RFX 1000003125

Kenya Power

**TENDER NO. KP9/9A/OT/HRA/014/25-26**

# FOR PROCUREMENT OF CONSTRUCTION OF MODERN WAREHOUSE AT KAKAMEGA COUNTY – WESTERN REGION

**FEBRUARY, 2026**

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

TENDER DOCUMENT FOR WORKS
(E-PROCUREMENT OPEN TENDER SYSTEM)

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## ABBREVIATIONS

| | |
|---|---|
| AO | Accounting Officer |
| FY | Fiscal year |
| ICT | Information, Communications Technology |
| ITT | Instructions to Tenderers |
| JV | Joint Venture |
| KPLC | Kenya Power and Lighting PLC |
| NCB | National competitive tender |
| PE | Procuring Entity |
| PPADA | Public Procurement and Asset Disposal Act, 2015 |
| PPRA | Public Procurement Regulatory Authority |
| R | Responsive |
| NR | Not-Responsive |
| RFQ | Request for Quotation |
| STD | Standard Tender Documents |
| TDS | Tender data Sheet |
| TEC | Tender Evaluation Committee |
| TOR | Terms of reference |

**DEFINITION OF TERMS**

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

a) *Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under.*

b) *"Date of Tender Document" shall be the* ***start date*** *specified on the KPLC tendering portal.*

c) *"Day" means calendar day and "month" means calendar month.*

d) *"KEBS" wherever appearing means the Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits.*

e) *"KENAS" wherever appearing means the Kenya National Accreditation Service or its successor(s) and assign(s) where the context so admits*

f) *"KPLC"Wherever appearing means The Kenya Power and Lighting PLC and shall have the same meaning with "Kenya Power"or "Kenya Power and Lighting Company Limited"*

g) *"PPRA" wherever appearing means The Public Procurement Regulatory Authority or its successor(s) and assign(s) where the context so admits.*

h) *Reference to "the tender" or the "Tender Document" includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.*

i) *"The Procuring Entity" means The Kenya Power and Lighting Company Limited or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KPLC).*

j) *"The Tenderer" means the person(s) submitting its Tender for the works in response to the Invitation to Tender.*

k) *Where there are two or more persons included in the expression the "Tenderer", any act or default or omission by the Tenderer shall be deemed to be an act, default or omission by any one or more of such persons.*

l) *Words importing the masculine gender only, include the feminine gender*

m) *Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the "Tenderer" the covenants, agreements and obligations expressed to be made or performed by the Tenderer shall be deemed to be made or performed by such persons jointly and severally.*

n) *KPLC's "authorized person" shall mean its MD & CEO who is designated by the PPAD Act 2015 to exercise such power, authority or discretion as is required under the tender and any contract arising therefrom, or such other KPLC staff delegated with such authority.*

o) *Citizen contractors-means a person/firm wholly owned and controlled by person(s) who are citizens of Kenya.*

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

q) *"DDP" refers to Delivered Duty Paid*

# INVITATION TO TENDER

**FEBRUARY, 2026**

**Tender No: TENDER NO. KP9/9A/OT/HRA/014/25-26**

**Tender Name: PROCUREMENT OF CONSTRUCTION OF MODERN WAREHOUSE AT KAKAMEGA COUNTY – WESTERN KENYA REGION**

## 1.1 Introduction

The Kenya Power & Lighting Company Plc (KPLC) invites bids from eligible Tenderers for **PROCUREMENT OF CONSTRUCTION OF MODERN WAREHOUSE AT KAKAMEGA COUNTY – WESTERN KENYA REGION.**

Interested Eligible Tenderers may obtain further information from the Senior Supply Chain Officer, Western Kernya Region - The Kenya Power & Lighting Company Plc at Electricity House, 3rd Floor, P.O. Box 151 – 40100 Kisumu, Kenya.

## 1.2 Obtaining tender documents.

1.2.1 Tender documents detailing the requirements may be obtained from the KPLC E- Procurement Portal. Kindly ensure you are registered in Coast Region as a supplier in order for you to participate in this tender.

1.2.2 Prospective bidders may also download the tender document from KPLC's website (www.kplc.co.ke) free of charge.

## 1.3 Submission of Tender documents

Completed Tenders are to be submitted in electronic format on the KPLC's E-procurement portal on the due date and time published on the portal. Tenderers are required to visit the portal from time to time for revised closing dates and addendums. The Tender is to be submitted **ONLINE** on or before the submission date and time indicated on the **KPLC tendering portal.**

## 1.4 Tender Closing Date and Time

Tender closing date and time is Tuesday 10th March, 2026 at 10.00am.

## 1.5 Prices

Offered Price should be inclusive of all taxes, duties, levies and delivery costs to the premises (where applicable) of KPLC or other specified site, must be in Kenya Shillings and shall remain valid for **One Hundred and Eighty (180) days** from the closing date of the tender. ***Please note that prices indicated on the KPLC tendering portal should be exclusive of VAT.***

## 1.6 Opening of submitted Tenders

Tenders will be opened promptly thereafter in the presence of the Tenderer's or their representatives who choose to attend at the Demonstration Centre, Electricity House, Kisumu. All health protocols during opening ***must*** be observed and ***only one representative*** will be allowed in opening venue.

## 1.7 Pre-bid Meeting

A mandatory Pre-bid meeting shall be held on Tuesday, 3rd March, 2026 at CBM Board Room, Kakamega Office at 10:00 am. Interested bidders are to gather at the said site.

## TENDER SUBMISSION CHECKLIST

**Bidders are advised to clearly label their documents while uploading on the portal.**

| No. | Item | Tick Where Provided |
|---|---|---|
| 1 | Tender Security – Bank Guarantee or irrevocable letter of credit (issued by Banks Licensed by the Central Bank of Kenya), Guarantee by a deposit taking Microfinance Institution, Sacco Society, the Youth Enterprise Development Fund or the Women Enterprise Fund. | |
| 2 | Declaration Form | |
| 3 | Duly completed Tender Form | |
| 4 | Copy of Company or Firm's Registration Certificate | |
| 5 | Copy of PIN Certificate | |
| 6 | Copy of Valid Tax Compliance Certificate | |
| 7 | Confidential Business Questionnaire (CBQ) | |
| 8 | National Construction Authorities (NCA) registration Certificate and a valid Tenderer's Practicing License for the relevant category | |
| 9 | Proposed Work program (Work method & schedule) | |
| 10 | Certificate of Confirmation of Directors and Shareholding (C.R.12) for registered companies and if not a registered company registration of business name for those trading as a sole proprietor or a registration of partnership deed registered under the Kenyan law or equivalent certification for foreign tenderers. | |
| 11 | Names with full contact as well as physical addresses of previous customer(s) of similar works and reference letter(s) for at least four (4) projects. | |
| 12 | Priced Bill of Quantities (signed and stamped by bidder) | |
| 13 | Financial Statements. The audited financial statements required must be those that are reported within eighteen (18) calendar months of the date of the tender document. *(For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original).* | |
| 14. | Any other document or item required by the Tender Document. (The Tenderer shall specify such other documents or items he has submitted) | |

*NOTES TO TENDERERS

1. Valid Tax Compliance Certificate shall be one issued by the relevant tax authorities and valid for at least up to the tender closing date. All Kenyan Registered Tenderers must provide a valid Tax Compliance Certificate.

2. All Kenyan Registered Tenderers must provide the Personal Identification Number Certificate (PIN Certificate).

3. Foreign Tenderers must provide equivalent documents to Tax Compliance and PIN certificates from their country of origin OR statements certifying that the equivalent documentation is not issued in the Tenderer's country of origin. Such Statement(s) shall be original and issued by the Tax authorities in the Tenderer's country of origin.

# PART 1 - TENDERING PROCEDURES

## SECTION I: INSTRUCTIONS TO TENDERERS

### A General Provisions

### 1. Scope of Tender

1.1 Kenya Power as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The name, identification, and number of lots (contracts) of this Tender Document are **specified in the TDS.**

### 2. Fraud and Corruption

2.1 Kenya Power requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 "Declaration not to engage in corruption". The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.

2.2 Kenya Power requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to the Form of Tender.

2.3 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, Kenya Power shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

2.4 Unfair Competitive Advantage -Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender being tendered for. Kenya Power shall indicate in the **TDS** firms (if any) that provided consulting services for the contract being tendered for. Kenya Power shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. Kenya Power shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

### 3. Eligible Tenderers

3.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.7 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. Public employees and their close relatives *(spouses, children, brothers, sisters and uncles and aunts)* are not eligible to participate in the tender. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire 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 tendering process and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the **TDS.**

3.2 Public Officers of Kenya Power, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

3.3 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:

a) Directly or indirectly controls, is controlled by or is under common control with another tenderer; or

b) Receives or has received any direct or indirect subsidy from another tenderer; or

c) Has the same legal representative as another tenderer; or

d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of Kenya Power regarding this tendering process

e) 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 tender; or

f) any of its affiliates has been hired (or is proposed to be hired) by Kenya Power as Engineer for the Contract implementation; or

g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document or

h) Has a close business or family relationship with a professional staff of Kenya Power who:

i) are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender 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 Kenya Power throughout the tendering process and execution of the Contract.

3.4 A tenderer shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. A tenderer that is proven to have been involved any of these practices shall be automatically disqualified.

3.5 A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender.

3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.8.A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub- consultants for any part of the Contract including related Services.

3.7 Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.

3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are accredited by PPRA to be (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.

3.9 A Firms and individuals may be ineligible if their countries of origin (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, 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, Kenya 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. A tenderer shall provide such documentary evidence of eligibility satisfactory to Kenya Power, as Kenya Power shall reasonably request.

3.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable Kenya Power determine if this condition is met shall be provided in for this purpose is be provided in *"SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9"*.

3.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan Citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in

Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.

3.12 The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before such award and signature of contract. Application for registration with National Construction Authority may be accessed from the website www.nca.go.ke.

3.13 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke

3.14 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

**4. Eligible Goods, Equipment, and Services**

4.1 Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not eligible under ITT 3.9. At Kenya Power's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.

4.2 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

**5. Tenderer's Responsibilities**

5.1 The tenderer shall bear all costs associated with the preparation and submission of his/her tender, and Kenya Power will in no case be responsible or liable for those costs.

5.2 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.

5.3 The Tenderer and any of its personnel or agents will be granted permission by Kenya Power to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify Kenya Power against all liability arising from death or personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the inspection.

5.4 The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.

## B. Contents of Tender Documents

**6. Sections of Tender Document**

6.1 The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITT 8. PART 1 Tendering Procedures

i) Section I - Instructions to Tenderers (ITT)
ii) Section II - Tender Data Sheet (TDS)
iii) Section III - Evaluation and Qualification Criteria
iv) Section IV - Tendering Forms

**PART 2 Works Requirements**

i) Section V - Drawings

ii) Section VI - Specifications

iii) Section VII - Bills of Quantities

**PART 3 Conditions of Contract and Contract Forms**

i) Section VIII - General Conditions of Contract (GCC)

ii) Section IX - Special Conditions of Contract (SC)

iii) Section X - Contract Forms

6.2 The Invitation to Tender Document (ITT) issued by Kenya Power is not part of the Contract documents.

6.3 Unless obtained directly from Kenya Power, Kenya Power is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 8. In case of any contradiction, documents obtained directly from Kenya Power shall prevail.

The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document and to furnish with its Tender all information and documentation as is required by the Tender document.

**7. Site Visit**

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. The costs of visiting the Site shall be at the Tenderer's own expense.

**8. Pre-Tender Meeting**

8.1 Kenya Power shall specify in the **TDS** if a pre-tender meeting will be held, when and where. Kenya Power shall also specify in the **TDS** if a pre-arranged pretender site visit will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

8.2 The Tenderer is requested to submit any questions in writing, to reach Kenya Power not later than the period specified in the **TDS** before the meeting.

8.3 Minutes of the pre-Tender meeting and the pre-arranged pretender site visit of the site of the works, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.

8.4 Kenya Power shall also promptly publish anonymized (*no names*) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-tender meeting and the pre-arranged pretender site visit, shall be made by Kenya Power exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

**9. Clarification and amendments of Tender Documents**

9.1 A Tenderer requiring any clarification of the Tender Document shall contact Kenya Power in writing at Kenya Power's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre-arranged pretender visit of the site of the works if provided for in accordance with ITT 8.4. Kenya Power will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. Kenya Power shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If specified in the **TDS**, Kenya

Power shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, Kenya Power shall amend the Tender Documents appropriately following the procedure under ITT 8.4.

**10. Amendment of Tendering Document**

10.1 At any time prior to the deadline for submission of Tenders, Kenya Power may amend the Tendering document by issuing addenda.

10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from Kenya Power in accordance with ITT 6.3. Kenya Power shall also promptly publish the addendum on Kenya Power's web page in accordance with ITT 8.4.

10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, Kenya Power shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 25.2 below.

**C. Preparation of Tenders**

**11. Cost of Tendering**

11.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and Kenya Power shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

**12. Language of Tender**

12.1 The Tender, as well as all correspondence and documents relating to the tender exchanged by the tenderer and Kenya Power, shall be written in the English Language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate and notarized translation of the relevant passages into the English Language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

**13. Documents Comprising the Tender**

13.1 The Tender shall comprise the following:

a) Form of Tender prepared in accordance with ITT 14;
b) Schedules including priced Bill of Quantities, completed in accordance with ITT 14 and ITT 16;
c) Tender Security or Tender-Securing Declaration, in accordance with ITT 21.1;
d) Alternative Tender, if permissible, in accordance with ITT 15;
e) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;
f) Qualifications: documentary evidence in accordance with ITT 19establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
g) Conformity: a technical proposal in accordance with ITT 18;
h) Any other document required in the **TDS**.

13.2 In addition to the requirements under ITT 11.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender together with a copy of the proposed Agreement. The Tenderer shall chronologically serialize pages of all tender documents submitted.

13.3 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

**14. Form of Tender and Schedules**

14.1 The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant

forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested.

## 15. Alternative Tenders

15.1 Unless otherwise specified in the **TDS**, alternative Tenders shall not be considered.

15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **TDS**, and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.

15.3 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price Kenya Power's design as described in the Tender Documents and shall further provide all information necessary for a complete evaluation of the alternative by Kenya Power, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by Kenya Power. When specified in the **TDS**, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the **TDS**, as will the method for their evaluating, and described in Section VII, Works' Requirements.

## 16. Tender Prices and Discounts

16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements specified below.

16.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by Kenya Power. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.

16.3 The price to be quoted in the Form of Tender, in accordance with ITT 14.1, shall be the total price of the Tender, including any discounts offered.

16.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT 14.1.

16.5 It will be specified in the **TDS** if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, except in cases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and Kenya Power may require the Tenderer to justify its proposed indices and weightings.

16.6 Where tenders are being invited for individual lots (contracts)or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 16.4, provided the Tenders for all lots (contracts) are opened at the same time.

16.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

## 17. Currencies of Tender and Payment

17.1 Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer in the Bill of Quantities, entirely in Kenya shillings. A Tenderer expecting to incur expenditures in

other currencies for inputs to the Works supplied from outside Kenya shall device own ways of getting foreign currency to meet those expenditures.

**18. Documents Comprising the Technical Proposal**

18.1 The Tenderer shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Tender Forms, in sufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.

**19. Documents Establishing the Eligibility and Qualifications of the Tenderer**

19.1 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance with ITT 4.

19.2 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Tender Forms.

19.3 A margin of preference will not be allowed. Preference and reservations will be allowed, individually or in joint ventures. Applying for eligibility for Preference and reservations shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.

19.4 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by Kenya Power, a contractor or group of contractors qualifies for a margin of preference. Further the information will enable Kenya Power identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.

19.5 The purpose of the information described in ITT 19.4 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by Kenya Power as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

19.6 The Tenderer shall provide further documentary proof, information or authorizations that Kenya Power may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

19.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to Kenya Power. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to Kenya Power.

19.8 If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if Kenya Power is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.

19.9 If information submitted by a tenderer pursuant to these requirements, or obtained by Kenya Power (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:

i) if the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
ii) if the contract has been awarded to that tenderer, the contract award will be set aside,
iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the

tenderer or any other persons have committed any criminal offence.

19.10 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of Kenya Power that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

**20. Period of Validity of Tenders**

20.1 Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by Kenya Power in accordance with ITT 24). A Tender valid for a shorter period shall be rejected by Kenya Power as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, Kenya Power may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 21.1, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 20.3.

20.3 If the award is delayed by a period exceeding the number of days to be specified in the **TDS** days beyond the expiry of the initial tender validity period, the Contract price shall be determined as follows:

a) In the case of **fixed price** contracts, the Contract price shall be the tender price adjusted by the factor specified in the **TDS**;

b) In the case of **adjustable price** contracts, no adjustment shall be made; or in any case, tender evaluation shall be based on the tender price without taking into consideration the applicable correction from those indicated above.

**21. Tender Security**

21.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the **TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified in the **TDS**. A Tender-Securing Declaration shall use the form included in Section IV, Tender Forms.

21.2 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:

a) An unconditional Bank Guarantee issued by reputable commercial bank); or

b) An irrevocable letter of credit;

c) A Banker's cheque issued by a reputable commercial bank; or

d) Another security specified **in the TDS**.

21.3 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 20.2.

21.4 If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by Kenya Power as non-responsive.

21.5 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the **TDS**. Kenya Power shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined nonresponsive or a bidder declines to extend tender validity period.

21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the

successful Tenderer has signed the Contract and furnished the required Performance Security, and any other documents required in the **TDS**.

21.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:

e) If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension thereto provided by the Tenderer; or

f) If the successful Tenderer fails to:

i) Sign the Contract in accordance with ITT 50; or

ii) Furnish a Performance Security and if required in the **TDS**, and any other documents required in the **TDS**.

21.8 Where tender securing declaration is executed, Kenya Power shall recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.

21.9 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.

21.10 A tenderer shall not issue a tender security to guarantee itself.

**22. Format and Signing of Tender**

22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 15, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

22.2 Tenderers shall mark as "CONFIDENTIAL" all information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

22.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.

22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

**D. Submission and Opening of Tenders**

**23. Sealing and Marking of Tenders**

23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to Kenya Power and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

a) In an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and

b) In an envelope or package or container marked "COPIES", all required copies of the Tender; and

c) If alternative Tenders are permitted in accordance with ITT 15, and if relevant:

i) In an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", the

alternative Tender; and

ii) In the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

a) Bear the name and address of Kenya Power.

b) Bear the name and address of the Tenderer; and

c) Bear the name and Reference number of the Tender.

23.2 If an envelope or package or container is not sealed and marked as required, Kenya Power will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

**24. Deadline for Submission of Tenders**

24.1 Tenders must be received by Kenya Power at the address specified in the **TDS** and no later than the date and time also specified in the **TDS**. When so specified in the **TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the **TDS**.

24.2 Kenya Power may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of Kenya Power and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

**25. Late Tenders**

25.1 Kenya Power shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT 24. Any Tender received by Kenya Power after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

**26. Withdrawal, Substitution, and Modification of Tenders**

26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 22.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

a) prepared and submitted in accordance with ITT 22 and ITT 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;"and

b) received by Kenya Power prior to the deadline prescribed for submission of Tenders, in accordance with ITT 24.

26.2 Tenders requested to be withdrawn in accordance with ITT 26.1 shall be returned unopened to the Tenderers.

26.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

**27. Tender Opening**

27.1 Except in the cases specified in ITT 23 and ITT 26.2, Kenya Power shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified in the **TDS**, in the presence of Tenderers' designated representatives who chooses to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 24.1, shall be as specified in the **TDS**.

27.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the corresponding Tender shall not be opened, but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

27.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

27.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as Kenya Power may consider appropriate.

27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed by the members of the tender opening committee attending the opening. The number of representatives of Kenya Power to sign shall be specified in the **TDS**.

27.7 At the Tender Opening, Kenya Power shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 25.1).

27.8 Kenya Power **shall prepare minutes of the Tender Opening that shall include, as a minimum:**

a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
b) The Tender Price, per lot (contract) if applicable, including any discounts;
c) Any alternative Tenders;
d) The presence or absence of a Tender Security, if one was required.
e) Number of pages of each tender document submitted.

27.9 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall be distributed to all Tenderers upon request.

## E. Evaluation and Comparison of Tenders

### 28. Confidentiality

28.1 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 46.

28.2 Any effort by a Tenderer to influence Kenya Power in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.

28.3 Notwithstanding ITT 28.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact Kenya Power on any **matter related to the tendering process, it shall do so in writing.**

### 29. Clarification of Tenders

29.1 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, Kenya Power may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by Kenya Power shall not be considered. Kenya Power 's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by Kenya Power in the evaluation of the tenders, in accordance with ITT 33.

29.2 If a tenderer does not provide clarifications of its tender by the date and time set in Kenya Power's request for clarification, its Tender may be rejected.

## 30. Deviations, Reservations, and Omissions

30.1 During the evaluation of tenders, the following definitions apply:

a) "Deviation" is a departure from the requirements specified in the tender document;

b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tender document; and

c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender document.

## 31. Determination of Responsiveness

31.1 Kenya Power's determination of a Tender's responsiveness is to be based on the contents of the tender itself, as defined in ITT 13.

31.2 A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, **reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:**

a) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or

b) limit in any substantial way, inconsistent with the tender document, Kenya Power 's rights or the tenderer's obligations under the proposed contract; or

c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.

31.3 Kenya Power shall examine the technical aspects of the tender submitted in accordance with ITT 18, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.

31.4 If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by Kenya Power and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## 32. Non-material Non-conformities

32.1 Provided that a tender is substantially responsive, Kenya Power may waive any non-conformities in the tender.

32.2 Provided that a Tender is substantially responsive, Kenya Power may request that the tenderer submit the necessary information or documentation, within a reasonable period, to rectify nonmaterial non-conformities in the tender related to documentation requirements. Requesting information or documentation on such non- conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to comply with the request may result in the rejection of its tender.

32.3 Provided that a tender is substantially responsive, Kenya Power shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS.**

## 33. Arithmetical Errors

33.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

33.2 Provided that the Tender is substantially responsive, Kenya Power shall handle errors on the following basis:

a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.

b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, and subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and

c) if there is a discrepancy between words and figures, the amount in words shall prevail

33.3 Tenderers shall be notified of any error detected in their bid during the notification of a ward.

**34. Currency provisions**

34.1 Tenders will priced be in Kenya Shillings only. Tenderers quoting in currencies other than in Kenya shillings will be determined non-responsive and rejected.

**35. Margin of Preference and Reservations**

35.1 No margin of preference shall be allowed on contracts for small works.

35.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and/or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to those specified groups are the only ones eligible to tender. Otherwise if no so stated, the invitation will be open to all tenderers.

**36. Nominated Subcontractors**

36.1 Unless otherwise stated in the **TDS**, Kenya Power does not intend to execute any specific elements of the Works by subcontractors selected in advance by Kenya Power.

36.2 Tenderers may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the **TDS**. Subcontractors proposed by the Tenderer shall be fully qualified for their parts of the Works.

36.3 The subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works unless their specialized parts of the Works were previously designated by Kenya Power in the **TDS** as can be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Tenderer may be added to the qualifications of the Tenderer.

**37. Evaluation of Tenders**

37.1 Kenya Power shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies Kenya Power shall determine the Best Evaluated Tender in accordance with ITT 40.

37.2 To evaluate a Tender, Kenya Power shall consider the following:

a) Price adjustment due to discounts offered in accordance with ITT16;

b) Converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT39;

c) Price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 30.3; and

d) Any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

37.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.

37.4 In the case of multiple contracts or lots, Tenderers shall be allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) combinations, including any discounts offered in the **Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.**

**38. Comparison of Tenders**

38.1 Kenya Power shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 38.2 to determine the Tender that has the lowest evaluated cost.

**39. Abnormally Low Tenders**

39.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the

Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.

39.2 In the event of identification of a potentially Abnormally Low Tender, Kenya Power shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

39.3 After evaluation of the price analyses, in the event that Kenya Power determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, Kenya Power shall reject the Tender.

**40. Abnormally High Tenders**

40.1 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that Kenya Power is concerned that it (Kenya Power) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

40.2 In case of an abnormally high tender price, Kenya Power shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. Kenya Power may also seek written clarification from the tenderer on the reason for the high tender price. Kenya Power shall proceed as follows:

i) If the tender price is abnormally high based on wrong estimated cost of the contract, Kenya Power may accept or not accept the tender depending on Kenya Power's budget considerations.

ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, Kenya Power shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

40.3 If Kenya Power determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), Kenya Power shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

**41. Unbalanced and/or Front-Loaded Tenders**

41.1 If in Kenya Power's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, Kenya Power may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

41.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, Kenya Power may as appropriate:

a) Accept the Tender; or

b) Require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price; or

c) Agree on a payment mode that eliminates the inherent risk of Kenya Power paying too much for undelivered works; or

d) Reject the Tender,

**42. Qualifications of the Tenderer**

42.1 Kenya Power shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

42.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 19. The determination shall not take into

consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the Tender document), or any other firm(s) different from the Tenderer.

42.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event Kenya Power shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

42.4 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.

42.5 In the event of identification of a potentially Abnormally Low Tender, Kenya Power shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

42.6 After evaluation of the price analyses, if Kenya Power determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, Kenya Power shall reject the Tender.

**43. Best Evaluated Tender**

43.1 Having compared the evaluated prices of Tenders, Kenya Power shall determine the Best Evaluated Tender. The Best Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined to be:

a) Most responsive to the Tender document; and
b) The lowest evaluated price.

**44. Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders.**

44.1 Kenya Power reserves the right to accept or reject any Tender and to annul the Tender process and reject all Tenders at any time prior to Contract Award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenderers shall be notified with reasons and all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

**F. Award of Contract**

**45. Award Criteria**

45.1 Kenya Power shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

**46. Notice of Intention to enter into a Contract**

46.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period Kenya Power shall issue a Notification of Intention to Enter into a Contract / Notification of award to all tenderers which shall contain, at a minimum, the following information:

a) The name and address of the Tenderer submitting the successful tender;
b) The Contract price of the successful tender;
c) A statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
d) The expiry date of the Standstill Period; and
e) Instructions on how to request a debriefing and/or submit a complaint during the standstill period;

**47. Standstill Period**

47.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

47.2 Where a Standstill Period applies, it shall commence when Kenya Power has transmitted to each Tenderer the Notification of Intention to Enter **into a Contract with the successful Tenderer.**

**48. Debriefing by Kenya Power**

48.1 On receipt of Kenya Power's Notification of Intention to Enter into a Contract referred to in ITT 46, an unsuccessful tenderer may make a written request to Kenya Power for a debriefing on specific issues or concerns regarding their tender. Kenya Power shall provide the debriefing within five days of receipt of the request.

48.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending **such a debriefing meeting.**

**49. Letter of Award**

49.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, Kenya Power shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

**50. Signing of Contract**

50.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, Kenya Power shall send the successful Tenderer the Contract Agreement.

50.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to Kenya Power.

50.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period

**51. Appointment of Adjudicator**

51.1 Kenya Power proposes the person named in the **TDS** to be appointed as Adjudicator under the Contract, at the hourly fee specified in the **TDS**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in his Tender. If, in the Letter of Acceptance, Kenya Power does not agree on the appointment of the Adjudicator, Kenya Power will request the Appointing Authority designated in the Special Conditions of Contract (SCC) pursuant to Clause 23.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator.

## 52. Performance Security

52.1 Within twenty-one (21) days of the receipt of the Letter of Acceptance from Kenya Power, the successful Tenderer shall furnish the Performance Security and, any other documents required in the **TDS**, in accordance with the General Conditions of Contract, subject to ITT 40.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to Kenya Power. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless Kenya Power has agreed in writing that a correspondent bank is not required.

52.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the **TDS**, or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event Kenya Power may award the Contract to the Tenderer offering the next Best Evaluated Tender.

52.3 Performance security shall not be required for contracts estimated to cost less than Kenya shillings five million shillings.

## 53. Publication of Procurement Contract

53.1 Within fourteen days after signing the contract, Kenya Power shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

a) Name and address of Kenya Power;

b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;

c) The name of the successful Tenderer, the final total contract price, the contract duration.

d) Dates of signature, commencement and completion of contract;

e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

## 54. Procurement Related Complaints and Administrative Review

54.1 The procedures for making Procurement-related Complaints are as specified in the **TDS**.

54.2 A request for administrative review shall be made in the form provided under contract forms.

## SECTION II - TENDER DATA SHEET (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| **A** | **General** |
| ITT 1.1 | The name of the Contract is **PROCUREMENT OF CONSTRUCTION OF MODERN WAREHOUSE AT KAKAMEGA COUNTY-WESTERN KENYA REGION**<br><br>The reference number of the Tender **is KP9/9A/OT/HRA/014/25-26** |
| ITT 2.3 | There is no information on competing firms. |
| ITT 2.4 | The firms that provided consulting services for the contract being tendered for are: **None** |
| ITT 3.1 | Maximum number of members in a Joint Venture (JV) are three (3).<br>Adopt definition of 'relative' as provided for under **section 59 (2)(b)** of the Public Procurement and Asset Disposal Act, 2015. |
| ITT 3.1 | Joint Venture Firms which may prevent, distort or lessen competition to seek approval from Competitions Authority before award of tender. |
| ITT 7.1 | There shall be a Pre-bid meeting on 3rd March, 2026 from 9:00am at CBM Board room, Kakamega Office. |
| **B** | **Contents of Tender Document** |
| ITT 8.2 | Any questions in writing, shall reach KPLC not later than Seven (7) days prior to tender closing date and shall be requested through the e-mail addresses on the cover page of this tender document. |
| ITT 8.4 | Minutes of the Pre-Tender meeting and site visit of the site of the works will be published at the website on the KPLC website www.kplc.co.ke and on our E-Procurement portal. |
| ITT 9.1 | KPLC shall publish its response at the website and on their E-Procurement Portal through an addendum for general queries or email for specific queries.<br><br>For Clarification of **Tender purposes** only, KPLC's address is:<br>Senior Supply Chain & Logistics Officer<br>The Kenya Power and Lighting Company PLC<br>Electricity House, 3rd Floor,<br>P.O Box 151 - 40100<br>Kisumu.<br><br>Electronic mail address: Gouma@kplc.co.ke, and copy to Eckoech@kplc.co.ke |
| **C** | **Preparation of Tenders** |
| ITT 13.1(h) | The tenderer shall submit the following additional documents in its tender: ***as per the qualification criteria with and including the documents listed in the Check List*** |
| ITT 15.1 | Alternative tenders *shall not be* considered. |
| ITT 15.2 | Alternative times for completion shall *be as specified in Section III (Evaluation and Qualification Criteria).* |
| ITT 15.3 | Alternative technical solutions shall not be permitted |
| ITT 20.3 | Price variation on the basis of extending tender validity period is Not applicable |
| ITT 21.2 | The Tender validity period shall be ***One Hundred and Eighty (180)*** days. A Tender valid for shorter period shall be rejected. |
| ITT 21.1 | A Tender Security valid for 210 days shall be required in form of bank guarantee |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| | only. The amount and currency of the Tender Security shall be as follows:<br>**Tender Security in Kenya Shillings 800,000.00**<br>**Amount in Words: Eight Hundred Thousand Kenya Shillings only.**<br>The Original Tender Security should be kept in an envelope clearly labelled with the Tender number & name, and shall be deposited in the Tender Security Box on Ground Floor at Electricity House, Kisumu, on or before the tender opening time. |
| ITT 21.2 (d) | The other tender security shall be as specified in ITT 21.1 above. |
| **D** | **Submission and Opening of Tenders** |
| ITT 24.1 | All tenders shall be submitted through the KPLC SAP online tendering portal in PDF format. |
| ITT 26 | Withdrawals, substitutions and modifications to be done online through KPLC tendering portal. |
| ITT 27.1 | Public opening will be done through the KPLC tendering portal at Demonstration Center, Electricity House Kisumu, as specified in the KPLC Tendering Portal. |
| ITT 27.6 | There shall be tender opening minutes and electronic report generated electronically from KPLC ONLINE TENDERING PORTAL and the minimum number of representatives of KPLC to sign is Three (3). |
| **E.** | **Evaluation and Comparison of Tenders** |
| ITT 36.1 | KPLC *does not intend* to execute certain specific parts of the Works by subcontractors selected in advance by KPLC. |
| ITT 36.2 | Contractor's may propose subcontracting: Maximum percentage of subcontracting permitted is: 20% *of the total contract amount (N/A)*<br>Tenderers planning to subcontract more than 10% of total volume of work shall specify, in the Form of Tender, the activity (ies) or parts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience (N/A)<br>Specialized subcontractors shall be so qualified in their respective specialties and are subject to evaluations as *detailed in the evaluation qualification criteria.* |
| ITT 36.3 | The parts of the Works for which the KPLC permits Tenderers to propose Specialized Subcontractors are designated as follows:<br>1. Electrical Installation Services (BS)<br>2. Internal Plumbing & Drainage Installations (BS)<br>For the above-designated parts of the Works that may require Specialized Subcontractors, the relevant qualifications of the proposed Specialized Subcontractors will be added to the qualifications of the Tenderer for the purpose of evaluation. |
| ITT 37.2 | (b) The currency of the tender shall be Kenya Shillings<br>(d)*Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.* |
| ITT 47 | The standstill period shall be 14 days irrespective of the number of bids that shall be submitted. |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| ITT 54.1 | The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA website info@ppra.go.ke or complaints@ppra.go.ke<br><br>**Senior Supply Chain Officer, Western Kenya Region**<br>**The Kenya Power and Lighting Company PLC,**<br>**Electricity House, 3rd Floor**<br>**P.O Box 151 – 40100**<br>**Kisumu , Kenya**<br>**Electronic mail address: Gouma@kplc.co.ke**<br><br>In summary, a Procurement-related Complaint may challenge any of the following:<br>(i) the terms of the Tendering Documents; and<br>(ii) KPLC's decision to award the contract. |

## SECTION III - EVALUATION AND QUALIFICATION CRITERIA

### 1. General Provisions

Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

a) For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
b) Value of single contract - Exchange rate prevailing on the date of the contract signature.
c) Exchange rates shall be taken from the publicly available source identified in the ITT 14.3. Any error in determining the exchange rates in the Tender may be corrected by Kenya Power.

This section contains the criteria that the KPLC shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms.

**Evaluation and contract award Criteria**

Kenya Power shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

### 2. Preliminary examination for Determination of Responsiveness

Kenya Power will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements of "Part 2 – KPLC's "Works Requirements", including checking for tenders with unacceptable errors, abnormally low tenders, abnormally high tenders and tenders that are front loaded. Tenders that do not pass the Preliminary Examination will be considered irresponsive and will not be considered further.

**3.1 Part 1 - Preliminary Examination Criteria. These are mandatory requirements.** This shall include confirmation of the following: -

*3.1.1 Submission of Tender Security - Checking its validity, whether it is Original; whether it is sufficient; whether it is authentic; whether it is issued by a local Bank/institution and whether it is strictly in the format required in accordance with the sample Tender Security Form(s).*

*3.1.2 Submission of the following duly completed, signed and stamped forms:*

*(a) Form of Tender*
*(b) Certificate of Independent Tender Determination*
*(c) Self Declaration Forms as hereunder:*
- *Confidential Business Questionnaire*
- *Form SD1*
- *Form SD2*

*(d) Declaration and Commitment to the Code of Ethics*
*(e) Form EL1 1.1 – Tenderer Information Sheet*
*(f) Form EL1 1.2 (if applicable) – Party to JV Information Sheet*

*3.1.3 Submission and considering the following: -*

*3.1.3.1 For local Tenderers*

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

*3.1.3.2 For Foreign Tenderers*

*a) Company or Firm's Registration Certificate*

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

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

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

*3.1.5 The tenderer must be registered with National Construction Authority with a valid Practicing license for: Main Contractor - Must be registered in both Buildings and Roads & other Civil works as follows: NCA 1 to NCA 6 (Building).*

*Where the main contractor is duly registered and eligible for all or part thereof the required categories, he shall submit the NCA registration certificates and Practicing Licences for such categories.*

*3.1.6 Submission of a duly completed and signed site visit form.*

*3.1.7 Submission of a proposed Work Program (Work Methodology & Schedule)*

*3.1.8 Submission of a Price Bill of Quantities, signed and stamped by bidder in its sanctity form.*

*3.1.9 Duly filled Form EXP 4.1 and names with full contact as well as physical addresses of previous customer (s) of similar works with reference letter (s) for at least four (4) projects.*

*3.1.11 Submission of a complete and current CR12 Form (dated within 12 months before date of tender opening) obtained from the Registrar of Companies showing the Directorship and their respective shareholding of the firm, and in case of a corporate shareholder, bidders must separately submit a CR12 Form of the corporate shareholder until all the human Directors and their shareholding are disclosed.*

*3.1.12 Submission of the audited financial Statements are those that are reported within eighteen (18) calendar months of the date of the tender document together with a copy of the Auditors/Audit Firm valid ICPAK practicing license.*

*3.1.13 Power of Attorney authorizing the signatory of the Tender to commit the Tenderer in accordance with the Tender requirements. Proof of authorization shall be furnished in the form of power of attorney which shall accompany the tender* ***if the signatory to the tender is not a director of the company*** *(provide name and attach proof of citizenship of the signatory to the tender).*

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

*3.1.15 Notwithstanding the above, considering any outstanding contracts where applicable and the execution capacity indicated by the Tenderer.*

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

### 3.2 Part II - Technical Examination Criteria

In determining qualification requirements, KPLC shall apply the following among other criteria as listed in the Qualification Form Summary:

a) **History of non-performing contracts**:
Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last five (5) *years*). The required information shall be furnished in the appropriate form.

b) **Pending Litigation**
Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (a) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) **Litigation History**
There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last ten (10) *years*). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

### 3.3 Part III - Financial Examination Criteria

Evaluation of the following financial information against Tender Requirements and Specifications:

3.3.1 This will include the following: -

*a) Confirmation of and considering that the Bill of Quantities is duly completed and signed and is in **original KPLC format** and not mutilated **or typewritten**.*

*(b) detailed financial review of the priced Bill of Quantities.*

*c) Conducting a financial comparison based on the analysis of the Bidder's priced quantity.*

*d) Confirming that the bidder has quoted in Kenya Shillings.*

***3.4 The award shall be to the bidder with the lowest evaluated price.***

**3.5 Scoring Criteria**:

| NO. | EVALUATION ATTRIBUTE | WEIGHTING % |
|---|---|---|
| 6.2.1 | **EXPERIENCE**<br>Specific experience on Building renovation and construction of new projects (buildings) at least 3 letters of award on projects undertaken<br>a. Value of projects<br>i. Up to 40m **5 marks**<br><br>b. Provide evidence of satisfactory completion of Construction of buildings / Civil works with Completion Certificates **-30 Marks.** | **35** |
| 6.2.2 | Qualified Technical staff in the company relevant to the construction industry who will actively be involved in the proposed project. Provide employment/appointment letters, contracts of the key personnel including length of service and termination date, CV, Academic and professional certificates and evidence of registration with relevant professional bodies and Telephone contacts.<br><br>1. Registered Project Engineer<br>• Degree in Civil Engineer<br>**or**<br>• Diploma in Building or Civil Engineering **10 marks**<br><br>2. Project Manager with<br>• degree in Civil Engineering<br>**or**<br>• Higher Diploma in Building & Civil Engineering- **8 marks**<br><br>**3.** SITE Supervisor (Foreman)<br>Diploma in Building/Civil Engineering- **1 mark**<br>4. Safety Officer –with special qualification in occupational first aid, awareness With necessary qualifications **1 mark** | **20** |
| 6.2.3 | The tenderer's undertaking that the key site management and technical personnel will be available for the contract full marks for employee commitment namely project manager, project engineer, foreman<br>-full employer undertaking **1 marks**<br>* full employee undertaking **1 marks**<br>* endorsed appointment letters for all category of staff **1 marks** | **3** |

| | | |
|---|---|---|
| 6.2.4. | Proposed completion period for the project accompanied by a proposed Implementation Plan with completion date method statement and work methodology plan in MS Project format (Generic and not relevant schedules will STRICTLY NOT be scored)<br>• Method statement highlighting sequence, safety policy, quality policy ,contract administration, construction procedures - 7 **marks**<br>• Work programme in project management software(Microsoft project), sequence, matching, matching scope, within clients time lines, realistic time estimation **10marks** | **17** |
| 6.2.5 | Equipment, Give a list and type of relevant equipment owned by the company evidenced by ownership documents. Where not owned by the company, provide documentary evidence of leased equipment as required under qualifications forms EQU<br>• Heavy earthworks construction equipment; lorries, tippers, excavators etc.- **10 marks** (full marks for lease agreement,)-assessment on full set of equipment due to criticality<br>• Construction equipment and light duty machines ie 6 Tonne deadweight roller,Self priming centrifugal pump, vibrating Roller, survey tools, dumper, tilting concrete mixers **10 marks** -1 each<br>• Hand tools ,heavy duty wheel barrows, first aid kit and complete safety gear for staff min 10 sets- **5marks** | **25** |
| | **TOTAL** | **100** |

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

## 3. QUALIFICATION FORM SUMMARY

| 1 | 2 | 3 | *4* | *5* |
|---|---|---|---|---|
| **Item No.** | **Qualification Subject** | **Qualification Requirement** | ***Document To be Completed by Tenderer*** | ***For KPLC's Use (Qualification met or Not Met)*** |
| 1 | Nationality | Nationality in accordance with ITT 3.6 | Forms ELI – 1.1 and 1.2, with attachments | |
| 2 | Tax Obligations for Kenyan Tenderers | Has produced a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14. | Form of Tender | |
| 3 | Conflict of Interest | No conflicts of interest in accordance with ITT 3.3 | Form of Tender | |
| 4 | PPRA Eligibility | Meets conditions of ITT 3.7 | Form of Tender, Forms ELI – 1.1 and 1.2, with attachments | |
| 5 | State- owned Enterprise | Not having been declared ineligible by the PPRA as described in ITT 3.8 | Forms ELI – 1.1 and 1.2, with attachments | |
| 6 | Goods, equipment and services to be supplied under the contract | To have their origin in any country that is not determined ineligible under ITT 4.1 | Forms ELI – 1.1 and 1.2, with attachments | |
| 7 | History of Non-Performing Contracts | Non-performance of a contract did not occur as a result of contractor default since 1st January 2022. | Form CON-2 | |
| 8 | Suspension Based on Execution of Tender/Proposal Securing Declaration by Kenya Power | Not under suspension based on-execution of a Tender/Proposal Securing Declaration pursuant to ITT 19.9 | Form of Tender | |
| 9 | Pending Litigation | Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer. | Form CON – 2 | |
| 10 | Litigation History | No consistent history of court/arbitral award decisions against the Tenderer since 1st January *2022* | Form CON – 2 | |
| 11 | Financial Capabilities | (i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Kenya Shillings *[Value of this Contract]* equivalent for the subject contract(s) net of the Tenderer's other commitments. | Form FIN – 3.1, with attachments | |

| | | | | |
|---|---|---|---|---|
| | | (ii) The Tenderers shall also demonstrate, to the satisfaction of Kenya Power, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.<br><br>(iii) The audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to Kenya Power , for the last *[One and a Half]* years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability. | | |
| 12 | Average Annual Construction Turnover | Minimum average annual construction turnover of Kenya Shillings *[20,000,000.00]*, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last *[three]* years, divided by *[three]* years | Form FIN – 3.2 | |
| 13 | General Construction Experience | Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last *[three]* years, starting 1st February [*2021]*. | Form EXP – 4.1 | |
| | Specific Construction & Contract Management Experience | A minimum number of *[four]* similar contracts specified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1st February [*2021*] and tender submission deadline i.e. 4 (number) contracts, of similar scope and complexity regardless of contract sums.<br><br>The similarity of the contracts shall be based on the following: *Scope of Works including excavations, Reinforcement concrete works, paving works, Masonry works, Roofing works, Finishes, openings, External civil works, and for the specialized items; specialized electrical installations and internal plumbing and drainage work.* | Form EXP 4.2(a) | |

QUALIFICATION FORMS

## 1. FORM EQU: EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

| Item of equipment | | |
|---|---|---|
| Equipment information | Name of manufacturer | Model and power rating |
| | Capacity | Year of manufacture |
| Current status | Current location | |
| | Details of current commitments | |
| Source | Indicate source of the equipment<br>☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured | |

Omit the following information for equipment owned by the Tenderer.

| Owner | Name of owner | |
|---|---|---|
| | Address of owner | |
| | Telephone | Contact name and title |
| | Fax | Telex |
| Agreements | Details of rental / lease / manufacture agreements specific to the project | |
| | | |
| | | |

## 2. FORM PER-1

### Contractor's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

### Contractor' Representative and Key Personnel

| | | |
|---|---|---|
| **1.** | **Title of position: Contractor's Representative** | |
| | **Name of candidate:** | |
| | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **2.** | **Title of position:** [ ] | |
| | **Name of candidate:** | |
| | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **3.** | **Title of position:** [ ] | |
| | **Name of candidate:** | |
| | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **4.** | **Title of position:** [ ] | |
| | **Name of candidate:** | |
| | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **5.** | **Title of position:** *[insert title]* | |
| | **Name of candidate** | |
| | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |

## 3. FORM PER-2:

Resume and Declaration - Contractor's Representative and Key Personnel.

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

| **Name of Tenderer** |
|---|
| |

| Position [*#1*]: [*title of position from Form PER-1*] | | |
|---|---|---|
| Personnel information | Name: | Date of birth: |
| | Address: | E-mail: |
| | | |
| | Professional qualifications: | |
| | Academic qualifications: | |
| | Language proficiency: *[language and levels of speaking, reading and writing skills]* | |
| Details | | |
| | Address of Procuring Entity: | |
| | Telephone: | Contact (manager / personnel officer): |
| | Fax: | |
| | Job title: | Years with present Procuring Entity: |

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

| **Project** | **Role** | **Duration of involvement** | **Relevant experience** |
|---|---|---|---|
| *[main project details]* | *[role and responsibilities on the project]* | *[time in role]* | *[describe the experience relevant to this position]* |
| | | | |
| | | | |
| | | | |

**Declaration**

I, the undersigned *[insert either "Contractor's Representative" or "Key Personnel" as applicable]*, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

| **Commitment** | **Details** |
|---|---|
| Commitment to duration of contract: | *[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]* |

| | |
|---|---|
| Time commitment: | *[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]* |

I understand that any misrepresentation or omission in this Form may:

a) be taken into consideration during Tender evaluation;
b) result in my disqualification from participating in the Tender;
c) result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel: [*insert name*]

Signature: _____

Date: (day month year): _____

Counter signature of authorized representative of the Tenderer:

Signature: _____

Date: (day month year): _____

## 4. TENDERER'S QUALIFICATION WITHOUT PRE-QUALIFICATION

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

### 4.1 FORM ELI -1.1

**Tenderer Information Form**
Date: _____

ITT No. and title: _____

| |
|---|
| Tenderer's name |
| In case of Joint Venture (JV), name of each member: |
| Tenderer's actual or intended country of registration:<br>*[indicate country of Constitution]* |
| Tenderer's actual or intended year of incorporation: |
| Tenderer's legal address [in country of registration]: |
| Tenderer's authorized representative information<br>Name: _____<br>Address: _____<br>Telephone/Fax numbers: _____<br>E-mail address: _____ |
| 1. Attached are copies of original documents of<br>☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.6<br>☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5<br>☐ In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing:<br>• Legal and financial autonomy<br>• Operation under commercial law<br>• Establishing that the Tenderer is not under the supervision of Kenya Power<br>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

## 4.2 FORM ELI -1.2

**Tenderer's JV Information Form**
**(to be completed for each member of Tenderer's JV)**
Date: _____

ITT No. and title: _____

| |
|---|
| Tenderer's JV name: |
| JV member's name: |
| JV member's country of registration: |
| JV member's year of constitution: |
| JV member's legal address in country of constitution: |
| JV member's authorized representative information<br>Name: _____<br>Address: _____<br>Telephone/Fax numbers: _____<br>E-mail address: _____ |
| 1. Attached are copies of original documents of<br>☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.6.<br>☐ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of Kenya Power , in accordance with ITT 3.8.<br><br>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

## 4.3 FORM CON – 2

**Historical Contract Non-Performance, Pending Litigation and Litigation History**

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

| Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria | | | |
|---|---|---|---|
| ☐ Contract non-performance did not occur since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.<br><br>☐ Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1 | | | |
| **Year** | **Non- performed portion of contract** | **Contract Identification** | **Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*<br>Employer/Procuring Entity/Client: *[insert full name]*<br>Address of Procuring Entity: *[insert street/city/country]*<br>Reason(s) for nonperformance: *[indicate main reason(s)]* | *[insert amount]* |
| Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria | | | |
| ☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.<br>☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below. | | | |

| **Year of dispute** | **Amount in dispute (currency)** | **Contract Identification** | **Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)** |
|---|---|---|---|
| | | Contract Identification: _____<br>Kenya Power: _____<br>Address of Procuring Entity: _____<br>Matter in dispute: _____<br>Party who initiated the dispute: ____<br>Status of dispute: _____ | |
| | | Contract Identification:<br>Kenya Power:<br>Address of Procuring Entity:<br>Matter in dispute:<br>Party who initiated the dispute:<br>Status of dispute: | |
| Litigation History in accordance with Section III, Evaluation and Qualification Criteria | | | |
| ☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. | | | |

| ☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below. | | | |
|---|---|---|---|
| **Year of award** | **Outcome as percentage of Net Worth** | **Contract Identification** | **Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)** |
| *[insert year]* | *[insert percentage]* | Contract Identification: [indicate complete contract name, number, and any other identification]<br>Kenya Power: *[insert full name]*<br>Address of Procuring Entity: *[insert street/city/country]*<br>Matter in dispute: *[indicate main issues in dispute]*<br>Party who initiated the dispute: *[indicate "Procuring Entity" or "Contractor"]*<br>Reason(s) for Litigation and award decision *[indicate main reason(s)]* | *[insert amount]* |

## 4.4 FORM FIN – 3.1: Financial Situation and Performance

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

### 4.4.1. Financial Data

| **Type of Financial information in_____ (currency)** | **Historic information for previous _____ *years,* _____ (amount in currency, currency, exchange rate*, USD equivalent)** | | | | |
|---|---|---|---|---|---|
| | **Year 1** | **Year 2** | **Year 3** | **Year 4** | **Year 5** |
| Statement of Financial Position (Information from Balance Sheet) | | | | | |
| Total Assets (TA) | | | | | |
| Total Liabilities (TL) | | | | | |
| Total Equity/Net Worth (NW) | | | | | |
| Current Assets (CA) | | | | | |
| Current Liabilities (CL) | | | | | |
| Working Capital (WC) | | | | | |
| Information from Income Statement | | | | | |
| Total Revenue (TR) | | | | | |
| Profits Before Taxes (PBT) | | | | | |
| Cash Flow Information | | | | | |
| Cash Flow from Operating Activities | | | | | |

*Refer to ITT 15 for the exchange rate

### 4.4.2 Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

| No. | Source of finance | Amount (Kenya Shilling equivalent) |
|---|---|---|
| 1 | | |
| 2 | | |
| 3 | | |

### 4.4.3 Financial documents

The Tenderer and its parties shall provide copies of financial statements for _____years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

(a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent company or group member).

(b) be independently audited or certified in accordance with local legislation.

(c) be complete, including all notes to the financial statements.

(d) correspond to accounting periods already completed and audited.

☐ Attached are copies of financial statements[1] for the _____years required above; and complying with the requirements If the most recent set of financial statements is for a period earlier than 12 months from the date of Tender, the reason for this should be justified

## 4.5 FORM FIN – 3.2: Average Annual Construction Turnover

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

| | Annual turnover data (construction only) | | |
|---|---|---|---|
| **Year** | **Amount Currency** | **Exchange rate** | **Kenya Shilling equivalent** |
| *[indicate year]* | *[insert amount and indicate currency]* | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Average Annual Construction Turnover * | | | |

* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3. Item 12.

## 4.6 FORM FIN – 3.3: Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in Section III, Evaluation and Qualification Criteria

| **Financial Resources** | | |
|---|---|---|
| **No.** | **Source of financing** | **Amount (Kenya Shilling equivalent)** |
| 1 | | |
| 2 | | |
| 3 | | |
| | | |

## 4.7 FORM FIN – 3.4: Current Contract Commitments / Works in Progress

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

| Current Contract Commitments | | | | | |
|---|---|---|---|---|---|
| | **Name of Contract** | **Procuring Entity's Contact Address, Tel,** | **Value of Outstanding Work [Current Kenya Shilling /month Equivalent]** | **Estimated Completion Date** | **Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month)]** |
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| | | | | | |

## 4.8 FORM EXP - 4.1 General Construction Experience

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

Page _____of _____pages

| Starting Year | Ending Year | Contract Identification | Role of Tenderer |
|---|---|---|---|
| | | Contract name: _____<br>Brief Description of the Works performed by the Tenderer: _____<br>Amount of contract: _____<br>Client/P.E : _____<br>Address: _____ | |
| | | Contract name: _____<br>Brief Description of the Works performed by the Tenderer: _____<br>Amount of contract: _____<br>Client/P.E: _____<br>Address: _____ | |
| | | Contract name: _____<br>Brief Description of the Works performed by the Tenderer: _____<br>Amount of contract: _____<br>Client/P.E: _____<br>Address: _____ | |
| | | Contract name: _____<br>Brief Description of the Works performed by the Tenderer: _____<br>Amount of contract: _____<br>Client/P.E: _____<br>Address: _____ | |

## 4.9 FORM EXP - 4.2(a) Specific Construction and Contract Management Experience

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

| **Similar Contract No.** | **Information** | | | |
|---|---|---|---|---|
| Contract Identification | | | | |
| Award date | | | | |
| Completion date | | | | |
| Role in Contract | Prime Contractor ☐ | Member in JV ☐ | Management Contractor ☐ | Sub-contractor ☐ |
| Total Contract Amount | | | **Kenya Shilling** | |
| If member in a JV or sub-contractor, specify participation in total Contract amount | | | | |
| Procuring Entity's Name: | | | | |
| Address:<br>Telephone/fax number<br>E-mail: | | | | |

## 4.10 FORM EXP - 4.2 (a) (cont.)

**Specific Construction and Contract Management Experience (cont.)**

| **Similar Contract No.** | **Information** |
|---|---|
| Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III: | |
| 1. Amount | |
| 2. Physical size of required works items | |
| 3. Complexity | |
| 4. Methods/Technology | |
| 5. Construction rate for key activities | |
| 6. Other Characteristics | |

## 4.11 FORM EXP - 4.2(b)

**Construction Experience in Key Activities**

Tenderer's Name: _____
Date: _____
Tenderer's JV Member Name: _____
Sub-contractor's Name[2] (as per ITT 34): _____
ITT No. and title: _____

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: _

| | **Information** | | | |
|---|---|---|---|---|
| Contract Identification | | | | |
| Award date | | | | |
| Completion date | | | | |
| Role in Contract | Prime Contractor ☐ | Member in JV ☐ | Management Contractor ☐ | Sub-contractor ☐ |
| Total Contract Amount | | | **Kenya Shilling** | |
| Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year | Total quantity in the contract (i) | Percentage participation (ii) | | Actual Quantity Performed (i) x (ii) |
| Year 1 | | | | |
| Year 2 | | | | |
| Year 3 | | | | |
| Year 4 | | | | |
| Procuring Entity's Name: | | | | |
| Address:<br>Telephone/fax number<br>E-mail: | | | | |
| Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III: | | | | |
| | | | | |
| | | | | |

## OTHER FORMS

## 5. FORM OF TENDER

*INSTRUCTIONS TO TENDERERS*

i) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.*

ii) *All italicized text is to help Tenderer in preparing this form.*

iii) *Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.*

iv) *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*

- *Tenderer's Eligibility- Confidential Business Questionnaire*
- *Certificate of Independent Tender Determination*
- *Self-Declaration of the Tenderer*

**Date of this Tender submission**: *[insert date (as day, month and year) of Tender submission]*

**Request for Tender No.:** *[insert identification*]

**Name and description of Tender** *[Insert as per ITT)*

**Alternative No.:** [*insert identification No if this is a Tender for an alternative*]

**To:** [*Kenya Power]* Dear Sirs,

*1.* In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct and complete the Works and remedy any defects therein for the sum of Kenya Shillings [*[Amount in figures]*_____Kenya Shillings *[amount in words]*_____.

The above amount includes foreign currency amount (s) of [*state figure or a percentage and currency*] [figures]_____[words]_____.

The percentage or amount quoted above does not include provisional sums, and only allows not more than two foreign currencies.

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

3. We agree to adhere by this tender until_____*[Insert date],* and it shall remain binding upon us and may be accepted at any time before that date.

4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us. We further understand that you are not bound to accept the lowest or any tender you may receive.

5. We, the undersigned, further declare that:

i) *No reservations:* We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;

ii) *Eligibility:* We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;

iii) *Tender-Securing Declaration:* We have not been suspended nor declared ineligible by Kenya Power based on execution of a Tender-Securing or Proposal-Securing Declaration in Kenya Power 's Country in accordance with ITT 19.8;

iv) *Conformity:* We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: *[insert a brief description of the Works];*

v) *Tender Price:* The total price of our Tender, excluding any discounts offered in item 1 above is: *[Insert one of the options below as appropriate]*

Option 1, in case of one lot: Total price is: [*insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies*]; Or

Option 2, in case of multiple lots:

a) Total price of each lot [*insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies*]; and

b) Total price of all lots (sum of all lots) [*insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies*];

vii) *Discounts:* The discounts offered and the methodology for their application are:

viii) The discounts offered are: [*Specify in detail each discount offered.*]

ix) The exact method of calculations to determine the net price after application of discounts is shown below: [*Specify in detail the method that shall be used to apply the discounts*];

x) *Tender Validity Period:* Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

xi) *Performance Security:* If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;

xii) *One Tender Per Tender:* We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;

xiii) *Suspension and Debarment:* We, along with any of our subcontractors, suppliers, Project Manager, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.

xiv) *State-owned enterprise or institution:* [*select the appropriate option and delete the other*] [*We are not a state-owned enterprise or institution*] / [*We are a state-owned enterprise or institution but meet the requirements of ITT 3.8*];

xv) *Commissions, gratuities, fees:* We have paid, or will pay the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity].*

| Name of Recipient | Address | Reason | Amount |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

*(If none has been paid or is to be paid, indicate "none.")*

xvi) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;

xvii) Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;

xviii) Fraud and Corruption: We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption;

xix) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.

xx) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from_____(*specify website*) during the procurement process and the execution of any resulting contract.

xxi) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:

a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in **"Appendix 1- Fraud and Corruption"** attached to the Form of Tender.

**Name of the Tenderer:** *[*insert complete name of person signing the Tender*]

**Name of the person duly authorized to sign the Tender on behalf of the Tenderer:** **[*insert complete name of person duly authorized to sign the Tender*]

**Title of the person signing the Tender**: [*insert complete title of the person signing the Tender*]

**Signature of the person named above**: [*insert signature of person whose name and capacity are shown above*] **Date signed** [*insert date of signing*] day of [*insert month*], [*insert year*]

Date signed_____day of_____, _____

*Notes*
** In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer*
** Person signing the Tender shall have the power of attorney given by the Tenderer to be attached with the Tender.*

## A. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

**Instruction to Tenderer**

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV.* Tenderer is further reminded that it is an offence to give false information on this Form.

(a) **Tenderer's details**

| | ITEM | DESCRIPTION |
|---|---|---|
| 1 | Name of Procuring Entity | Kenya Power |
| 2 | Reference Number of the Tender | |
| 3 | Date and Time of Tender Opening | |
| 4 | Name of the Tenderer | |
| 5 | Full Address and Contact Details of the Tenderer. | 1. Country<br>2. City<br>3. Location<br>4. Building<br>5. Floor<br>6. Postal Address<br>7. Name and email of contact person. |
| 6 | Current Trade License Registration Number and Expiring date | |
| 7 | Name, country and full address (*postal and physical addresses, email, and telephone number*) of Registering Body/Agency | |
| 8 | Description of Nature of Business | |
| 9 | Maximum value of business which the Tenderer handles. | |
| 10 | State if Tenders Company is listed in stock exchange, give name and full address (*postal and physical addresses, email, and telephone number*) of<br><br>state which stock exchange | |

**General and Specific Details**

b) **Sole Proprietor,** provide the following details.

Name in full_____

Age_____

Nationality_____

Country of Origin_____

Citizenship _____

c) **Partnership,** provide the following details.

| | Names of Partners | Nationality | Citizenship | % Shares owned |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

d) **Registered Company,** provide the following details.

i) Private or public Company_____

ii) State the nominal and issued capital of the Company_____

iii) Give details of Directors as follows.

| | **Names of Director** | **Nationality** | **Citizenship** | **% Shares owned** |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

**(e) DISCLOSURE OF INTEREST- Interest of the Firm in Kenya Power.**

i) Are there any person/persons in ..... ..... *(Kenya Power)* who has/have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

| | **Names of Person** | **Designation in Kenya Power** | **Interest or Relationship with Tenderer** |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |

**ii) Conflict of interest disclosure**

| | **Type of Conflict** | **Disclosure YES OR NO** | **If YES provide details of the relationship with Tenderer** |
|---|---|---|---|
| 1 | Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer. | | |
| 2 | Tenderer receives or has received any direct or indirect subsidy from another tenderer. | | |
| 3 | Tenderer has the same legal representative as another tenderer | | |
| 4 | Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of Kenya Power regarding this tendering process. | | |
| 5 | Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender. | | |
| 6 | Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document. | | |
| 7 | Tenderer has a close business or family relationship with a professional staff of Kenya Power who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract. | | |
| 8 | Tenderer has a close business or family relationship with a professional staff of Kenya Power who would be involved in the implementation or supervision of the such Contract. | | |
| 9 | Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner | | |

| | Type of Conflict | Disclosure YES OR NO | If YES provide details of the relationship with Tenderer |
|---|---|---|---|
| | acceptable to Kenya Power throughout the tendering process and execution of the Contract. | | |

**f) Certification**

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name_____

_____ _____

Title or Designation_____

*(Signature)* *(Date)*

## B. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the_____[Kenya Power ] for:_____[Name and number of tender] in response to the request for tenders made by:_____[Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of_____[Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;

2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;

3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;

4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
   a) has been requested to submit a Tender in response to this request for tenders;
   b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities orexperience;

5. The Tenderer discloses that [check one of the following, as applicable:
   a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
   b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;

6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
   a) prices;
   b) methods, factors or formulas used to calculate prices;
   c) the intention or decision to submit, or not to submit, a tender; or
   d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5)(b) above;

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;

8. the terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name_____ Title__ Date __

_____

*[Name, title and signature of authorized agent of Tenderer and Date].*

## C. SELF - DECLARATION FORMS

### FORM SD1

**SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENTAND ASSET DISPOSALACT 2015.**

I, ....., of Post Office Box ..... being a resident of
..... in the Republic of ..... do hereby make a statement as follows: -

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of
   ..... *(insert name of the Company)* who is a Bidder in respect of Tender No.
   ..... for ..... *(insert tender title/description)* for
   ..... *(insert name of Kenya Power)* and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

| ..... | ..... | ..... |
|---|---|---|
| (Title) | (Signature) | (Date) |

Bidder Official Stamp

**FORM SD2**

**SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE**

I, ..... of P. O. Box ..... being a resident of
..... in the Republic of ..... do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of ..... *(insert name of the Company)* who is a Bidder in respect of Tender No. ..... for ..... *(insert tender title/description)* for ..... *(insert name of Kenya Power)* and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... *(insert name of Kenya Power)* which is Kenya Power.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... (name of Kenya Power)

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender

5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

..... .....
..... (Title)
(Signature)
(Date)

Bidder's Official Stamp

## DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I ..... (person) on behalf of *(Name of the Business/ Company/Firm)* ..... declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....
Sign.....

Position.....
.....

Office address.....

Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name .....

Sign..... Date.....

## D. APPENDIX 1- FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

### 1. Purpose

2. The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act *(no. 33 of 2015)* and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

### 3. Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act *(no. 33 of 2015)* under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior: -

1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;

2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;

3) Without limiting the generality of the subsection (1) and (2), the person shall be: -

   a) Disqualified from entering into a contract for a procurement or asset disposal proceeding; or

   b) If a contract has already been entered into with the person, the contract shall be voidable;

4) The voiding of a contract by Kenya Power under subsection (7) does not limit any legal remedy Kenya Power may have;

5) An employee or agent of Kenya Power or a member of the Board or committee of Kenya Power who has a conflict of interest with respect to a procurement: -

   a) Shall not take part in the procurement proceedings;

   b) Shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and

c) Shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to Kenya Power;

7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

In compliance with Kenya's laws, regulations and policies mentioned above, Kenya Power:

a) Defines broadly, for the purposes of the above provisions, 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;

ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

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;

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;

v) "obstructive practice" is:

- Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.

b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of Kenya Power or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive Kenya Power of the benefits of free and open competition.

c) Rejects a proposal for award[1] of a contract if PPRA determines that the firm or individual recommended for award, 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;

d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2] all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

---

[1] *For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.*

[2] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by Kenya Power to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]

**Beneficiary:**_____ **Request forTenders No:_Date:**___

**Guarantor:** _____

1. We have been informed that_____(here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of_____ under Request for Tenders No._____

2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_____(__) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

(a) Has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or

b) Having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above onor before that date.

_____

*[signature(s)]*

***Note: All italicized text is for use in preparing this form and shall be deleted from the final product.***

**FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]**

**TENDER GUARANTEE No.: _____**

1. Whereas ..... [*Name of the tenderer]* (hereinafter called "the tenderer") has submitted its tender dated ..... [*Date of submission of tender]* for the ..... *[Name and/or description of the tender]* (hereinafter called "the Tender") for the execution of__under Request for Tenders No._____("the ITT").

2. KNOW ALL PEOPLE by these presents that WE ..... of ..... [**Name of Insurance Company**] having our registered office at ..... (hereinafter called "the Guarantor"), are bound unto ..... [*Kenya Power]* (hereinafter called "the Procuring Entity") in the sum of ..... (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

   Sealed with the Common Seal of the said Guarantor this ___day of _____ 20 __.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:

   a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or

   Having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document, then the guarantee undertakes to immediately pay to the Procuring up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii)twenty-eight days after the end of the Tender Validity Period.

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

_____ _____

*[Date ]* *[Signature of the Guarantor]*

_____ _____

*[Witness]* *[Seal]*

***Note: All italicized text is for use in preparing this form and shall be deleted from the final product.***

## TENDER-SECURING DECLARATION FORM

*[The Bidder shall complete this Form in accordance with the instructions indicated]*

Date:.....*[insert date (as day, month and year) of Tender Submission]*
Tender No.:.....*[insert number of tendering process]*
To:..... *[insert complete name of Purchaser]* I/We, the undersigned, declare

that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.

2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we – (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
   a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
   b) Thirty days after the expiration of our Tender.

4. I/We understand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:.....

Capacity / title (director or partner or sole proprietor, etc.) .....

Name: ..... Duly

authorized to sign the bid for and on behalf of: *[insert complete name of Tenderer]*

Dated on ..... day of ..... *[Insert date of signing]* Seal or stamp

**Appendix to Tender**

**Schedule of Currency requirements**

Summary of currencies of the Tender for_____*[insert name of Section of the Works]*

| ***Name of currency*** | ***Amounts payable*** |
|---|---|
| Local currency: _____ | |
| Foreign currency #1: _____ | |
| Foreign currency #2: _____ | |
| Foreign currency #3: _____ | |
| Provisional sums expressed in local currency _____ | [To be entered by Kenya Power ] |

# PART II - WORK REQUIREMENTS

## SECTION V - DRAWINGS

See drawings annexed in a separate section.

## SECTION VI - SPECIFICATIONS

See specifications annexed in a separate section

## SECTION VII- BILLS OF QUANTITIES

See Bills of Quantities in a separate section

**NOTE**

The prices quoted by the tenderer in the Form of Tender and in the Price Schedules shall be **inclusive of a 0.03% Public Procurement Capacity Building Levy of the item value exclusive of Value Added Tax (VAT).** The Levy shall be deducted from the supplier's payment and remitted to PPRA as stipulated in the Public Procurement Capacity Building Levy order 2023 effective for all Tender published after **1st September 2024.**

# PART III - CONDITIONS OF CONTRACT AND CONTRACT FORMS

## SECTION VIII - GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both smaller admeasurement contracts and lump sum contracts.

**General Conditions of Contract**

**A. General**

**1. Definitions**

1.1 Bold face type is used to identify defined terms.

a) **The Accepted Contract** Amount means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.

b) **The Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.

c) **The Adjudicator** is the person appointed jointly by Kenya Power and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.

d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.

e) **Compensation Events** are those defined in GCC Clause 42 hereunder.

f) **The Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 53.1.

g) **The Contract** is the Contract between Kenya Power and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.

h) **The Contractor** is the party whose Bid to carry out the Works has been accepted by Kenya Power.

i) **The Contractor's Bid** is the completed bidding document submitted by the Contractor to Kenya Power.

j) **The Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.

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

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

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

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

o) **The Defects Liability Period** is the period **named in the SCC** pursuant to Sub-Clause 34.1 and calculated from the Completion Date.

p) **Drawings** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) Kenya Power in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

q) **Kenya Power is** the party who employs the Contractor to carry out the Works, **as specified in the SCC,** who is also Kenya Power.

r) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the

Site to construct the Works.

s) **"In writing" or "written"** means hand-written, type-written, printed or electronically made, and resulting in a permanent record;

t) The Initial Contract Price is the Contract Price listed in Kenya Power 's Letter of Acceptance.

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

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

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

x) **The Project Manager** is the person **named in the SCC** (or any other competent person appointed by Kenya Power and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

y) **SCC** means Special Conditions of Contract.

z) **The Site** is the area of the works as **defined as such in the SCC**.

aa) **Site Investigation Reports** are those that were included in the bidding document and are factual and interpretative reports about the surface and subsurface conditions at the Site.

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

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

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

ee) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

ff) **A Variation** is an instruction given by the Project Manager which varies the Works.

gg) **The Works** are what the Contract requires the Contractor to construct, install, and turn over to Kenya Power, **as defined in the SCC**.

## 2. Interpretation

21 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.

22 If sectional completion is specified in the SCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

23 The documents forming the Contract shall be interpreted in the following order of priority:

a) Agreement,
b) Letter of Acceptance,
c) Contractor's Bid,
d) Special Conditions of Contract,
e) General Conditions of Contract, including Appendices,
f) Specifications,
g) Drawings,

h) Bill of Quantities and

i) Any other document **listed in the SCC** as forming part of the Contract.

*In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."*

**3. Language and Law**

3.1 The language of the Contract is English Language and the law governing the Contract are the Laws of Kenya.

3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in Kenya Power 's Country when

a) As a matter of law or official regulations, Kenya prohibits commercial relations with that country; 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, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

**4. Project Manager's Decisions**

4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between Kenya Power and the Contractor in the role representing Kenya Power.

**5. Delegation**

5.1 Otherwise **specified in the SCC,** the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.

**6. Communications**

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

**7. Subcontracting**

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

**8. Other Contractors**

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

**9. Personnel and Equipment**

9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.

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

9.3 If Kenya Power, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in Fraud and Corruption during the execution of the Works, then that employee shall be removed in accordance with Clause 9.2 above.

## 10. Procuring Entity's and Contractor's Risks

10.1 Kenya Power carries the risks which this Contract states are Procuring Entity's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

## 11. Procuring Entity's Risks

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

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

i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or

ii) Negligence, breach of statutory duty, or interference with any legal right by Kenya Power or by any person employed by or contracted to him except the Contractor.

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

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

a) A Defect which existed on the Completion Date,

b) An event occurring before the Completion Date, which was not itself a Procuring Entity's risk, or

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

## 12. Contractor's Risks

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

## 13. Insurance

13.1 The Contractor shall provide, in the joint names of Kenya Power and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the SCC** for the following events which are due to the Contractor's risks:

a) Loss of or damage to the Works, Plant, and Materials;

b) Loss of or damage to Equipment;

c) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and

d) personal injury or death.

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

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

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

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

## 14. Site Data

14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the SCC**, supplemented by any information available to the Contractor.

**15. Contractor to Construct the Works**

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

**16. The Works to Be Completed by the Intended Completion Date**

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

**17. Approval by the Project Manager**

17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

17.2 The Contractor shall be responsible for design of Temporary Works.

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

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

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

**18. Safety**

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

**19. Discoveries**

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

**20. Possession of the Site**

20.1 Kenya Power shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the SCC,** Kenya Power shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

**21. Access to the Site**

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

**22. Instructions, Inspections and Audits**

22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

22.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub-consultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.

22.3 The Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, Kenya Power and/or persons appointed by the Public Procurement Regulatory Authority to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Public Procurement Regulatory Authority. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 25.1 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Public Procurement Regulatory Authority's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to

a determination of ineligibility pursuant to the Public Procurement Regulatory Authority's prevailing sanctions procedures).

## 23. Appointment of the Adjudicator

23.1 The Adjudicator shall be appointed jointly by Kenya Power and the Contractor, at the time of Kenya Power's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, Kenya Power does not agree on the appointment of the Adjudicator, Kenya Power will request the Appointing Authority designated in the SCC, to appoint the Adjudicator within 14 days of receipt of such request.

23.2 Should the Adjudicator resign or die, or should Kenya Power and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by Kenya Power and the Contractor. In case of disagreement between Kenya Power and the Contractor, 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.

## 24. Settlement of Claims and Disputes

### 24.1 Contractor's Claims

24.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.

24.1.2 If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and Kenya Power shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clause shall apply.

24.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

24.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting Kenya Power's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record- keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

24.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

a) This fully detailed claim shall be considered as interim;

b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and

c) The Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

24.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

24.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause

24.1.8 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion

(before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

24.1.9 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

24.1.10 If the Project Manager does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 24.4 [Arbitration].

24.1.11 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 24.3.

**24.2 Amicable Settlement**

24.2.1 Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 24.1 above should move to commence arbitration after the fifty-sixth day from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

**24.3 Matters that may be referred to arbitration**

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

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

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

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

e) Any dispute arising in respect of war risks or war damage.

f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless Kenya Power and the Contractor agree otherwise in writing.

**24.4 Arbitration**

24.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 24.3 shall be finally settled by arbitration.

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

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

24.4.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

24.4.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

24.4.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

24.4.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the

reasons for dissatisfaction given in its Notice of Dissatisfaction.

24.4.8 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the Works.

24.4.9 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

**24.5 Arbitration with National Contractors**

24.5.1 If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

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

24.5.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

**24.6 Alternative Arbitration Proceedings**

24.6.1 Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

**24.7 Failure to Comply with Arbitrator's Decision**

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

24.7.2 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

**24.8 Contract operations to continue**

24.8.1 Notwithstanding any reference to arbitration herein,

a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

b) Kenya Power shall pay the Contractor any monies due the Contractor.

**25. Fraud and Corruption**

25.1 The Government requires compliance with the country's Anti-Corruption laws and its prevailing sanctions policies and procedures as set forth in the Constitution of Kenya and its Statutes.

25.2 Kenya Power requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

**B. Time Control**

**26. Program**

26.1 Within the time stated in the SCC, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.

26.2 An update of the Program shall be a program showing the actual progress achieved on each activity

and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

26.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the SCC. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the SCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

26.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

**27. Extension of the Intended Completion Date**

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

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

**28. Acceleration**

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

28.2 If the Contractor's priced proposals for an acceleration are accepted by Kenya Power, they are incorporated in the Contract Price and treated as a Variation.

**29. Delays Ordered by the Project Manager**

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

**30. Management Meetings**

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

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

**31. Early Warning**

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

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

## C. Quality Control

### 32. Identifying Defects

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

### 33. Tests

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

### 34. Correction of Defects

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

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

### 35. Uncorrected Defects

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

## D. Cost Control

### 36. Contract Price[7]

36.1 The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

### 37. Changes in the Contract Price[8]

37.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of Kenya Power.

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

### 38. Variations

38.1 All Variations shall be included in updated Programs9 produced by the Contractor.

38.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

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

38.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be

treated as a Compensation Event.

[7] *In lump sum contracts, replace GCC Sub-Clauses 36.1 as follows:*

*36.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for materials on site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.*

[8] *In lump sum contracts, replace entire GCC Clause 37 with new GCC Sub-Clause 37.1, as follows:*

*The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.*

[9] *In lump sum contracts, add "and Activity Schedules" after "Programs."* [10] *In lump sum contracts, delete this paragraph.*

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

38.6 If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 39.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work

38.7 Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

a) The proposed change(s), and a description of the difference to the existing contract requirements;

b) A full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) Kenya Power may incur in implementing the value engineering proposal; and

c) A description of any effect(s) of the change on performance/functionality.

38.8 Kenya Power may accept the value engineering proposal if the proposal demonstrates benefits that:

a) Accelerate the contract completion period; or

b) Reduce the Contract Price or the life cycle costs to Kenya Power; or

c) Improve the quality, efficiency, safety or sustainability of the Facilities; or

d) Yield any other benefits to Kenya Power, without compromising the functionality of the Works.

38.9 If the value engineering proposal is approved by Kenya Power and results in:

a) A reduction of the Contract Price; the amount to be paid to the Contractor shall be the **percentage specified in the SCC** of the reduction in the Contract Price; or

b) An increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in

(a) To (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.

## 39. Cash Flow Forecasts

39.1 When the Program[11], is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

## 40. Payment Certificates

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

40.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid

to the Contractor.

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

40.4 The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed[12].

40.5 The value of work executed shall include the valuation of Variations and Compensation Events.

40.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

40.7 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (which would be the tender price), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: *(corrected tender price – tender price)/tender price X 100.*

**41. Payments**

41.1 Payments shall be adjusted for deductions for advance payments and retention. Kenya Power shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of each certificate. If Kenya Power makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.

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

41.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

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

**42. Compensation Events**

42.1 The following shall be Compensation Events:

d) Kenya Power does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.

e) Kenya Power modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.

f) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.

g) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.

h) The Project Manager unreasonably does not approve a subcontract to be let.

i) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.

j) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by Kenya Power, or additional work required for safety or other reasons.

k) Other contractors, public authorities, utilities, or Kenya Power does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.

l) The advance payment is delayed.

m) The effects on the Contractor of any of Kenya Power's Risks.

n) The Project Manager unreasonably delays issuing a Certificate of Completion.

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

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

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[11] *In lump sum contracts, add "or Activity Schedule" after "Program."*

[12] *In lump sum contracts, replace this paragraph with the following: "The value of work executed shall comprise the value of completed activities in the Activity Schedule."*

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

**43. Tax**

43.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 30 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

**44. Currency y of Payment**

44.1 All payments under the contract shall be made in Kenya Shillings

**45. Price Adjustment**

45.1 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, before 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 specified below applies:

**P = A + B Im/Io**

where: P is the adjustment factor for the portion of the Contract Price payable.

A and B are coefficients[13] **specified in the SCC,** representing the non-adjustable and adjustable portions, respectively, of the Contract Price payable and Im is the index prevailing at the end of the month being invoiced and IOC is the index prevailing 30 days before Bid opening for inputs payable.

45.2 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.

**46. Retention**

46.1 Kenya Power shall retain from each payment due to the Contractor the proportion stated in the **SCC** until Completion of the whole of the Works.

46.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 53.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an "on demand" Bank guarantee.

**47. Liquidated Damages**

47.1 The Contractor shall pay liquidated damages to Kenya Power 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. Kenya Power may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

472 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 41.1.

**48. Bonus**

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

**49. Advance Payment**

49.1 Kenya Power shall make advance payment to the Contractor of the amounts stated in the **SCC** by the date stated in the **SCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to Kenya Power in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

492 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

493 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

**50. Securities**

50.1 The Performance Security shall be provided to Kenya Power no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the SCC,** by a bank or surety acceptable to Kenya Power, 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 day from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

**51. Day works**

51.1 If applicable, the Day works rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

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

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

**52. Cost of Repairs**

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

## E. Finishing the Contract

**53. Completion**

53.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

**54. Taking Over**

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

**55. Final Account**

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

*The sum of the two coefficients A and B should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the non-adjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other non-adjustable components. The sum of the adjustments for each currency are added to the Contract Price.*

**56. Operating and Maintenance Manuals**

56.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the SCC.

562 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC pursuant to GCC Sub-Clause 56.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the SCC** from payments due to the Contractor.

**57. Termination**

57.1 Kenya Power or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

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

a) The Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;

b) The Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;

c) Kenya Power or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction oramalgamation;

d) A payment certified by the Project Manager is not paid by Kenya Power to the Contractor within 84 days of the date of the Project Manager's certificate;

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

f) The Contractor does not maintain a Security, which is required;

g) The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**; or

h) If the Contractor, in the judgment of Kenya Power has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix A to the GCC, in competing for or in executing the Contract, then Kenya Power may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel him from the Site.

573 Notwithstanding the above, Kenya Power may terminate the Contract for convenience.

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

575 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

## 58. Payment upon Termination

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

58.2 If the Contract is terminated for Kenya Power's convenience or because of a fundamental breach of Contract by Kenya Power, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

## 59. Property

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

## 60. Release from Performance

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

## SECTION IX - SPECIAL CONDITIONS OF CONTRACT

*Except where otherwise specified, all* Special *Conditions of Contract should be filled in by Kenya Power prior to issuance of the bidding document. Schedules and reports to be provided by Kenya Power should be annexed.*

Special conditions of contract with reference to the general conditions of contract.

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|---|---|
| **A. General** | |
| **GCC 1.1 (q)** | The Employer or the Procuring Entity is:<br>**The Kenya Power & Lighting Company Plc, Stima Plaza, Kolobot Road,**<br>**P.O. Box 30099 – 00100 Nairobi, Kenya.** |
| **GCC 1.1 (u)** | The Intended Completion Date for the whole of the Works shall be: ***as per accepted tender*** |
| **GCC 1.1 (x)** | The Project Manager is:<br>**The Manager – Administration and Property,**<br>**The Kenya Power & Lighting Company Plc, Kolobot Road,**<br>**P.O. Box 30099 – 00100 Nairobi, Kenya.** |
| **GCC 1.1 (z)** | The Site location in Kakamega County, Kakamega town opposite Kakamega County Referral Hospital. Approximately 3 Km from Kakamega Town CBD |
| **GCC 1.1 (cc)** | The Start Date shall be: **after site possession by the contractor.** |
| **GCC 1.1 (gg)** | The Works consist of: Proposed Construction of a modern warehouse including yard paving works and an access road<br><br>Specific work descriptions and details are as detailed in the Preliminary Bill of the Bills of quantities in which the works occur.<br><br>There shall be inspection and acceptance of the works & installations and a certificate issued by KPLC's inspection and acceptance committee before payment. |
| **GCC 2.2** | Sectional Completions are: **N/A** |
| **GCC 5.1** | The Project manager **may** delegate any of his duties and responsibilities. |
| **GCC 8.1** | Schedule of other contractors: **As per accepted tender i.e Tenderer's domestic specialist subcontractors for electrical, plumbing & drainage works shall be as per accepted tender. KPLC has not nominated any subcontractor(s) for any works either in whole or part** |
| **GCC 9.1** | **Key Personnel**<br>GCC 9.1 is replaced with the following:<br><br>9.1 Key Personnel are the Contractor's personnel named in this GCC 9.1 of the Special Conditions of Contract. The Contractor shall employ the Key Personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of Key Personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.<br><br>[insert the name/s of each Key Personnel agreed by Kenya Power prior to |

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|---|---|
| | Contract signature. |
| **GCC 13.1** | The minimum insurance amounts and deductibles shall be:<br>(a) For loss or damage to the Works, Plant and Materials: *[Ksh. 1,000,000.00]*.<br>(b) For loss or damage to Equipment: *[Ksh. 1,000,000.00]*.<br>(c) For loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract *[Ksh. 2,000,000.00]*<br>(d) For personal injury or death:<br>(i) of the Contractor's employees: *[Ksh. 1,000,000.00]*.<br>(ii) of other people: *[Ksh. 1,000,000.00]*. |
| **GCC 14.1** | Site Data are:<br>Site location is in Kakamega County, Kakamega Town Opposite Kakamega County referral Hospital<br>The site data provided in the Preliminary Bill part of the Bill of Quantities under site location and distances is for guidance only and without any warranty. |
| **GCC 20.1** | The Site Possession Date(s) shall be: determined upon submission of a valid performance bond, signing of the contract by both parties and issuance of the LPO. |
| **GCC 23.1 & GCC 23.2** | Appointing Authority for the Adjudicator: [both parties*]*. |
| | Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: *[to be agreed by both parties]*. |
| **B. Time Control** | |
| **GCC 26.1** | The Contractor shall submit for approval a Program for the Works within *14* days from the date of the Letter of Acceptance. |
| **GCC 26.3** | The period between Program updates is **14** days.<br>The amount to be withheld for late submission of an updated Program is Ksh. 20,000.00. |
| **C. Quality Control** | |
| **GCC 34.1** | The Defects Liability Period is: **180 days.** |
| **D. Cost Control** | |
| **GCC 38.9** | If the value engineering proposal is approved by Kenya Power the amount to be paid to the Contractor shall be **N/A** of the reduction in the Contract Price. |
| **GCC 44.1** | The currency of Kenya Power's Country is: **Kenya Shillings.** |
| **GCC 45** | The Contract **["is not"]** subject to price adjustment in accordance with GCC Clause 46. |
| **GCC 46.1 & 46.2** | The percentage of certified value retained is: **10%**<br>The Limit of retention is: **5% repaid only once when the defects Liability period has passed and the Project Manager has certified that all defects have been** |

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|---|---|
| | **rectified** |
| **GCC 47.1** | The liquidated damages for the whole of the Works are **[0.05% of final Contract Price]** per day. The maximum amount of liquidated damages for the whole of the Works is **[10%]** of the final Contract Price. |
| **GCC 49.1** | The Advance Payments shall be: **[N/A]** |
| **GCC 50.1** | The Performance Security amount is: **10% of the accepted tenderer's contract sum**<br>(a) Performance Security – Bank Guarantee: in the amount(s) of **10** percent of the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount.<br>(b) Performance Security – Performance Bond: in the amount(s) of **10** percent of the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount. |
| **E. Finishing the Contract** | |
| **GCC 56.1** | The date by which operating and maintenance manuals are required is: **At Take Over date.**<br>The date by which "as built" drawings are required is: **30 days after practical completion**. |
| **GCC 56.2** | The amount to be withheld for failing to produce "as built" drawings and/or operating and maintenance manuals by the date required in GCC 57 is: **1.0% of the contract sum.** |

## FORM No 1: NOTIFICATION OF INTENTION TO AWARD

This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

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## FORMAT

1. For the attention of Tenderer's Authorized Representative
   - *i)* Name: *[insert Authorized Representative's name]*
   - *ii)* Address: *[insert Authorized Representative's Address]*
   - *iii)* Telephone: *[insert Authorized Representative's telephone/fax numbers]*
   - *iv)* Email Address: *[insert Authorized Representative's email address]*

   *[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]*

2. Date of transmission: [*email*] on [*date*] (local time)

   This Notification is sent by (*Name and designation*) _____

3. Notification of Intention to Award

   - *i)* Procuring Entity: *[insert the name of Kenya Power]*
   - *ii)* Project: *[insert name of project]*
   - *iii)* Contract title: *[insert the name of the contract]*
   - *iv)* Country: *[insert country where ITT is issued]*
   - *v)* ITT No: *[insert ITT reference number from Procurement Plan]*

   This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

4. Request a debriefing in relation to the evaluation of your tender

   Submit a Procurement-related Complaint in relation to the decision to award the contract.

   a) The successful tenderer
      - i) Name of successful Tender
      - ii) Address of the successful Tender
      - iii) Contract price of the successful Tender Kenya Shillings……... (in words)

   b) Other Tenderers

   Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out. For Tenders not evaluated, give one main reason the Tender was unsuccessful.

| S/No | Name of Tender | Tender Price as read out | Tender's evaluated price (Note a) | One Reason Why not Evaluated |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| | | | | |

*(Note a) State NE if not evaluated*

5. How to request a debriefing

a) DEADLINE: The deadline to request a debriefing expires at midnight on [*insert date*] (*local time*).

b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.

c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

i) Attention: [*insert full name of person, if applicable*]

ii) Title/position: [*insert title/position*]

ii) Agency: [*insert Kenya Power]*

iii) Email address: [*insert email address*]

d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

6. **How to make a complaint?**

a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [*insert date*] (local time).

b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

i) Attention: [*insert full name of person, if applicable*]

ii) Title/position: [*insert title/position*]

iii) Agency: [*insert Kenya Power]*

iv) Email address: [*insert email address*]

c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

d) Further information: For more information, refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website info@ppra.go.ke or complaints@ppra.go.ke.

You should read these documents before preparing and submitting your complaint.

e) There are four essential requirements:

i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.

ii) The complaint can only challenge the decision to award the contract.

iii) You must submit the complaint within the period stated above.

iv) You must include, in your complaint, all of the information required to support your complaint.

7. Standstill Period

i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).

ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.

iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of Kenya Power:

**Signature:**_____

**Name:**_____

**Title/position:**_____

**Telephone:**_____

**Email:** _____

FORM NO. 2 - **REQUEST FOR REVIEW**

**FORM FOR REVIEW (r.203(1))**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO..... OF.....20.....**

**BETWEEN**

**..... APPLICANT**

**AND**

**.....RESPONDENT (Procuring Entity)**

Request for review of the decision of the..... (Name of Kenya Power of .....dated the...day of .....20.....in the matter of Tender No.....of .....20..... for .....(Tender description).

**REQUEST FOR REVIEW**

I/We....., the above named Applicant(s), of address: Physical address..... P. O. Box No..... Tel. No..... Email ....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds, namely:

1.

2.

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

1.

2.

SIGNED ..... (Applicant) Dated on..... day of ...../...20.....

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FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of .....20.....

**SIGNED**

**Board Secretary**

## FORM NO 3: LETTER OF AWARD

*[letter head paper of Kenya Power] [date]*

To: *[name and address of the Contractor]*

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by ..... (*Kenya Power).*

You are requested to furnish the Performance Security within 30 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature:.....

Name and Title of Signatory:.....

Kenya Power .....

Attachment: *Contract Agreement*.....

## FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the_____day of_____,

20_____, between

_____of _____ (hereinafter "the Procuring
Entity"), of the one part, and of_____(hereinafter "the Contractor"), of the other part:

WHEREAS Kenya Power desires that the Works known as ..... should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

Kenya Power and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
   a) The Letter of Acceptance
   b) The Letter of Tender
   c) The addenda Nos_____(if any)
   d) The Special Conditions of Contract
   e) The General Conditions of Contract;
   f) The Specifications
   g) The Drawings; and
   h) The completed Schedules and any other documents forming part of the contract.

3. In consideration of the payments to be made by Kenya Power to the Contractor as specified in this Agreement, the Contractor hereby covenants with Kenya Power to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. Kenya Power hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the Laws of Kenya on the day, month and year specified above.

Signed and sealed by_____(for Kenya Power)

Signed and sealed by_____(for the Contractor).

## FORM NO. 5 - PERFORMANCE SECURITY

**[Option 1 - Unconditional Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:**_____*[insert name and Address of* Procuring Entity*]* **Date:**_____*[Insert date of issue]*

**Guarantor:** [*Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that_____(hereinafter called "the Contractor") has entered into Contract No._____dated_____ _____with (*Kenya Power)*_____(Kenya Power as the Beneficiary), for the execution of _____(hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of .....(*in words* ),[1] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

4. This guarantee shall expire, no later than the .... Day of ....., 2.....[2], and any demand for payment under it must be received by us at the office indicated above on or before that date.

5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year],* in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

*[Name of Authorized Official, signature(s) and seals/stamps*].

***Note:*** *All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.*

[1] *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[2] *Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. Kenya Power should note that in the event of an extension of this date for completion of the Contract, Kenya Power would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

## FORM No. 6 - PERFORMANCE SECURITY

**[Option 2– Performance Bond]**

*[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:**_____*[insert name and Address of* Procuring Entity*]*

**Date:**_____*[Insert date of issue].*

**PERFORMANCE BONDNo.:**_____

**Guarantor:** [*Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond_____as Principal (hereinafter called "the Contractor") and_____] as Surety (hereinafter called "the Surety"), are held and firmly bound unto_____] Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Contractor has entered into a written Agreement with Kenya Power dated the _____day of_____, 20, for_____in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by Kenya Power to be, in default under the Contract, Kenya Power having performed Kenya Power 's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:
   1) Complete the Contract in accordance with its terms and conditions; or
   2) Obtain a tender or tenders from qualified tenderers for submission to Kenya Power for completing the Contract in accordance with its terms and conditions, and upon determination by Kenya Power and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
   3) Pay Kenya Power the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than Kenya Power named herein or the heirs, executors, administrators, successors, and assigns of Kenya Power.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day_____of_____20_____.

SIGNED ON_____on behalfof By___in the capacity of

In the presence of

SIGNED ON_____on behalf of By__in the capacity of

In the presence of

## FORM NO. 7 - ADVANCE PAYMENT SECURITY

**[Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:**_____*[Insert name and Address of* Procuring Entity*]*
**Date:**_____*[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:**_____*[Insert guarantee reference number]* **Guarantor:**_____**[***Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that_____(hereinafter called "the Contractor") has entered into Contract No.___*dated*_____with the Beneficiary, for the execution of_____

2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum
_____(*in words*) is to be made against an advance payment guarantee.

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_____(*in words*_____)[1] upo
   a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
   b) Has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number_____at____.

5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of_____, 2, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year],* in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

*{Name of Authorized Official, signature(s) and seals/stamps*]

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

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[1] *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

[2] *Insert the expected expiration date of the Time for Completion. Kenya Power should note that in the event of an extension of the time for completion of the Contract, Kenya Power would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

FORM NO. 8 - RETENTION MONEY SECURITY

**[Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** _____*[Insert name and Address of* Procuring Entity*]*

**Date:**_____*[Insert date of issue]*

**Advance payment guarantee no.** *[Insert guarantee reference number]*

**Guarantor:** [*Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that_____*[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. _____*[insert reference number of the contract]* dated_____with the Beneficiary, for the execution of_____*[insert name of contract and brief description of* Works*]* (hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and payment of *[*insert the second half of the Retention Money] is to be made against a Retention Money guarantee.

3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words*_____*])*[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Contractor on its account number_____at_____*[insert name and address of Applicant's bank].*

5. This guarantee shall expire no later than the ..... Day of ....., 2.....[2], and any demand for payment under it must be received by us at the office indicated above on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year],* in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

*[Name of Authorized Official, signature(s) and seals/stamps*]

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

[1] *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.*

[2] *Insert a date that is twenty-eight days after the expiry of retention period after the actual completion date of the contract. Kenya Power should note that in the event of an extension of this date for completion of the Contract, Kenya Power would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

## FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE FORM

*INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM*

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:*

- *Directly or indirectly holding 25% or more of the shares.*
- *Directly or in directly holding 25% or more of the voting rights.*
- *Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

Tender Reference No.:_____ *[insert identification no]* Name of the Assignment:_____ *[insert name of the assignment]* to:_____ *[insert complete Kenya Power]*

In response to your notification of award dated_____ *[insert date of notification of award]* to furnish additional information on beneficial ownership:_*[select one option as applicable and delete the options that are not applicable]*

I) We here by provide the following beneficial ownership information.

**Details of beneficial ownership**

| **Identity of Beneficial Owner** | **Directly or indirectly holding 25% or more of the shares (Yes / No)** | **Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)** | **Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)** |
|---|---|---|---|
| *[include full name (last, middle, first), nationality, country of residence]* | | | |

*OR*

*ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

*OR*

*We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]*

*Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding25% or more of the voting rights.*

*Directly or indirectly having the right to appoint a majority of the board of directors or equivalent*

*governing body of the Tenderer]"*

*Name of the Tenderer: .....*[insert complete name of the Tenderer]_____*

*Name of the person duly authorized to sign the Tender on behalf of the Tenderer: ** [insert complete name of person duly authorized to sign the Tender]*

*Title of the person signing the Tender: ..... [insert complete title of the person signing the Tender]*

*Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]*

*Date signed ..... [insert date of signing] day of..... [Insert month], [insert year]*