



BIDDING DOCUMENT

For

Procurement of Non-Consultant Services of an Inspection Agency for Wooden Poles

ICB No: KP1/6E-2/PT/9/16/A55

KENYA ELECTRICITY MODERNIZATION PROJECT

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Revisions

This bidding document is based on the World Bank Standard Bid Document referred to as a Trial Edition, dated April 2007 and revised April 2007: The features of May 2004, revised October 2006, Procurement Guidelines have been incorporated.

The Instructions to Bidders have been updated for Corrupt and Fraudulent Practices and Eligible Bidders in accordance with the Procurement Guidelines (2011)

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Part I – Bidding Procedures

Section I. Instructions to Bidders

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Instructions to Bidders

A. General

- 1. Scope of Bid**
 - 1.1 The Employer, as defined in the **Bidding Data Sheet (BDS)**, invites bids for the Services, as described in the Appendix A to the Contract. The name and identification number of the Contract is **provided in the BDS**.
 - 1.2 The successful Bidder will be expected to complete the performance of the Services by the Intended Completion Date **provided in the BDS**.
- 2. Source of Funds**
 - 2.1 The Borrower, as **defined in the BDS**, intends to apply part of the funds of a loan from the World Bank, **as defined in the BDS**, towards the cost of the Project, **as defined in the BDS**, to cover eligible payments under the Contract for the Services. Payments by the World Bank will be made only at the request of the Borrower and upon approval by the World Bank in accordance with the Loan Agreement, and will be subject in all respects to the terms and conditions of that Agreement. Except as the World Bank may specifically otherwise agree, no party other than the Borrower shall derive any rights from the Loan Agreement or have any rights to the loan proceeds.
- 3. Corrupt or Fraudulent Practices**
 - 3.1 The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section V.
 - 3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit the Bank to inspect all accounts, records and other documents relating to any prequalification process, bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank.
- 4. Eligible Bidders**
 - 4.1 A Bidder may be a firm that is a private entity, a government-owned entity—subject to ITB 4.5—or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the

members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution. **Unless specified in the BDS**, there is no limit on the number of members in a JV.

- 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:
- (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
 - (b) receives or has received any direct or indirect subsidy from another Bidder; or
 - (c) has the same legal representative as another Bidder; or
 - (d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
 - (e) participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
 - (f) any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or
 - (g) any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the Contract implementation; or
 - (h) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
 - (i) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan)

who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract.

- 4.4 A Bidder that has been sanctioned by the Bank in accordance with the above ITB 3.1, including in accordance with the Bank's Guidelines on Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants ("Anti-Corruption Guidelines"), shall be ineligible to be prequalified for, bid for, or be awarded a Bank-financed contract or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall have determined. The list of debarred firms and individuals is available as **specified in the BDS**.
- 4.5 Bidders that are Government-owned enterprises or institutions in the Employer's Country may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not dependent agencies of the Employer. To be eligible, a government-owned enterprise or institution shall establish to the Bank's satisfaction, through all relevant documents, including its Charter and other information the Bank may request, that it: (i) is a legal entity separate from the government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the enterprise or has the ability to exercise influence or control over the enterprise or institution.
- 4.6 A Bidder shall not be under suspension from bidding by the Employer as the result of the operation of a Bid-Securing Declaration.
- 4.7 Firms and individuals may be ineligible if so indicated in Section IV and (a) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods

or the contracting of works or services required; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.

4.8 This bidding is open only to prequalified Bidders unless **specified in the BDS**.

4.9 A Bidder shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.

5. Qualification of the Bidder

5.1 All bidders shall provide in Section III, Bidding Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

5.2 In the event that prequalification of potential bidders has been undertaken **as stated in the BDS**, only bids from prequalified bidders shall be considered for award of Contract, in which case the provisions of sub-clauses 5.3 to 5.6 hereafter shall not apply. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section IV.

5.3 If the Employer has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids in Section IV, unless otherwise **stated in the BDS**:

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;
- (b) total monetary value of Services performed for each of the last five years;
- (c) experience in Services of a similar nature and size for each of the last five years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
- (d) list of major items of equipment proposed to carry out the Contract;

- (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
- (f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years;
- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) authority to the Employer to seek references from the Bidder's bankers;
- (i) information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
- (j) proposals for subcontracting components of the Services amounting to more than 10 percent of the Contract Price.

5.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **BDS**:

- (a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture partner;
- (b) the Bid shall be signed so as to be legally binding on all partners;
- (c) the Bid shall include a copy of the agreement entered into by the joint venture partners defining the division of assignments to each partner and establishing that all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms; alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement;
- (d) one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

5.5 To qualify for award of the Contract, bidders shall meet the

following minimum qualifying criteria:

- (a) annual volume of Services of at least the amount **specified in the BDS;**
- (b) experience as prime contractor in the provision of at least two service contracts of a nature and complexity equivalent to the Services over the last 5 years (to comply with this requirement, Services contracts cited should be at least 70 percent complete) **as specified in the BDS;**
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the BDS;**
- (d) a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the **BDS.**

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

- 5.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB Sub-Clause 4.4(a), (b) and (e); however, for a joint venture to qualify the partner in charge must meet at least 40 percent of those minimum criteria for an individual Bidder and other partners at least 25% of the criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise **stated in the BDS.**

6. One Bid per Bidder

- 6.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified.

7. Cost of Bidding

- 7.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs.

- 8. Site Visit** 8.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of required Services and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Services. The costs of visiting the Site shall be at the Bidder's own expense.

B. Bidding Documents

- 9. Content of Bidding Documents** 9.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with ITB Clause 11:

Section I	Instructions to Bidders
Section II	Bidding Data Sheet
Section III	Bidding Forms
Section IV	Eligible Countries
Section V	Corrupt and Fraudulent Practices
Section VI	Activity Schedule
Section VII	General Conditions of Contract
Section VIII	Special Conditions of Contract
Section IX	Performance Specifications and Drawings (if Applicable)
Section X	Contract Forms

- 9.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid. Sections III, VI, and X should be completed and returned with the Bid in the number of copies specified in the **BDS**.

- 10. Clarification of Bidding Documents** 10.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable ("cable" includes telex and facsimile) at the Employer's address indicated in the invitation to bid. The Employer will respond to any request for clarification received earlier than 14 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.

- 11. Amendment of** 11.1 Before the deadline for submission of bids, the Employer may

Bidding Documents

modify the bidding documents by issuing addenda.

- 11.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by cable to the Employer.
- 11.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with ITB Sub-Clause 21.2 below.

C. Preparation of Bids

12. Language of Bid

- 12.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer shall be written in the language **specified in the BDS**. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the Bidding Data Sheet, in which case, for purposes of interpretation of the Bid, the translation shall govern.

13. Documents Comprising the Bid

- 13.1 The Bid submitted by the Bidder shall comprise the following:
- (a) The Form of Bid (in the format indicated in Section III);
 - (b) Bid Security;
 - (c) Priced Activity Schedule;
 - (d) Qualification Information Form and Documents;
 - (e) Alternative offers where invited;

and any other materials required to be completed and submitted by bidders, as **specified in the BDS**.

- 13.2 Bidders bidding for this contract together with other contracts stated in the IFB to form a package will so indicate in the bid together with any discounts offered for the award of more than one contract

14. Bid Prices

- 14.1 The Contract shall be for the Services, as described in Appendix A to the contract and in the Specifications, Section IX, based on the priced Activity Schedule, Section VI, submitted by the

Bidder.

- 14.2 The Bidder shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), Section IX and listed in the Activity Schedule, Section VI. Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.
- 14.3 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the total Bid price submitted by the Bidder.
- 14.4 If **provided for in the BDS**, the rates and prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Special Conditions of Contract and of the General Conditions of Contract.
- 14.5 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder in the form of Appendices D and E to the Contract

15. Currencies of Bid and Payment

- 15.1 The lump sum price shall be quoted by the Bidder separately in the following currencies:
- (a) for those inputs to the Services which the Bidder expects to provide from within the Employer's country, the prices shall be quoted in the currency of the Employer's country, unless otherwise **specified in the BDS**; and
 - (b) for those inputs to the Services which the Bidder expects to provide from outside the Employer's country, the prices shall be quoted in up to any three currencies of any member country of the Bank.
- 15.2 Bidders shall indicate details of their expected foreign currency requirements in the Bid.
- 15.3 Bidders may be required by the Employer to justify their foreign currency requirements and to substantiate that the amounts included in the Lump Sum are reasonable and responsive to ITB Sub-Clause 15.1.

- 16. Bid Validity**
- 16.1 Bids shall remain valid for the period **specified in the BDS**.
- 16.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by cable. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with ITB Clause 17 in all respects.
- 16.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended by more than 60 days, the amounts payable in local and foreign currency to the Bidder selected for award, shall be increased by applying to both the local and the foreign currency component of the payments, respectively, the factors specified in the request for extension, for the period of delay beyond 60 days after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.
- 17. Bid Security**
- 17.1 The Bidder shall furnish, as part of the Bid, a Bid Security or a Bid-Securing Declaration, if required, as **specified in the BDS**.
- 17.2 The Bid Security shall be in the amount **specified in the BDS** and denominated in the currency of the Employer's Country or a freely convertible currency, and shall:
- (a) at the bidder's option, be in the form of either a letter of credit, or a bank guarantee from a banking institution, or a bond issued by a surety;
 - (b) be issued by a reputable institution selected by the bidder and located in any eligible country. If the institution issuing the bond is located outside the Employer's Country, it shall have a correspondent financial institution located in the Employer's Country to make it enforceable.
 - (c) be substantially in accordance with one of the forms of Bid Security included in Section X, Contract Forms, or other form approved by the Employer prior to bid submission;
 - (d) be payable promptly upon written demand by the Employer in case the conditions listed in ITB Sub-Clause 17.5 are invoked;
 - (e) be submitted in its original form; copies will not be

accepted;

- (f) remain valid for a period of 28 days beyond the validity period of the bids, as extended, if applicable, in accordance with ITB Sub-Clause 16.2;

17.3 If a Bid Security or a Bid- Securing Declaration is required in accordance with ITB Sub-Clause 17.1, any bid not accompanied by a substantially responsive Bid Security or Bid Securing Declaration in accordance with ITB Sub-Clause 17.1, shall be rejected by the Employer as non-responsive.

17.4 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the Performance Security pursuant to ITB Clause 35.

17.5 The Bid Security may be forfeited or the Bid Securing Declaration executed:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, except as provided in ITB Sub-Clause 16.2; or
- (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 34;
 - (ii) furnish a Performance Security in accordance with ITB Clause 35.

17.6 The Bid Security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent to constitute the JV.

18. Alternative Proposals by Bidders

18.1 **Unless otherwise indicated in the BDS**, alternative bids shall not be considered.

18.2 When alternative times for completion are explicitly invited, a statement to that effect will be **included in the BDS**, as will the method of evaluating different times for completion.

18.3 Except as provided under ITB Sub-Clause 18.4 below, bidders wishing to offer technical alternatives to the requirements of the bidding documents must first submit a Bid that complies with the requirements of the bidding documents, including the scope, basic technical data, graphical documents and specifications. In addition to submitting the basic Bid, the Bidder shall provide all

information necessary for a complete evaluation of the alternative by the Employer, including calculations, technical specifications, breakdown of prices, proposed work methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer. Alternatives to the specified performance levels shall not be accepted.

18.4 When bidders are **permitted in the BDS** to submit alternative technical solutions for specified parts of the Services, such parts shall be described in the Specifications (or Terms of Reference) and Drawings, Section IX. In such case, the method for evaluating such alternatives will be as **indicated in the BDS**.

19. Format and Signing of Bid

19.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB Clause 11 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number **specified in the BDS**, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.

19.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 5.3(a) or 5.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.

19.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

D. Submission of Bids

20. Sealing and Marking of Bids

20.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as "ORIGINAL" and "COPIES".

20.2 The inner and outer envelopes shall

- (a) be addressed to the Employer at the address **provided in the BDS**;
- (b) bear the name and identification number of the Contract as

defined in the BDS and Special Conditions of Contract;
and

- (c) provide a warning not to open before the specified time and date for Bid opening as **defined in the BDS**.

20.3 In addition to the identification required in ITB Sub-Clause 20.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to ITB Clause 22.

20.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

21. Deadline for Submission of Bids

21.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date **specified in the BDS**.

21.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.

22. Late Bids

22.1 Any Bid received by the Employer after the deadline prescribed in ITB Clause 21 will be returned unopened to the Bidder.

23. Modification and Withdrawal of Bids

23.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in ITB Clause 21.

23.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 19 and 20, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as appropriate.

23.3 No Bid may be modified after the deadline for submission of Bids.

23.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the BDS or as extended pursuant to ITB Sub-Clause 16.2 may result in the forfeiture of the Bid Security pursuant to ITB Clause 17.

23.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause, or included in the original Bid submission.

E. Bid Opening and Evaluation

- 24. Bid Opening**
- 24.1 The Employer will open the bids, including modifications made pursuant to ITB Clause 23, in the presence of the bidders' representatives who choose to attend at the time and in the place **specified in the BDS.**
- 24.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 23 shall not be opened.
- 24.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. No bid shall be rejected at bid opening except for the late bids pursuant to ITB Clause 22; Bids, and modifications, sent pursuant to ITB Clause 23 that are not opened and read out at bid opening will not be considered for further evaluation regardless of the circumstances. Late and withdrawn bids will be returned unopened to the bidders.
- 24.4 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with ITB Sub-Clause 24.3.
- 25. Process to Be Confidential**
- 25.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder is notified of the award. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.
- 25.2 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Employer, who will provide written explanation. Any request for explanation from one bidder should relate only to its own bid; information about the bid of competitors will not be addressed.
- 26. Clarification of Bids**
- 26.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of the prices in the Activity Schedule, and other information that the Employer may require. The request for clarification and the response shall be in writing or by cable, telex, or facsimile, but no

change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with ITB Clause 28.

26.2 Subject to ITB Sub-Clause 26.1, no Bidder shall contact the Employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, he should do so in writing.

26.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation or contract award decisions may result in the rejection of the Bidder's bid.

27. Examination of Bids and Determination of Responsiveness

27.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 4; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.

27.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Services; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

27.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

28. Correction of Errors

28.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetical errors will be rectified by the Employer on the following basis: if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected; if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; if there is a discrepancy between the amounts in figures and in words, the amount in words will prevail.

28.2 The amount stated in the Bid will be adjusted by the Employer

in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with ITB Sub-Clause 17.5(b).

29. Currency for Bid Evaluation

29.1 The Employer will convert the amounts in various currencies in which the Bid Price, corrected pursuant to ITB Clause 28, is payable (excluding Provisional Sums but including Daywork where priced competitively) to either:

(a) the currency of the Employer's country at the selling rates established for similar transactions by the authority **specified in the BDS** on the date **stipulated in the BDS**;

or

(b) a currency widely used in international trade, such as the U.S. dollar, **stipulated in the BDS**, at the selling rate of exchange published in the international press as **stipulated in the BDS** on the date **stipulated in the BDS**, for the amounts payable in foreign currency; and, at the selling exchange rate established for similar transactions by the same authority specified in ITB Sub-Clause 29.1 (a) above on the date **specified in the BDS** for the amount payable in the currency of the Employer's country.

30. Evaluation and Comparison of Bids

30.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with ITB Clause 27.

30.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

(a) making any correction for errors pursuant to ITB Clause 28;

(b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, Section VI, but including Day work, when requested in the Specifications (or Terms of Reference) Section XI;

(c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with ITB Clause 18; and

(d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB

Sub-Clause 23.5.

- 30.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.
- 30.4 The estimated effect of any price adjustment conditions under Sub-Clause 7.6 of the General Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

31. Preference for Domestic Bidders

- 31.1 Domestic bidders shall not be eligible for any margin of preference in Bid evaluation.

F. Award of Contract

32. Award Criteria

- 32.1 Subject to ITB Clause 33, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 4, and (b) qualified in accordance with the provisions of ITB Clause 5.
- 32.2 If, pursuant to ITB Sub-Clause 13.2 this contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating this contract in conjunction with other contracts to be awarded concurrently. Taking into account any discounts offered by the bidders for the award of more than one contract.

33. Employer’s Right to Accept any Bid and to Reject any or all Bids

- 33.1 Notwithstanding ITB Clause 32, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer’s action.

34. Notification of Award and Signing of Agreement

- 34.1 The Bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by cable, telex, or facsimile confirmed by registered letter from the Employer. This letter (hereinafter and in the Conditions of Contract called the “Letter of Acceptance”) will state the sum that the Employer will pay the Service provider in consideration of the execution, completion, and maintenance of the Services by the

Service provider as prescribed by the Contract (hereinafter and in the Contract called the “Contract Price”).

- 34.2 The notification of award will constitute the formation of the Contract.
- 34.3 The Contract, in the form provided in the bidding documents, will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder along with the Letter of Acceptance. Within 21 days of receipt of the Contract, the successful bidder shall sign the Contract and return it to the Employer, together with the required performance security pursuant to Clause 35.
- 34.4 Upon fulfillment of ITB Sub-Clause 34.3, the Employer will promptly notify the unsuccessful Bidders the name of the winning Bidder and that their bid security will be returned as promptly as possible.
- 34.5 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Employer. The Employer will promptly respond in writing to the unsuccessful Bidder.

35. Performance Security

- 35.1 Within 21 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in the amount and in the form (Bank Guarantee and/or Performance Bond) **stipulated in the BDS**, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the General Conditions of Contract.
- 35.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued either (a) at the Bidder’s option, by a bank located in the country of the Employer or a foreign bank through a correspondent bank located in the country of the Employer, or (b) with the agreement of the Employer directly by a foreign bank acceptable to the Employer.
- 35.3 If the Performance Security is to be provided by the successful Bidder in the form of a Bond, it shall be issued by a surety which the Bidder has determined to be acceptable to the Employer.
- 35.4 Failure of the successful Bidder to comply with the requirements of ITB Sub-Clause 35.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.

36. Advance

- 36.1 The Employer will provide an Advance Payment on the

Payment and Security

Contract Price as stipulated in the Conditions of Contract, subject to the amount **stated in the BDS.**

37. Adjudicator

37.1 The Employer proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at an hourly fee **specified in the BDS**, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

Section II. Bid Data Sheet

Instructions to Bidders Clause Reference

A. General																																																																																																																										
1.1	The Employer is: THE KENYA POWER AND LIGHTING CO. (KPLC) LTD which is a national electric utility Company that transmits, distributes and retails electricity to customers throughout the country.																																																																																																																									
1.1	<p>The Name of the Contract is: Inspection Agency for Wood Poles</p> <p>The Identification number of the Contract is KP1/6E-2/PT/9/16/A55</p> <p>Details of the wooden poles to be inspected are as tabulated below;</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th rowspan="2"></th> <th colspan="3" style="text-align: center;">Quantities in pieces</th> <th rowspan="2" style="text-align: center;">Site</th> <th rowspan="2" style="text-align: center;">Period for Inspection</th> </tr> <tr> <th style="text-align: center;">10 M</th> <th style="text-align: center;">11 M</th> <th style="text-align: center;">12M</th> </tr> </thead> <tbody> <tr> <td></td> <td style="text-align: center;">5,183</td> <td style="text-align: center;">1,172</td> <td style="text-align: center;">1,082</td> <td>Nakuru Lanet Stores</td> <td rowspan="10" style="text-align: center; vertical-align: middle;">Within 6 Months after date of contract signature</td> </tr> <tr> <td></td> <td style="text-align: center;">5,183</td> <td style="text-align: center;">1,171</td> <td style="text-align: center;">1,081</td> <td>Eldoret Rivatex Stores</td> </tr> <tr> <td></td> <td style="text-align: center;">5,183</td> <td style="text-align: center;">1,171</td> <td style="text-align: center;">1,081</td> <td>Kitale Stores</td> </tr> <tr> <td></td> <td style="text-align: center;">5,183</td> <td style="text-align: center;">1,171</td> <td style="text-align: center;">1,081</td> <td>Kericho Stores</td> </tr> <tr> <td></td> <td style="text-align: center;">7,439</td> <td style="text-align: center;">967</td> <td style="text-align: center;">893</td> <td>Mombasa Rabai Stores</td> </tr> <tr> <td></td> <td style="text-align: center;">7,098</td> <td style="text-align: center;">1,141</td> <td style="text-align: center;">1,053</td> <td>Nairobi, Nairobi South stores</td> </tr> <tr> <td></td> <td style="text-align: center;">6,738</td> <td style="text-align: center;">1,523</td> <td style="text-align: center;">1,406</td> <td>Kisumu Mamboleo Stores</td> </tr> <tr> <td></td> <td style="text-align: center;">5,183</td> <td style="text-align: center;">1,171</td> <td style="text-align: center;">1,081</td> <td>Thika Stores</td> </tr> <tr> <td></td> <td style="text-align: center;">3,628</td> <td style="text-align: center;">820</td> <td style="text-align: center;">757</td> <td>Meru Stores</td> </tr> <tr> <td></td> <td style="text-align: center;">6,220</td> <td style="text-align: center;">1,406</td> <td style="text-align: center;">1,298</td> <td>Nyeri Kiganjo Stores</td> </tr> <tr> <td style="text-align: center;">Sub-Total</td> <td style="text-align: center;">57,038</td> <td style="text-align: center;">11,713</td> <td style="text-align: center;">10,813</td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">6,911</td> <td style="text-align: center;">–</td> <td style="text-align: center;">–</td> <td>Nakuru Lanet Stores</td> <td rowspan="10" style="text-align: center; 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Sub-total	49,600	–	–		
Grand Total				195,299	
1.2	The Intended Completion Date is: Twenty Four (24) Months after contract signature.				
2.1	The Borrower is: THE GOVERNMENT OF KENYA				
2.1	The name of the Project is: Kenya Electricity Modernization Project Implemented under Component C: Electrification Program				
2.1	The loan/credit number is: 55870				
4.4	A list of debarred firms and individuals is available on the Bank’s external website: http://www.worldbank.org/debarr .				
4.8	Prequalification HAS NOT been undertaken. Bidding is open to all eligible bidders.				
5.4	The information needed for Bids submitted by joint ventures as stated in ITB 5.4 plus this additional as follows: a)The Power of Attorney b)An undertaking signed by all parties i) Stating that all parties shall be jointly and severally liable, if so required in accordance with ITB 5.4 and ii) Nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.				
5.5(a)	The minimum required annual volume of Services for the successful Bidder in any of the last ten years shall be: A minimum inspection of 130,000 pieces of wooden poles.				

<p>5.5(b)</p>	<p>The experience required to be demonstrated by the Bidder should include as a minimum that he has executed during the last 5 years the following:</p> <p>Must demonstrate material inspection for at least two (2) contracts in the last five (5) years for wooden utility poles of a similar size and complexity as the proposed contract.</p> <p>Affiliations to Regional and international accreditation/certification/inspection bodies. Alternatively, the Lead Inspector of the firm must be a member of a relevant Technical committee (or equivalent) of an internationally recognized National accreditation body.</p>																					
<p>5.5 (c)</p>	<p>The essential equipment to be made available for the Contract by the successful Bidder shall be,</p> <table border="1" data-bbox="331 604 1432 1243"> <thead> <tr> <th data-bbox="331 604 440 680">Sr.No.</th> <th data-bbox="440 604 1143 680">Item Description</th> <th data-bbox="1143 604 1432 680">Minimum Quantity Required</th> </tr> </thead> <tbody> <tr> <td data-bbox="331 680 440 753">1</td> <td data-bbox="440 680 1143 753">Moisture Meter- For Testing Moisture Before Treatment</td> <td data-bbox="1143 680 1432 753">6</td> </tr> <tr> <td data-bbox="331 753 440 827">2.</td> <td data-bbox="440 753 1143 827">Tree Calipers Or Diameter Tape – For Testing Diameters</td> <td data-bbox="1143 753 1432 827">6</td> </tr> <tr> <td data-bbox="331 827 440 900">3.</td> <td data-bbox="440 827 1143 900">Increment Borers – For Testing Penetration And Collecting Retention Samples</td> <td data-bbox="1143 827 1432 900">6</td> </tr> <tr> <td data-bbox="331 900 440 940">4.</td> <td data-bbox="440 900 1143 940">Steel Measuring Tapes – For Measuring the Lengths</td> <td data-bbox="1143 900 1432 940">6</td> </tr> <tr> <td data-bbox="331 940 440 1131">5.</td> <td data-bbox="440 940 1143 1131">Spectrometric Analyzer – For Testing CCA Retention and Components <ul style="list-style-type: none"> • Micro-wave oven for drying core boring samples • Grinder and sieve refining sample </td> <td data-bbox="1143 940 1432 1131">6</td> </tr> <tr> <td data-bbox="331 1131 440 1243">6.</td> <td data-bbox="440 1131 1143 1243">Hammer for branding inspected poles after inspection. Equivalent or better technology may be used</td> <td data-bbox="1143 1131 1432 1243">6</td> </tr> </tbody> </table> <p><i>For item No.s 1, 2, 3, 4 and 5 need to be calibrated by a recognized body equivalent or better than Kenya Bureau of Standards. Valid Calibration certificates shall be submitted.</i></p> <p><i>Proof of ownership (Purchase receipts or lease agreements) of the equipment shall be submitted.</i></p> <p>The Strength test facility – for testing strength especially will be provided by the manufacturer</p>	Sr.No.	Item Description	Minimum Quantity Required	1	Moisture Meter- For Testing Moisture Before Treatment	6	2.	Tree Calipers Or Diameter Tape – For Testing Diameters	6	3.	Increment Borers – For Testing Penetration And Collecting Retention Samples	6	4.	Steel Measuring Tapes – For Measuring the Lengths	6	5.	Spectrometric Analyzer – For Testing CCA Retention and Components <ul style="list-style-type: none"> • Micro-wave oven for drying core boring samples • Grinder and sieve refining sample 	6	6.	Hammer for branding inspected poles after inspection. Equivalent or better technology may be used	6
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<p>5.5 (d)</p>	<p>Experience and Qualification of Lead Inspector</p> <p>The minimum qualifications shall be as follows;</p> <ol style="list-style-type: none"> a) Holder of a Bachelor of Science Degree in Wood Science & Technology or other comparable qualifications from a recognized institution; b) Ten (10) years’ experience as an inspector of wood utility poles and the preservative treatment of wood utility poles or c) Ten (10) years’ experience in wood treating plant quality control work and having 																					

	<p>worked with both CCA and Creosote preservatives; or</p> <p>See also the full qualifications for the key staff the Lead Inspector and at least two (2) Inspection Officers as described in Appendices to Contract –Appendix C—Key Personnel and Subcontractors.</p>
5.5(e)	The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be: USD 80,000
5.6	Subcontractors’ experience WILL be taken into account.
B. Bidding Data	
9.2 and 19.1	In addition to the original of the bid, the number of copies is TWO and a soft copy (in PDF) provided in a Flash disk.
C. Preparation of Bids	
12.1	<p>The language of the bid is: ENGLISH</p> <p>All correspondence exchange shall be in ENGLISH language.</p> <p>Language for translation of supporting documents and printed literature is ENGLISH</p>
13.1	The additional materials required to be completed and submitted are: None
14.4	The Contract may be subject to price adjustment in accordance with Clause 6.6 of the Conditions of Contract.
15.1	Local inputs shall be quoted in KSH also called KES (Kenya Shillings)
16.1	The period of Bid validity shall be 120 days after the deadline for Bid submission specified in the BDS.
17.1	A Bid Security shall be required
17.2	<p>The amount of Bid Security shall be USD 11,000 or an equivalent amount in a freely convertible currency.</p> <p>Bid Security shall be in the form of a bank guarantee only, and in the format included in Section III-Bidding Forms.</p>
18.1	Alternative bids ARE NOT permitted.
18.2	Alternative times for completion ARE NOT permitted
18.4	Alternative technical solutions shall be permitted for the following parts of the Services: N/A

D. Submission of Bids	
20.2 (a)	The Employer's address for the purpose of Bid submission is: Attention: The General Manager, Corporate Affairs & Company Secretary The Kenya Power and Lighting Company, 7 th Floor, Stima Plaza, Kolobot Road, Parklands City: Nairobi ZIP/Postal Code: 30099-001 Country: Kenya
20.2 (b)	For identification of the bid the envelopes should indicate: Contract: <i>Procurement of Non Consulting Services of an Inspection Agency for Wooden Poles:</i> Bid / Contract Number: KP1/6E-2/PT/9/16/A55
21.1	The deadline for the submission of bids is: 8th November,2016 Time: 10:00 Hrs. East African Time
E. Bid Opening and Evaluation	
24.1	The bid opening shall take place at: The Kenya Power and Lighting Company, Stima Plaza Street Address: <i>Kolobot Road, Parklands</i> Floor: <i>Ground Floor</i> , Room number: <i>Stima Plaza Auditorium</i> City: <i>Nairobi</i> Country: <i>Kenya</i> Date: 8th November,2016 Time: 10:30Hrs East African Time
29.1	The currency that shall be used to convert all bid prices expressed in various currencies into a single currency is: KES (Kenya Schillings) The source of exchange rate shall be: The Central Bank of Kenya (Selling Exchange) The date for the exchange rate shall be: Rate at the closing date of submission of bids.
F. Award of Contract	
35.0	The Performance Security acceptable to the Employer shall be in the Standard Form of a Bank Guarantee Only.
36.1	The Advance Payment shall be of Ten (10) percent of the Contract Price.
37.1	The Adjudicator proposed by the Employer is: N/A

Section III. Bidding Forms

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Service Provider's Bid

[date]

To: [name and address of Employer]

Having examined the bidding documents including addenda No, we offer to execute the [name and identification number of Contract] in accordance with the Conditions of Contract, specifications, drawings and activity schedule accompanying this Bid for the Contract Price of [amount in numbers], [amount in words] [names of currencies].

The Contract shall be paid in the following currencies:

Currency	Amount payable in currency	Inputs for which foreign currency is required
(a)		
(b)		

We accept the appointment of [name proposed in the Bidding Data Sheet] as the Adjudicator.

[or]

We do not accept the appointment of [name proposed in the Bidding Data Sheet] as the Adjudicator, and propose instead that [name] be appointed as Adjudicator, whose daily fees and biographical data are attached.

This Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

We hereby confirm that this Bid complies with the Bid validity and Bid Security required by the bidding documents and specified in the Bidding Data Sheet.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agent	Amount and Currency	Purpose of Commission or gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____
(if none, state "none")		

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Bidder: _____

Address: _____

Qualification Information

1. Individual Bidders or Individual Members of Joint Ventures

- 1.1 Constitution or legal status of Bidder: *[attach copy]*
Place of registration: *[insert]*
Principal place of business: *[insert]*
Power of attorney of signatory of Bid: *[attach]*
- 1.2 Total annual volume of Services performed in five years, in the internationally traded currency specified in the BDS: *[insert]*
- 1.3 Services performed as prime Service Provider on the provision of Services of a similar nature and volume over the last five years. The values should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of employer and contact person	Type of Services provided and year of completion	Value of contract
(a)			
(b)			

- 1.4 Major items of Service Provider's Equipment proposed for carrying out the Services. List all information requested below. Refer also to ITB Sub-Clause 5.4(c).

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
(a)			
(b)			

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to ITB Sub-Clause 5.4(e) and GCC Clause 9.1.

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			

(b)

1.6 Proposed subcontracts and firms involved. Refer to Clause 7 GCC.

Sections of the Services	Value of subcontract	Subcontractor (name and address)	Experience in providing similar Services
(a)			
(b)			

- 1.7 Financial reports for the last five years: balance sheets, profit and loss statements, auditors’ reports, etc. List below and attach copies.
- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents. We certify/confirm that we comply with eligibility requirements as per ITB Clause 4.
- 1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Employer.
- 1.10 Information regarding any litigation, current or within the last five years, in which the Bidder is or has been involved.

Other party(ies)	Cause of dispute	Details of litigation award	Amount involved
(a)			
(b)			

- 1.11 Statement of compliance with the requirements of ITB Sub-Clause 4.2.
- 1.12 Proposed Program (service work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents.

2. Joint Ventures

- 2.1 The information listed in 1.1 - 1.11 above shall be provided for each partner of the joint venture.
- 2.2 The information in 1.12 above shall be provided for the joint

venture.

2.3 Attach the power of attorney of the signatory (ies) of the Bid authorizing signature of the Bid on behalf of the joint venture.

2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that

(a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

(b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and

(c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

3. Additional Requirements

3.1 Bidders should provide any additional information required in the BDS and to fulfill the requirements of ITB Sub-Clause 5.1, if applicable.

Letter of Acceptance

[Letterhead paper of the Employer]

[Date]

To: *[name and address of the Service provider]*

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of *[amount in numbers and words]* *[name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

Note: Insert one of the 3 options for the second paragraph. The first option should be used if the Bidder has not objected the name proposed for Adjudicator. The second option if the Bidder has objected the proposed Adjudicator and proposed a name for a substitute, who was accepted by the Employer. And the third option if the Bidder has objected the proposed Adjudicator and proposed a name for a substitute, who was not accepted by the Employer.

We confirm that *[insert name proposed by Employer in the Bidding Data]*,

or

We accept that *[name proposed by bidder]* be appointed as the Adjudicator

or

We do not accept that *[name proposed by bidder]* be appointed as Adjudicator, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the Adjudicator in accordance with Clause 37.1 of the Instructions to Bidders

You are hereby instructed to proceed with the execution of the said contract for the provision of Services in accordance with the Contract documents.

Please return the attached Contract duly signed

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract

Form of Contract

[letterhead paper of the Employer]

LUMP-SUM REMUNERATION

This CONTRACT (hereinafter called the “Contract”) is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Employer]* (hereinafter called the “Employer”) and, on the other hand, *[name of Service Provider]* (hereinafter called the “Service Provider”).

[Note: In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Employer”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Employer for all the Service Provider’s obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (hereinafter called the “Service Provider”).]

WHEREAS

- (a) the Employer has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);
- (b) the Service Provider, having represented to the Employer that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;
- (c) the Employer has received *[or has applied for]* a loan from the International Bank for Reconstruction and Development (hereinafter called the “Bank”) *[or a credit from the International Development Association (hereinafter called the “Association”)]* towards the cost of the Services and intends to apply a portion of the proceeds of this loan *[or credit]* to eligible payments under this Contract, it being understood (i) that payments by the Bank *[or Association]* will be made only at the request of the Employer and upon approval by the Bank *[or Association]*, (ii) that such payments will be subject, in all respects, to the terms and conditions of the agreement providing for the loan *[or credit]*, and (iii) that no party other than the Employer shall derive any rights from the agreement providing for the loan *[or credit]* or have any claim to the loan *[or credit]* proceeds;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:

- (a) the Letter of Acceptance;
- (b) the Service Provider’s Bid
- (c) the Special Conditions of Contract;

-
- (d) the General Conditions of Contract;
 - (e) the Specifications;
 - (f) the Priced Activity Schedule; and
 - (g) The following Appendices: [**Note:** *If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.*]

Appendix A: Description of the Services

Appendix B: Schedule of Payments

Appendix C: Key Personnel and Subcontractors

Appendix D: Breakdown of Contract Price in Foreign Currency

Appendix E: Breakdown of Contract Price in Local Currency

Appendix F: Services and Facilities Provided by the Employer

Appendix G: Performance Incentive Compensation

- 2. The mutual rights and obligations of the Employer and the Service Provider shall be as set forth in the Contract, in particular:
 - (a) the Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Employer shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of Employer]*

[Authorized Representative]

For and on behalf of *[name of Service Provider]*

[Authorized Representative]

[Note: *If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the Service Provider

[name of member]

[Authorized Representative]

[name of member]

[Authorized Representative]

Bid Security (Bank Guarantee)

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

Beneficiary: _____

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ (hereinafter called "the Bidder") has submitted to you its bid dated (hereinafter called "the Bid") for the execution of _____ under Invitation for Bids No. _____ ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity, (i) fails or refuses to execute the Contract Form; or (ii) fails or refuses to furnish the performance security, if required, in accordance with the Instructions to Bidders.

This guarantee will expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful bidder; or (ii) twenty-eight days after the expiration of the Bidder's Bid.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[signature(s)]

Section IV. Eligible Countries

Eligibility for the Provision of Goods, Works and Services in Bank-Financed Procurement

1. In accordance with Para 1.8 of the Guidelines: Procurement under IBRD Loans and IDA Credits, dated May 2004, the Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:

Para 1.8 (a) (i): as a matter of law or official regulation, the Borrower's Country prohibits commercial relations with that Country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works required, or

Para 1.8 (a) (ii): by an Act of Compliance with a Decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's Country prohibits any import of goods from that Country or any payments to persons or entities in that Country.

2. For the information of borrowers and Offerors, at the present time firms, goods and Services from the following countries are excluded from this Priced Proposal:

(a) With reference to paragraph 1.8 (a) (i) of the Guidelines:

Refer to list of debarred firms and individuals available on the Bank's external website <http://www.worldbank.org/debarr>.

(b) With reference to paragraph 1.8 (a) (ii) of the Guidelines:

Refer to list of debarred firms and individuals available on the Bank's external website <http://www.worldbank.org/debarr>.

Section V. Bank Policy - Corrupt and Fraudulent Practices

Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, dated January 2011.

“Fraud and Corruption:

1.16 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.¹ In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;²
 - (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;³
 - (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;⁴
 - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;⁵
 - (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a

¹ In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

² For the purpose of this sub-paragraph, “*another party*” refers to a public official acting in relation to the procurement process or contract execution. In this context, “*public official*” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

³ For the purpose of this sub-paragraph, “*party*” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁴ For the purpose of this sub-paragraph, “*parties*” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

⁵ For the purpose of this sub-paragraph, “*party*” refers to a participant in the procurement process or contract execution.

corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

- (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 1.16(e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- (d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures,⁶ including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated⁷;
- (e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.”

⁶ A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines.

⁷ A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

Part II – Activity Schedule

Section VI. Activity Schedule

1. Background

The Government of Kenya has pledged to stimulate economic growth and accelerate job creation to improve the economic wellbeing of Kenyans. Among the many interventions to achieve this is expansion of the power distribution system to be within reach and thus enable more Kenyans connect to the grid at affordable cost and hence initiate economic activities at the micro-economic level.

To support this initiative the World Bank through the International Development Association (IDA) has approved a grant under Kenya Electricity Modernization Project (KEMP). Part of the grant will finance an electrification program under Component C1 to be implemented by the Kenya Power and Lighting Company (KPLC) on behalf of the Government of Kenya. This will support the government's objective of increasing access to electricity to by providing grant financing for the connection of new households thus introducing a more cost-effective and suitable source of funding for electrification investments.

For this contract, the selected firm will carry out inspection services for KPLC (referred to as the Employer) for all wooden electric poles to be procured by IDA with financing under the Project as outlined below.

2. Objective of the Assignment

The Services to be procured have the following major objectives:

- i. To conduct inspection services for wooden poles to ensure that quality and reliable wooden poles are delivered to the Employer as per the Employer's specifications.
- ii. Assess and monitor the wooden pole manufacturers' facilities to ensure that they conform to the laid down requirements of the Employer.
- iii. Assess and monitor the quality control procedures of the wooden pole treatment plants to ensure that the wood poles conform to the requirements of the specifications of the Employer.

3. Scope of the Assignment

The inspection services shall be provided for all wooden poles supplied to the Employer under this contract. The inspection agency shall ensure that procedures pertaining to the

quality control by pole manufacturers and pertaining to the inspection of wooden poles produced are in accordance with the Employer's specifications –“Specifications for Treated Wood Poles; Part 1 Eucalyptus Poles”, KP1/3CB/TSP/03/001-1; date of issue: 2014-03-30 (13 pages), and KS 02-94 and KS 516:2008. These specifications indicate the Quality Management System that suppliers are required to follow, as well as Tests and Inspection and Sampling.

The KPLC technical specifications for wooden poles borrow from KS 516:2008 which in turn borrows from BS 1990 and SABS754 (South African) on wooden poles while KS 02-94 on treatment/impregnation borrows from AS 1604-180 (Australian) and BS 1282 & 4072.

The detailed tasks and responsibilities of the selected firm, and the detailed TOR of the Inspection Agency are outlined in Appendix A – *Description of the Services*

4. Reporting Responsibilities

The Inspection Agency will submit inspection and progress reports to the Employer in specified format and frequency as outlined in Appendix B- *Schedule of Payments and Reporting Responsibilities*.

Part III – Conditions of Contract and Contract Forms

Section VII. General Conditions of Contract

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Section VII. General Conditions of Contract

A. General Provisions

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- (b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Bid;
- (c) “Bank” means the International Bank for Reconstruction and Development, Washington, D.C., U.S.A.;

or

- (c) “Association” means the International Development Association, Washington, D.C., U.S.A.;
- (d) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the Employer
- (e) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- (f) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- (g) “Dayworks” means varied work inputs subject to payment on a time basis for the Service Provider’s employees and equipment, in addition to payments for associated materials and administration.
- (h) “Employer” means the party who employs the Service Provider
- (i) “Foreign Currency” means any currency other than the currency of the country of the Employer;
- (j) “GCC” means these General Conditions of Contract;
- (k) “Government” means the Government of the Employer’s country;
- (l) “Local Currency” means the currency of the country of the

Employer;

- (m) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Service Provider’ rights and obligations towards the Employer under this Contract;
- (n) “Party” means the Employer or the Service Provider, as the case may be, and “Parties” means both of them;
- (o) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- (p) “Service Provider” is a person or corporate body whose Bid to provide the Services has been accepted by the Employer;
- (q) “Service Provider’s Bid” means the completed bidding document submitted by the Service Provider to the Employer
- (r) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- (s) “Specifications” means the specifications of the service included in the bidding document submitted by the Service Provider to the Employer
- (t) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider’s Bid.
- (u) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4.

1.2 Applicable Law The Contract shall be interpreted in accordance with the laws of the Employer’s country, unless otherwise **specified in the Special Conditions of Contract (SCC)**.

1.3 Language This Contract has been executed in the language **specified in the SCC**, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex,

telegram, or facsimile to such Party at the address **specified in the SCC.**

- 1.5 Location** The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Employer may approve.
- 1.6 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Service Provider may be taken or executed by the officials **specified in the SCC.**
- 1.7 Inspection and Audit by the Bank** The Service Provider shall permit the Bank to inspect its accounts and records relating to the performance of the Services and to have them audited by auditors appointed by the Bank, if so required by the Bank.
- 1.8 Taxes and Duties** The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

2. Commencement, Completion, Modification, and Termination of Contract

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be **stated in the SCC.**
- 2.2 Commencement of Services**
- 2.2.1 Program** Before commencement of the Services, the Service Provider shall submit to the Employer for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.
- 2.2.2 Starting Date** The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC.**
- 2.3 Intended Completion Date** Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC.** If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case,

the Completion Date will be the date of completion of all activities.

2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties and shall not be effective until the consent of the Bank or of the Association, as the case may be, has been obtained.

2.5 Force Majeure

2.5.1 Definition

For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.6 Termination

2.6.1 By the Employer

The Employer may terminate this Contract, by not less than thirty (30) days’ written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.6.1:

- (a) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in

writing;

- (b) if the Service Provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Service Provider, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purposes of this Sub-Clause:

- (i) “corrupt practice”⁸ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice”⁹ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “collusive practice”¹⁰ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”¹¹ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or

⁸ For the purpose of this Contract, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

⁹ For the purpose of this Contract, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

¹⁰ For the purpose of this Contract, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

¹¹ For the purpose of this Contract, “party” refers to a participant in the procurement process or contract execution.

threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

- (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under para. 1.14 (e) of the Bank's Procurement Guidelines.

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- (a) if the Employer fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Suspension of Loan or Credit

In the event that the World Bank suspends the loan or Credit to the Employer, from which part of the payments to the Service Provider are being made:

- (a) The Employer is obligated to notify the Service Provider of such suspension within 7 days of having received the World Bank's suspension notice.
- (b) If the Service Provider has not received sums due to by the due date stated in the SCC in accordance with Sub-Clause 6.5 the Service Provider may immediately issue a 14 day termination notice.

2.6.4 Payment upon Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Employer shall make the following payments to the Service Provider:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the

Personnel.

3. Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Contract, any business or professional activities in the Government's country which would conflict with the activities assigned to them under this Contract;

-
- (b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
 - (c) after the termination of this Contract, such other activities as may be **specified in the SCC**.

3.3 Confidentiality

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.

3.4 Insurance to be Taken Out by the Service Provider

The Service Provider (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Employer, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the Employer's request, shall provide evidence to the Employer showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Service Provider's Actions Requiring Employer's Prior Approval

The Service Provider shall obtain the Employer's prior approval in writing before taking any of the following actions:

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- (c) changing the Program of activities; and
- (d) any other action that may be **specified in the SCC**.

3.6 Reporting Obligations

The Service Provider shall submit to the Employer the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents Prepared by the Service Provider to Be the Property of the Employer

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Employer, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Employer, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use

of these documents, if any, shall be **specified in the SCC**.

3.8 Liquidated Damages

3.8.1 Payments of Liquidated Damages The Service Provider shall pay liquidated damages to the Employer at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Employer may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Over-payment If the Intended Completion Date is extended after liquidated damages have been paid, the Employer shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

3.8.3 Lack of performance penalty If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

3.9 Performance Security

The Service Provider shall provide the Performance Security to the Employer no later than the date specified in the Letter of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 days from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

4. Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Employer.

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- 4.2 Removal and/or Replacement of Personnel**
- (a) Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
 - (b) If the Employer finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Employer's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Employer.
 - (c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. Obligations of the Employer

- 5.1 Assistance and Exemptions** The Employer shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC.**
- 5.2 Change in the Applicable Law** If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.
- 5.3 Services and Facilities** The Employer shall make available to the Service Provider the Services and Facilities listed under Appendix F.

6. Payments to the Service Provider

- 6.1 Lump-Sum Remuneration** The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to

-
- additional payments in accordance with Sub-Clauses 2.4 and 6.3.
- 6.2 Contract Price**
- (a) The price payable in local currency is **set forth in the SCC**.
 - (b) The price payable in foreign currency is set **forth in the SCC**.
- 6.3 Payment for Additional Services, and Performance Incentive Compensation**
- 6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.
 - 6.3.2 **If the SCC so specify**, the service provider shall be paid performance incentive compensation as set out in the Performance Incentive Compensation appendix.
- 6.4 Terms and Conditions of Payment**
- Payments will be made to the Service Provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Employer specifying the amount due.
- 6.5 Interest on Delayed Payments**
- If the Employer has delayed payments beyond fifteen (15) days after the due date stated in the SCC, interest shall be paid to the Service Provider for each day of delay at the rate stated in the SCC.
- 6.6 Price Adjustment**
- 6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:
- $$P_c = A_c + B_c \text{ Lmc/Loc} + C_c \text{ Imc/Ioc}$$
- Where:
- P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.
- A_c , B_c and C_c are coefficients specified in the SCC, representing: A_c the nonadjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and
- Lmc is the index prevailing at the first day of the month of the

corresponding invoice date and Loc is the index prevailing 28 days before Bid opening for labor; both in the specific currency “c”.

Imc is the index prevailing at the first day of the month of the corresponding invoice date and Ioc is the index prevailing 28 days before Bid opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Z_o/Z_n will be applied to the respective component factor of pn for the formula of the relevant currency. Z_o is the number of units of currency of the country of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

6.7 Dayworks

6.7.1 If applicable, the Daywork rates in the Service Provider’s Bid shall be used for small additional amounts of Services only when the Employer has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Employer. Each completed form shall be verified and signed by the Employer representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

7. Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Employer shall be as **indicated in the SCC**. The Employer shall check the Service Provider’s performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider’s responsibilities. The Employer may instruct the Service Provider to search for a Defect and to uncover and test any service

that the Employer considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

7.2 Correction of Defects, and Lack of Performance Penalty

- (a) The Employer shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- (b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice.
- (c) If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

8. Settlement of Disputes

8.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

8.2 Dispute Settlement

8.2.1 If any dispute arises between the Employer and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 14 days of the notification of disagreement of one party to the other.

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

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

8.2.4 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place **shown in the SCC**.

8.2.5 Should the Adjudicator resign or die, or should the Employer and

the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Service Provider. In case of disagreement between the Employer and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

Section VIII. Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1	The words “in the Government’s country” are amended to read “ in Kenya. ”
1.1(a)	The Adjudicator is: N/A
1.1(e)	The contract name is: <i>Procurement of Non Consulting Services of an Inspection Agency for Wooden Poles.</i>
1.1(h)	The Employer is: <i>The Kenya Power and Lighting Company Limited</i>
1.1(m)	The Member in Charge is: Eng. Joseph Gathuru, Electrification Projects Manager, Kenya Power & Lighting Company Limited.
1.1(p)	The Service Provider is _____
1.2	The Applicable Law is: <i>The Law of the Republic of Kenya</i>
1.3	The language is: <i>English</i>
1.4	<p>The addresses are:</p> <p>Employer:</p> <p style="padding-left: 40px;">Attention: Electrification Projects Manager, The Kenya Power and Lighting Company Stima Sacco Building, Kolobot Road Third Floor P.O Box 30099 - 00100 Nairobi, Kenya Telephone: +254-20-3201821 Facsimile Number: +254-20-3201889 Electronic mail address: JGathuru@kplc.co.ke</p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Telex: _____</p> <p>Facsimile: _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Employer: Eng. Joseph Gathuru, Electrification Projects Manager</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	For the Service Provider: _____
2.1	The date on which this Contract shall come into effect is: The Date of Contract Signing.
2.2.2	The Starting Date for the commencement of Services is: Thirty (30) days after signing the contract.
2.3	The Intended Completion Date is: Twenty four (24) months after the date of contact signature.
3.2.3	Activities prohibited after termination of this Contract are: None
3.4	<p>The risks and coverage by insurance shall be:</p> <ul style="list-style-type: none"> (i) Third Party motor vehicle the minimum <u>As per Local (Kenyan) Law</u> (ii) Third Party liability the minimum <u>As per Local (Kenyan) Law</u> (iii) Employer's liability and workers' compensation <u>As per Local (Kenyan) Law</u> (iv) Professional liability <u>100% of the contract price</u> (v) Loss or damage to equipment and property <u>As per Local (Kenyan) Law</u>
3.5(d)	The other actions are: None
3.7	Restrictions on the use of documents prepared by the Service Provider are: Prior Approval of the Employer
3.8.1	<p>The liquidated damages rate is 0.05% (percent) per day of unperformed contract value.</p> <p>The maximum amount of liquidated damages for the whole contract is 10% percent of the final Contract Price.</p>
3.8.3	The percentage of 150% of the cost to correct a Defect is to be used for the calculation of Lack of performance. Penalty (ies) of this amount will be assessed if the defect is not corrected within the time period specified in the Employer's notice.
5.1	The assistance and exemptions provided to the Service Provider are: N/A
6.2(a)	The amount in local currency is:xxxxxxxx
6.2(b)	The amount in foreign currency or currencies is:xxxxxxxxxxxx

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract																									
6.3.2	The performance incentive paid to the Service Provider shall be: N/A																									
6.4	<p>Payments shall be made according to the following schedule:</p> <ul style="list-style-type: none"> • Advance for Mobilization, Materials and Supplies: Ten (10) percent Advance Payment of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same. • Progress payments in accordance with the milestones established as follows, subject to certification by the Employer, that the Services have been rendered satisfactorily, pursuant to the performance indicators: <table border="1" data-bbox="418 720 1385 1869"> <thead> <tr> <th data-bbox="418 720 800 793">Milestones for Payments</th> <th data-bbox="800 720 1084 793">Frequency</th> <th data-bbox="1084 720 1385 793">Payment Plan</th> </tr> </thead> <tbody> <tr> <td data-bbox="418 793 800 972">Inception Report with Work Plan</td> <td data-bbox="800 793 1084 972">Initially within four (4) weeks after the effective date of contract</td> <td data-bbox="1084 793 1385 972">Lump Sum based Ten (10) percent of the contract price</td> </tr> <tr> <td data-bbox="418 972 800 1869"> <p>Progress Reports per Lot of supply of wooden poles on completion of inspections as indicated on the table below:</p> <table border="1" data-bbox="435 1255 800 1822"> <thead> <tr> <th data-bbox="435 1255 557 1402">Lot No.</th> <th data-bbox="557 1255 800 1402">Quantities of Wooden Poles inspected(pieces)</th> </tr> </thead> <tbody> <tr> <td data-bbox="435 1402 557 1476">Lot 1</td> <td data-bbox="557 1402 800 1476">5,000</td> </tr> <tr> <td data-bbox="435 1476 557 1549">Lot 2</td> <td data-bbox="557 1476 800 1549">4,000</td> </tr> <tr> <td data-bbox="435 1549 557 1623">Lot 3</td> <td data-bbox="557 1549 800 1623">2,500</td> </tr> <tr> <td data-bbox="435 1623 557 1696">Lot 4</td> <td data-bbox="557 1623 800 1696">2,000</td> </tr> <tr> <td data-bbox="435 1696 557 1770">Lot 5</td> <td data-bbox="557 1696 800 1770">1,500</td> </tr> <tr> <td data-bbox="435 1770 557 1822">Lot 6</td> <td data-bbox="557 1770 800 1822">2,500</td> </tr> </tbody> </table> </td> <td data-bbox="800 972 1084 1869"> <ol style="list-style-type: none"> 1. Supply of wooden poles Lot 1: 16 progress reports approximately every four (4) weeks, with final report on 3,199 wooden poles 2. Supply of wooden poles Lot 2: 9 progress reports approximately every eight (8) weeks, with final report on 3,153 wooden poles 3. Supply of wooden poles </td> <td data-bbox="1084 972 1385 1869"> <p>Lump sum based on delivery and acceptance by the Employer of each Progress Report</p> <p>(Total shall constitute 70% of the contract price).</p> </td> </tr> </tbody> </table>			Milestones for Payments	Frequency	Payment Plan	Inception Report with Work Plan	Initially within four (4) weeks after the effective date of contract	Lump Sum based Ten (10) percent of the contract price	<p>Progress Reports per Lot of supply of wooden poles on completion of inspections as indicated on the table below:</p> <table border="1" data-bbox="435 1255 800 1822"> <thead> <tr> <th data-bbox="435 1255 557 1402">Lot No.</th> <th data-bbox="557 1255 800 1402">Quantities of Wooden Poles inspected(pieces)</th> </tr> </thead> <tbody> <tr> <td data-bbox="435 1402 557 1476">Lot 1</td> <td data-bbox="557 1402 800 1476">5,000</td> </tr> <tr> <td data-bbox="435 1476 557 1549">Lot 2</td> <td data-bbox="557 1476 800 1549">4,000</td> </tr> <tr> <td data-bbox="435 1549 557 1623">Lot 3</td> <td data-bbox="557 1549 800 1623">2,500</td> </tr> <tr> <td data-bbox="435 1623 557 1696">Lot 4</td> <td data-bbox="557 1623 800 1696">2,000</td> </tr> <tr> <td data-bbox="435 1696 557 1770">Lot 5</td> <td data-bbox="557 1696 800 1770">1,500</td> </tr> <tr> <td data-bbox="435 1770 557 1822">Lot 6</td> <td data-bbox="557 1770 800 1822">2,500</td> </tr> </tbody> </table>	Lot No.	Quantities of Wooden Poles inspected(pieces)	Lot 1	5,000	Lot 2	4,000	Lot 3	2,500	Lot 4	2,000	Lot 5	1,500	Lot 6	2,500	<ol style="list-style-type: none"> 1. Supply of wooden poles Lot 1: 16 progress reports approximately every four (4) weeks, with final report on 3,199 wooden poles 2. Supply of wooden poles Lot 2: 9 progress reports approximately every eight (8) weeks, with final report on 3,153 wooden poles 3. Supply of wooden poles 	<p>Lump sum based on delivery and acceptance by the Employer of each Progress Report</p> <p>(Total shall constitute 70% of the contract price).</p>
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Recommendations	contract.			
6.5	<p data-bbox="415 789 1406 890">Payment shall be made within Thirty (30) days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within Sixty (60) days in the case of the final payment.</p> <p data-bbox="415 915 727 949">The interest rate is: N/A</p>			
6.6.1	<p data-bbox="415 982 896 1016">Price adjustment is Not to be Applied</p>			
7.1	<p data-bbox="415 1050 1406 1150">The principle and modalities of inspection of the Services by the Employer are as follows: As indicated Appendix A to Contract: Description of Services</p> <p data-bbox="415 1176 883 1209">The Defects Liability Period is: N/A</p>			
8.2.3	<p data-bbox="415 1243 734 1276">The Adjudicator is: N/A</p>			
8.2.4	<p data-bbox="415 1302 1240 1335">The arbitration procedures of <i>the Republic of Kenya</i> will be used</p>			
8.2.5	<p data-bbox="415 1369 1286 1402">The designated Appointing Authority for a new Adjudicator is: N/A</p>			

Section IX. Performance Specifications and Drawings

As per the following documents attached

- 1. Employer's KPLC specifications –“Specifications for Treated Wood Poles; Part 1 Eucalyptus Poles”, KP1/3CB/TSP/03/001-1; date of issue: 2014-03-30 (13 pages)**
- 2. KS 02-94**
- 3. KS 516:2008**

Section X. Contract Forms

Table of Forms

Performance Bank Guarantee (Unconditional)68
Bank Guarantee for Advance Payment69

Performance Bank Guarantee (Unconditional)

To: _____

Whereas _____ (hereinafter called “the Service Provider”) has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ (hereinafter called “the Contract”);

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

And whereas we have agreed to give the Service Provider such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Service Provider, up to a total of _____, _____, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____/ as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

This Guarantee shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

Signature and seal of the Guarantor _____

Name of Bank _____

Address _____

Date _____

Bank Guarantee for Advance Payment

To: _____

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub-Clause 6.4 (“Terms and Conditions of Payment”) of the above-mentioned Contract, _____ (hereinafter called “the Service Provider”) shall deposit with _____ a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of _____

We, the _____, as instructed by the Service Provider, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to _____ on his first demand without whatsoever right of objection on our part and without his first claim to the Service Provider, in the amount not exceeding _____

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

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until _____ receives full repayment of the same amount from the Service Provider.

Yours truly,

Signature and seal: _____

Name of Bank/Financial Institution: _____

Address: _____

Date: _____

Appendices

Appendix A - Description of the Services

1. Background

The Government of Kenya has pledged to stimulate economic growth and accelerate job creation to improve the economic wellbeing of Kenyans. Among the many interventions to achieve this is expansion of the power distribution system to be within reach and thus enable more Kenyans connect to the grid at affordable cost and hence initiate economic activities at the micro-economic level.

To support this initiative the World Bank through the International Development Association (IDA) has approved a grant under Kenya Electricity Modernization Project (KEMP). Part of the grant will finance an electrification program under Component C1 to be implemented by the Kenya Power and Lighting Company (KPLC) on behalf of the Government of Kenya. This will support the government's objective of increasing access to electricity to by providing grant financing for the connection of new households thus introducing a more cost-effective and suitable source of funding for electrification investments.

For this contract, the selected firm will carry out inspection services for treated wooden for KPLC (referred to as the Employer) for all wooden poles to be procured by IDA financing under the Project as outlined below.

2. Objective of the Assignment

The Service to be procured have the following major objectives;

- i. To conduct inspection services for wooden poles to ensure that quality and reliable wooden poles are delivered to the Employer as per the Employer's specifications.
- ii. Assess and monitor the wooden pole manufacturers' facilities to ensure that they conform to the laid down requirements of the Employer.
- iii. Assess and monitor the quality control procedures of the wooden pole treatment plants to ensure that the wood poles conform to the requirements of the specifications of the Employer.

3. Scope of the Inspection Services

The inspection services shall be provided for all wooden poles supplied to the employer under this contract. The Inspection Agency shall ensure that procedures pertaining to the quality control by pole manufacturers/treatment facilities and pertaining to the inspection of wooden poles produced are in accordance with the employer's specifications the Employer's specifications –“Specifications for Treated Wood Poles; Part 1 Eucalyptus Poles”, KP1/3CB/TSP/03/001-1; date of issue: 2014-03-30 (13 pages), and KS 02-94 and KS 516:2008. These specifications indicate the Quality Management System that suppliers are required to follow, as well as Tests and Inspection and Sampling.

The KPLC technical specifications for wooden poles borrow from KS 516:2008 which in turn borrows from BS 1990 and SABS754 (South African) on wooden poles while KS 02-94 on treatment/impregnation borrows from AS 1604-180 (Australian) and BS 1282 & 4072.

The contract for supply of wooden poles is divided into six (6) Lots with ten (10) delivery points as summarized in the table below. After the end of the procurement process, KPLC will inform the Inspection Agency if there will be a single, or multiple inspection locations for the treatment of wooden poles.

Lot	Delivery Points	10m wooden	11m wooden	12m wooden	Totals	Lot Total
Lot 1	KPLC Nakuru-Lanet Stores	17,278	1,172	1,082	19,532	78,119
	KPLC Eldoret-Rivatex Stores	17,277	1,171	1,081	19,529	
	KPLC Kitale Stores	17,277	1,171	1,081	19,529	
	KPLC Kericho Stores	17,277	1,171	1,081	19,529	
Lot 2	KPLC Nairobi South Stores	7,439	967	893	9,299	35,153
	KPLC Mombasa Rabai Stores	23,660	1,141	1,053	25,854	
Lot 3	KPLC Kisumu Mambo Leo Stores	22,460	1,523	1,406	25,389	25,389
Lot 4	KPLC Thika Stores	17,277	1,171	1,081	19,529	19,529
Lot 5	KPLC Meru Stores	12,094	820	757	13,671	13,671
Lot 6	KPLC Nyeri Kiganjo Stores	20,734	1,406	1,298	23,438	23,438

The responsibilities of the Inspection Agency shall include among others;

- i. Notify the employers' and suppliers personnel of their presence and responsibilities at the inspection site. Convene a pre-inspection meeting with the manufacturer/supplier and detail out his inspection schedule.
- ii. To comply at all times with the employers' specifications for wooden poles as detailed in the document "Specifications for Treated Wood Poles"
- iii. Inspect all wooden poles under this contract and determine compliance to specifications and applicable provisions.
- iv. To bring all non-conforming items to the attention of the Employer. Such items must be captured in the Inspection Agencies report and the resolution/corrective action taken noted.
- v. Complete written inspection reports for each Lot (i.e. per contract with a wooden pole treatment supplier) and provide reports on a timely basis to the Employer. The report for each Lot should;
 - a) Describe the inspections and tests done
 - b) Indicate the total number of pieces offered for inspection, number of pieces rejected and cause of rejection.
 - c) Indicate the level of nonconformity/discrepancies and how they were resolved.
 - d) List unresolved issues, parties notified and time and method of notification.
 - e) Indicate treatment results, which shall include;
 - Depth of penetration for each sample and a summary of all poles rejected for insufficient penetration.
 - Retention analysis of preservative used.
- vi. Submit a final signed report to the Employer stating that all items have been duly inspected and tested as per the required specifications and that to the best of their knowledge they conform to the specifications. Items not in conformance, unresolved items or any discrepancies in inspection coverage (i.e., missed inspections,) shall be specifically itemized in this report.

The specific tasks to be done by the Inspection Agency are highlighted in the specific tasks section as below;

Specific Tasks Listings

The responsibilities of the inspection agency under this contract shall include but not limited to the following specific tasks;

- i. Test and verify that the moisture content before treatment of the poles conforms to the required specifications.
- ii. Straightness of the pole
Inspect and verify that a straight line from the center of the butt to the center of the tip lie entirely within the body of the pole. The poles shall be confirmed to be free from crooks as per specifications.
- iii. Defects

Inspect and verify that the poles are of sound wood, free of decay, insect attack, rot pockets and any damage caused by handling and processing that would affect the strength of the pole.

iv. Dimensions

- a) Inspect and verify that all pole lengths are as specified, that the minimum top diameter and Theoretical Ground level diameters are within the specified limits.
- b) Inspect and verify that all bolt and insulator pin holes are properly drilled as per specifications.
- c) Verify that the shaping and cutting of the poles is in conformance with the specifications.

v. Impregnation

- a) Verify and test that the poles have undergone complete preservative fixation and are safe to handle before delivery. Fixation period shall not be less than 72 hours after preservative impregnation.
- b) Test and determine that the sapwood penetration and preservative retention conforms to the clients' specifications.
- c) The preservative used shall be either Creosote in mineral oil base or formulations of water soluble compounds of copper, chromium and arsenic (CCA) in accordance with Kenya Standards specification KS 02-94 but as specifically required by the Client in clause 4.2.5 in the 'specification of treated wooden poles' document.

vi. Banding and Colour Coding

- a) Inspect and verify each end banded at 100mm \pm 10mm; the band to be firmly tensioned and nailed to the pole at four different positions evenly located. Nail plates cover \geq 60% of the butt and no larger than the face.
- b) Ensure that paint used for colour coding is as per specifications.

vii. Marking

- a) Verify proper nameplate markings as per specifications
- b) Ensure that any additional markings as proposed by the client are placed.

4. Treatment and Inspection Results

The treated wooden poles shall be inspected and tested in accordance with the are in accordance with the employer's specifications the Employer's specifications – "Specifications for Treated Wood Poles; Part 1 Eucalyptus Poles", KP1/3CB/TSP/03/001-1; date of issue: 2014-03-30 (13 pages), and KS 02-94 and KS 516:2008. These specifications indicate the Quality Management System that suppliers are required to follow, as well as Tests and Inspection and Sampling.

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The poles shall be tested against the relevant minimum dimensions and strength values as per clause 4.4 (of specifications of treated wooden poles) among other parameters as per this specification and applicable standards.

The tests and requirements are as tabulated below;

	Inspection Type Description	Remarks																								
1	<p>Dimensions</p> <p>Length - tolerance of $\pm 1\%$</p> <table border="1" data-bbox="354 436 1166 762"> <thead> <tr> <th>Code</th> <th>Length (M)</th> <th>Colour coding</th> <th>Min. Top \varnothing (mm)</th> <th>Min. TGL \varnothing (mm)</th> <th>Theoretical Ground Line (M)</th> </tr> </thead> <tbody> <tr> <td>186187</td> <td>10M</td> <td>Black</td> <td>140</td> <td>182.5</td> <td>1.8</td> </tr> <tr> <td>186188</td> <td>11M</td> <td>Navy Blue</td> <td>180</td> <td>227.5</td> <td>1.8</td> </tr> <tr> <td>186189</td> <td>12M</td> <td>Yellow</td> <td>180</td> <td>232.5</td> <td>1.8</td> </tr> </tbody> </table> <p>Drilling</p> <p>Straight line parallel to the axis and 90^0 to the diameter.</p> <ul style="list-style-type: none"> • 10m Poles – four (4) holes, 18mm diameter, at 150mm, 455mm, 760mm and 1065mm from the top of the pole • All other sizes – one (1) hole, 24mm \varnothing, at 150mm from the top of the pole <p>Tolerance of $\pm 1\text{mm}$</p> <p>Shaping and Cutting</p> <ul style="list-style-type: none"> • Butt end of the pole to be Cut square to within 5^0; Top end cut to a slant of $60^0(+5^0)$ to the longitudinal axis. • Branches cut off neatly in the direction of growth and be dressed down flush with the trunk. 	Code	Length (M)	Colour coding	Min. Top \varnothing (mm)	Min. TGL \varnothing (mm)	Theoretical Ground Line (M)	186187	10M	Black	140	182.5	1.8	186188	11M	Navy Blue	180	227.5	1.8	186189	12M	Yellow	180	232.5	1.8	
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3	<p>Banding /Nail Plates</p> <p>Each end banded at $100\text{mm} \pm 10\text{mm}$; the band firmly tensioned and nailed to the pole at four different positions evenly located. Nail plates cover $\geq 60\%$ of the butt & no larger than the face.</p>																									

	Inspection Type Description	Remarks																																														
4	<p>Defects Defects limited to:</p> <table border="1" data-bbox="354 296 1206 674"> <tr> <td data-bbox="358 302 610 449">Knots</td> <td data-bbox="615 302 883 338">Single</td> <td data-bbox="888 302 1201 338">Cluster in 500mm</td> </tr> <tr> <td data-bbox="358 344 610 380">• Sound</td> <td data-bbox="615 344 883 380">$\leq \frac{1}{6}$ circumference</td> <td data-bbox="888 344 1201 380">$\leq \frac{1}{4}$ circumference</td> </tr> <tr> <td data-bbox="358 386 610 449">• Unsound</td> <td data-bbox="615 386 883 449">$\leq \frac{1}{12}$ circumference</td> <td data-bbox="888 386 1201 449">$\leq \frac{1}{8}$ circumference</td> </tr> <tr> <td data-bbox="358 455 610 491">Spi al Grain</td> <td colspan="2" data-bbox="615 455 1201 491">Not more than one complete turn in any 6M</td> </tr> <tr> <td data-bbox="358 497 610 596">End Check</td> <td colspan="2" data-bbox="615 497 1201 596">Number not more than 4 from pith to surface. Length of ≤ 2 times butt \varnothing at butt, and ≤ 1 times top \varnothing at top</td> </tr> <tr> <td data-bbox="358 602 610 674">Surface check</td> <td colspan="2" data-bbox="615 602 1201 674">Max width of ≤ 15mm; at over 4mm wide, length shall not exceed 6 times average \varnothing</td> </tr> </table> <table border="1" data-bbox="354 709 1227 951"> <thead> <tr> <th data-bbox="358 716 500 835" rowspan="2">Length (M)</th> <th data-bbox="505 716 646 835" rowspan="2">Min. Top \varnothing (mm)</th> <th colspan="2" data-bbox="651 716 935 772">End Check Length (mm)</th> <th colspan="2" data-bbox="940 716 1222 772">Surface Check (mm)</th> </tr> <tr> <th data-bbox="651 779 792 835">Top</th> <th data-bbox="797 779 935 835">Butt</th> <th data-bbox="940 779 1081 835">Average \varnothing</th> <th data-bbox="1086 779 1222 835">Length</th> </tr> </thead> <tbody> <tr> <td data-bbox="358 835 500 871">10M</td> <td data-bbox="505 835 646 871">140</td> <td data-bbox="651 835 792 871">140</td> <td data-bbox="797 835 935 871">384</td> <td data-bbox="940 835 1081 871">166</td> <td data-bbox="1086 835 1222 871">996</td> </tr> <tr> <td data-bbox="358 877 500 913">11M</td> <td data-bbox="505 877 646 913">180</td> <td data-bbox="651 877 792 913">180</td> <td data-bbox="797 877 935 913">474</td> <td data-bbox="940 877 1081 913">209</td> <td data-bbox="1086 877 1222 913">1251</td> </tr> <tr> <td data-bbox="358 919 500 951">12M</td> <td data-bbox="505 919 646 951">180</td> <td data-bbox="651 919 792 951">180</td> <td data-bbox="797 919 935 951">484</td> <td data-bbox="940 919 1081 951">211</td> <td data-bbox="1086 919 1222 951">1266</td> </tr> </tbody> </table> <p>Ring shakes Top free of shake; one at the butt of $\leq \frac{1}{3}$ of circumference but not within 50mm of surface</p>	Knots	Single	Cluster in 500mm	• Sound	$\leq \frac{1}{6}$ circumference	$\leq \frac{1}{4}$ circumference	• Unsound	$\leq \frac{1}{12}$ circumference	$\leq \frac{1}{8}$ circumference	Spi al Grain	Not more than one complete turn in any 6M		End Check	Number not more than 4 from pith to surface. Length of ≤ 2 times butt \varnothing at butt, and ≤ 1 times top \varnothing at top		Surface check	Max width of ≤ 15 mm; at over 4mm wide, length shall not exceed 6 times average \varnothing		Length (M)	Min. Top \varnothing (mm)	End Check Length (mm)		Surface Check (mm)		Top	Butt	Average \varnothing	Length	10M	140	140	384	166	996	11M	180	180	474	209	1251	12M	180	180	484	211	1266	
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5	<p>Marking</p> <ul style="list-style-type: none"> • Aluminium plate of at least 60mm× 60mm×1.2mm; depth of 3mm and positioned 3.5m from the butt end • Marked legibly and permanently with the following info: <ol style="list-style-type: none"> a) The words ‘PROPERTY OF KPLC’; b) Manufacturer’s name or trade mark; c) Date of treatment, comprising the month and year; d) The Kenya Standard i.e. KS 516 & KS 02 94; e) Length of pole (in metres); f) Top diameter (in mm); g) Hazard class (H4) h) Species of timber i) Preservative used and applicable standard j) Marking for serialization and traceability <p>The following additional markings shall be permanently placed / engraved on the poles;</p> <ol style="list-style-type: none"> a) Project Name i.e KEMP b) Lot No. e.g. Lot 1 																																															

5. Time Span

The Inspection Agency upon being hired and signing of the contract by the client shall carry out the above tasks for a period of Twenty four (24) Months. The agency shall prepare an inspection schedule from the start of manufacturing to the point of final delivery of the poles.

Appendix B—Schedule of Payments and Reporting Requirements

The selected firm will provide the following reports;

Milestones for Payments	Frequency	Payment Plan														
Inception Report with Work Plan	Initially within four (4) weeks after the effective date of contract	Lump Sum based Ten (10) percent of the contract price														
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Lot 2	4,000															
Lot 3	2,500															
Lot 4	2,000															
Lot 5	1,500															
Lot 6	2,500															
Final Report with Summary of all Progress Reports and Recommendations	Within Two months after completion of the contract.	Lump Sum based on Ten (10) percent of the contract price														

The Language of communication for the assignment shall be English. The Inspection Agency will produce the documents and Reports in both electronic and hard copy formats as required by the Employer.

Format of the report shall be provided by the Employer.

Appendix C—Key Personnel and Subcontractors

1. Qualification and Experience of the Inspection Agency

The independent Inspection Agency shall ensure that inspectors assigned to the inspection of wooden poles are competent and experienced.

The team shall comprise of a Lead Inspector who shall overall be responsible and at least two (2) other inspection officers who shall work directly under his supervision.

The minimum qualifications and experience to be considered shall be as follows;

Experience and Qualification of the Agency/Firm

The minimum standards shall be as follows;

- a) Be a legally registered organization/entity
- b) Must demonstrate material inspection for at least two (2) projects in the last five (5) years for wooden utility poles of a similar size and complexity as the proposed contract.
- c) Affiliations to Regional and international accreditation/certification/inspection bodies. Alternatively, the Lead Inspector of the firm must be a member of a relevant Technical committee (or equivalent) of an internationally recognized National accreditation body.

2. Experience and Qualification of Lead Inspector

The minimum standards shall be as follows;

- a) Holder of a Bachelor of Science Degree in Wood Science & Technology or other comparable qualifications from a recognized institution;
- b) Ten (10) years' experience as an inspector of wood utility poles and the preservative treatment of wood utility poles or
- c) Ten (10) years' experience in wood treating plant quality control work and having worked with both CCA and Creosote preservatives; or
- d) The prospective Lead Inspector shall have performed the following;
 - i. Inspected at least 10,000 poles before treatment (referred to as “in the white”)
 - ii. Checked preservative penetration results of at least 10,000 poles.
 - iii. Made at least 100 wood assays or performed equivalent tests with XRF for preservative retention.
 - iv. Made at least 30 analyses of each type of preservative used on material the person is assigned to inspect; and

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- e) In both (b) and (c), the experience should be not less than that required in (e).
 - f) The inspector should be well informed in wood utility pole preservation and the operation of a wood utility pole treatment plant, and be competent in preservative analysis and other laboratory work.
 - g) Knowledge on Quality Management Systems will be an added advantage.
 - h) Excellent communications skills, both verbal and written in English; The Lead Inspector should show experience in instructing junior staff and technical staff at wood pole manufacturing facilities in the application of relevant international specifications and the standards for wood utility poles and the treatments applied to them. Knowledge of these specifications and standards, as well as Lead Inspectors' proficiency for KPLC standards may be checked and subjected to verification by KPLC.

3. Experience and Qualification of Inspection Officers

The minimum standards shall be as follows;

- a) Holder of a Bachelor of Science Degree in Wood Science & Technology or other comparable qualifications from a recognized institution;
- b) Five (5) years' experience as an inspector of wood utility poles and the preservative treatment of wood utility poles or
- c) Five (5) years' experience in wood treating plant quality control work and having worked with both CCA and Creosote preservatives; or
- d) Has worked under the direct on site supervision of an senior experienced, well qualified inspector, the Inspection Officer shall have performed the following;
 - i. Inspected at least 5,000 poles before treatment (referred to as "in the white")
 - ii. Checked preservative penetration results of at least 5,000 poles.
 - iii. Made at least 50 wood assays or performed equivalent tests with XRF for preservative retention.
 - iv. Made at least 15 analyses of each type of preservative used on material assigned to inspect; and
- e) In both (b) and (c), the experience should be not less than that required in (d)
- f) The inspector should be well informed in wood utility pole preservation and the operation of a wood utility pole treatment plant, and be competent in preservative analysis and other laboratory work.
- g) Knowledge on Quality Management Systems will be an added advantage.
- h) Knowledge and application of relevant KPLC specifications and standards, as well as Inspection Officer's proficiency may be checked and subjected to verification by KPLC.

Appendix D—Breakdown of Contract Price in Foreign Currency (ies)

List here the elements of cost used to arrive at the breakdown of the lump-sum price—foreign currency portion:

- 1. Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*
- 2. Reimbursable expenditures.*

This appendix will exclusively be used for determining remuneration for additional Services.

Appendix E—Breakdown of Contract Price in Local Currency

List here the elements of cost used to arrive at the breakdown of the lump-sum price—local currency portion:

- 1. Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*
- 2. Reimbursable expenditures.*

This appendix will exclusively be used for determining remuneration for additional Services.

Appendix F—Services and Facilities Provided by the Employer

The “Employer” will provide the following services / facilities to the Inspection Agency:

- i. Access to relevant information with regard to the assignment.
- ii. Notify/brief the manufacturer / supplier about the inspection agency and arrange for a pre inspection meeting between the two (All the parties to meet their own costs). The manufacturer/supplier shall be responsible for providing full access to the plant during the inspection period.

Appendix G—Performance Incentive Compensation Appendix

- **Not Applicable**