



**KP1/9AA-2/PT/21/NM/15-16- TENDER FOR PREQUALIFICATION OF
CONTRACTORS FOR ROADS/PAVEMENT OPENING/CUTTING,
DUCTING AND REINSTATEMENT
2016-2018**

October, 2015

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

(E-PROCUREMENT TENDER OPENING SYSTEM)

**(ENSURE YOU READ THE APPENDIX TO INSTRUCTIONS
TO TENDERERS)**

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SECTION I - INVITATION TO TENDER

DATE: October 2015

KP1/9AA-2/PT/21 /NM/15-17 TENDER FOR PREQUALIFICATION OF CONTRACTORS FOR ROADS/PAVEMENT OPENING/CUTTING, DUCTING AND REINSTATEMENT SERVICES

1.1 Introduction

The Kenya Power & Lighting Company Ltd (KPLC) invites bids from eligible Tenderers for **KP1/9AA-2/PT/21 /NM/15-16- TENDER FOR PREQUALIFICATION OF CONTRACTORS FOR ROADS/PAVEMENT OPENING/CUTTING, DUCTING AND REINSTATEMENT.**

Interested eligible Tenderers may obtain further information from the General Manager, Supply Chain, The Kenya Power & Lighting Company Limited at Stima Plaza, 3rd 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 viewed at **KPLC E-Procurement Web Portal** found on the KPLC website (www.kplc.co.ke) beginning on **30/10/2015**

1.3 Submission of Tender documents

Completed Tenders are to be **saved as PDF** documents marked **KP1/9AA-2/PT/21 /NM/15-17-TENDER FOR PREQUALIFICATION OF CONTRACTORS FOR ROADS/PAVEMENT OPENING/CUTTING, DUCTING AND REINSTATEMENT** and submitted in the **KPLC E-Procurement Web Portal** found on the KPLC website (www.kplc.co.ke) so as to be received on or before **17/11/2015 at 10.30 a.m.**

1.4 Prices

Offered Price should be inclusive of all taxes, duties, levies and delivery costs to the premises (where applicable) of KPLC or other specified site **must be in Kenya Shillings** and shall remain valid for one hundred and twenty (120) days from the closing date of the tender.

1.5 Opening of submitted Tenders

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 meeting on **09/11/2015** to be held at the **Stima Plaza Auditorium at 10.30 a.m.**

SECTION II - TENDER SUBMISSION CHECKLIST

Tender Submission Format

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

No.	Item	Tick Where Provided
1	Form of Tender	
2*	Copy of Valid Tax Compliance Certificate	
3	Declaration Form	
4	Confidential Business Questionnaire (CBQ)	
5*	Copy of PIN Certificate	
6	Copy of Company or Firm's Registration Certificate	
7	Four Names with full contact as well as physical addresses of previous customers of similar goods together with a letter from each of them confirming completion of the contracts on schedule.	
8	Statement on Deviations	
9	Registration Certificate from National Construction Authority (NCA)	
10	Copy of a CR12 search showing list of Directors. An enterprise owned by Youth, Women or persons with disabilities shall have to show proof of registration with the relevant government body and has at least 70% membership of youth, women or persons with disabilities and the leadership shall be 100% youth, women and persons with disability, respectively.	
11	Price Schedule(s)	
12	Audited Financial Statements. The audited financial statements Required must be those that are reported within fifteen (15) calendar months of the date of the tender document. <i>(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).</i>	
13	Any other document or item required by the Tender Document	

***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. All Kenyan registered Tenderers must provide the Personal Identification Number Certificate (PIN Certificate).

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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 :-
 - At the Ministry of Lands or,
 - 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 1,000/=.

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 General Manager, Supply Chain 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 BQ 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 subparagraphs 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 successful Tenderer shall furnish a Performance Security being the sum of **Ksh. 200,000.00**.

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 one hundred and twenty (**120**) 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 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.

3.27.3 The order and arrangement as indicated in the Tender Submission Checklist will be considered as the Tender Formats.

3.27.4 Any Tender not prepared and signed in accordance with this paragraph, and in particular subparagraphs 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 initialed 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 initialed 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

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.

3.25.4 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

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 VI 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

3.37.1 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.

3.38.2 KPLC will examine the Tenders to determine whether they conform to the Preliminary Evaluation Criteria set out in Section VI Evaluation Criteria.

3.38.3 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.

3.38 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 pre-requisite 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 will be been determined to be substantially responsive after the financial proposals.

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 Evaluated Successful Tenderer

3.46.1 Clarifications may be undertaken with the 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 fourteen (14) 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 any thing 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.

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 Appendix, the provisions of the Appendix herein shall prevail over those of the ITT.

No.	ITT Reference Clause	Particulars of Appendix
1.	3.2 Eligible Tenderers	<i>Only Local Registered contractors with National Construction Authority are eligible.</i>
2.	3.16 Documents Comprising the Tender – List of Previous Customers	<ul style="list-style-type: none"> a) <i>Declaration Form, Tender Form and a Price Schedule completed in compliance with paragraphs 3.27, 3.17, 3.18 and 3.19.</i> b) <i>Documentary evidence established in accordance with paragraph 3.21 that the Tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.</i> c) <i>Documentary evidence established in accordance with paragraph 3.14 that the services and any ancillary thereto to be provided by the Tenderer conform to the tender documents, and,</i> d) <i>A detailed list of previous customers as prescribed for similar services on tender and their contact addresses shall be submitted with the Tender with Reference letters from three (3) major clients for similar jobs</i>
3.	3.20 (a) Manufacturer’s Principal’s Authorization	<i>Not required for this tender</i>
4.	3.20 Documentary evidence of financial capability	<i>The audited financial statements required must be those that are reported within fifteen (15) calendar months of the date of the tender document. (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</i>

		<i>should be original).</i>
5.	3.20 (c) and (d) Documents of evidence of eligibility	<ul style="list-style-type: none"> a) <i>Tax Compliance Certificate issued by the relevant tax authorities.</i> b) <i>Company's or firms registration Certificate, Copy of PIN Certificate and copy of Valid Trading License.</i> c) <i>Detailed information on Supervisory and personnel, Transport and Tools & equipment as indicated in Forms 2 to 4 together with required attachments as indicated in the tender document.</i> d) <i>Submission of documents showing evidence of possession of a Workshop /Yard i.e. Title deed, Lease agreement</i> e) <i>Submission of documents showing evidence of possession of an office i.e. Lease agreement.</i> f) <i>that the Tenderer is duly registered with the Ministry of Roads and or Public Works and or Transport & Infrastructure for construction of paved roads category .</i> g) <i>that the Tenderer is duly registered with the National Construction Authority (NCA) for construction of paved roads.</i>
	3.21 (a) Catalogues, Brochures, Manufacturer's/ Principal's Drawings	<i>Not required for this tender</i>
7.	3.23 Warranty – Period of	<i>Not required for this tender</i>
8.	3.24 Performance bond	<i>The successful Tenderer shall furnish a Performance Bond being the sum of Ksh. 200,000.00</i>
9.	3.44 Mode of Award of Contract	<i>Bidders who meet the tender requirements shall be prequalified. Award will be on the basis of a counter offered rate to the prequalified firms by the procuring entity. The rate to be counter offered shall be determined by the procuring entity.</i>

SECTION IV – SCHEDULES OF SERVICES

EXCAVATION

EXCAVATION		
ITEM NO.	ITEM DESCRIPTION	UNIT
1a	Micro Tunneling under the tarmac rd, including installation of 150mm diameter PVC cable duct as required and concrete surround at the edges.	LM
1b	Micro Tunneling under the tarmac rd, including installation of 100mm PVC cable duct as required	LM
1c	Micro Tunneling under the tarmac rd, including installation of 50mm PVC cable duct as required	LM
1d	Wall drilling, including installation of 150mm cable duct as required	No
2	Excavate and construct manhole complete with cover as per appropriate KPLC standard of finishing	M ³
3	Excavate and construct turret/distribution board plinth as per KPLC standard.	No
4	Clear the 0.6m TO 0.75m wide cable trench site of all bushes, shrubs, undergrowth and the like and load and cart away from site	M ²
5	Excavate 0.6m to 0.75m wide cable trench in soil (cotton, murrum, red soil, clay, loam etc) commencing from ground level and not exceeding 3.0m deep and load and cart away from site the excess excavated material unless instructed otherwise by the K.P.L.C. supervisor	M ³
6	Excavate 0.6 to 0.75m wide cable trench in tarmac footpath or pavement (precast concrete, Insitu concrete, Terrazzo, reinforced concrete, cabroworks etc) Commencing from finished pavement level and not exceeding 3.0m deep and load and cart away the excess excavated material unless instructed otherwise by the KPLC Supervisor	M ³
7	Excavate a 0.6m to 0.75m wide cable trench in tarmac road commencing from finished road level and not exceeding 3.0m deep and cart away the excess excavated material unless otherwise directed by the KPLC supervisor on site	M ³
8	Excavate a 0.6m to 0.75m wide cable trench in rock of all classes A,B,C, etc. (The unit rate should cover all the classes of rock) and cart away the excess excavated material unless otherwise directed by the KPLC supervisor on site	M ³
	NOTE: The cost of all the necessary planking and strutting to sides of this cable trenches and dewatering to keep this excavations free from general water is deemed to be included in the quoted unit rates. The abbreviations stand for:- M ² – square meter, LM – Linear meter, M ³ – meter cubed	

REINSTATEMENT		
ITEM NO	ITEM DESCRIPTION	UNIT
1	Reinstate the excavated trench to the standards specified in (KPLC Drg No. 02A) using the excavated material	M ³
2	Reinstate the excavated trench to the specified standards in KPLC Drg No.02A using imported (not the excavated material) red soil	M ³
3	Reinstate the excavated trench to the specified standards in KPLC Drg No.02A using imported (not the excavated material) Murrum	M ³
4	Reinstate the excavated trench to the specified standards in KPLC Drg No.02A using imported River sand	M ³
5	Reinstate the excavated trench in pavement to the standards specified for a pavement in KPLC Drg No. 02A.	M ³

6	Reinstate the excavated trench in tarmac road to the specified standards for a tarmac road as per KPLC Drg No. 01 and as required by N.C.C or M.O.P.W.	M ³
7	Reinstate the excavated trench using (1:2:4) concrete reinforced with BRC No. A142	M ³
8	Reinstate the excavated trench using murrum compacted to 95% maximum dry density at 80-105% optimum moisture content (AASHTO T 180)	M ³
9	Reinstate the excavated trench using approved hardcore compacted to 96% maximum dry density at 80 – 100% optimum moisture content (BS 1377 Test 14)	M ³
10	Reinstate the excavated trench in cabro works or tarmac footpath to the standard that was in place before the site was disturbed	M ³
11	Reinstate grassed areas by backfilling the trench with the excavated material. The upper 150mm will be imported red soil mixed with manure. The type of grass to be planted will be the one approved by the Nairobi City Council parks Superintendent	M ³
12	Reinstate standing Bougainvillea by excavating a hole 120cm diameter by 120cm deep. Fill with red soil mixed with manure. A 100cm tall support pole will be planted next to the bougainvillea of a type approved by the Nairobi City Council parks superintendent	M ³
13	Reinstate shrub bougainvillea by excavating holes, 120cm diameter by 120cm deep. Fill with red soil mixed with manure. The holes would be at 300cm spacing in a triangular network (hexagon corner diagonally interlinked). Erect 200mm diameter cedar poles midway between holes in the same format. External poles (of the hexagon) to be 600mm deep and 300mm above the ground. The pole at the middle (of the hexagon) to be 600mm deep and 300mm above the ground. Areas between holes to be filled with 150mm murrum. Fix barbed wire between the poles in a hexagonal shape. The type of bougainvillea is to be approved by the parks superintendent, Nairobi City Council	M ²
	OTHERS	
14	Provide and lay 150mm diameter precast concrete cable ducts covered with a 150mm concrete surround as specified in KPLC drawing.	LM
15	Provide and lay 150mm diameter Heavy Gauge PVC ducts covered with a 150mm concrete surround as specified in KPLC Dr.	LM
16	Provide and lay 100mm diameter Heavy Gauge PVC ducts covered with a 150mm concrete surround	LM
17	Provide and lay 50mm diameter Heavy Gauge PVC ducts covered with a 150mm concrete surround	LM
18	Cable (185sqmm to 400sqmm) installation in trenches and ducts including its security until trench is reinstated.	LM
19	Cable (25sqmm to 120sqmm) installation in trenches and ducts including its security until trench is reinstated.	LM
20	Cable (10 sqmm, 16 sqmm and fibre optic) installation in trenches and ducts including its security until trench is reinstated.	LM
21	Construct turret enclosure wall as per appropriate KPLC standard of finishing specified in KPLC Drawing.	M ²
22	Transportation of materials from stores to site in a lorry (7 tons)	KM
23	Transportation of materials from stores to site in a pick up	KM
24	Rock drilling under tarmac road, including installation of 150mm diameter PVC heavy gauge cable duct as required and concrete surround at the edges	LM
25	Provision of service tunnel under tarmac road measuring 0.8M wide by 0.4M height with concrete lining	LM

1. TOOLS & EQUIPMENTS

Please indicate availability of equipments to be viewed at your yard based on the attached list of equipments provided use **Form No. 4**

2. CAPABILITY IN RESPECT TO PERSONNEL

The organisation chart of your firm should be provided.

The names and pertinent information about key personnel of the firm be identified on the attached **Form No. 2**. One of the key personnel employed to carry out KPLC work must have a **minimum of a diploma in Civil Engineering** from a credited institution and another one who is a **qualified mason**.

It shall be understood and agreed by the applicants that the tendering data submitted is to be used by KPLC in determining the qualifications of the prospective Tenderers to Perform the Services.

3. ADDITIONAL INFORMATION

Applicants to submit further information to demonstrate their ability and or to support their previous working record.

The evaluation team may visit yard of qualifying contractor and verify existence of the above equipments and personnel as part of the evaluation process.

SECTION V - PRICE SCHEDULES FOR SERVICES

TENDER: For: - “ROAD/PAVEMENTS OPENING/CUTTING, DUCTING AND REINSTATEMENT

From: (Name of firm).....

**To : The Company Secretary
The Kenya Power & Lighting Company Limited
Stima Plaza, Kolobot Road
P.O. BOX 30099 - 00100
Nairobi**

Dear Sir,

We, the undersigned have carefully examined and understood the Tender Documents. We hereby agree to execute the works as described in the price schedules in conformity with the specifications and Tender Documents.

The rates chargeable are as hereunder;

ITEM NO.	EXCAVATION ITEM DESCRIPTION	UNIT	UNIT COST KSH(VAT exclusive)
1	Micro Tunneling under the tarmac rd, including installation of 150mm diameter PVC cable duct as required and concrete surround at the edges.	LM	
1b	Micro Tunneling under the tarmac rd, including installation of 100mm PVC cable duct as required	LM	
1c	Micro Tunneling under the tarmac rd, including installation of 50mm PVC cable duct as required	LM	
1d	Wall drilling, including installation of 150mm cable duct as required	No	
2	Excavate and construct manhole complete with cover as per appropriate KPLC standard of finishing	M ³	
3	Excavate and construct turret/distribution board plinth as per KPLC standard.	No	
4	Clear the 0.6m TO 0.75m wide cable trench site of all bushes, shrubs, undergrowth and the like and load and cart away from site	M ²	
5	Excavate 0.6m to 0.75m wide cable trench in soil (cotton, murrum, red soil, clay, loam etc) commencing from ground level and not exceeding 3.0m deep and load and cart away from site the excess excavated material unless instructed otherwise by the K.P.L.C. supervisor	M ³	
6	Excavate 0.6 to 0.75m wide cable trench in tarmac footpath or pavement (precast concrete, Insitu concrete, Terrazzo, reinforced concrete, cabroworks etc) Commencing from finished pavement level and not exceeding 3.0m deep and load and cart away the	M ³	

	excess excavated material unless instructed otherwise by the KPLC Supervisor		
7	Excavate a 0.6m to 0.75m wide cable trench in tarmac road commencing from finished road level and not exceeding 3.0m deep and cart away the excess excavated material unless otherwise directed by the KPLC supervisor on site	M ³	
8	Excavate a 0.6m to 0.75m wide cable trench in rock of all classes A,B,C, etc. (The unit rate should cover all the classes of rock) and cart away the excess excavated material unless otherwise directed by the KPLC supervisor on site	M ³	
	NOTE: The cost of all the necessary planking and strutting to sides of this cable trenches and dewatering to keep this excavations free from general water is deemed to be included in the quoted unit rates. The abbreviations stand for:- M ² – square meter, LM – Linear meter, M ³ – meter cubed		

REINSTATEMENT			
ITEM NO	ITEM DESCRIPTION	UNIT	UNIT COST KSH (VAT Exclusive)
1	Reinstate the excavated trench to the standards specified in (KPLC Drg No. 02A) using the excavated material	M ³	
2	Reinstate the excavated trench to the specified standards in KPLC Drg No.02A using imported (not the excavated material) red soil	M ³	
3	Reinstate the excavated trench to the specified standards in KPLC Drg No.02A using imported (not the excavated material) Murrum	M ³	
4	Reinstate the excavated trench to the specified standards in KPLC Drg No.02A using imported (not the excavated material) River sand	M ³	
5	Reinstate the excavated trench in pavement to the standards specified for a pavement in KPLC Drg No. 02A.	M ³	
6	Reinstate the excavated trench in tarmac road to the specified standards for a tarmac road as per KPLC Drg No. 01 and as required by N.C.C or M.O.P.W.	M ³	
7	Reinstate the excavated trench using (1:2:4) concrete reinforced with BRC No. A142	M ³	
8	Reinstate the excavated trench using murrum compacted to 95% maximum dry density at 80-105% optimum moisture content (AASHTO T 180)	M ³	
9	Reinstate the excavated trench using approved hardcore compacted to 96% maximum dry density at 80 – 100% optimum moisture content (BS 1377 Test 14)	M ³	
10	Reinstate the excavated trench in cabro works or tarmac footpath to the standard that was in place before the site was disturbed	M ³	
11	Reinstate grassed areas by backfilling the trench with the excavated material. The upper 150mm will be imported red soil mixed with manure. The type of grass to be planted will be the one approved by the Nairobi City Council parks Superintendent	M ³	
12	Reinstate standing Bougainvillea by excavating a hole 120cm diameter by 120cm deep. Fill with red soil mixed with manure. A 100cm tall support pole will be planted next to the	M ³	

	bougainvillea of a type approved by the Nairobi City Council parks superintendent		
13	Reinstate shrub bougainvillea by excavating holes, 120cm diameter by 120cm deep. Fill with red soil mixed with manure. The holes would be at 300cm spacing in a triangular network (hexagon corner diagonally interlinked). Erect 200mm diameter cedar poles midway between holes in the same format. External poles (of the hexagon) to be 600mm deep and 300mm above the ground. The pole at the middle (of the hexagon) to be 600mm deep and 300mm above the ground. Areas between holes to be filled with 150mm murrum. Fix barbed wire between the poles in a hexagonal shape. The type of bougainvillea is to be approved by the parks superintendent, Nairobi City Council	M ²	
	OTHERS		
14	Provide and lay 150mm diameter precast concrete cable ducts covered with a 150mm concrete surround as specified in KPLC drawing.	LM	
15	Provide and lay 150mm diameter Heavy Gauge PVC ducts covered with a 150mm concrete surround as specified in KPLC Dr.	LM	
16	Provide and lay 100mm diameter Heavy Gauge PVC ducts covered with a 150mm concrete surround	LM	
17	Provide and lay 50mm diameter Heavy Gauge PVC ducts covered with a 150mm concrete surround	LM	
18	Cable (185sqmm to 400sqmm) installation in trenches and ducts including its security until trench is reinstated.	LM	
19	Cable (25sqmm to 120sqmm) installation in trenches and ducts including its security until trench is reinstated.	LM	
20	Cable (10 sqmm, 16 sqmm and fibre optic) installation in trenches and ducts including its security until trench is reinstated.	LM	
21	Construct turret enclosure wall as per appropriate KPLC standard of finishing specified in KPLC Drawing.	M ²	
22	Transportation of materials from stores to site in a lorry (7 tons)	KM	
23	Transportation of materials from stores to site in a pick up	KM	
24	Rock drilling under tarmac road, including installation of 150mm diameter PVC heavy gauge cable duct as required and concrete surround at the edges	LM	
25	Provision of service tunnel under tarmac road measuring 0.8M wide by 0.4M height with concrete lining	LM	

Signed this day of..... 2015

Signature Stamp of the

Firm.....

Note: In case of discrepancy between unit price and total, the unit price shall prevail.

Date:

Tender Number and Name:

To:

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

Dear Sirs and Madams,

Having read, examined and understood the Tender Document including all Addenda, receipt of which we hereby acknowledge, we, the undersigned Tenderer, offer to provide(*insert services description*) for the sum of.....(*total tender price in words and figures*) or such other sums as may be ascertained in accordance with the schedule of prices inserted by me/ us above.

Name of Tenderer

Name and Capacity of authorised person signing the Tender

Signature of authorised person signing the Tender

Stamp of Tenderer

FORM No. 1

FINANCIAL STATUS OF APPLICANT

1. Name of Applicant _____

Attach Audited Financial Statements. The audited financial statements required must be those that are reported within fifteen (15) calendar months of the date of the tender document.

(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).

(The Representative)

(Place and Date)

FORM NO. 2

SUPERVISORY AND PERSONNEL

Give the detailed information of three (3) key supervisory personnel and (1) mason who would be working full-time on Road/ Pavement Opening/Cutting, ducting and Reinstatement if awarded contract. (Complete a form for each person) and **attach** copies of C.Vs and **certified** copies of Certificates for the staff.

- 1. Name _____
- 2. Date of birth _____
- 3. Nationality _____
- 4. Education _____
- 5. Languages _____
- 6. Speciality _____
- 7. Registration _____

8. Length of service with Applicant _____ Years :
 From _____ (month) _____ (Year) to _____ (month) _____ (Year)

9. Years of experience _____

10. If item 8 is less than 3 years, give names and length of service with previous employers covering a 3 year period

NAME OF EMPLOYER	LENGTH OF SERVICE (Years)	FROM (Month, Year)	To (Month, Year)

11. Road works/ Pavement Opening/Cutting, ducting and Reinstatement Experience:
 (This should cover past 3 years continuous experience. Use as many pages as necessary)

- (1) Name of project/works _____
- (2) Name and address of employer _____
- (3) Work Volume (Value in kshs.) _____

Totals _____

(4) Position Held _____

(5) Assignment period: From _____ (Month) _____ (Year)
To _____ (Month) _____ (Year)

(6) Attach List of Support staff in the present firm with a brief CVs and their contact Telephone numbers

(Place and Date)

(The Representative)

FORM NO. 3

TRANSPORT/ MACHINERY

(Bidder) Give detailed information of transport and machinery owned, which would be used for Road/ Pavement Opening/Cutting, ducting and Reinstatement if awarded contract. Attach Photostat copies of the valid Logbooks for vehicles certified by Kenya Revenue Authority (KRA).

Type Of Vehicle Or Machinery	Quantity	Registration/Serial Nos.	Location
7 ton lorry			
1 ton pick up			
Cranes/Forklift/ Hiabs (specify below)			
Excavators			
Compressors			
Pulling Winches			
OTHERS			
Micro –tunnelling Equipment			

(You may attach a separate sheet)

.....
(Place and Date)

.....
(The Representative)

FORM NO. 4

TOOLS AND EQUIPMENT

Give detailed information of tools and equipment, which would be used for Road/ Pavement Opening/Cutting, ducting and Reinstatement if awarded contract.

(Bidder) Give the number of Tools and Equipment indicated on the list that you own and any other not on the list but equivalent and **attach** documents showing ownership i.e. lease agreements, purchase documents/receipts

TOOL NAME	Quantity	Serial Nos.	Location (Site)
Compressors (manual)			
Compactors			
Concrete mixer			
Dewatering pumps			
Pick Axes			
Shovels			
Generator and flood lights			
Road safety signs.			
Wheel barrows			
Cable drum Jacks			
Cable Rollers			
OTHERS			

(You may attach a separate sheet)

.....

(Place and Date)

.....

(The Representative)

SECTION VI - EVALUATION CRITERIA

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

6.1 Part 1 - Preliminary Evaluation Under Paragraph 3.28 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 its sufficient; 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:-

a) Company or Firm's Registration Certificate

b) PIN Certificate.

c) Valid Tax Compliance Certificate.

6.1.5 That the Tender is valid for the period required.

6.1.6 Submission and considering that the required number of sets (original and copies) of Tender.

6.1.7 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.

6.1.8 Submission of a copy of:-

a) Registration Certificate from National Construction Authority (paved roads category)

6.1.9 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.

6.1.10 Notwithstanding the above, considering any outstanding jobs where applicable and the performance capacity indicated by the Tenderer.

Tenders will proceed to the Technical Evaluation Stage only if they qualify in compliance with Part 1 above, Preliminary Evaluation under Paragraph 3.28.

6.2 Part II – Technical Evaluation and Comparison of Tenders Under Paragraph 3.30 of the ITT. These are mandatory requirements.

6.2.1 Verification of the following information:

i) List of Transport and Machinery as detailed on form 3 with copies of valid and certified logbooks for the listed transport or machinery.

ii) *List of Tools and Equipment owned or leased as detailed on form 4 with proof of ownership.i.e purchase receipts/documents.*

iii) *List of staff as detailed on Form 2 with copies of Cvs and certificates*

iv) *Documents showing evidence of possession of a Workshop / Yard i.e Title deed, Lease agreements.*

v) *Documents showing evidence of possession of an office i.e. ownership, Lease agreement.*

vi) *Reference letters from (4) major clients for similar and or Road works projects.*

6.2.2 Detailed Evaluation

6.2.2.1 Tenderers shall be expected to indicate full compliance to Details of Service.

6.2.2.2 Evaluation of Demonstration of ability of the offered service, to comply with the Details of Service (where required).

6.2.2.3 Identifying and determining any deviation(s) from the requirements; errors and oversights.

6.2.2.4 Confirmation of compliance of previous contract(s) in accordance with its/ their terms and conditions where applicable.

6.2.2.5 Confirmation of the firms office/yard location

6.2.3 Further tender requirements based on a scoring criterion.

6.2.3.1 The total marks are 100%. The pass mark is 70 %. Only those bidders who obtain the mandatory cut off point shall be considered for further evaluation.

1.	Relevant experience of the firm and technical capabilities to carry out the assignment	Score	Weight
a.	<ul style="list-style-type: none"> • Description of organization profile indicating the suitability to carry out this specific assignment • Description of technical capabilities and resources to carry out this specific assignment • Description of experience of the firm to carry out this type of work 	4 3 3	
	Sub Total		10
b.	Number of similar or relevant contracts undertaken by the firm in the last three years. List the names of the organizations where the relevant assignment (s) were carried out; and provide dates and must attach documentary evidence i.e copies of contracts, completion certificates, recommendation letters <ul style="list-style-type: none"> • Above 4 firms • 4 firms • Below 4 firms 	10 Nil	
	Sub Total		10

2.	Transport and Machinery		
	<ul style="list-style-type: none"> Adequacy as detailed in form no. 3 Evidence of ownership and availability as detailed in form no. 3 	10	10
Sub Total			20
3.	Tools and Equipments		
	<ul style="list-style-type: none"> Adequacy as detailed in form no. 4 Evidence of ownership and availability as detailed in form no. 4 	10	10
Sub Total			20
4.	Human Resource Capacity (<i>Attach documentary evidence i.e. CV's, academic testimonials, appointment letters etc</i>)		
	(i) Provide 4 Key staffs including 1 mason: <ul style="list-style-type: none"> Academic Qualifications – Professional Qualifications Experience - Have at least three (3) years experience in similar work. Assignments handled – Should have handled similar construction work . Above 3 jobs – 4 3 jobs – 3 Below 3 jobs – Nil 	4 4 4	
	(ii) Details and completeness of CV's of key staff provided	4	
Sub Total			20
5.	Operating Premises:		
	<ul style="list-style-type: none"> Ownership of office (Attach certified lease agreements or other proof of ownership) Ownership of Yard for materials (Attach certified lease agreements or Title deeds) 	10 10	
Sub Total			20
Grand Total			100

Tenderers will proceed to Financial Evaluation stage only if they qualify in compliance with Parts I and II i.e. Preliminary and Technical stages which will include visit to confirm location of the cited tools, equipments office and yard.

6.3 Part III – Financial Evaluation Criteria Under Paragraph 3.31 of the ITT. These are mandatory requirements.

6.3.1 This will include the following: -

- a) *Confirmation of the authenticity of submitted bid bond.*
- b) *Confirmation of and considering Price Schedule duly completed and signed.*
- c) *Checking submission of audited financial statements required which must be those that are reported within fifteen (15) calendar months of the date of the tender document. (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).*
- d) *Taking into account the cost of any deviation(s) from the tender requirements,*
- e) *Considering information submitted in the Confidential Business Questionnaire against other information in the bid including:-*
 - a) *Declared maximum value of business*

6.3.2 Confirming the following: -

6.3.2.1 that the Supplier's offered Terms of Payment meets KPLC's requirements.

The Successful Tenderers shall be those who meets the minimum technical tender requirements and are successful at financial evaluation and further that they shall accept the offered rates.

***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.

TABLE OF CLAUSES ON GENERAL CONDITIONS OF CONTRACT

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SECTION VII – GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract *hereinafter referred abbreviated as the GCC* shall form part of the Conditions of Contract in accordance with the law and KPLC’s guidelines, practices, procedures and working circumstances. The provisions in the GCC will apply unless an alternative solution or amendment is made under other parts of the Contract including the Special Conditions of Contract.

7.1 Definitions

In this contract, the following terms shall be interpreted as follows: -

- a) *“Day” means calendar day and “month” means calendar month.*
- b) *“The Contract” means the agreements entered into between KPLC and the Contractor, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.*
- c) *“The Contract Price” means the price payable to the Contractor under the contract for the full and proper performance of its contractual obligations.*
- d) *“The Services” means services or art thereof to be provided by the Contractor and includes all of the materials and incidentals, which the Contractor is required to perform and provide to KPLC under the contract.*
- e) *“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).*
- f) *“The Contractor” means the individual or firm providing the services under this contract or his/ her/ its permitted heir(s), personal representative(s), successor(s) or permitted assign(s) where the context so admits. For the avoidance of doubt this shall mean the successful Tenderer(s) pursuant to the tender.*
- g) *Wherever used in the contract, “performance” shall be complete or be deemed to be complete, unless the circumstances indicate otherwise, when the services have been performed in accordance with the Contract and where KPLC does not signify its approval to the Contractor, but without giving notice of dissatisfaction, on the expiration of thirty (30) days from date of documented completion of performance of the service.*

7.2 Application

These General Conditions shall apply to the extent that provisions of other parts of the contract do not supersede them.

7.3 Standards

The Services supplied under this contract shall conform to the standards mentioned in the Details of Service.

7.4 Use of Contract Documents and Information

- 7.4.1 The Contractor shall not, without KPLC's prior written consent, disclose the contract, or any provision thereof or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of KPLC in connection therewith, to any person other than a person employed by the Contractor in the performance of the contract.
- 7.4.2 The Contractor shall not, without KPLC's prior written consent, make use of any document or information enumerated in clause 7.4.1 above.
- 7.4.3 Any document, other than the contract itself, enumerated in clause 7.4.1 shall remain the property of KPLC and shall be returned (including all copies) to KPLC on completion of the Contractor's performance under the contract if so required by KPLC.

7.5 Patent Rights

The Contractor shall indemnify KPLC against all third party claims of infringement of patent, trademark, or industrial design rights arising from provision of the services or any part thereof.

7.6 Performance Security

- 7.6.1 Within fourteen (14) days of the date of the notification of contract award, the Contractor shall furnish to KPLC the 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) Confirmed Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid by the successful Tenderer. Certain mandatory conditions of the LC shall be as prescribed in the Performance Security Form (LC) in the Tender Document.
- 7.6.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 7.6.3 The Performance Security shall be the sum of ten percent (10%) of the contract price. It shall be in the currency of the contract price.
- 7.6.4 Failure of the Contractor to furnish the 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.
- 7.6.5 The proceeds of the Performance Security shall be payable to KPLC as compensation for any loss resulting from the Contractor's failure to comply with its obligations in accordance with the contract without KPLC being required to demonstrate the loss it has suffered.

- 7.6.6 The Performance Security shall be valid for a minimum of sixty (60) days after satisfactory delivery for both Foreign and Local Contractors.
- 7.6.7 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 three (3) 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, unless information to the contrary is received by KPLC two (2) days before the expiry of the Contractor's Tender Security.
- 7.6.8 Subject to the provisions of this contract, the Performance Security will be discharged by KPLC and returned to the Contractor not earlier than thirty (30) days following the date of completion of the Contractor's obligations under the contract, including any warranty obligations, under the contract.

7.7 Inspection and Tests

- 7.7.1 KPLC or its representative(s) shall have the right to inspect and/or to test the services to confirm their conformity to the contract specifications. KPLC shall notify the Contractor in writing in a timely manner, of the identity of any representative(s) retained for these purposes. Such visit and or inspection/ test shall in no way prejudice KPLC's rights and privileges.
- 7.7.2 In appropriate circumstances, Inspection/ Test Report(s) shall be completed upon conclusion of the inspection/ tests.
- 7.7.3 The inspections and tests may be conducted in the premises of the Contractor or its subcontractor(s). If conducted on the premises of the Contractor or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KPLC.
- 7.7.4 Should any inspected or tested services fail to conform to the specifications, KPLC may reject the Service(s), and the Contractor shall either replace or remedy the rejected services or make alterations necessary to meet specification requirements free of cost to KPLC.
- 7.7.5 KPLC's right to inspect, test and where necessary, reject the services after provision shall in no way be limited or waived by reason of the services having previously been inspected, tested and passed by KPLC or its representative(s) prior to the services performance / delivery.
- 7.7.6 For the avoidance of doubt, any acknowledgement by KPLC on the Contractor's or sub-contractor's document shall not be conclusive proof or evidence of satisfactory performance without duly authorized approval by KPLC.
- 7.7.7 Nothing in this clause 7.7 shall in any way release the Contractor from any warranty or other obligations under this Contract.

7.8 Packaging and Labelling

- 7.8.1 Where applicable, the Contractor shall provide such packaging of the material and equipment as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract.
- 7.8.2 The method of packaging, labeling and marking shall comply strictly with such special requirements as shall be specified and attached to the Contract and particular Order.
- 7.8.3 The labelling, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract.
- 7.8.4 The materials and equipment shall be packed in good condition suitable for sea/air/road/rail dispatch. Hazard in transit to the final destination shall include rough handling and storage in tropical conditions.
- 7.8.5 The Contractor shall enclose a packing list in each package and all documents relating to the Order shall show the Tender reference number and name against the items or package indicating the supplier or supplier's agent as the consignee.

7.9 Delivery and Documents for Materials/ Equipment

- 7.9.1 Where applicable, delivery of the materials/ equipment shall be made by the Contractor to the place and in accordance with the terms specified by KPLC in its Schedule of Requirements or as may be otherwise indicated.
- 7.9.2 The Contractor shall notify KPLC of the full details of the delivered materials/ equipment by delivering the materials/ equipment with a full set of the following documents: -
 - a) *Contractor's invoice showing the materials/ equipment description, quantity, unit price and total price*
 - b) *Delivery note*
 - c) *Packing list identifying contents of each package*
- 7.9.3 It is the responsibility of the Contractor to ensure that the delivery documents are received by KPLC at the designated delivery point at the time of delivery.

7.10 Insurance

- 7.10.1 The Contractor shall be responsible for and keep in force current appropriate insurance covers for its property and persons engaged in the performance and or provision of the Services under the contract.
- 7.10.2 The Contractor shall (*except in respect to losses, injuries or damage resulting from any act or neglect of KPLC*) indemnify and keep indemnified KPLC against all losses and claims for injuries or damage to any person or property whatsoever which may arise out of or in consequence of the contract and against all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

7.11 Payment

- 7.11.1 Payments shall be made promptly by KPLC and shall not be less than thirty (30) days from completion of satisfactory performance and submission of invoice together with other required and related documents or as otherwise prescribed in the contract.
- 7.11.2 Payment shall primarily be through KPLC's cheque or Real Time Gross Settlement (*RTGS*) or telegraphic transfer. Where applicable, a copy of a valid Performance Security, stamped, certified as authentic by KPLC, shall form part of the documents to be presented to KPLC before any payment is made.
- 7.11.3 A Contractor who requests for a Letter of Credit (*hereinafter abbreviated as LC*)–
- a) *Shall meet the LC bank charges levied by its bank while KPLC shall meet the LC bank charges levied by its bank.*
 - b) *Any extension and or amendment charges and any other costs that may result from the Contractor's delays, requests, mistakes or occasioned howsoever by the Contractor shall be to the Beneficiary's account.*
 - c) *The maximum number of extensions and amendments shall be limited to two (2).*
 - d) *Notwithstanding sub-clause 7.11.3 (a), should the Contractor require a confirmed LC, then all confirmation and any other related charges levied by both the Contractor's and KPLC's bank shall be to the Beneficiary's account.*
 - e) *The LC shall be opened only for the specific Order within the validity period of the contract.*
 - f) *LCs shall be partial for partial performance or full for whole performance as per the contract.*
 - g) *The Contractor shall be required to submit a proforma invoice for each lot for use in the placement of order and opening of the LC. The proforma invoice shall be on total all-inclusive costs basis.*
 - h) *A copy of the Performance Security, stamped and certified as authentic by KPLC, whose expiry date should not be less than sixty (60) days from the LC expiry date, shall form part of the documents to be presented to the Bank before any payment is effected.*
- 7.11.4 KPLC shall have the sole discretion to accept or decline any Contractor's payment request through Letters of Credit without giving any reason for any decline.

7.12 Interest

Interest payment by KPLC is inapplicable in the contract.

7.13 Prices

- 7.13.1 Subject to clause 7.14 herein below, prices charged by the Contractor for services performed under the contract shall be fixed for the period of the contract with no variations.

7.13.2 A price that is derived by a pre-disclosed incorporation or usage of an internationally accepted standard formula shall not be deemed to be a price variation within the meaning of this clause.

7.14 Variation of Contract

KPLC and the Contractor may vary the contract only in accordance with the following: -

- a) *the quantity variation for goods and services shall not exceed ten percent (10%) of the original contract quantity.*
- b) *the quantity variation must be executed within the period of the contract.*

7.15 Assignment

The Contractor shall not assign in whole or in part its obligations to perform under this contract, except with KPLC's prior written consent.

7.16 Subcontracts

7.16.1 The Contractor shall notify KPLC in writing of all subcontracts awards under this contract if not already specified in the tender. Such notification, in the original tender or obligation under the Contract shall not relieve the Contractor from any liability or obligation under the Contract.

7.16.2 In the event that an award is given and the contract is sub-contracted, the responsibility and onus over the contract shall rest on the Contractor who was awarded.

7.17 Termination of Contract

7.17.1 KPLC may, without prejudice to any other remedy for breach of contract, by written notice sent to the Contractor, terminate this contract in whole or in part due to any of the following: -

- a) *if the Contractor fails to perform any or all of the services within the period(s) specified in the contract, or within any extension thereof granted by KPLC.*
- b) *if the Contractor fails to perform any other obligation(s) under the contract.*
- c) *if the Contractor, in the judgment of KPLC has engaged in corrupt or fraudulent practices in competing for or in executing the contract.*
- d) *by an act of force majeure.*
- e) *if the Contractor becomes insolvent or bankrupt*
- f) *if the Contractor has a receiving order issued against it, compounds with its creditors, or an order is made for its winding up (except for the purposes of its amalgamation or reconstruction), or a receiver is appointed over its or any part of its undertaking or assets, or if the Contractor suffers any other analogous action in consequence of debt.*
- g) *if the Contractor abandons or repudiates the Contract.*

- 7.17.2 In the event that KPLC terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered or not rendered, and the Contractor shall be liable to KPLC for any excess costs for such similar services and or any other loss PROVIDED that the Contractor shall not be so liable where the termination is for convenience of KPLC.
- 7.17.3 The Parties may terminate the Contract by reason of an act of *force majeure* as provided for in the contract.
- 7.17.4 The Contract may automatically terminate by reason of an act of *force majeure* as provided for in the Contract.

7.18 Liquidated Damages

Notwithstanding and without prejudice to any other provisions of the contract, if the Contractor fails to perform any or all of the services within the period specified in the contract, KPLC shall, without prejudice to its other remedies under the contract, deduct from the contract prices, liquidated damages sum equivalent to 0.5% of the performance price per day of delay of the delayed due services up to a maximum of ten percent (10%) of the performance price of the delayed due services.

7.19 Warranty

- 7.19.1 Where applicable, the Contractor warrants that the Services provided under the contract are of the highest quality or current specification and incorporate all recent improvements unless provided otherwise in the contract. The Contractor further warrants that any materials/ equipment provided under this contract shall have no defect arising from manufacture, materials or workmanship or from any act or omission of the Contractor that may develop under normal use of the materials/ equipment provided under the conditions obtaining in Kenya.
- 7.19.2 This Warranty will remain valid for one (1) year after the services, or any part thereof as the case may be, have been performed as indicated in the contract.
- 7.19.3 KPLC shall promptly notify the Contractor in writing of any claims arising under this Warranty.
- 7.19.4 Upon receipt of such a notice, the Contractor shall, with all reasonable speed, remedy the defective services without cost to KPLC.
- 7.19.5 If the Contractor having been notified, fails to remedy the defect(s) within a reasonable period, KPLC may proceed to take such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which KPLC may have against the Contractor under the contract.

7.20 Resolution of Disputes

- 7.20.1 KPLC and the Contractor may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.

7.20.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may resort to resolution before a recognized local forum for the resolution of disputes.

7.21 Language and Law

The language of the contract and the law governing the contract shall be the English language and the laws of Kenya respectively unless otherwise stated.

7.22 Waiver

Any omission or failure by KPLC to exercise any of its rights or enforce any of the penalties arising from the obligations imposed on the Contractor shall in no way, manner or otherwise howsoever, alter, amend, prejudice, vary, waive or be deemed to alter, amend, prejudice, vary, waive or otherwise whatsoever any of KPLC's powers and rights as expressly provided in and as regards this contract.

7.23 Force Majeure

7.23.1 Force majeure means any circumstances beyond the control of the parties, including but not limited to:

- a) *war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;*
- b) *ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;*
- c) *rebellion, revolution, insurrection, military or usurped power & civil war;*
- d) *riot, commotion or disorder except where solely restricted to employees servants or agents of the parties;*
- e) *un-navigable storm or tempest at sea.*

7.23.2 Notwithstanding the provisions of the contract, neither party shall be considered to be in default or in breach of its obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of *force majeure* which arise after the contract is entered into by the parties.

7.23.3 If either party considers that any circumstances of *force majeure* are occurring or have occurred which may affect performance of its obligations it shall promptly notify the other party and provide reasonable proof of such circumstances.

7.23.4 Upon the occurrence of any circumstances of *force majeure*, the Contractor shall endeavour to continue to perform its obligations under the contract so far as is reasonably practicable. The Contractor shall notify KPLC of the steps it proposes to take including any reasonable alternative means for performance,

which is not prevented by *force majeure*. The Contractor shall not take any such steps unless directed so to do by KPLC.

7.23.5 If the Contractor incurs additional costs in complying with KPLC's directions under sub clause 7.23.4, then notwithstanding the provisions of the contract, the amount thereof shall be agreed upon with KPLC and added to the contract price.

7.23.6 If circumstances of *force majeure* have occurred and shall continue for a period of twenty one (21) days then, notwithstanding that the Contractor may by reason thereof have been granted an extension of time for performance of the contract, either party shall be entitled to serve upon the other seven (7) days' notice to terminate the contract. If at the expiry of the period of twenty-eight (28) days, *force majeure* shall still continue, the contract shall terminate.

SECTION VIII – SPECIAL CONDITIONS OF CONTRACT

The Special Conditions of Contract *hereinafter abbreviated as SCC* shall form part of the Conditions of Contract. They are made in accordance with the law and KPLC's guidelines, practices, procedures and working circumstances. They shall amend, add to and vary the GCC. The clauses in this section need not therefore, be completed but must be completed by KPLC if any changes to the GCC provisions are deemed necessary. Whenever there is a conflict between the GCC and SCC, the provisions of the SCC shall prevail over those in the GCC.

1.0 The successful Tenderer will be responsible for damage of any existing services brought to his attention by the relevant authorities and shall be responsible for the cost of repairs e.g. water mains, sewers, fuel pipes, telephone cables, KPLC cables etc.

2.0 Health and Medical facilities

It is the responsibility of the contractor to provide health services to his employees. The contractor shall provide First aid and Medical Services for the personnel at the various sites.

3.0 Workers standards and etiquette

All workers from the contracted firms must observe standards acceptable to the procuring entity. These standards include:-

4.0 Presentability of Workers

The staff should have in their possession at all times documentation of proof that they are workers of the tenderer.

4.1 Organization of Workers

The contracted firm should have a reliable supervisor who must be introduced to the procuring entity's supervisors in writing. They should present a clear and workable schedule or plan of work which should be in line with the procuring entity's target completion times.

4.2 Public Relation of Workers

Public relations and customer care are priority considerations to the procuring entity and the Officer in charge must ensure adequate briefing of such contracted staff is done prior to their commencement of work.

4.3 Procuring entity's Complaints

The Workers should be impressed upon to:-

- (a) Treat the procuring entity's complaints seriously.
- (b) Respond quickly and efficiently.
- (c) Put right the cause of these complaints.

5.0 Tenderer's responsibility

- 5.1 Each Tenderer shall satisfy himself as to the risks, obligations and responsibilities to be undertaken in the Contract to be entered into by him, should his Tender be accepted.
- 5.2 In this regard, the Tenderers shall inquire and satisfy themselves with procedures. The Tenderers shall also be familiar with laws and regulations in force in Kenya and all other items affecting the execution, completion and maintenance of the Works, including financial, local labour and safety, customs regulations, holidays, etc.
- 5.3 Any neglect or failure on the part of a Tenderer to obtain reliable information concerning the foregoing or any other matters affecting the Tender and Contract, shall not relieve the Tenderer from any risks or liabilities or from the responsibility of carrying out the Works, nor shall he be allowed to secure relief for such oversight on the plea of error in his Tender.
- 5.4 The Tenderer shall affirm in submitting his Tender that he has examined carefully and is fully familiar with all the Tender Documents, and that these documents will become an integral part of the Contract if awarded to him and accepts without any reservation the terms and conditions specified in the Tender Documents.

6.0 Employers staff

If any Contractor or tenderer is discovered to be using any of the procuring entity's staff whether permanent or temporary, his Contract shall be terminated or it will lead to a disqualification of his tender whichever is the case.

7.0 Price proposal

The Tenderer shall submit his Price Proposal for the Works as per Appendix 1 accordingly.

8.0 Tender prices

a) VAT

VAT shall be assessed by the Tenderer in accordance with the laws and regulations of the Government of Kenya and stated in local currency portion of Schedule for Prices All prices shall clearly indicate the VAT chargeable.

9.0 Local regulations

The Contractor shall observe and comply with all laws, regulations, orders, by-laws and customs in Kenya in respect to the Contract execution.

10.0 Consents and Way leaves

The Employer shall, obtain all consents, way leaves approvals required in connection with the Regulations and by-laws of Local or other Authority which shall be applicable to the Works.

11.0 Procuring entity's representative DUTIES

- 11.1 The **Procuring entity's** Representative shall carry out such duties in issuing decisions, certificates and orders as are specified in the Contract. The

Employer's Representative shall be responsible to the Employer and his duties are to watch and supervise the Works and ensure standard and acceptable workmanship is employed in connection with the works.

12.0 Obligations of the contractor

12.1 Sufficiency of contract price

Whenever the Contractor is called upon to perform the job at any given time, the contractor shall certify itself with the scope of works and shall take that information into consideration when invoicing the **Procuring entity**

12.2 Responsiveness of the contractor

The contractor should be ready to take up works so allocated within **3 hours** from receipt of instruction from the **Procuring entity** failure to take up such works within the time specified herein will lead to automatic cancellation of the contract.

12.3 Compliance with statutes, regulations

The Contractor/Tenderer shall, in all matters arising in the performance of the Contract, comply in all respects with, give all notices and pay all fees required by the provisions of any national or state ordinance or other law or any regulations or bye-law of any duly constituted Authority.

12.4 Engagement of labour

The Contractor shall provide on the site in connection with the execution and completion of the works and remedying of any defects therein;

Such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely fulfilling of the Contractors obligations under the contract.

The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all labour and for their payment, housing, feeding and transport (All the general welfare needs of his employees). The contractor shall not engage an individual who, at the time of such engagement is an employee of the **Procuring entity**. A breach of this Condition shall entitle the **Procuring entity** to terminate the contract forthwith by notice to the Contractor, and shall in addition, result in automatic disqualification of the contractor from the List of contractors.

12.5 Safety precautions

The Contractor shall, throughout the execution and completion of the works and the remedying of any defects therein:

- (a) Have full regard for safety of all persons entitled to be upon the Site and keep the Site (so far as the same is under his control) and the Works in an orderly state appropriate to the avoidance of danger to such persons.
- (b) Provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the **Procuring entity** or by any duly constituted authority, for the protection of the works or for the safety and convenience of the public or others, and
- (c) Take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or property of the public or

others resulting from pollution , noise or other cause arising as a consequence of his methods of operation.

12.6 Opportunities for other contractors

The Contractor shall, in accordance with the **Procuring entity's** instructions, afford to other contractors engaged by the **Procuring entity** to work on the Site and persons lawfully upon the Site, all reasonable opportunities for carrying out their work provided that the same shall not obstruct or disturb the progress of the Works. The Contractor shall also afford such opportunities to the Employees of the **Procuring entity**.

12.7 Rejection

If, as a result of the inspection or examination the **Procuring entity** decides that any works is defective or otherwise not in accordance with the Contract, he may reject such works and shall notify the Contractor thereof immediately. The notice shall state the **Procuring entity's** objections with reasons.

The Contractor shall then with all speed make good the defect or ensure that any rejected works complies with the Contract.

If the **Procuring entity** requires such works to be re-done, the works shall be repeated under the same terms and conditions.

12.8 Completion

The Works shall be completed and shall have passed for inspection within the targeted time for completion for each job as specified from time to time by the **Procuring entity's** Representative in the job cards. Time of completion shall be as specified by the **Procuring entity**.

12.9 Prolonged delay

If the Contractor fails to complete the works within the stipulated time, and this is not due to a cause for which the **Procuring entity** is responsible, the **Procuring entity** may by notice to the Contractor either:-

- (a) require the Contractor to complete, or
- (b) terminate the Contract

If the **Procuring entity** terminates the Contract, he shall be entitled to recover from the Contractor any loss he has suffered.

The **Procuring entity** shall be entitled to recover that part of the Contract Price which is attributable to that part of the Works which Contractor shall not have completed.

12.10 Making good defects

The Contractor shall be responsible for making good any defect in or damage to any part of the Works which may appear or occur during the execution of works and which arises from either:-(a) poor workmanship , or(b) any act of omission or commission by the Contractor during the said period.

12.11 Failure to remedy defects

If the Contractor fails to remedy a defect within a reasonable time, the **Procuring entity** may fix a final time for remedying the defect. If the Contractor fails to do so, the **Procuring entity** may:-

- (a) Carry out the work himself or by others at the Contractor's risk and cost, provided that he does so in a reasonable manner.
- (b) if the defect or damage is such that the **Procuring entity** has been deprived of substantially the whole of the benefit of the Works or a part thereof, he may terminate the Contract in respect of such parts of the Works as cannot be put to the intended use.

12.12 Damage to property and injury to persons

Contractor's liability

Except as provided under this conditions, the Contractor shall be liable for and shall indemnify the **Procuring entity** against all losses, expenses and claims in respect of any loss of or damage to physical property, death or personal injury occurring before the issue of the last completion of works Certificate to the extent caused by:-

- (a) poor workmanship of the Contractor, or
- (b) Negligence or breach of statutory duty of the Contractor, his Sub-Contractors or their respective Employees and Agents.

12.13 Accidents

The Contractor shall be liable for and shall indemnify the **Procuring entity** against all losses, expenses or claims arising in connection with the death or injury to any person employed by the Contractor for the purpose of the Works, unless caused by any acts or defaults of the **Procuring entity**.

13.0 Foreseen damages

Where either the **Procuring entity** or the Contractor is liable in damages to the other these shall not exceed the damage which the party in default could reasonably have foreseen.

14.0 Law, procedure and legislation

14.1 Statutory and other regulations

The Contract Price shall be adjusted to take account of any increase or decrease in cost resulting from changes in legislation of the Republic of Kenya. Legislation means any law, order, regulation or bye-law having the force of law, which affects the Contractor in the performance of his obligations under the Contract.

The **Procuring entity** shall certify the amount of the resulting increase or decrease in cost, which shall be added to or deducted from the Contract Price.

15.0 Applicable law

This contract shall be governed by the Kenyan Law.

16.0 Taxation

The Contractor and his staff shall be liable to pay all income and other taxes as required by regulations which may be in force during the period of the Contract.

17.0 Duration of the contract

The contract shall be for a term of two years renewable for a similar term at the sole discretion of the **Procuring entity** .On renewal the terms and conditions of the contract and specifically the contract price shall remain the same .The **Procuring entity** shall give the contractor one months notice of its intention to renew the contract.

18.0 Third party liability

The Contractor shall insure against liability to third parties for any death or personal injury and loss of or damage to any physical property arising out of the performance of the Contract. Such insurance will be effected before the contractor begins any work on the sites.

SECTION IX - 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 perform, deliver, install and commission (*the latter two where applicable*) (*insert services description*) in accordance and conformity with the said tender document and in particular the Schedule of Prices that are made part of this Tender.
2. We undertake, if our Tender is accepted, to perform and provide the services in accordance with the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of 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 one hundred and twenty (120) days.
2. This form must be duly signed, stamped and/or sealed.

SECTION X - 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. You are advised that it is a serious offence to give false information on this form.

Part 1 – General

Business Name.....

Location of business premises.....

Plot No.Street/ Road

Postal Address Postal Code

Tel No.....

Facsimile.....

Mobile and/ or 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 BankersBranch.....

*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
NationalityCountry of origin
*Citizenship details.....

Part 2 (b) Partnership

Give details of partners as follows: -

Names	Nationality	*Citizenship Details	Shares
1.....			
2.....			
3.....			
4.....			
5.....			

Part 2 (c) Registered Company

Private or Public

State the nominal and issued capital of company-

Nominal KSh.....

Issued KSh.....

Give details of all directors as follows

Name	Nationality	*Citizenship Details	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. *If a Kenyan citizen, please indicate under “Citizenship Details” whether by birth, naturalization or registration.*
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.***
4. *For foreign Tenderers please give the details of nominal and issued share capital in the currency of the country of origin of the Tenderer.*

SECTION XI A - 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.....ofhaving 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 theday of.....20.....

EITHER

SEALED with the)
COMMON SEAL)

of the said **BANK**) _____
thisday) **BANK SEAL**
of20....)
))
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 one hundred and twenty (120) 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.*

SECTION XI B - 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 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 an Institution’s guarantee by an acceptable Institution 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 theday of.....20....

EITHER

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

)
thisday)
of20....)
in the presence of :-)
_____)
and in the presence of:-)
_____)

INSTITUTION SEAL

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 hundred and twenty (120) 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.*

SECTION XI C - 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 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 hundred and twenty (120) 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.*

SECTION XIII - 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

SECTION XIV – DRAFT LETTER OF NOTIFICATION OF AWARD

To:

(Name and full address of the Successful Tenderer).....

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

CHIEF MANAGER, SUPPLY CHAIN AND LOGISTICS

Enclosures

SECTION XV – 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 2nd 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 a 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 AND LOGISTICS

SECTION XVI - 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 services, that is to say for(*KPLC insert description of services*) 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) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.

- d) 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.
 - e) 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 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) the Special Conditions of Contract as per the Tender Document
 - c) the General Conditions of Contract as per the Tender Document
 - d) the Price Schedules submitted by the Contractor and agreed upon with KPLC.
 - e) the Details of Service as per KPLC’s Tender Document
 - f) the Schedule of Requirements
 - g) KPLC’s Notification of Award dated.....**
 - h) the Tender Form signed by the Contractor
 - i) the Declaration Form signed by the Contractor/ successful Tenderer
 - j) the 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 on either -
 - a) sixty (60) days after the last date of the agreed performance schedule, or,
 - b) where a Letter of Credit is adopted as a method of payment, sixty (60) days after the expiry date of the Letter of Credit or the expiry date of the last of any such opened Letter of Credit whichever is later.

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 Suppliers and five (5) days for Foreign Suppliers.

14. For the purposes of Notices, the address of KPLC shall be Company Secretary, The Kenya Power & Lighting Company Limited, 7th 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**

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: -

Beatrice Meso,

Advocate,

C/o The Kenya Power & Lighting Company Limited,

7th Floor, Stima Plaza, Kolobot Road, Parklands,

Post Office Box Number 30099–00100,

NAIROBI, KENYA,

Telephones: + 254-20-3201000/ 731

Facsimile: + 254-20-3514485/ 3750240

SECTION XVI A - 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 Supplier”) has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*) and its Tender dated(*insert Supplier'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 Supplier shall furnish you with a bank guarantee by an acceptable bank for the sum specified therein as security for compliance of the Supplier's performance obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Supplier a guarantee;

THEREFORE WE HEREBY AFFIRM that we are Guarantors and responsible to you, on behalf of the Supplier, 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 Supplier 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 theday of.....20....

EITHER

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

thisday) _____
)
 of20....) **BANK SEAL**
 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 SUPPLIERS 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 Supplier 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 Supplier'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”*

SECTION XVII B - 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 “Supplier”) indicating that the “Supplier” has defaulted in the performance and adherence to and performance of the contract between the Beneficiary and the Supplier.
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 SUPPLIERS 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 Supplier 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 Supplier'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.*

SECTION XVIII SERVICE DETAILS /SPECIFICATIONS

4.1 General

Kenya Power (KP) requires Contractors to Open Cut or Duct Roads/ Pavements to facilitate the passage of cables. They will be expected to reinstate the same to previous state after the works.

The jobs are not on continuous basis but the contractors will be called upon whenever the said works arise but should be on a 24 hour daily availability basis.

4.2 Scope of work

The procuring entity intends to pre-qualify Contractors for the award of a contract for

- i. Cutting and or opening roads, pavements and grass/flower beds to prepare trenches for under ground power cable.
- ii. Reinstatement of Roads, Footpaths and Open Spaces
- iii. Reinstatement of Flower Beds and Grassed Areas

Or

Micro tunneling of the roads and pavements.

4.3 Opening and cutting

Cutting and or opening roads, pavements and grass/flower beds to prepare a trench for underground power cable. The width of the trench will generally be between 60-75cm wide while the depth shall be upto100 cm from the existing surface. However, the depth might be more in situations where the cables are required to be laid below other services.

The bottom of the trench shall be of smooth contour, and shall have no sharp dips or rises which may cause tensile forces in the cable during backfilling.

The excavated material shall be placed adjacent to trench in such a manner as to prevent nuisance, interference or damage to other services or traffic. Excavations shall be fenced off with caution notices displayed.

Surplus material shall be removed from site and disposed of by the contractor as part of this tender cost.

Trenches across road, access ways or footpaths shall not be left open. The contractor shall screen off the open trenches to avoid danger. The contractor shall also be responsible for installation of suitable temporary 'bridges'.

4.4 Reinstatement

Reinstatement of work will be done in accordance with specified drawing provided by KP. Similar drawings and works specifications are available from the Nairobi City Council Engineer's office.

The bottom of the trench shall be filled across the full width 10cm layer of suitable material e.g. Quarry dust sifted through 6mm mesh in case of rocky areas or excavated material not suitable. The contractor shall provide the suitable material.

After cable laying a further layer of bedding shall be provided using the same material extend to 10cm above the cables.

Where cables cross under roads or other services through ducts (sleeves) the ends of the sleeves shall be sealed with non-hardening water tight compound after the installation of the cable. The contractor shall provide the non-hardening water tight compound as per the procuring entity specifications before backfilling.

Where the soil excavated is considered not suitable for cable bedding and reinstatement, the contractor shall dispose the soil at no additional cost and reinstate the trench with suitable imported soil material e.g. Murram or sand .

4.5 Cable laying

The cables shall be installed at the minimum depths as approved by the employer. The work will be carried out under employers direct supervision.

The cable shall be removed from the drum in such a manner that the cable is not subjected to twisting or tension exceeding that stipulated by the cable manufacturer or as directed by the employer.

Cable rollers shall be used as far as possible to run out cables. Rollers shall be spaced so that the length of cable in the trench will be totally suspended during laying and sufficiently close to prevent undue sagging and the cable from touching the ground.

Where cables have to be drawn around a corner, well lubricated skid plated shall be used.

Where cables have to be drawn through pipes or ducts, a suitable cable sock shall be used and particular care shall be taken to avoid abrasion, elongation or distortion of any kind.

The contractor if undertaking cable laying shall be responsible of its security until the work site is handed over to the employer.

4.6 Ducting across roads

The Ducts will be of concrete or Heavy Gauge PVC reinforced by concrete 150mm thick surround.

The contractor shall provide the ducts.

4.7 Particulars

Most of the works will be done within Nairobi Region but the same prices should be applicable whenever works arise in other Regions.

The work done must also be compliant with Kenya National Highways Authority, Kenya Urban Roads Authority, Kenya Railways and Nairobi City County conditions and standards.