auditors must be currently registered by ICPAK.*
  - (ii.) *For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six (6) months prior to the Date of the Tender Document. The copies should be certified by the Bank issuing the statements. The certification should be original.*
  - (iii.) *A valid and current Tax Compliance Certificate (TCC) issued by KRA. The Tenderer is strongly advised to confirm the authenticity of the TCC with KRA's Compliance Department to avoid rejection of its Tender.*
  - (iv.) *evidence of adequacy of working capital for this Contract eg. access to line(s) of credit and availability of other financial resources*
- b) *that the Tenderer has the technical and management capability necessary to perform the contract. These are as per the Qualification Information Form which includes :-*
  - (i.) *documents showing qualifications and experience of key site management and technical personnel proposed for the Contract.*
  - (ii.) *employment records including contracts of employment for all key personnel*
  - (iii.) *The Tenderer's undertaking that the key site management and technical personnel will be available for the contract*
  - (iv.) *List and evidence of ownership/lease of contractor's equipment proposed for carrying out the Works*
- c) *that the Tenderer is duly classified and currently registered by the Ministry of Public Works as capable of performing the Works under the contract. The Tenderer will furnish KPLC with a copy of the registration certificate and*

*copy of renewal receipt. KPLC reserves the right to subject the certificate and receipt to authentication.*

- d) *information regarding any litigation or arbitration current or during the last five (5) years, in which the Tenderer is involved, the parties concerned and disputed amount; and*
- e) *detailed proposals for subcontracting components of the Works amounting to more than twenty percent (20%) of the Contract Price.*

3.20.3 Tenderers with a record of unsatisfactory or default in performance obligations in any contract shall not be considered for evaluation or award. For the avoidance of doubt, this shall include any Tenderer with unresolved case(s) in its obligations for more than two (2) months in any contract.

### **3.21 Conformity of Works to Tender Documents**

3.21.1 The Tenderer shall furnish, as part of its tender, documents establishing the conformity to the Tender Document of all the Works that the Tenderer proposes to perform under the contract.

3.21.2 The documentary evidence of conformity of the Works to the Tender Document may be in the form of literature, drawings, and data, and shall (where applicable) consist of: -

- a) *a detailed description of the essential technical and performance characteristics of the Works whether in brochures, catalogues, drawings or otherwise,*
- b) *a list giving full particulars, including available source and current prices of spare parts, special tools and other incidental apparatus necessary for the proper and continuing performance of the Works for a minimum period of six (6) months following usage of the Works after the official handing over to KPLC, and,*
- c) *duly completed BQs' in compliance with KPLC's BQs' requirements or, a Statement of Deviations and exceptions to the provisions of KPLC's BQs'.*

3.21.3 For purposes of the documentary and other evidence to be furnished pursuant to sub-paragraphs 3.21.1, 3.21.2 and paragraph 3.22, the Tenderer shall note that standards for workmanship, material, and equipment, designated by KPLC in its BQs' are intended to be descriptive only and not restrictive. The Tenderer may adopt higher standards in its Tender, provided that it demonstrates to KPLC's satisfaction that the substitutions ensure substantial equivalence to those designated in the BQs'.

### **3.22 Demonstration(s), Inspection(s) and Test(s)**

3.22.1 Where required, all Tenderers shall demonstrate ability of performance of the required Works in conformity with the Bills of Quantities and Specifications.

3.22.2 KPLC or its representative(s) shall have the right to inspect/ test the Tenderer's capacity, equipment, premises, and to confirm their conformity to the tender requirements. This shall include the quality management system. KPLC's

representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection/ test.

- 3.22.3 KPLC shall meet its own costs of the inspection/ test. Where conducted on the premises of the Tenderer(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KPLC.
- 3.22.4 Demonstration, Inspection/ Test Report(s) shall be completed upon conclusion of the inspection/ tests. This Report will be considered at time of evaluation and or award.

### **3.23 Warranty**

- 3.23.1 Where required in the Tender, all Tenderers must also provide a Warranty that warrants that any part of the Works that comprises any equipment, the equipment to be provided under the contract are new, unused and or are of the most recent or current specification and incorporate all recent improvements in design and materials unless provided otherwise in the Tender. The Warranty shall also warrant that the equipment in the Tenderer's bid have no defect arising from manufacture, materials or workmanship or from any act or omission of the Tenderer that may develop under normal use or application of the equipment under the conditions obtaining in Kenya.
- 3.23.2 The Warranty will remain valid for a minimum of six (6) months after the equipment, or any part thereof as the case may be, have been used or provided or performed as indicated in the contract.

### **3.24 Tender Security**

- 3.24.1 The Tenderer shall furnish, as part of its Tender, a tender security for the amount specified in the BDS.
- 3.24.2 The tender security shall be either one or a combination of the following:-
- a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Tender Security Form (Bank Guarantee) in the Tender Document.
  - b) For local bidders, Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC shall be prepaid by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.
  - c) For foreign bidders, Standby Letters of Credit (LC) confirmed by a bank in Kenya. All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.
  - d) An original Guarantee by a deposit taking Microfinance Institution, Sacco Society, Youth Enterprise Development Fund or the Women Enterprise Fund,

that is strictly in the form and content as prescribed in the Tender Security Form

- 3.24.3 The Tender Security is required to protect KPLC against the risk of the Tenderer's conduct which would warrant the security's forfeiture pursuant to paragraph 3.24.10.
- 3.24.4 The Tender Security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 3.24.5 The Tender Security shall be valid for thirty (30) days beyond the validity of the tender.
- 3.24.6 KPLC shall seek authentication of the Tender Security from the issuing bank. It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed five (5) days from the date of KPLC's query. Should there be no conclusive response by the bank within this period, such Tenderer's Tender Security may be deemed as invalid and the bid rejected.
- 3.24.7 Any Tender not secured in accordance with this paragraph will be rejected by KPLC as non-responsive, pursuant to paragraph 3.35.
- 3.24.8 The unsuccessful Tenderer's Tender Security will be released as promptly as possible, in any of the following circumstances: -
- a) *the procurement proceedings are terminated*
  - b) *KPLC determines that none of the submitted Tenders is responsive*
  - c) *a contract for the procurement is entered into*
  - d) *the Tenderer does not qualify for Financial Evaluation in accordance with paragraph 3.37.*
- 3.24.9 The successful Tenderer's Tender Security will be released upon the successful Tenderer's signing the contract, pursuant to paragraph 3.47 and furnishing an authentic Performance Security, pursuant to paragraph 3.48.
- 3.24.10 The Tender Security shall be forfeited –
- a) *if the Tenderer withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which the Tenders must remain valid*
  - b) *if the Tenderer rejects a correction of an arithmetic error*
  - c) *if the Tenderer fails to enter into a written contract in accordance with paragraph 3.47*
  - d) *if the successful Tenderer fails to furnish the performance security in accordance with paragraph 3.48*
  - e) *if the Tenderer fails to extend the validity of the tender security where KPLC has extended the tender validity period in accordance with paragraph 3.25.*
- 3.24.11 In cases of a JV bid, without prejudice to the provisions relating to a JV, the Tender Security may be in the name of any or all parties to the JV and the above provisions on Tender Security shall apply.

### **3.25 Validity of Tenders**

- 3.25.1 Tenders shall remain valid for ninety (90) days after the date of tender opening as specified in the Invitation to Tender or as otherwise may be prescribed by KPLC, pursuant to paragraph 3.30. A Tender that is valid for a shorter period shall be rejected by KPLC as non-responsive.
- 3.25.2 In exceptional circumstances, KPLC may extend the Tender validity period. The extension shall be made in writing. The tender security provided under paragraph 3.24 shall also be extended. A Tenderer shall not be required nor permitted to modify its tender during the extended period.

### **3.26 Alternative Offers**

Only main offers shall be considered, as alternative offers are not acceptable. \_\_\_\_\_

### **3.27 Number of Sets of and Tender Format**

- 3.27.1 The Tenderer shall prepare three complete sets of its Tender, identifying and clearly marking the “ORIGINAL TENDER”, “COPY 1 OF TENDER”, and “COPY 2 OF TENDER” as appropriate. Each set shall be properly bound. The copies shall be a replica of the Original. Each copy will be deemed to contain the same information as the Original.
- 3.27.2 The Tenderer shall divide and mark the sets as follows:-  
*3.27.2.1 TECHNICAL/FINANCIAL – Three (3) sets i.e. Original, Copy 1 and Copy 2.*
- 3.27.4 The Tender shall be bound and divided clearly in descending order as listed in the Tender Submission Checklist. The divisions are for clear identification and marking of the respective documents or information that are serially numbered in the Checklist.
- 3.27.5 The order and arrangement as indicated in the Tender Submission Checklist will be considered as the Tender Formats.
- 3.27.6 Any Tender not prepared and signed in accordance with this paragraph, and in particular sub-paragraphs 3.27.1, 3.27.2 and 3.27.3 may be rejected by KPLC as non-responsive, pursuant to paragraph 3.35.

### **3.28 Preparation and Signing of the Tender**

- 3.28.1 The Original and all copies of the Tender shall be typed or written in indelible ink. They shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract.
- 3.28.2 The authorization shall be indicated by a written Power of Attorney granted by the Tenderer to the authorized person before any of the following persons:-
- a) *For local Tenderers, a Commissioner of Oaths or a Notary Public or a Magistrate of the Kenyan Judiciary.*
  - b) *For foreign Tenderers, a Notary Public in the country of the Tenderer.*
- In either case above, the Power of Attorney shall accompany the Tender.

3.28.3 All pages of the Tender, including un-amended printed literature, shall be initialled by the person or persons signing the Tender and serially numbered.

3.28.4 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialled by the person or persons signing the Tender.

3.28.5 KPLC will assume no responsibility whatsoever for the Tenderer's failure to comply with or observe the entire contents of this paragraph.

3.28.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPLC as non-responsive, pursuant to paragraph 3.35.

### **3.29 Sealing and Outer Marking of Tenders**

3.29.1 The Tenderer shall seal the Original and each Copy of the Tender in separate envelopes or packages, duly marking the envelopes or packages as "ORIGINAL", "COPY 1 OF TENDER" and "COPY 2 OF TENDER". The envelopes or packages shall then be sealed in outer envelopes or packages.

3.29.2 The inner and outer envelopes or packages shall -

- a) *be addressed to KPLC at the address given in the Invitation to Tender,*
- b) *bear the tender number and name as per the Invitation to Tender and the words, "DO NOT OPEN BEFORE ..... as specified in the Invitation to Tender.*

3.29.3 All inner envelopes or packages shall also indicate the name and full physical, telephone, e-mail, facsimile and postal contacts of the Tenderer to enable the Tender to be returned unopened in circumstances necessitating such return including where Tenders are received late, procurement proceedings are terminated before tenders are opened.

3.29.4 If the envelopes or packages are not sealed and marked as required by this paragraph, KPLC will assume no responsibility whatsoever for the Tender's misplacement or premature opening. A tender opened prematurely for this cause will be rejected by KPLC and promptly returned to the Tenderer.

### **3.30 Deadline for Submission of Tenders**

3.30.1 Tenders must be received by KPLC by the time and at the place specified in the Invitation to Tender.

3.30.2 KPLC may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents in accordance with paragraph 3.14, in which case all rights and obligations of KPLC and the Tenderer's previously subject to the initial deadline, will therefore be subject to the deadline as extended.

### **3.31 Modification and Withdrawal of Tenders**

3.31.1 The Tenderer may modify or withdraw its Tender after it has submitted it, provided that written notice of the modification, including substitution or withdrawal of the

Tender is received by KPLC prior to the deadline prescribed for submission of tenders.

- 3.31.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraphs 3.27, 3.28 and 3.29. A withdrawal notice may also be sent by facsimile, electronic mail, cable or telex but followed by an original signed confirmation copy, postmarked not later than the deadline for submission of Tenders.
- 3.31.3 No Tender may be modified after the deadline for submission of Tenders.
- 3.31.4 No Tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period during which the Tender must remain valid. Withdrawal of a Tender during this interval shall result in forfeiture of the Tenderer's Tender Security.

### **3.32 Opening of Tenders (a)**

- 3.32.1 KPLC shall open all Tenders promptly after the tender closing date and time, at the location specified in the Invitation to Tender or as may otherwise be indicated.
- 3.32.2 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Tender Security, the number of sets of tender documents duly received and such other details as KPLC, at its discretion, may consider appropriate, will be announced at the opening.
- 3.32.3 At the Tender opening, tender prices, discounts, and such other details as KPLC, at its discretion, may consider appropriate will be read out.
- 3.32.4 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

### **3.32 Opening of Tenders (b)**

- 3.32.1 KPLC shall, in accordance with the sub-paragraphs below, adopt a two tender opening system for this Tender.
- 3.32.2 At the first opening, KPLC shall open all Tenders promptly after the tender closing date and time, at the location specified in the Invitation to Tender or as may otherwise be indicated. For purposes of clarity, this opening shall include the outer Financial Proposals' envelopes or packages of the duly submitted tenders.
- 3.32.3 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Tender Security, the number of sets of both Non-Financial as well as Financial Proposals tender documents duly received and such other details as KPLC, at its discretion, may consider appropriate, will be announced at the first opening.
- 3.32.4 Tenderers whose tenders qualify after preliminary and technical evaluation will be promptly invited for the second opening i.e. of their detailed Financial Sets. In any event, the invitation shall not be more than five (5) days after completion of the process regarding the earlier evaluation(s).



- 3.32.5 At the opening of the detailed Financial Sets, tender rates & prices, discounts, and such other details as KPLC, at its discretion, may consider appropriate, will be announced at this opening.
- 3.32.6 The Tenderers or their representatives may attend the openings and those present shall sign a register evidencing their attendance.
- 3.32.7 Tenders not opened and read out at the first tender opening shall not be considered further for evaluation, award or otherwise irrespective of the circumstances.

### **3.33 Process to be Confidential**

- 3.33.1 After the first opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations arising there-from shall not be disclosed to a Tenderer or other person(s) not officially concerned with such process until conclusion of that process.
- 3.33.2 Conclusion of that process shall be deemed to have occurred, at the latest, by the date and time KPLC announces to qualified bidder(s) the date and time for the second opening of the tenders i.e. of the detailed Financial Sets. In any event, official disclosure by KPLC of any information upon conclusion of that process shall only be to the unsuccessful bidders and may contain only the information permissible by law in summary form.
- 3.33.3 After the second opening of tenders, information relating to the further examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to a Tenderer or other person(s) not officially concerned with such process until the award of Contract is announced.
- 3.33.4 Any effort by a Tenderer to influence KPLC or any of its staff members in the process of examination, evaluation and comparison of tenders and information or decisions concerning award of Contract may result in the rejection of the Tenderer's tender.

### **3.34 Clarification of Tenders and Contacting KPLC**

- 3.34.1 To assist in the examination, evaluation and comparison of Tenders KPLC may, at its discretion, ask the Tenderer for a clarification of its Tender. The request for clarification and the response shall be in writing, and no change in the rates and prices or substance of the Tender shall be sought, offered, or permitted.
- 3.34.2 The Tenderer is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the Tenderer to provide in writing the clarification or substantiation which should reach KPLC within five (5) days from the date of KPLC's query. Such writing may include by electronic mail, facsimile or postal mail. Should there be no conclusive response within this period, it shall result in the Tenderer's disqualification.

- 3.34.3 Save as is provided in this paragraph and paragraph 3.33 above, no Tenderer shall contact KPLC on any matter related to its Tender, from the time of the tender openings to the time the contract is awarded.
- 3.34.4 Any effort by a Tenderer to influence KPLC in its decisions on tender evaluation, tender comparison, tender recommendation(s) or contract award may result in the rejection of the Tenderer's Tender.

### **3.35 Preliminary Evaluation and Responsiveness**

- 3.35.1 Prior to the detailed Technical and Financial evaluation, KPLC will determine the substantial responsiveness of each Tender. For purposes of this tender, a substantially responsive Tender is one that conforms to the requirements of Preliminary Evaluation. KPLC's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.
- 3.35.2 KPLC will examine the Tenders to determine whether they conform to the Preliminary Evaluation Criteria set out in Section X Summary of Evaluation Process (*Evaluation Criteria*).
- 3.35.3 Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KPLC and cannot subsequently be made responsive by the Tenderer by correction of any non-conformity.

### **3.36 Minor Deviations, Errors or Oversights**

- 3.36.1 KPLC may waive any minor deviation in a Tender that does not materially depart from the requirements of the Works set out in the Tender Document.
- 3.36.2 Such minor deviation -
- 3.36.2.1 shall be quantified to the extent possible
- 3.36.2.2 shall be taken into account in the evaluation process, and,
- 3.36.2.3 shall be applied uniformly and consistently to all qualified Tenders duly received by KPLC.
- 3.36.3 KPLC may waive errors and oversights that can be corrected without affecting the substance of the Tender.
- 3.36.4 A material deviation or reservation is one –
- a) which affects in any substantial way the scope, quality, or performance of the works;
  - b) which limits in any substantial way, inconsistent with the tendering documents, KPLC's rights or the Tenderer's obligations under the Contract; or,
  - c) whose rectification would affect unfairly the competitive position of other Tenderers presenting responsive tenders.

### **3.37 Evaluation Criteria – Preliminary, Technical and Financial**

- (a) The Tenders submitted will be evaluated in three stages; Preliminary, Technical and Financial. Tenderers will proceed to the Technical Stage only if they qualify in compliance with Preliminary Evaluation.
  - (b) The criteria to be followed at the Technical Evaluation stage is contained in Evaluation Process, and bidders are urged to follow the format outlined therein which is critical in determining the responsiveness of the bids.
  - (c) To be eligible for the Financial Evaluation, bidders are urged to follow the format outlined therein which is critical in determining the responsiveness of the bids.
  - (d) The Evaluation Committee will determine whether the financial proposals are complete (i.e. whether the tenderer has costed all the items of the corresponding Technical Proposal and correct any computational errors). The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.
- 1.1 If a tender is not substantially responsive, it will be rejected, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.
- 1.2 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:
- (a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
  - (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.
  - (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.
  - (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work (i.e. Corrected tender sum less P.C. and Provisional Sums)
  - (e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.

- (f) the amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11.
- 1.3 The Employer will evaluate and compare only the tenders determined to be substantially responsive in accordance with Clause 5.5.
  - 1.4 In evaluating the 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 5.7;
    - (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Dayworks where priced competitively.
    - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and
    - (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 4.6
  - 1.5 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in tender evaluation.
  - 1.6 The tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.
  - 1.7 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a non-indigenous sub-contractor.

### **3.38 Financial Evaluation**

- 3.38.1 The financial evaluation and comparison shall be as set out in the Summary of Evaluation Process. The comparison shall be -

- a) of the rates and prices including all costs as well as duties and taxes payable on all the materials to be used in the execution of the Works.
- b) deviations in Payment Schedule from that specified in the Special Conditions of Contract

3.38.2 Where other currencies are used, KPLC will convert those currencies to the same currency using the selling exchange rate ruling on the date of tender closing provided by the Central Bank of Kenya.

### **3.39 Preferences**

3.39.1 In the evaluation of tenders, exclusive preference shall be given to citizen contractors where the amount of the tender as evaluated is below KShs. 500 Million in respect of services.

3.39.2 For purposes of this paragraph the Tenderer shall submit with its Tender, the following documents:-

- a) a valid copy of certificate or letter of Confirmation of Ownership or Partnerships and Shareholding issued and signed by the Registrar of Companies or Registrar of Business Names both of the Office of the Attorney General of Kenya.
- b) The certificate must not be more than three (3) months old from the Date of the Tender Document. KPLC reserves the right to subject the certificate to authentication.
- c) A copy of the Memorandum and Articles of Association of the company
- d) In JV, sub-contracting or other contractual arrangements, copies of the Memorandum and Articles of Association of each company in the JV, sub-contracting or other contractual arrangements.

### **3.40 Tender Evaluation Period**

3.40.1 The tender evaluation committee may conduct and complete a preliminary and technical evaluation of the tender within thirty (30) days of the validity period from the date of the first opening of the Tender.

3.40.2 The tender evaluation committee may conduct the financial evaluation of the tender within five (5) days of the validity period from the date of the second opening of the Tender.

3.40.3 Notwithstanding the above, the overall evaluation period for the tender shall be thirty five (35) days in the validity period of the tender.

### **3.41 Debarment of a Tenderer**

A Tenderer who gives false information in the Tender about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

### **3.42 Confirmation of Qualification for Award**

- 3.42.1 KPLC may confirm to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 3.42.2 The confirmation will take into account the Tenderer's financial, technical, and performance capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to paragraph 3.20 as well as confirmation of such other information as KPLC deems necessary and appropriate. This may include factory, office and other facilities inspection and audits.
- 3.42.3 An affirmative confirmation will be a prerequisite for award of the contract to the Tenderer. A negative confirmation will result in rejection of the Tenderer's Tender, in which event KPLC will proceed to the next lowest evaluated responsive tender to make a similar confirmation of that Tenderer's capabilities to perform satisfactorily.

### **3.43 Award of Contract**

- 3.43.1 KPLC will award the contract to the successful Tenderer whose Tender has been determined to be substantially responsive, compliant with the evaluation criteria and has been determined to be the lowest evaluated tender, and further, where deemed necessary, that the Tenderer is confirmed to be qualified to perform the contract satisfactorily.

### **3.44 Termination of Procurement Proceedings**

- 3.44.1 KPLC may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 3.44.2 KPLC shall give prompt notice of the termination to the Tenderers, and, on request from any Tenderer, give its reasons for termination within fourteen (14) days of such request.

### **3.45 Notification of Award**

- 3.45.1 Prior to the expiration of the period of tender validity, KPLC shall notify the successful Tenderer in writing that its Tender has been accepted.
- 3.45.2 The notification of award shall not constitute the formation of the contract until one is finally signed by both parties.
- 3.45.3 Simultaneously, and without prejudice to the contents of paragraph 3.34, on issuance of Notification of Award to the successful Tenderer, KPLC shall notify each unsuccessful Tenderer.
- 3.45.4 A notification of the tender outcome does not reduce the validity period for any tender security whether the Tenderer is successful or not, except where such tender security is officially released to the Bank and/or the Tenderer and such Bank discharged of all its obligations by KPLC prior to the expiry of its stated validity period.

### **3.46 Clarifications with Lowest Evaluated Successful Tenderer**

3.46.1 Clarifications may be undertaken with the lowest responsive evaluated Tenderer relating to any or all of the following areas:-

- a) A minor alteration to the technical details of the BQ's
- b) Reduction of quantities for budgetary reasons where the reduction is in excess of any provided for in the Tender Document
- c) A minor amendment to the Special Conditions of Contract.
- d) Finalising payment arrangements (*excluding any Advance Payment*)
- e) Mobilisation arrangements eg. operational details (*excluding any Advance Payment*)
- f) Agreeing final delivery or Work Plans to accommodate and changes required by KPLC.
- g) Methodology and Staffing
- h) Clarifying details that were not apparent or could not be finalized at the time of tendering

3.46.2 Clarifications shall not change the substance of the Tender.

### **3.47 Signing of Contract**

3.47.1 At the same time as KPLC notifies the successful Tenderer that its Tender has been accepted, KPLC will send the Tenderer the Contract Agreement provided in the Tender Document together with any other necessary documents incorporating all agreements between the Parties.

3.47.2 Within seven (7) days of the date of notification of award, the successful Tenderer shall only sign the Contract Form and all the documents specified in that Form and return them to KPLC within that period of seven (7) days.

3.47.3 KPLC shall sign and date the Contract in the period between not earlier than seven (7) days from the date of notification of contract award and not later than thirty (30) days after expiry of tender validity. Further, KPLC shall not sign the contract until and unless the authentic performance security is received in accordance with paragraph 3.48.

3.47.4 Failure of the successful Tenderer to sign the Contract, the award shall be annulled and its tender security forfeited in which event KPLC shall notify the next lowest evaluated Tenderer that its Tender has been accepted.

3.47.5 Paragraph 3.45 together with the provisions of this paragraph 3.47 will apply with necessary modifications with respect to the Tenderer notified under sub-paragraph 3.47.4.

### **3.48 Performance Security**

3.48.1 Within twenty one (21) days of the date of notification of award from KPLC, the successful Tenderer shall furnish KPLC with a Performance Security which shall be either one or a combination of the following:

- a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
- b) For local bidders, Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC shall be prepaid by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.
- c) For foreign bidders, Standby Letters of Credit (LC) confirmed by a bank in Kenya. All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.

- 3.48.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 3.48.3 The successful Tenderer shall furnish a Performance Security being the sum of ten percent (10%) of the contract price.
- 3.48.4 KPLC shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed five (5) days from the date of KPLC's query. Should there be no conclusive response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.
- 3.48.5 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPLC may notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 3.48.6 Paragraph 3.45, 3.47 together with the provisions of this paragraph 3.48 will apply with necessary modifications, and as far as circumstances permit, with respect to the Tenderer notified under sub-paragraph 3.48.5.

### **3.49 Corrupt or Fraudulent Practices**

- 3.49.1 KPLC requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. When used in the present Regulations, the following terms are defined as follows: -
- a) *“Corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of public official in the procurement process or in contract execution;*
  - b) *“Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KPLC, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish tender prices at artificial*



*non-competitive levels and to deprive KPLC of the benefits of free and open competition.*

- 3.49.2 KPLC will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 3.49.3 Further, a Tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

**SECTION IV - BID DATA SHEET (Appendix to Instructions To Tenderers)**

The following information regarding the particulars of the tender shall complement and or amend the provisions of the Instructions to Tenderers *hereinafter abbreviated as ITT*. Wherever there is a conflict between the provisions of the ITT and the Bid Data Sheet, the provisions of the BDS shall prevail over those of the ITT.

No.	ITT Reference Clause	Particulars of Appendix
1.	<b>3.2.1 Eligible Tenderers</b>	<i>Only tenderers who are registered with the National Contracting Authority (NCA 5 and Above) are eligible to participate.</i>
2.	<b>3.6 Time for Completion of works</b>	24 Weeks
3.	<b>3.10.3a) Site Visit Meeting</b>  <b>b) Pre – Bid Meeting</b>	<b>Mandatory</b> <i>Proposed site visit at Wajir &amp; Mandera Perimeter walls on <b>Tuesday, 9<sup>th</sup> December, 2014</b> at 9.00 a.m. and <b>Thursday, 11<sup>th</sup> December, 2014</b> at 9.00am respectively.</i>  <i>There will be a pre - bid meeting to be held at sites the same time and dates.</i>
4.	<b>3.16(f) – List of Previous Customers</b>	<i>The Tenderer shall submit at least four (4) names with full contact including telephone, email and physical addresses of previous clients of similar Works and letters from the previous clients confirming satisfactory completion of the contracts and on schedule.</i>
5.	<b>3.24.1 Tender Security</b>	<i>Tender Security is Kshs. 500,000.00 as original Bank Guarantee that is strictly in the form and content as prescribed in the Tender Security Form (Bank Guarantee) or For local bidders, Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC shall be prepaid by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of Credit) or For foreign bidders, Standby Letters of Credit (LC) confirmed by a bank in Kenya. All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of</i>

		<i>Credit) in the Tender Document. The Tender Security shall be valid for thirty (30) days beyond the validity of the tender.</i>
6.	<b>3.25 Validity of Tenders</b>	<i>Tenders shall remain valid for ninety (90) days after the date of tender opening.</i>
7.	<b>3.27 Number of Sets of and Tender Format</b>	<i>The Tenderer shall divide and mark the sets as follows:- a) Three (3) sets i.e. Original, Copy 1 and Copy 2.</i>
8.	<b>3.43 Award of Contract</b>	<i>Award shall be to the most compliant evaluated bidder.</i>
9.	<b>3.48 Performance Security</b>	<i>Performance Security shall be 10% of the contract sum as an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) or For local bidders, Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC shall be prepaid by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of Credit) or For foreign bidders, Standby Letters of Credit (LC) confirmed by a bank in Kenya. All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.</i>

## **SECTION V - CONDITIONS OF CONTRACT**

**Table of Contents**

1	Definitions .....	38
2	Interpretation.....	40
3	Language and Law .....	41
4	Project Manager’s Decisions.....	41
5	Delegation.....	41
6	Communications .....	41
7	Sub-Contracting .....	41
8	Other Contractors .....	41
9	Personnel .....	41
10	Works.....	42
11	Safety and temporary works .....	42
12	Discoveries .....	42
13	Work Program .....	42
14	Possession of site .....	43
15	Access to site .....	43
16	Instructions .....	43
17	Extension or Acceleration of completion date .....	43
18	Management Meetings .....	44
19	Early Warning .....	44
20	Defects .....	44
21	Bills of Quantities .....	45
22	Variations .....	45
23	Payment certificates, currency of payments and Advance Payments .....	46
24	Compensation events .....	48
25	Price Adjustment .....	49
26	Retention .....	51
27	Liquidated Damages.....	51
28	Securities .....	51
29	Day Works .....	52
30	Liability and Insurance .....	53
31	Completion and taking over .....	54
32	Final Account .....	54

33 Termination ..... 54  
34 Payment upon termination ..... 55  
35 Release from performance ..... 56  
36 Corrupt gifts and payments of commission .....56  
37 Settlement of Disputes .....57

1. **Definitions**

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

**“Bill of Quantities”** means the priced and completed Bill of Quantities forming part of the tender.

**“Compensation Events”** are those defined in Clause 24 hereunder.

**“The 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 Contractor as recorded in the Agreement Form and signed by the parties including all attachments and appendices thereto and all documents incorporated by reference therein to execute, complete, and maintain the Works,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Site”** is the area defined as such in the Appendix to Condition of Contract.

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

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

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

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

**“A Variation”** is an instruction given by the Project Manager which varies the Works.

**“The Works”** are what the Contract requires the Contractor to construct, install, and turnover to the Employer, as defined in the Special Conditions of Contract.

## 2. Interpretation

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the Special Conditions of Contract, reference in the Conditions of Contract to the Works, the Completion Date and the Intended Completion Date apply to any section of the Works (other than references to the Intended Completion Date for the whole of the Works).
- 2.3 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;
- (1) Agreement,
  - (2) Letter of Acceptance,
  - (3) Contractor's Tender,
  - (4) Special Conditions of Contract,
  - (5) Conditions of Contract,
  - (6) Specifications,
  - (7) Drawings,
  - (8) Bill of Quantities,
  - (9) Any other documents listed in the Special 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

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



#### 4 **Project Manager's Decisions**

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

#### 5 **Delegation**

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

#### 6 **Communications**

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

#### 7 **Subcontracting**

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

#### 8 **Other Contractors**

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

#### 9 **Personnel**

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

#### 10 **Works**

- 10.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the

Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

## 11 Safety and Temporary Works

- 11.1 The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.
- 11.2 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent Works, shall be subject to prior approval by the Project Manager before they can be used.
- 11.3 The Contractor shall be responsible for the safety of all activities on the Site.

## 12. Discoveries

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

## 13. Work Program

**13.1 Within the time stated in the Special 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 Special 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

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

**15. Access to Site**

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

**16. Instructions**

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

**17. Extension or Acceleration of Completion Date**

- 17.1** The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining Work, which would cause the Contractor to incur additional cost. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 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 delay or has failed to cooperate in dealing with a delay, the delay caused by such failure shall not be considered in assessing the new (extended) Completion Date.

- 17.2** No bonus for early completion of the Works shall be paid to the Contractor by the Employer.

**18. Management Meetings**

- 18.1** A Contract management meeting shall be held as per schedule and in any event not less than once a month and attended by the Project Manager and the Contractor. Its business shall be to review the plans for the remaining

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

## **19. Early Warning**

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

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

## **20. Defects**

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

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

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

## **21. Bills Of Quantities**

**21.1** The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rate in the Bills of Quantities for each item.

21.2 If the final quantity of the Work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the Initial Contract price, the Project Manager shall adjust the rate to allow for the change.

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

## **22. Variations**

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

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

22.3 If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the variation does not correspond with items in the Bills of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.

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

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

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

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

**23. Payment Certificates, Currency of Payments and Advance Payments**

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

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

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

23.4 If an amount certified is increased in a later certificate or 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.

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

23.6 The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the

Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Special 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 an changes in the expected foreign currency requirements of the Contractor during the execution of the Works as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.

23.7 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

X<sup>1</sup> = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 20% but not exceed 80%.

$X^{11}$  = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80% but not less than 20%.

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

## 24. Compensation Events

24.1 The following issues shall constitute Compensation Events:

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



- 24.2 If a compensation event would cause additional cost or would prevent the Work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 24.3 As soon as information demonstrating the effect of each compensation event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.
- 24.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.
- 24.5 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Special Conditions of Contract.
- 24.6 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**

- 25.1 The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.
- 25.2 The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works. Unless otherwise stated in the Contract, if at any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case may be.

- 25.3 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 prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C.) and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Special Conditions of Contract.
  - (ii) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.
  - (iii) No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.
- 25.4 The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the Works as determined by the J.B.C. and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Special Conditions of Contract.
- 25.5 Upon the J.B.C. determining that any of the said basic prices are increased or decreased then the Contract Price shall be increased or decreased by the amount to be assessed by the Project Manager based upon the difference between the price set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 23 of these Conditions issued before the date of publication of such increase or decrease.
- 25.6 No adjustment shall be made in respect of changes in basic prices of materials which occur after the date for Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

25.7 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 rates.

## 26. Retention

26.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the Special 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

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

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

## 28. Performance Security

28.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a commercial bank licensed by the Central Bank of Kenya, and denominated in Kenya Shillings. The Performance Security shall be valid until a date sixty (60) days beyond the date of issue of the Certificate of Completion.

28.2 The Performance Security shall be either one or a combination of the following:

- a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
- b) For Local bidders, Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC shall be prepaid by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as

prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.

- c) For Foreign bidders, Standby Letters of Credit (LC) confirmed by a bank in Kenya. All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.

28.3 The successful Tenderer shall furnish a Performance Security being the sum of ten percent (10%) of the contract price.

28.4 KPLC shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed five (5) days from the date of KPLC's query. Should there be no conclusive response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.

28.5 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPLC may notify the next lowest evaluated Tenderer that its Tender has been accepted.

3.40.6 Paragraph 3.38, 3.39 together with the provisions of this paragraph 3.40 will apply with necessary modifications, and as far as circumstances permit, with respect to the Tenderer notified under sub-paragraph 3.39.4

## 29. Dayworks

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

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

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

## 30. Liability and Insurance

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

- (a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to;

- (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or
- (ii) negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.

(b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in Employer's design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.

30.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is the Employer's risk except loss or damage due to;

- (a) a defect which existed on or before the Completion Date.
- (b) an event occurring before the Completion Date, which was not itself the Employer's risk
- (c) the activities of the Contractor on the Site after the Completion Date.

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

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

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

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

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

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

- 30.6 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager. Both parties shall comply with any conditions of insurance policies.

### **31. Completion and taking over**

- 31.1 Upon deciding that the Works are complete, the Contractor shall issue a written request to the Project Manager to issue a Certificate of Completion of the Works. The Employer shall take over the Site and the Works within seven [7] days of the Project Manager's issuing a Certificate of Completion.

### **32. Final Account**

- 32.1 The Contractor shall issue the Project Manager with a detailed account of the total amount that the Contractor considers payable to him by the Employer under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 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**

- 33.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;
- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorised by the Project Manager;
  - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
  - (c) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.

(e) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;

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

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

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

33.4 If the Contract 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**

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

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

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

34.4 The Contractor shall, during the execution or after the completion of the Works under this clause remove from the Site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, 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, holding 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 Employer to the Contractor.

### **35. Release from Performance**

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

### **36. Corrupt gifts and payments 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 him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement Regulations issued under The Exchequer and Audit Act Cap 412 of the Laws of Kenya.

### **37. Settlement Of Disputes**

37.1 In case any dispute or difference shall arise between the Employer or the Project Manager on his behalf and the Contractor, either during the



progress or after the completion or termination of the Works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of any of the following professional institutions;

- (i) Architectural Association of Kenya
- (ii) Institute of Quantity Surveyors of Kenya
- (iii) Association of Consulting Engineers of Kenya
- (iv) Chartered Institute of Arbitrators (Kenya Branch)
- (v) Institution of Engineers of Kenya

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

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

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

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

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

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

- 37.5.2 Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- 37.5.3 Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- 37.5.4 Any dispute or difference arising in respect of war risks or war damage.
- 37.6 All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Employer and the Contractor agree otherwise in writing.
- 37.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 37.8 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 37.9 The award of such Arbitrator shall be final and binding upon the parties.

**SECTION VI - SPECIAL CONDITIONS OF CONTRACT**

CONDITIONS OF CONTRACT	CLAUSE	REQUIREMENT(S)
Employer		The Employers address is: <b>The General Manager, Corporate Affairs &amp; Company Secretary, Kenya Power Stima Plaza, Kolobot Road, Parklands P. O. Box 30099-00100 Nairobi, Kenya.</b>
Project Manager		The Project Manager's address is: Name - <b>DICK KWINGA</b> Address – <b>P.O BOX 30099 – 00100</b> Telephone - <b>+254711031495</b>
The Name and identification number of the contract		<b>PROPOSED WAJIR &amp; MANDERA PERIMETER WALLS.</b>
The work consist of		<b>ERECTION AND COMPLETION OF A PERIMETER WALLS</b>
Start Date		<b>TO BE DECIDED BY EMPLOYER</b>
Intended Completion Date for the whole of the works		<b>AS PER ACCEPTED TENDER</b>
Other documents to form part of the contract		<b>As per tender</b>
The number of days within which the contractor shall submit a revised program for the Works after delivery of the Letter of		7 days

Acceptance		
The Site Possession Date		To be decided
Site Location and Drawing Number		<b>WAJIR TOWN AND MANDERA TOWN</b>
Defects Liability Period (in days)		<b>ONE HUNDRED AND EIGHTY (180) DAYS</b>
Other Contractors, utilities etc to be engaged by the Employer on the Site		
The minimum insurance covers shall be;  <ol style="list-style-type: none"> <li>1. The minimum cover for insurance of the Works, Plant and Materials in respect of the Contractor's faulty design</li> <li>2. The minimum cover for loss or damage to Equipment</li> <li>3. The minimum cover for other property</li> <li>4. The minimum cover for personal injury or death insurance <ul style="list-style-type: none"> <li>• For the Contractor's employees</li> <li>• And for other people</li> </ul> </li> </ol>		<b>AS PER TENDER</b>  <b>TEN MILLION (KES. 10,000,000.00)</b>  <b>AS PER WORK INJURY BENEFITS</b>  <b>TEN MILLION (KES. 10,000,000.00)</b>
The period between program updates (In days)		<b>FOURTEEN (14) DAYS</b>
The amount to be withheld for late submission of an updated Program		<b>FIFTY THOUSAND ( KES. 50,000.00)</b>
The proportion of payment to be retained (in Percent)		<b>10%</b>
The Price Adjustment Clause (Shall/shall not apply)		<b>SHALL NOT APPLY</b>
The liquidated damages for the whole of the works in Ksh (per week)		<b>ONE MILLION (KES. 200,000.00)</b>
Maximum Limit of liquidated damages		<b>10% of Contract Value</b>
Performance Security (as a percentage of the Contract Price)		<b>10% of Contract Value</b>
Completion Period for the works (in weeks)		<b>24 WEEKS</b>
The rate of exchange for calculation of foreign currency payments		<b>The ruling interbank market rate on the date of actual payment</b>
Advance payment (Shall/ Shall not be granted)		<b>NOT APPLICABLE TO THIS TENDER</b>
Percentage of Retention(Of the Interim		<b>10% of Interim Payment Certificate</b>

Payment Certificate)		
Maximum Limit of Retention Money		<b>10 % of Contract Price</b>
Minimum amount of interim certificates		<b>2% of Contract Price</b>
Time (in days)after which payment is to be made after Interim Payment Certificate signed by Project Manager and date of receipt of Invoice.		<b>30 days</b>
Time after which payment to be made after Final Payment Certificate signed by Project Manager and date of receipt of Invoice.		<b>60 days</b>
Appointer of Arbitrator		

## **SECTION VII - SPECIFICATIONS**

Specifications are included in the respective documents together with the bill of quantities.

**SECTION VIII - DRAWINGS**

ATTACHED

## **SECTION IX - BILL OF QUANTITIES**

### **Notes for preparing Bills of Quantities**

1.0 The objectives of the Bills of Quantities are;

- (a) to provide sufficient information on the quantities of Works to be performed to enable tenders to be prepared efficiently and accurately; and
- (b) when a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.

In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bill of Quantities should be as simple and brief as possible.

2.0 The Bills of Quantities should be divided generally into the following sections:

**(a) Preliminaries.**

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

The number of preliminary items to be priced by the tenderer should be limited to tangible items such as site office and other temporary works, otherwise items such as security for the Works which are primarily part of the Contractor's obligations should be included in the Contractor's rates.

**(b) Work Items**

(i) The items in the Bills of Quantities should be grouped into sections to distinguish between those parts of the Works which by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, or phasing of the Works, or considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities.

(ii) Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage or waste. Quantities should be rounded up or down where appropriate.

(iii) The following units of measurement and abbreviations are recommended for use.

Unit	Abbreviation	Unit	Abbreviation
cubic meter	M3 or cu m	millimeter	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m <sup>2</sup> or sq m
lump sum	sum	square millimeter	mm <sup>2</sup> or sq mm
meter	m	week	wk
metric ton (1,000 kg)	t		

(iv) The commencing surface should be identified in the description of each item for Work involving excavation, boring or drilling, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for Work involving excavation for which the excavated surface is not also the final surface. The depths of Work should be measured from the commencing surface to the excavated surface, as defined.

**(c) Daywork Schedule**



A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the Employer of the realism of rates quoted by the tenderers, the Daywork Schedule should normally comprise:

- (i) a list of the various classes of labour, and materials for which basic Daywork rates or prices are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Work executed on a Daywork basis; and
- (ii) a percentage to be entered by the tenderer against each basic Daywork Subtotal amount for labour, materials and plant representing the Contractor's profit, overheads, supervision and other charges.

**(d) Provisional Quantities and Sums**

(i) Provision for quantity contingencies in any particular item or class of Work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities, and not by increasing the quantities for that item or class of Work beyond those of the Work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a "Provisional Sum" in the Summary of the Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a "Provisional Sum" in the Summary of the Bill of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

(ii) Provisional sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialised Works should be included as a section of the main Bills of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name (s) of the specialised firms he proposes to engage to carry out the specialized Works as his approved domestic sub-contractors. Only provisional sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities.

**(e) Summary**

The Summary should contain a tabulation of the separate parts of the Bills of Quantities carried forward, with provisional sums for Daywork, for physical (quantity) contingencies, and for price contingencies (upward price adjustment) where applicable.

### **SECTION X - SUMMARY OF EVALUATION PROCESS**

Evaluation of duly submitted tenders will be conducted along the following three main stages: -

**6.1 Part I - Preliminary Evaluation Criteria Under Clause 3.35 of the ITT. These are mandatory requirements.** This shall include confirmation of the following: -

6.1.1 *Submission of Tender Security - Checking its validity, whether it is Original; whether it is issued by a local bank; whether it is strictly in the format required in accordance with the sample Tender Security Form(s).*

6.1.2 *Submission of Declaration Form(s) duly completed and signed.*

6.1.3 *Submission and considering Tender Form duly completed and signed.*

6.1.4 *Submission and considering the following:-*

6.1.4.1 *For Local Tenderers*

- a) *Company or Firm's Registration Certificate*
- b) *PIN Certificate.*
- c) *Valid Tax Compliance Certificate.*

6.1.4.2 *For Foreign Tenderers*

- a) *Company or Firm's Registration Certificate*
- b) *PIN Certificate or its equivalent in the country of bidder or a statement from the tax authorities in the Tenderer's country of origin indicating that such certificate or its equivalent is not issued.*
- c) *Valid Tax Compliance Certificate or its equivalent in the*

*country of bidder or a statement from the tax authorities in the Tenderer's country of origin indicating that such certificate or its equivalent is not issued.*

6.1.5 *That the Tender is valid for the period required.*

6.1.6 *Submission and considering the required number of sets original, copy 1 and copy 2*

6.1.7 *Site visit form signed and stamped by project manager.*

6.1.8 *Submission and considering the Confidential Business Questionnaire:-*

a) *Is fully filled.*

b) *That details correspond to the related information in the bid.*

c) *That the Tenderer is not ineligible as per paragraph 3.2 of the ITT.*

6.1.9 *Submission and considering the Certificate of Confirmation of Directors and Shareholding if any one of the undertakings owns a significant interest in the other or has at least one director or one substantial shareholder in common as per paragraph 3.2 and 3.41 of the ITT.*

6.1.10 *Record of unsatisfactory or default in performance obligations in any contract shall be considered. This shall include any Tenderer with unresolved case(s) in its performance obligations for more than two (2) months in any contract.*

6.1.11 *Notwithstanding the above, considering any outstanding orders where applicable and the production capacity indicated by the tenderer.*

***Tenderers will proceed to the Technical Stage only if they qualify in compliance with Part 1 above, Preliminary Evaluation under clause 3.37.***

**6.2 Part II - Technical Evaluation under clause 3.37 of the ITT. It will include the following stages: -**

6.2.1 **Table 1: Mandatory Technical Requirements (against Tender Requirements and Technical Specifications).** Verification and consideration of the following:-

	<b>Criteria</b>	<b>KPLC Requirement</b>
1	<i>Insurance covers.</i>	<i>Provide documentary evidence of having the following valid insurance covers. a. Group personal accident cover b. Public liability cover</i>
2	<i>Proposed construction period</i>	<i>Proposed construction period for the project accompanied by a proposed Works Program Chart</i>
3	<i>Building and Civil Engineering</i>	<i>Registration with National Construction Authority (NCA 5) and above</i>

6.2.1 Additional tender requirements based on a scoring criterion

<b>NO.</b>	<b>EVALUATION ATTRIBUTE</b>	<b>WEIGHTING</b>
		<b>%</b>
6.2.1	<i>Experience as main contractor in the construction of at least 5 years. a. Above 5 years– 15 marks b. Five years – 10marks c. Less than five years but not below 1 year - 5</i>	<b>15</b>

	<b>marks</b>	
6.2.2	<i>A statement of work methods ((Methodology). Include Gantt Chart and brief description.</i>	<b>5</b>
6.2.3	<p><i>Qualified Technical staff in the company relevant to the building construction industry who will actively be involved in the proposed project. Provide employment/appointment letters, contracts of the key personnel including length of service and termination date, CV, Academic and professional certificates and evidence of registration with relevant professional bodies and Telephone contacts.</i></p> <p><i>i) Building or civil or Engineer or Quantity surveyor --- 15 marks</i></p> <p><i>ii) Diploma in Building or civil or Quantity surveyor..... 10 marks</i></p> <p><i>Note: Bidders can only qualify in i or ii to get maximum 15 marks.</i></p>	<b>15</b>
6.2.4	<p><i>Qualified project management staffs in the company relevant to project management who are actively involved in the management of the company. (Provide employment/appointment letters, contracts of the key personnel including length of service, detailed CV accompanied by relevant academic and professional certificates and Telephone contacts.</i></p> <p><i>Manager with a degree and above - 15 marks</i></p> <p><i>Manager with a diploma - 10 marks</i></p>	<b>15</b>
6.2.5	<p><i>Numbers of years of gainful employment of key staff</i></p> <ol style="list-style-type: none"> <li><i>1. Project Manager</i> <ol style="list-style-type: none"> <li><i>i. 5 years and above 5 years – 5marks</i></li> <li><i>ii. Less than 5 years – 3 marks</i></li> </ol> </li> <li><i>2. Project Engineer –</i> <ol style="list-style-type: none"> <li><i>i. 5 years and above 5 years – 5marks</i></li> <li><i>ii. Less than 5 years – 3 marks</i></li> </ol> </li> <li><i>iii. General Foreman –</i> <ol style="list-style-type: none"> <li><i>i. 5 years and above 5 years – 5 marks</i></li> <li><i>ii. Less than 5 years – 3 marks</i></li> </ol> </li> </ol> <p><i>Employment records including length of service</i></p>	<b>15</b>
6.2.6	<i>The Tenderer’s undertaking that the key site management and technical personnel will be available for the contract – show proof with commitment letter.</i>	<b>10</b>
6.2.7	<i>Accomplishments: (previous &amp; current projects) Details of building projects undertaken successfully within the last 5 years each worth Ksh. 50 Million and above evidenced by letters of reference from clients, certificates of occupation</i>	<b>15</b>

	<p><i>and completion certificates for the respective projects. (for a project to qualify it must be at least 70% complete. For Projects that are not completed, letters of reference from respective Architects and Clients must be provided.</i></p> <p><b>Above 2 projects ----- 15 marks</b></p> <p><b>Two projects -----12 Marks</b></p> <p><b>1 project ----- 8 marks</b></p>	
6.2.8	<p><i>Tools and equipment. Provide list and type of relevant building construction tools and equipment e.g. trucks, cranes, excavators, bull dozers, mixers, etc owned by the company evidenced by ownership documents e.g. log books, receipts. Provide documentary evidence of ability to lease or hire relevant tools and equipment not owned by the company. Give a description of their application and performance to demonstrate technical capacity and an undertaking that the tools and equipment will be available for the execution of the contract.</i></p>	<b>10</b>
	<b>TOTAL</b>	<b>100</b>

***Tenderers will proceed to Financial Evaluation stage only if they score a minimum of 75% of the Technical Evaluation under clause 3.37.***

### 6.3 Part III – Financial Evaluation under clause 3.38 of the ITT.

Evaluation of the following Financial information against Tender Requirements and Specifications:-

NO.	EVALUATION CRITERIA	
6.3.1	a) Confirmation of the authenticity and sufficiency of the submitted Tender Security	
	b) Confirmation of and considering priced Bill of Quantities duly completed and signed.	
	c) Checking that the Tenderer has quoted prices based on all costs including duties and taxes	
	d) Where applicable, Conducting a financial comparison, including conversion of tender currencies into one common currency	
6.3.2	<p>Ascertaining the financial capability through Last Financial Year's audited financial statements (Audited Accounts - The Auditors must be currently registered by ICPAK and the statements must be stamped and signed) issued within the last 15 months which Statements should conform to International Accounting Standards One (IAS 1). which includes the following:-</p> <p>a) Checking and considering that the Tenderer's liquidity ratios are acceptable to KPLC and meet the threshold of:-</p> <p>(i.) Current ratios 1:1 i.e. current assets: current liabilities</p> <p>(ii.) Quick ratios (Acid test) of 1.0 i.e. (Cash + Accounts Receivable +</p>	

	<p><i>Short Term Investments) divided by Current Liabilities</i></p> <p><i>b) Checking and considering that the Tenderer's Solvency ratios in particular the Debt to Assets Ratio is acceptable to KPLC i.e. meets the threshold of at least 1:1Or</i></p> <p><i>for companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, a spot balance of a minimum of 20% of the Tender Price. The same should be as evidenced in the certified copies of bank statements at least in any day of the month of the Date of the Tender Document.</i></p>	
6.3.3	<i>Provide documentary evidence in form of certified audited accounts for the company for the last three years to indicate the company has had an annual turnover of over Kenya shillings fifty million (Kshs. 50 million)</i>	
6.3.4	<i>Provide documentary evidence of liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the contract.)</i>	
6.3.5	<i>Evidence of access to credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the contract, of no less than 2 months of Kshs. 10 Million (Kenya Shillings Ten Million) per month</i>	
6.3.6	<i>Submission of and considering the valid copy of certificate of Confirmation of Directorships and Shareholding issued by either the Registrar of Companies or Registrar of Business Names that is not more than three (3) months old from the Date of the Tender Document.</i>	
6.3.7	<p><i>Confirming the following: -</i></p> <p><i>a) that the Supplier's offered Delivery Schedule meets KPLC's requirements.</i></p> <p><i>b) that the Supplier's offered Terms of Payment meets KPLC's requirements.</i></p>	
6.3.8	<p><i>Considering information submitted in the Confidential Business Questionnaire against other information in the bid including:-</i></p> <p><i>a) Declared maximum value of business</i></p>	

**N.B**

***Award shall be to the lowest evaluated bidder***



**\*NOTES: -**

1. For purposes of evaluation, the exchange rate to be used for currency conversion shall be the selling exchange rate ruling on the date of tender closing provided by the Central Bank of Kenya. (Visit the Central Bank of Kenya website).
2. Total tender value means the Tenderer's total tender price inclusive of Value Added Tax (V.A.T) for the services it offers to provide.
3. For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original.
4. The spot balance of 20% required will be that which is seen in the certified bank statements at least in any day of the month of the Date of the Tender Document.

**SECTION XI - STANDARD FORMS**

- (i) Form of Tender
- (ii) Confidential Business Questionnaire
- (iii) Tender Security Form (Bank Guarantee)
- (iv) Tender Security Form (Letter of Credit)
- (v) Tender Security Form (Sacco Society, Micro Finance, Enterprise Fund)
- (vi) Tender Securing Declaration Form
- (vii) Declaration Form
- (viii) Letter of notification of award
- (ix) Letter of notification of regret
- (x) Contract Agreement Form
- (xi) Performance Security Form (Bank Guarantee)
- (xii) Performance Security Form (LC)
- (xiii) Letter of Acceptance
- (xiv) Qualification Information
- (xv) Site Visit Form

**(i) - TENDER FORM**

Date:.....

Tender No.....

**To:**

The Kenya Power & Lighting Company Limited,  
 Stima Plaza,  
 Kolobot Road, Parklands,  
 P.O Box 30099 – 00100,  
Nairobi, Kenya.

Ladies and Gentlemen,

1. Having read, examined and understood the Tender Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned Tenderer, offer to supply, deliver, install and commission (*the latter two where applicable*) ..... (*insert goods description*) in accordance and conformity with the said tender document for the sum of .....(*total tender amount inclusive of all taxes in words and figures*) or such sums as may be ascertained in accordance with the Price Schedule attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to deliver, install and commission the goods in accordance with the delivery schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the performance security of a licensed commercial bank in Kenya in a sum equivalent to ten percent (10%) of the

contract price for the due performance of the contract, in the form(s) prescribed by The Kenya Power & Lighting Company Limited.

- 4.\* We agree to abide by this Tender for a **period of.....days (Tenderer please indicate validity of your tender)** from the date fixed for tender opening as per the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. This Tender, together with your written acceptance thereof and your notification of award, shall not constitute a contract, between us. The contract shall be formed between us when both parties duly sign the written contract.
6. We understand that you are not bound to accept any Tender you may receive.

Yours sincerely,

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

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp or Seal of Tenderer

**\*NOTES:**

1. KPLC requires a validity period of at least ninety (90) days.
2. This form must be duly completed, signed, stamped and/or sealed.

**(ii) – CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM**

All Tenderers are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c) whichever applies to your type of business. Youth, Persons with disabilities and Women shall in addition complete part 2(d). Tenderers are advised that it is a serious offence to give false information on this form.

**Part 1 – General**

Business Name.....

Location of business premises.....

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

Postal Address ..... Postal Code .....

Tel No.....

Facsimile.....

Mobile and CDMA No.....

E-mail:.....

Nature of your business .....

Registration Certificate No.....

Maximum value of business which you can handle at any time KSh.....

Name of your Bankers .....Branch... ..

\*Names of Tenderer's contact person(s) .....

Designation/ capacity of the Tenderer's contact person(s) .....

Address, Tel, Fax and E-mail of the Tenderer's contact person(s) .....

.....

.....

**Part 2 (a) Sole Proprietor**

Your name in full .....  
 Nationality .....Country of origin .....

**Part 2 (b) Partnership**

Give details of partners as follows: -

Names	Nationality	Shares (%)
1.....		
2.....		
3.....		
4.....		
5.....		

**Part 2 (c) Registered Company**

Private or Public .....

State the nominal and issued capital of company-

\*Nominal in KSh. ....

\*Total Issued KSh. ....

Give details of all directors as follows

Name	Nationality	Shares (%)
1.....		
2.....		
3.....		
4.....		
5.....		

**Part 2 (d) Registered Youth, Women and Persons with Disabilities**

Give details of members as follows: -

Names	Nationality	Age	Gender	Shares (%)
1.....				
2.....				
3.....				
4.....				
5.....				

Name of duly authorized person to sign for and on behalf of the Tenderer ..  
.....

Capacity of the duly authorized person.....

Signature of the duly authorized person.....

**\*NOTES TO THE TENDERERS ON THE QUESTIONNAIRE**

1. *The address and contact person of the Tenderer provided above shall at all times be used for purposes of this tender.*
2. *The details on this Form are essential and compulsory for all Tenderers. **Failure to provide all the information requested shall lead to the Tenderer’s disqualification.***
3. *For foreign Tenderers please give the details of nominal and issued share capital in the currency of the country of origin of the Tenderer.*

**\*NOTES TO THE TENDERERS ON THE QUESTIONNAIRE**

1. *Youth, Persons with disabilities and Women Bidders shall attach their copies of the National Identity Card/ Passport*
2. *The address and contact person of the Tenderer provided above shall at all times be used for purposes of this tender.*
3. *The details on this Form are essential and compulsory for all Tenderers. **Failure to provide all the information requested shall lead to the Tenderer’s disqualification.***

**(iii) - TENDER SECURITY FORM – (BANK GUARANTEE)**



**(To Be Submitted On Bank’s Letterhead)**

**Date:**

**To:**

The Kenya Power & Lighting Company Limited,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 30099 – 00100,  
Nairobi, Kenya.

**WHEREAS** ..... (*name of the Tenderer*)  
(*hereinafter called “the Tenderer”*) has submitted its Tender dated ..... for the  
supply, installation and commissioning of..... (*please insert*  
*KPLC tender no. and name*) (*hereinafter called “the Tender”*);

**KNOW ALL PEOPLE** by these presents that **WE**.....of  
.....having our registered office at.....  
(*hereinafter called “the Bank”*), are bound unto The Kenya Power and Lighting  
Company Limited (*hereinafter called “KPLC” which expression shall where the*  
*context so admits include its successors-in-title and assigns*) in the sum of  
..... for which payment well and truly to be made to the  
said KPLC, the Bank binds itself, its successors, and assignees by these presents.

We undertake to pay you, upon your first written demand declaring the Tenderer to be  
in breach of the tender requirements and without cavil or argument, the entire sum of  
this guarantee being ..... (*amount of guarantee*) as aforesaid, without  
you needing to prove or to show grounds or reasons for your demand or the sum  
specified therein.

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

This guarantee is valid until the .....day of.....20.....

EITHER

**SEALED** with the )  
**COMMON SEAL** )

of the said **BANK** ) \_\_\_\_\_  
this .....day ) **BANK SEAL**  
of .....20.... )

in the presence of :- )  
 )  
 )  
 \_\_\_\_\_ )  
 )  
 and in the presence of:- )  
 )  
 \_\_\_\_\_ )

OR

**SIGNED** by the **DULY AUTHORISED REPRESENTATIVE(S)/ ATTORNEY(S)** of the **BANK**

\_\_\_\_\_  
 Name(s) and Capacity (ies) of duly authorised representative(s)/ attorney(s) of the Bank

\_\_\_\_\_  
 Signature(s) of the duly authorised person(s)

**NOTES TO TENDERERS AND BANKS**

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.*
  
2. *It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed three (3) days from the date of KPLC’s query. Should there be no conclusive response by the Bank within this period, such Tenderer’s Tender Security shall be deemed as invalid and the bid rejected.*
  
3. ***The issuing bank should address its response or communication regarding the bond to KPLC at the following e-mail address – “guarantees@kplc.co.ke”***

4. *The Tender validity period is NINETY (90) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPLC. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

**(iv) - TENDER SECURITY – (LETTERS OF CREDIT)**

The Mandatory Conditions to be included in the Letters are in two parts, A and B.

**Part A**

**Form of Documentary credit** - “Irrevocable Standby”

**Applicable rules** - “Must be UCP Latest Version” i.e. UCP 600 (2007 REVISION) ICC Publication No. 600.

**Place of expiry** - At the counters of the advising bank.

**The SBLC should be available** – “By Payment”

**Drafts should be payable at** - “SIGHT”

**Documents required** -

1. Beneficiary’s signed and dated statement demanding for payment under the letter of credit no..... (*Insert LC No.*) as..... (*Name of applicant*) (hereinafter called the “Tenderer”) indicating that the “Tenderer” has defaulted in the obligations of the Tenderer as stated by the Beneficiary.
2. The Original Letter of Credit and all amendments, if any.

**Additional Conditions** -

1. All charges levied by any bank that is party to this documentary credit are for the account of the applicant.
2. There should be no conditions requiring compliance with the specific regulations or a particular country’s Law and regulations.

**Charges** - All bank charges are for the account of the applicant.

\*Confirmation instructions – (See notes below)

**Part B**

The proceeds of these Letters are payable to KPLC -

- a) if the Tenderer withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which the Tenders must remain valid.
- b) if the Tenderer rejects a correction of an arithmetic error
- c) if the Tenderer fails to enter into a written contract in accordance with the Tender Document
- d) if the successful Tenderer fails to furnish the performance security in accordance with the Tender Document.
- e) if the Tenderer fails to extend the validity of the tender security where KPLC has extended the tender validity period in accordance with the Tender Document.

**NOTES TO TENDERERS AND BANKS.**

1. *Please note that should the Tender Security (LC) omit any of the above conditions the LC shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the LC where such LC is required in the Tender.*
2. *It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to any queries from KPLC. The period for response shall not exceed three (3) days from the date of KPLC's query. Should there be no conclusive response by the Bank within this period, such Tenderer's Tender Security shall be deemed as invalid and the bid rejected.*
3. ***The issuing bank should address its response or communication regarding the bond to KPLC at the following e-mail address – “guarantees@kplc.co.ke”***
4. *The Tender validity period is NINETY (90) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPLC. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*
5. *All Guarantees issued by foreign banks must be confirmed by a local bank in Kenya.*

**(v) - TENDER SECURITY FORM (SACCO SOCIETY, DEPOSIT TAKING MICRO FINANCE INSTITUTIONS, WOMEN ENTERPRISE FUND & YOUTH ENTERPRISE FUND)**

**(To Be Submitted On Institutions Letterhead)**

**Date:**

**To:**

The Kenya Power & Lighting Company Limited,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 30099 – 00100,  
Nairobi, Kenya.

**WHEREAS**.....(hereinafter called “the Tenderer”) has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*) and its Tender dated .....(*insert Tenderer’s date of Tender taken from the Tender Form*) to supply .....(*description of the Goods*) (hereinafter called “the Contract);

**AND WHEREAS** it has been stipulated by you in the said Contract that the Tenderer shall furnish you with an Institution’s guarantee by an acceptable Institution for the sum specified therein as security for compliance of the Tenderer’s performance obligations in accordance with the Contract;

**AND WHEREAS** we have agreed to give the Tenderer a Guarantee;

**THEREFORE WE HEREBY AFFIRM** that we are Guarantors and responsible to you, on behalf of the Tenderer, up to a total of..... (*amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the Tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of ..... (*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the .....day of.....20....

EITHER

**SEALED** with the )  
**COMMON SEAL** )  
of the said **INSTITUTION** )

)

this .....day ) \_\_\_\_\_

INSTITUTION SEAL

)  
 of .....20.... )  
 in the presence of :- )  
 )  
 \_\_\_\_\_ )  
 )  
 and in the presence of:- )  
 )  
 \_\_\_\_\_ )

OR

**SIGNED** by the **DULY AUTHORISED**  
**REPRESENTATIVE(S)/ ATTORNEY(S)** of  
 the **INSTITUTION**

\_\_\_\_\_  
 Name(s) and Capacity(ies) of duly authorised representative(s)/ attorney(s) of the  
**Institution.**

\_\_\_\_\_  
 Signature(s) of the duly authorised person(s)

**NOTES TO SUPPLIERS AND INSTITUTIONS**

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.*
  
2. *It is the responsibility of the Tenderer to sensitize its issuing institution on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed three (3) days from the date of KPLC’s query. Should there be no conclusive response by the institution within this period, such Tenderer’s Tender Security shall be deemed as invalid and the bid rejected.*

3. *The issuing institution should address its response or communication regarding the Tender Security to KPLC at the following e-mail address – “guarantees@kplc.co.ke”*
4. *The Tender validity period is NINETY (90) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPLC. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

**(vi) - TENDER SECURING DECLARATION FORM**  
*(Only applicable to Youth, Women and Persons with disability category)*

**(The Bidder shall complete in this form in accordance with the instructions indicated)**



Date:.....  
( insert date (as day, month, year) of Bid Submission)

Tender No.....  
(Insert number of bidding process)

To:  
The Kenya Power & Lighting Company Limited,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 30099 – 00100,  
Nairobi, Kenya.

We, the undersigned declare that.

1. We understand that, according to your conditions, bids must be supported by a bid-securing declaration.
2. We accept that we will be automatically be suspended from being eligible for bidding in any contract with the purchaser for the period of the time of (insert the number of months or years) starting on (insert date), if we are in breach of our obligation(s) under the bid conditions, because we-
  - a. Have withdrawn our bid during the period of bid validity specified by us in the bidding data sheet: or
  - b. Having been notified of the acceptance of our bid by the purchaser during the period of bid validity,
    - i. Fail or refuse the contract, if required, or
    - ii. Fail or refuse to finish the performance security, in accordance with the ITT
3. We understand that this bid securing declaration shall expire if we are not the successful bidder, upon the earlier of
  - i. Our receipt of a copy of your notification of the name of the successful bidder; or
  - ii. Twenty-eight days after the expiration of our tender.
4. We understand that if we are a joint venture, the bid securing declaration must be in the name of the joint venture that submits the bid, and the joint venture has not been legally constituted at the time of bidding, the bid securing declaration shall be in the names of all future partners as named in the letter of intent.

Signed:.....  
(insert signature of person whose name and capacity are shown)  
in the capacity of.....  
(insert legal capacity of person signing the bid securing declaration)

Name:.....  
(insert complete name of person signing the bid securing declaration)

Duly authorized to sign the bid for and on behalf of:  
.....  
(insert complete name of bidder)

Date on..... Day of.....  
(insert date signing)

**(vii) - DECLARATION FORM**

Date \_\_\_\_\_

**To:**

The Kenya Power & Lighting Company Limited,

P.O Box 30099 – 00100,  
Stima Plaza, Kolobot Road, Parklands,  
Nairobi,  
KENYA.

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address) \_\_\_\_\_  
\_\_\_\_\_ declare the following: -

- a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 of ITT (Eligible Tenderers) of the Instruction to Tenderers.
- d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- e) That I/ We are **not** associated with any other Tenderer participating in this Tender.
- f) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

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

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp or Seal of Tenderer

**(viii) – DRAFT LETTER OF NOTIFICATION OF AWARD**

**To:** *(Name and full address of the Successful Tenderer)*.....

**Date:**

.....

Dear Sirs/ Madams,

**RE: NOTIFICATION OF AWARD OF TENDER NO. ....**

We refer to your Tender dated..... and are pleased to inform you that following evaluation, your Tender has been accepted as follows: -

.....  
.....  
.....  
.....

This notification does not constitute a contract. The formal Contract Agreement, which is enclosed herewith shall be entered into upon expiry of seven (7) days from the date hereof but not later than thirty (30) days after expiry of tender validity pursuant to the provisions of the Public Procurement and Disposal Act, 2005 (*or as may be amended from time to time or replaced*).

Kindly sign, and seal the Contract Agreement. Further, initial and stamp on all pages of the documents forming the Contract that are forwarded to you with this letter. Thereafter return the signed and sealed Contract together with the documents to us within seven (7) days of the date hereof for our further action.

We take this opportunity to remind you to again note and strictly comply with the provisions as regards the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

**FOR: THE KENYA POWER & LIGHTING COMPANY LIMITED**

**GENERAL MANAGER, SUPPLY CHAIN**

Enclosures

**(ix) – DRAFT LETTER OF NOTIFICATION OF REGRET**

**To:** *(Name and full address of the Unsuccessful Tenderer).....*

**Date:**

Dear Sirs/ Madams,

**RE: NOTIFICATION OF REGRET IN RESPECT OF TENDER NO.**

**.....**

We refer to your Tender dated..... and regret to inform you that following evaluation, your Tender is unsuccessful. It is therefore not accepted. The brief reasons are as follows:-

- 1. ....
- 2. ....
- 3. .... etc...

The successful bidder was \_\_\_\_\_.

However, this notification does not reduce the validity period of your Tender Security. In this regard, we request you to relook at the provisions regarding the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

You may collect the tender security from our *Legal Department (Guarantees Section), on the 2<sup>nd</sup> Floor, Stima Plaza, Kolobot Road, Parklands, Nairobi* only after expiry of eighteen (18) days from the date hereof on Mondays and Wednesdays ONLY between 9.00 a.m to 12.30 pm and 2.00p.m to 4.00p.m.

It is expected that by that time KPLC and the successful bidder will have entered into a contract pursuant to the Public Procurement and Disposal Act, 2005 (*or as may be amended from time to time or replaced*). When collecting the Security, you will be required to produce the original or certified copy of this letter.

We thank you for the interest shown in participating in this tender and wish you well in all your future endeavours.

Yours faithfully,

**FOR: THE KENYA POWER & LIGHTING COMPANY LIMITED**

**GENERAL MANAGER, SUPPLY CHAIN**

**(x) - CONTRACT AGREEMENT FORM**

**THIS AGREEMENT** made this.....day of.....**20.... BETWEEN THE KENYA POWER & LIGHTING COMPANY LIMITED**, a limited liability company duly incorporated under the Companies Act, Chapter 486 of the Laws of Kenya, with its registered office situated at Stima Plaza, Kolobot Road, Parklands, Nairobi in the Republic of Kenya and of Post Office Box Number 30099-00100,

Nairobi in the Republic aforesaid (*hereinafter referred to as the “KPLC”*) of the one part,

**AND**

..... (*Contractor’s full name and principal place of business*) a duly registered entity according to the laws of..... (*state country*) and of Post Office Box Number.....(*full address physical and postal of Contractor*) in the Republic aforesaid, (*hereinafter referred to as the “Contractor”*) of the other part;

**WHEREAS** KPLC invited tenders for certain works, that is to say for ..... (*KPLC insert description of works*) under Tender Number..... (*KPLC insert tender number*)

**AND WHEREAS** KPLC has accepted the Tender by the Contractor for the services in the sum of .....(*KPLC specify the total amount in words which should include any payable taxes, duties and insurance where applicable e.g. Value Added Tax*) (*hereinafter called “the Contract Price”*).

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -**

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract and the Tender Document.
2. Unless the context or express provision otherwise requires: -
  - a) reference to “this Agreement” includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
  - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.
  - c) the Official Purchase Order shall also mean the Official Order or Local Purchase Order.
  - d) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
  - e) words importing the singular number only include the plural number and

vice-versa and where there are two or more persons included in the expression the “*Contractor*” the covenants, agreements obligations expressed to be made or performed by the Contractor shall be deemed to be made or performed by such persons jointly and severally.

- f) where there are two or more persons included in the expression the “*Contractor*” any act default or omission by the Contractor shall be deemed to be an act default or omission by any one or more of such persons.
3. In consideration of the payment to be made by KPLC to the Contractor as hereinbefore mentioned, the Contractor hereby covenants with KPLC to perform and Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract provide the services and remedy any defects thereon in conformity in all respects with the provisions of the Contract.
4. KPLC hereby covenants to pay the Contractor in consideration of the proper performance and provision of the services 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.
5. The following documents shall constitute the Contract between KPLC and the Contractor and each shall be read and construed as an integral part of the Contract: -
- a) this Contract Agreement
  - b) Letter of Acceptance dated .....
  - a) Conditions of Contract
  - b) Special Conditions of Contract
  - c) Official Purchase Order where applicable.
  - d) Specifications
  - e) Drawings
  - h) Priced Bill of Quantities and agreed upon with KPLC.
  - i) Work program (work methods and schedule)
  - j) KPLC’s Notification of Award dated.....
  - k) Tender Form signed by the Contractor
  - l) Declaration Form signed by the Contractor/ successful Tenderer
  - m) Warranty
6. In the event of any ambiguity or conflict between the contract documents listed above, the order of precedence shall be the order in which the contract

documents are listed in 5 above except where otherwise mutually agreed in writing.

7. The Commencement date shall be the working day immediately following the fulfillment of all the following: -
  - a) Execution of this Contract Agreement by KPLC and the Contractor.
  - b) Issuance of the Performance Bond by the Contractor and confirmation of its authenticity by KPLC.
  - c) Issuance of the Official Order by KPLC to the Contractor.
  - d) Where applicable, Opening of the Letter of Credit by KPLC.
  
8. The period of contract validity shall begin from the Commencement date and end at the expiry of the Defects Liability Period.  
 Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.
  
9. It shall be the responsibility of the Contractor to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.
  
10. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.
  
11. No failure or delay to exercise any power, right or remedy by KPLC shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
  
12. Notwithstanding proper completion of performance or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.
  
13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service for Local contractors and five (5) days for Foreign contractors.



14. For the purposes of Notices, the address of KPLC shall be Company Secretary, The Kenya Power & Lighting Company Limited, 7<sup>th</sup> Floor, Stima Plaza, Kolobot Road, Post Office Box Number 30099–00100, Nairobi, Kenya, Facsimile + 254-20-3750240/ 3514485. The address for the Contractor shall be the Contractor’s address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

**IN WITNESS** whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya the day and year first above written.

**SIGNED** for and on behalf  
of **KPLC**

\_\_\_\_\_  
GENERAL MANAGER, CORPORATE AFFAIRS & COMPANY SECRETARY

**SEALED** with the **COMMON SEAL**  
of the **CONTRACTOR**  
in the presence of:-

\_\_\_\_\_  
DIRECTOR

\_\_\_\_\_  
*Affix Contractor’s Seal here*

\_\_\_\_\_  
DIRECTOR’S FULL NAMES

and in the presence of:-

\_\_\_\_\_  
DIRECTOR/ COMPANY SECRETARY

\_\_\_\_\_  
DIRECTOR/ COMPANY SECRETARY’S FULL NAMES

DRAWN BY: -

C/o The Kenya Power & Lighting Company Limited,  
7<sup>th</sup> Floor, Stima Plaza,  
Kolobot Road, Parklands,  
Post Office Box Number 30099-00100,  
NAIROBI, KENYA,

Telephones: + 254-20-3201000/ 731

Facsimile: + 254-20-3514485/ 3750240

**(xi) PERFORMANCE SECURITY FORM (BANK GUARANTEE)**

**(To Be Submitted On Bank’s Letterhead)**

**Date:**

**To:**

The Kenya Power & Lighting Company Limited,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 30099 – 00100,  
Nairobi, Kenya.

**WHEREAS**.....(hereinafter called “the Contractor”) has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*) and its Tender dated .....(*insert Contractor’s date of Tender taken from the Tender Form*) to supply .....(*description of the works*) (hereinafter called “the Contract);

**AND WHEREAS** it has been stipulated by you in the said Contract that the Contractor shall furnish you with a bank guarantee by an acceptable bank for the sum specified therein as security for compliance of the Contractor’s performance obligations in accordance with the Contract;

**AND WHEREAS** we have agreed to give the Contractor a guarantee;

**THEREFORE WE HEREBY AFFIRM** that we are Guarantors and responsible to you, on behalf of the Contractor, up to a total of..... (*amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the Contractor to be in default under the Contract and without cavil or argument, any sum or sums within the limits of .....  
(*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the .....day of.....20....

EITHER

**SEALED** with the )  
**COMMON SEAL** )  
of the said **BANK** )  
)

this .....day ) \_\_\_\_\_  
 ) BANK SEAL  
 of .....20.... )  
 in the presence of :- )  
 )  
 \_\_\_\_\_ )  
 )  
 and in the presence of:- )  
 )  
 \_\_\_\_\_ )

OR

**SIGNED** by the **DULY AUTHORISED REPRESENTATIVE(S)/ ATTORNEY(S)** of the **BANK**

\_\_\_\_\_  
 Name(s) and Capacity(ies) of duly authorised representative(s)/ attorney(s) of the Bank

\_\_\_\_\_  
 Signature(s) of the duly authorised person(s)

**NOTES TO CONTRACTORS AND BANKS**

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Performance Security Bond (the Bond) to be furnished by the successful Tenderer/ Supplier. If any are made, the Bond may not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the Bond where such Bond is required in the tender and Contract.*
  
2. *KPLC shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Contractor to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed five (5) days from the date of KPLC's query. Should there be no conclusive response by the Bank within this period, such Contractor's Performance Security may be deemed as invalid and the Contract nullified.*

3. ***The issuing Bank should address its response or communication regarding the bond to KPLC at the following e-mail address – “guarantees@kplc.co.ke”***

**(xii) - PERFORMANCE SECURITY (LC)*****Mandatory Conditions that should appear on the Performance Security (LC).*****Form of Documentary credit** - “Irrevocable Standby”**Applicable rules** - “Must be UCP Latest Version” i.e. UCP 600 (2007 REVISION) ICC Publication No. 600.**Place of expiry** - At the counters of the advising bank.**The SBLC should be available** – “By Payment”**Drafts should be payable at** - “SIGHT”**Documents required** -

1. Beneficiary’s signed and dated statement demanding for payment under the letter of credit no..... *(Insert LC No.)* as..... *(Name of Applicant)* (hereinafter called the “Contractor”) indicating that the “Contractor” has defaulted in the performance and adherence to and performance of the contract between the Beneficiary and the Contractor.
2. The Original Letter of Credit and all amendments, if any.

**Additional Conditions** -

1. All charges levied by any bank that is party to this documentary credit are for the account of the Applicant.
2. (Include) that there should be no conditions requiring compliance with the specific regulations or a particular country’s laws and regulations.

**Charges** - All bank charges are for the account of the Applicant.

Confirmation instructions – (See notes below)

**NOTES TO CONTRACTORS AND BANKS**

1. *Please note that should the Performance Security (LC) omit any of the above conditions the LC shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the LC where such LC is required in the tender and Contract.*
2. *KPLC may seek authentication of the Performance Security (LC) from the issuing bank. It is the responsibility of the Contractor to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for*

*response shall not exceed five (5) days from the date of KPLC's query. Should there be no conclusive response by the Bank within this period, such Contractor's Performance Security (LC) may be deemed as invalid and the Contract nullified.*

- 3. *The issuing bank should address its response or communication regarding the bond to KPLC at the following e-mail address – "guarantees@kplc.co.ke"***
4. *All Guarantees issued by foreign banks must be confirmed by a local bank in Kenya.*

**(xiii) - LETTER OF ACCEPTANCE**

**[letter-head 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



**(xiv) QUALIFICATION INFORMATION****1. Individual Tenderers or Individual Members of Joint Ventures**

- 1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate)

Place of registration: \_\_\_\_\_

Principal place of business \_\_\_\_\_

Power of attorney of signatory of tender \_\_\_\_\_

- 1.2 Total annual volume of construction work performed in the last three years

Year	Volume	
	Currency	Value
Year 1		
Year 2		
Year 3		

- 1.3 Work performed as Main Contractor on works of a similar nature and volume over the last three years. Also list details of work under way or committed, including expected completion date.

Project Name	Name of Client and contact person (Address & Telephone No.)	Type of Work performed and year of completion	Value of contract

- 1.4 Major items of Contractor's Tools & Equipment proposed for carrying out the Works. List all information requested below. (Attach evidence of ownership or lease)

Item of Tools & Equipment	Description, Make and age (years)	Condition(new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)

_____	_____	_____	_____
_____	_____	_____	_____
_____ (etc	_____	_____	_____
_____ .)	_____	_____	_____

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract as required by Subsection 3.20 of the Instructions to Tenderer, Attach biographical data.

Bidders should provide the names of suitably qualified personnel.

<b>1.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>2.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>3.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>4.</b>	<b>Title of position*</b>
	<b>Name</b>

**Resume for each Proposed Personnel**

The data on their experience should be supplied using the Form below for each candidate.

<b>Name of Bidder</b>
-----------------------

<b>Position</b>		
<b>Personnel information</b>	<b>Name</b>	<b>Date of birth</b>
	<b>Professional qualifications</b>	
<b>Present employment</b>	<b>Name of employer</b>	
	<b>Address of employer</b>	
	<b>Telephone</b>	<b>Contact (manager / personnel officer)</b>
	<b>Fax</b>	<b>E-mail</b>
	<b>Job title</b>	<b>Years with present employer</b>

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

<b>From</b>	<b>To</b>	<b>Company / Project / Position / Relevant technical and management experience</b>

**1.6 Proposed Subcontractors for works**

As per the requirements of Clause 3.20 of Conditions of Contract, following is a list of subcontractors and the portions of the Work to be subcontracted:

The following Subcontractors and/or manufacturers are proposed for carrying out the item of the facilities indicated. Bidders are free to propose more than one for each item

Sections of the Works	Value of Subcontract	Subcontractor (name and address)	Experience in similar work
_____	_____	_____	_____
_____	_____	_____	_____
(etc.)	_____	_____	_____

- 1.7 Financial reports for the last three years: balance sheets, profit and loss statements, auditor’s reports, etc. List below and attach copies of audited financial statements.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of supportive documents.

---

---

---

---

- 1.9 Name, address and telephone, telex and facsimile numbers of banks and/or institution that may provide reference if contacted by the Employer.

---

---

---

---

- 1.10 Statement of compliance with the requirements of Clause 3.2.6 of the Instructions to Tenderers.

---

---

---

---

- 1.11 Proposed program (work method and schedule) in compliance with requirement of clause 3.6 of the Instructions to Tenderers. Descriptions, drawings and charts, as necessary, to comply with the requirements of the tendering documents.

**2 Joint Ventures**

- 2.1 The information listed in 1.1 – 1.10 above shall be provided for each partner of the joint venture.
- 2.2 The information required in 1.11 above shall be provided for the joint venture.
- 2.3 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture
- 2.4 Attach the Agreement among all partners of the joint venture ( and which is legally binding on all partners), which shows that:
  - a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
  - c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge

**(xv) - SITE VISIT FORM**

**CONFIRMATION OF PRE-BID SITE VISIT**

Name of Tenderer.....

Date of Visit.....

Name, position and signature of the Tenderer's staff visiting the site.

Name:.....

Position.....

Qualification

Signature..... Tenderer's Official

Stamp.....

Site Visit conducted by Kenya Power Authorised Officer's

Name .....

Signature.....