

# REPUBLIC OF KENYA



## THE COUNTY GOVERNMENT OF KISUMU DEPARTMENT OF, ENERGY & INDUSTRIALIZATION

P.O. BOX 2738  
KISUMU

KENYA

**SUPPLY, INSTALLATION AND COMMISSIONING OF TWO  
NUMBERS, 15M HIGH MAST FLOOD LIGHTS  
(LOT 2)**

**TENDER NO: CGK/E&I/FL/2019/2020/022**

**Prepared by:**  
The Chief Officer-Energy & Industrialization  
County Government of Kisumu  
P. O. Box 2738  
Kisumu.

**Issued by:**  
County Secretary  
County Government of Kisumu  
P.O. Box 2738.  
Kisumu.

## CONTENTS

DEFINITIONS.....	4
SECTION I FORM OF TENDER.....	5
SECTION II TENDER SURETY.....	6
SECTION III SITE VISIT CERTIFICATE.....	7
SECTION IV: INSTRUCTIONS TO TENDERERS (ITT).....	21
Scope of Tender .....	21
The successful Bidder will be expected to complete the Works within the period stated in the Appendix to tender from the date of commencement.....	21
Source of Funds.....	21
Eligible Tenderers .....	21
One Tender per Tenderer .....	22
Alternative Tenders by Tenderers .....	23
Cost of Tendering.....	23
Site Visit and Pre-Tender Meeting.....	23
Tendering Documents.....	24
Content of Tendering Documents .....	24
Clarification of Tendering Documents.....	24
Amendments of the Tendering Documents.....	25
Preparation of Tenders.....	25
Language of Tender .....	25
Documents Constituting the Tender.....	25
Documents Establishing Eligibility and Qualifications of the Tenderer.....	26
Lots Package .....	27
Form of Tender.....	27
Tender Prices.....	27
Tender Currencies .....	28
Tender Validity Period.....	28
Tender Security and Tender Securing Declaration .....	29
Format and Signing of Tender .....	30
Submission of Tenders.....	31
Sealing and Marking of Tenders .....	31
Deadline for Submission of Tenders.....	31
Late Tenders.....	31
Modification, Substitution and Withdrawal of Tenders .....	32
Opening and Evaluation of Tenders .....	32
Opening of Tenders.....	32
Confidentiality.....	34
Clarification of Tenders .....	34
Preliminary Examination of Tenders .....	34
Conversion to Single Currency .....	35
Comparison of Tenders .....	35
National Preference .....	36
Determination of the Lowest Evaluated Tender.....	36
Post-qualification of Tenderer.....	36
Award of Contract.....	37
Criteria of Award .....	37
Clarifications .....	37
CGK's Right to accept any Tender and to reject any or all Tenders.....	38

CGK Right to Vary Quantities at the Time of Award.....	38
Notification of Award .....	38
Signing of Contract .....	39
Performance Security .....	39
Advance Payment.....	40
Adjudicator.....	40
Review of Procurement Decisions.....	40
Right to Review.....	40
Time Limit on Review .....	41
Submission of Applications for Review by the Public Procurement Administrative Review Board	
41	
Decision by the Public Procurement Administrative Review Board .....	41
Appeal on the decision of the Review Board .....	42
Definitions.....	47
1.1 Boldface type is used to identify defined terms. ....	47
Interpretation.....	49
2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way round. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.	
49	
2.2 If sectional completion is specified in the <b>Contract Data Sheet</b> , references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).....	49
2.3 The documents forming the Contract shall be interpreted in the order of priority given in the <b>Contract Data Sheet</b> :.....	49
<b>(1) Agreement;</b> .....	49
<b>(2) Letter of Acceptance;</b> .....	49
<b>(3) Contract Data Sheet;</b> .....	49
<b>(4) Conditions of Contract;</b> .....	49
<b>(5) Technical Specifications;</b> .....	49
<b>(6) Contractor’s Tender;</b> .....	49
<b>(7) Drawings;</b> 49	
<b>(8) Bill of Quantities; and</b> .....	49
<b>(9) Any other document listed in the Contract Data Sheet as forming part of the Contract.</b>	
49	
Language, Law, Fraud and Corruption .....	49
3.1 The language of the Contract and the law governing the Contract are stated in English.	
49	
Confidentiality.....	51

4.1 The Service Providers, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the CGK’s business or operations without the prior written consent of the CGK.

51

Project Manager’s Decisions..... 51

5.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the CGK and the Contractor in the role representing the CGK. .51

Delegation ..... 51

6.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor. ....51

Communication..... 51

7.1 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. ....51

Subcontracting..... 52

8.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the CGK in writing. Subcontracting shall not alter the Contractor’s obligations. ....52

Other Contractors ..... 52

9.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the CGK between the dates given in the Schedule of Other Contractors, as referred to in the **Contract Data Sheet**. The Contractor shall also provide facilities and services for them as described in the Schedule. The CGK may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification .....52

Personnel ..... 52

10.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the **Contract Data Sheet**, who shall be appropriately qualified and registered with the appropriate bodies to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.52

10.2 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. 52

CGK’s and Contractor’s Risks ..... 52

11.1 The CGK carries the risks which this Contract states are CGK’s risks, and the Contractor carries the risks which this Contract states are Contractor’s risks. ....52

CGK’s Risks..... 52

12.1 From the Start Date until the Defects Correction Certificate has been issued, the following are CGK’s risks: .....52

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: .....52

(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 .....	52
(ii) Negligence, breach of statutory duty, or interference with any legal right by the CGK or by any person employed by or contracted to him except the Contractor. ....	52
b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the CGK or in the CGK’s design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed. ....	52
12.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an CGK’s risk except loss or damage due to: .....	53
(a) A Defect which existed on the Completion Date;.....	53
(b) An event occurring before the Completion Date, which was not itself an CGK’s risk; or	53
(c) The activities of the Contractor on the Site after the Completion Date. ....	53
Contractor’s Risks .....	53
13.1 From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not CGK’s risks are Contractor’s risks.	53
Insurance .....	53
14.1 The Contractor shall provide, in the joint names of the CGK 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 <b>Contract Data Sheet</b> for the following events which are due to the Contractor’s risks: .....	53
(a) Loss of or damage to the Works, Plant, and Materials; .....	53
(b) Loss of or damage to Equipment; .....	53
(c) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and.....	53
(d) Personal injury or death.....	53
14.2 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. ....	53
14.3 If the Contractor does not provide any of the policies and certificates required, the CGK may affect the insurance which the Contractor should have provided and recover the premiums the CGK 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. ....	53
14.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager. 53	
14.5 Both parties shall comply with any conditions of the insurance policies. ....	54

Site Investigation Reports .....	54
15.1 The Contractor, in preparing the Tender, shall rely on any Site Investigation Reports referred to in the <b>Contract Data Sheet</b> , supplemented by any information available to the Tenderers. 54	
Queries about the Contract Data Sheet.....	54
16.1 The Project Manager will clarify queries on the <b>Contract Data Sheet</b> . .....	54
Contractor to Construct the Works.....	54
17.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.....	54
Commencement and Completion .....	54
<b>18.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.</b> .....	54
Approval by the Project Manager .....	54
19.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.....	54
19.2 The Contractor shall be responsible for the design of Temporary Works. ....	54
19.3 The Project Manager’s approval shall not alter the Contractor’s responsibility for design of the Temporary Works.....	54
19.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.....	54
19.5 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 their use.....	54
Protection of the Environment .....	54
20.1 The Contractors shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. ....	54
Labour Laws.....	54
21.2 The Contractor shall comply with all the relevant labour laws applicable in the Country, including laws relating to workers employment, working hours, health, safety, welfare, and immigration, and shall allow them all their legal rights.....	54
21.2 The Contractor shall require his employees to obey all applicable laws, including those concerning safety at work. ....	55
Health and Safety .....	55
22.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of his personnel.....	55
Discoveries .....	55
23.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the CGK. The Contractor shall notify the Project Manager of	

such discoveries and carry out the Project Manager's instructions for dealing with them.

55

Possession of the Site ..... 55

24.1 The CGK 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 **Contract Data Sheet**, the CGK will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.

55

Access to the Site ..... 55

25.1 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. ....55

Instructions, Inspections and Audits ..... 55

26.1 **The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.**.....55

26.2 The Contractor shall permit the County Government to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the County Government, if so required by the Kenya Government

55

Disputes..... 55

27. 1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision. ....55

Procedure for Disputes ..... 56

28.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute. ....56

28.2 The Adjudicator shall be paid by the hour at the rate specified in the **Tender Data Sheet** and **Contract Data Sheet**, together with reimbursable expenses of the types specified in the **Contract Data Sheet**, and the cost shall be divided equally between the CGK and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding. ....56

Replacement of Adjudicator..... 56

29.1 Should the Adjudicator resign or die, or should the CGK and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the CGK and the Contractor. In case of disagreement between the CGK and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the **Contract Data Sheet** at the request of either party, within 14 days of receipt of such request. ....56

Time Control..... 57

Programme ..... 57

30.2 An update of the Programme shall be a programme 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.....	57
30.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the <b>Contract Data Sheet</b> . If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the <b>Contract Data Sheet</b> from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted. ....	57
30.4 The Project Manager’s approval of the Programme shall not alter the Contractor’s obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events.....	57
Extension of the Intended Completion Date .....	57
31.1 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. ....	57
31.2 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.....	57
Acceleration .....	58
32.1 When the CGK wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the CGK accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the CGK and the Contractor. ....	58
Delays Ordered by the Project Manager .....	58
33.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.....	58
Management Meetings .....	58
34.1 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. ....	58
34.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the CGK. 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. ....	58
Early Warning .....	58



35.1 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. ....58

35.2 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. 58

Quality Control ..... 58

    Identifying Defects ..... 58

36.1 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. ....58

    Tests 59

37.1 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. ....59

    Correction of Defects ..... 59

38.1 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 **Contract Data Sheet**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected. 59

38.2 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.....59

38.3 If the Contractor has not corrected a defect within the time specified in the CGK’s notice, a penalty for lack of performance will be paid by the Contractor. The amount to be paid will be calculated as a percentage of the cost of having the defect correct, assessed as described in Clause 39. 59

    Uncorrected Defects ..... 59

39.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager’s notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount. ....59

Cost Control ..... 59

    Bill of Quantities ..... 59

40.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor. ....59

40.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work done at the rate in the Bill of Quantities for each item.59

    Changes in the Quantities..... 59

- 41.1 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.  
59
- 41.2 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 the CGK. ....59
- 41.3 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. ....59  
Variations ..... 60
- 42.1 All Variations shall be included in the updated Programmes produced by the Contractor.  
60  
Payments for Variations ..... 60
- 43.1 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 days of the request or within any longer period stated by the Project Manager and before the Variation is ordered. ....60
- 43.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work is above the limit stated in Sub-Clause 41.1 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. ....60
- 43.3 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. ....60
- 43.4 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. ....60
- 43.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning. ....60  
Cash Flow Forecasts..... 60
- 44.1 When the Programme 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.60  
Payment Certificates ..... 60
- 45.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.....60
- 45.2 The Project Manager shall check the Contractor’s monthly statement and certify the amount to be paid to the Contractor within twenty eight 28 days of receipt of the certificate from the contractor. 60

45.3 The value of work executed shall be determined by the Project Manager. ....	60
45.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed. ....	61
Payments .....	61
46.1 Payments shall be adjusted for deductions for advance payments and retention. The CGK shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the CGK 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 as indicated in the <b>Contract Data Sheet</b> . ....	61
46.2 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. ....	61
46.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price. ....	61
46.4 Items of the Works for which no rate or price has been entered in will not be paid for by the CGK and shall be deemed covered by other rates and prices in the Contract. ....	61
Compensation Events .....	61
47.1 The following shall be Compensation Events: .....	61
(a) The CGK does not give access to a part of the Site by the Site Possession Date stated in the <b>Contract Data Sheet</b> . ....	61
(b) The CGK modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract. ....	61
(c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time. ....	62
(d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects. ....	62
(e) The Project Manager unreasonably does not approve a subcontract to be let. ....	62
(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site. ....	62
(g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the CGK, or additional work required for safety or other reasons. ....	62
(h) Other contractors, public authorities, utilities, or the CGK does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.	
62	
(i) The advance payment is delayed. ....	62

(j) The effects on the Contractor of any of the CGK’s Risks. ....	62
(k) The Project Manager unreasonably delays issuing a Certificate of Completion. ..	62
(l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply. ....	62
47.2 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.....	62
47.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor’s forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor’s forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager’s own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event. ....	62
47.4 The Contractor shall not be entitled to compensation to the extent that the CGK’s interests are adversely affected by the Contractor’s not having given early warning or not having cooperated with the Project Manager.....	63
Taxes .....	63
48.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders 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 Clause 50.....	63
Currencies .....	63
49.1 Where payments are made in currencies other than the Kenya Shillings, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor’s Tender.....	63
Price Adjustment.....	63
50.1 The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 45.1, shall be adjusted in respect of the rise or fall in the cost of labour, Contractor’s Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause based on the prevailing consumer price index obtained from the Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya.   63	
Retention .....	64
51.1 The CGK shall retain from each payment due to the Contractor the proportion stated in the <b>Contract Data Sheet</b> until Completion of the whole of the Works. ....	64
51.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the other 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.....	64

- 51.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” Bank guarantee.....64  
 Liquidated Damages..... 64
- 52.1 The Contractor shall pay liquidated damages to the CGK at the rate per day stated in the **Contract Data Sheet** 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 **Contract Data Sheet**. The CGK may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities. ....64
- 52.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 46.1.....65
- 52.3 If the Contractor has not corrected a defects within the time specified in the CGK’s notice, the CGK will assess the cost of having the defect corrected, the Contractor will pay this amount, and a penalty for lack of performance calculated as described in Clause 38. 65  
 Bonus..... 65
- 53.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the **Contract Data Sheet** 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. 65  
 Advance Payment..... 65
- 54.1 The CGK shall make advance payment to the Contractor of the amounts stated in the **Contract Data Sheet** by the date stated in the **Contract Data Sheet**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the CGK 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 will not be charged on the advance payment. ....65
- 54.2 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. ...65
- 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.....65
- 54.3 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. ....65  
 Performance Securities..... 65
- 55.1 The Performance Security shall be provided to the CGK no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety

acceptable to the CGK, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the 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.....65

Day works ..... 66

56.1 If applicable, the Day works rates in the Contractor’s Tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.....66

56.2 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. ....66

56.3 The Contractor shall be paid for Day works subject to obtaining signed Day works forms. 66

Cost of Repairs..... 66

57.1 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. 66

Finishing the Contract..... 66

Completion Certificate ..... 66

58.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed. 66

Taking Over ..... 66

59.1 The CGK shall take over the Site and the Works within seven days of the Project Manager’s issuing a certificate of Completion. ....66

Final Account..... 66

60.1 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. 66

Operating and Maintenance Manuals..... 67

61.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **Contract Data Sheet**. ....67

61.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **Contract Data Sheet**, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the **Contract Data Sheet** from payments due to the Contractor.....67

Termination ..... 67

- 62.1 The CGK or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. ....67
- 62.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:  
67
- (a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Project Manager; ...67
  - (b) The Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days; .....67
  - (c) The CGK or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation; .....67
  - (d) A payment certified by the Project Manager is not paid by the CGK to the Contractor within 84 days of the date of the Project Manager’s certificate; .....67
  - (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; .....67
  - (f) The Contractor does not maintain a Security, which is required; and .....67
  - (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 **Contract Data Sheet**.  
67
  - (h) If the Contractor, in the judgment of the CGK has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.....67
- For the purpose of this paragraph: .....67
- “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution and includes inter alia, bribery and extortion or coercion which involves threats of injury to person ,property or reputation, and. ....67
- “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the CGK, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the CGK of the benefits of free and open competition. ....68
- 62.3 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 Sub-Clause 62.2 above, the Project Manager shall decide whether the breach is fundamental or not. ....68
- 62.4 Notwithstanding the above, the CGK may terminate the Contract for convenience. 68
- 62.5 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.....68
- Payment upon Termination ..... 68
- 63.1 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 indicated in the **Contract Data Sheet**. Additional Liquidated Damages shall not apply. If the total amount due to the CGK exceeds any payment due to the Contractor, the difference shall be a debt payable to the CGK. 68

Property ..... 68

64.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the CGK if the Contract is terminated because of the Contractor’s default. 68

Release from Performance ..... 68

65.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the CGK 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 was made. 68

Suspension of Financing ..... 69

66.1 In the event that the source of financing is suspended to the CGK, from which part of the payments to the Contractor are being made: .....69

(a) The CGK is obligated to notify the Contractor of such suspension within 7 days of having received the financing agency’s suspension notice. ....69

(b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 46.1, the Contractor may immediately issue a 14-day termination notice. 69

SECTION VII: CONTRACT DATA SHEET (CDS) .....70

SECTION VIII: BILL OF QUANTITIES.....73



## **DEFINITIONS**

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

<b>The Employer</b>	County Government of Kisumu P. O. Box 2738, Kisumu.
<b>Employers Representative</b>	This shall mean the Project Manager and shall be Chief Officer Energy and Industrialization Department P.O. Box 2738 Kisumu.
<b>Contractor</b>	The firm appointed to carry out flood lighting Installations.
<b>The Site</b>	<b>The markets within Kisumu County as in the Annex in this Tender Document</b>

## SECTION I FORM OF TENDER

To: The Chief Officer,  
Energy and Industrialization,  
County Government of Kisumu,  
P.O. Box 2738,  
**Kisumu**

Name of Contract: \_\_\_\_\_

Dear Sir/Madam,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities/Schedule of Rates for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein of the sum of  
Kshs. \_\_\_\_\_ [Amount in figures/ Kenya shillings \_\_\_\_\_  
\_\_\_\_\_ *[Amount in words]*
2. We undertake, if our tender is accepted, to commence the works as soon as it is reasonably possible after the receipt of the Employer's Representative notice to commence, and to complete the whole of the works comprised in the Contract within the stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until \_\_\_\_\_ *[insert date]* and it shall remain binding upon us and may be accepted at any time before the date.
4. Unless and until a formal Agreement is prepared and executed this tender together with you written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bond to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signature \_\_\_\_\_ the capacity of \_\_\_\_\_

Duly authorized to sign tenders for and on behalf of

\_\_\_\_\_ *[Name of Tenderer]*

of \_\_\_\_\_ *[Address of Tenderer]*

Witness; Name \_\_\_\_\_ Signature \_\_\_\_\_

Address \_\_\_\_\_ Date \_\_\_\_\_

**SECTION II TENDER SURETY**

KNOW ALL MEN by these present that we..... (Name of surety)  
.....  
(Address)

hereinafter called “the bank”, incorporated/registered under companies’ act and having our registered office at.....are bound unto the government of Kenya in the sum of Ksh.....(figures)..... (words) for which payment will and truly to be made to the said government, the bank binds itself, its successors and assigns by these presents sealed with the common seal of the said bank subscribed for it and on its behalf by.....

CONDITIONS of this obligation are such that if.....  
(Name of Tenderer)

does not withdraw his tender dated.....of.....20.... within sixty (60) days from the official tender opening date and, if called upon to do so.

- 1. Executes the formal contract Agreement in accordance with conditions of the said tender and instructions for Tendering.
- 2. Complies with a written notice by the employer, under paragraph 1.6.2 of the instructions for Tendering.
- 3. Produces a performance Bond satisfactorily in all respects to the employer then this obligation is to be void and of no effect otherwise to remain in full force and virtue.

This surety may be considered invalid 70 days after the official Tender opening date unless the employer requests that it be extended to allow sufficient time for the successful tenderer to execute the formal contract agreement and/or produce the required performance Bond.

**Dated the.....day of.....20.....**

.....  
**(Signature of surety)**

.....  
**(Signature of witness)**

.....  
**(Name of witness)**

.....  
**(Address of witness)**

**SECTION III SITE VISIT CERTIFICATE**

**CERTIFICATE OF AREA INSPECTION**

This is to certify that,

I,.....(name of Tenderer or his representative)  
of the firm of.....(name of firm tendering)  
in the company of.....(name of client representative) visited the  
site in connection with the tender No.....

Having previously studied the contract document, I carefully examined the site.

1. I have made myself familiar with the local conditions and access roads likely to influence the works and the cost thereof.
2. I further certify that I am satisfied with the description of the work and explanations given by the said representative and that I understand perfectly the work to be done as specified and implied in the execution of the contract.

**Signed..... Date.....**

**Name.....**

**(Tenderer or his representative)**

**Signed..... Date.....**

**Name.....**

**(Client representative)**

## SECTION IV: INSTRUCTIONS TO TENDERERS (ITT)

- Scope of Tender**
- 1.1 **The Employer wishes to receive Bids for the supply, installation and commissioning of TWO NUMBER, 15M HIGH MAST FLOOD LIGHTS (LOT 2) WITHIN KISUMU COUNTY hereinafter referred to as "the Works".**
  - 1.2 The successful Bidder will be expected to complete the Works within the period stated in the Appendix to tender from the date of commencement.
  - 1.3 Throughout these Bidding documents, the terms ‘Employer’s Representative’ and ‘Engineer’ and the terms ‘Bid’ and ‘tender’ and their derivatives (Bidder/tenderer, Bid/tender, Bidding/tendering, etc.) and the terms ‘it’ and ‘he’ and their derivatives (its/his, itself/himself, etc.) are synonymous, and day means calendar day. Singular also means plural.
- Source of Funds**
- 2.1 The County Government of Kisumu has set aside funds for the use in the **Tender Data Sheet** during the Financial Year indicated in the **Tender Data Sheet**. It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the works as described in the **Tender Data Sheet**.
  - 2.2 Payments will be made directly by the CGK (or by financing institution specified in the **Tender Data Sheet** upon request of the CGK to so pay) and will be subject in all respects to the terms and conditions of the resulting contract placed by the CGK.
- Eligible Tenderers**
- 3.1 A Tenderer may be a natural person, private or public company, government-owned institution, subject to sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the **Tender Data Sheet**, all parties shall be jointly and severally liable.
  - 3.2 The Invitation for Tenders is open to gazetted qualified contractors dully registered in the republic of Kenya under NCA.
  - 3.3 All Tenderers shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya.
  - 3.4 A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if they:

- a) Are associated or have been associated in the past directly or indirectly with employees or agents of the CGK or a member of a board or committee of the CGK;
- b) Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the CGK to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the works under this Invitation for Tenders;
- c) Have controlling shareholders in common; or
- d) Receive or have received any direct or indirect subsidy from any of them; or
- e) Have the same legal representative for purposes of this Tender; or
- f) Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the CGK regarding this Tendering process; or
- g) Submit more than one Tender in this Tendering process; however, this does not limit the participation of subcontractors in more than one Tender or as Tenderer and subcontractor simultaneously.

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

**3.6** Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the Government of Kenya in accordance with GCC sub-Clause 3.2.

**3.7** Government owned enterprises in Kenya may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration board or authorities and if they are not a dependent agency of the Government.

**3.7** Tenderers shall provide such evidence of their continued eligibility satisfactory to the CGK, as the CGK shall reasonably request.

**One Tender  
per  
Tenderer**

**4.1** A firm shall submit only one Tender, in the same Tendering process, either individually as a Tenderer or as a partner in a joint venture pursuant to ITT Clause 5.

**4.2** No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process.

**4.3** A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity.

<b>Alternative Tenders by Tenderers</b>	<p><b>5.1</b> Tenderers shall submit offers that comply with the requirements of the Tendering documents, including the basic Tenderer’s technical design as indicated in the specifications and Drawings and Bill of Quantities. Alternatives will not be considered, unless specifically allowed for in the <b>Tender Data Sheet</b>. If so allowed, sub-Clause 5.2 and 5.3 shall govern.</p> <p><b>5.2</b> When alternative times for completion are explicitly invited, a statement to that effect will be included in the <b>Tender Data Sheet</b> as will the method of evaluating different times for completion.</p> <p><b>5.3</b> If so allowed in the <b>Tender Data Sheet</b>, Tenderers wishing to offer technical alternatives to the requirements of the Tendering documents must also submit a Tender that complies with the requirements of the Tendering documents, including the basic technical design as indicated in the specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the CGK, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the CGK.</p>
<b>Cost of Tendering</b>	<p><b>6.1</b> The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the CGK shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.</p>
<b>Site Visit and Pre-Tender Meeting</b>	<p><b>7.1</b> The Tenderer, at the Tenderer’s own responsibility and risk, is advised to visit and examine the Site of 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.</p> <p><b>7.2</b> The CGK may conduct a site visit and a pre-Tender meeting. The purpose of the pre-Tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.</p> <p><b>7.3</b> The Tenderer’s designated representative is invited to attend a site visit and pre-Tender meeting which, <b>if convened</b>, will take place at the venue and time stipulated in the <b>Tender Data Sheet</b>.</p> <p><b>7.4</b> The Tenderer is requested as far as possible, to submit any questions in writing or by electronic means to reach the CGK before the pre-Tender meeting. It may not be practicable at the meeting to answer all questions, but questions and responses will be transmitted in accordance with sub-Clause 7.5.</p> <p><b>7.5</b> Minutes of the pre-Tender meeting, including the text of the questions raised and the responses given together with any responses prepared after the pre-Tender meeting will be transmitted within the time stated in the <b>Tender Data Sheet</b> to all purchasers of the Tendering documents. Any modification of the Tendering documents listed in sub-Clause 8.1 that may become necessary as a result of the pre-Tender meeting shall be made by the CGK exclusively through the issue of an Addendum pursuant to ITT sub Clause 10.2 and not through the</p>

minutes of the pre-Tender meeting.

- 7.6 Non-attendance during the site visit or pre-Tender meeting will not be a cause for disqualification of a Tenderer unless specified to the contrary in the **Tender Data Sheet**.

---

## Tendering Documents

### Content of Tendering Documents

- 8.1 The works required, Tendering procedures, and contract terms are prescribed in the Tendering Documents. In addition to the Section I Invitation for Tenders, Tendering documents which should be read in conjunction with any addenda issued in accordance with ITT sub Clause 10.2 include:

**SECTION I** FORM OF TENDER

**SECTION II** TENDER SURETY

**SECTION III** SITE VISIT CERTIFICATE

**SECTION IV:** INSTRUCTIONS TO TENDERERS

**SECTION V:** TENDER DATA SHEET

**SECTION VI:** GENERAL CONDITIONS OF CONTRACT

**SECTION VII:** CONTRACT DATA SHEET

**SECTION VIII:** BILL OF QUANTITIES

**SECTION IX:** SUMMARY SHEET

- 8.2 The number of copies to be completed and returned with the Tender is specified in the **Tender Data Sheet**.
- 8.3 The Invitation for Tenders (Section I) issued by the CGK is not part of the Tendering Documents and is included for reference purposes only. In case of discrepancies between the Invitation for Tenders and the Tendering Documents listed in sub-Clause 8.1 above, the said Tendering Documents will take precedence.
- 8.4 The CGK is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from the authorized staff of the CGK.
- 8.5 The Tenderer is expected to examine all instructions, forms, terms and specifications in the Tendering documents. Failure to furnish all information required by the Tendering Documents or to submit a Tender substantially responsive to the Tendering documents in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

### Clarification of Tendering Documents

- 9.1 A prospective Tenderer requiring any clarification of the Tendering documents may notify the CGK in writing, e-mail or facsimile at the CGK's address indicated in the **Tender Data Sheet**.
- 9.2 The CGK will within the period stated in the **Tender Data Sheet** respond



in writing to any request for clarification provided that such request is received no later than the period indicated in the **Tender Data Sheet** prior to the deadline for the submission of Tenders prescribed in sub-Clause 22.1.

- 9.3 Copies of the CGK's response will be forwarded to all Purchasers of the Tendering documents, including a description of the inquiry, but without identifying its source.
- 9.4 Should the CGK deem it necessary to amend the Tendering documents as a result of a clarification, it shall do so following the procedure under ITT Clause 10.

**Amendments of  
the Tendering  
Documents**

- 10.1 Before the deadline for submission of Tenders, the CGK may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, modify the Tendering documents by issuing addenda.
- 10.2 Any addendum issued shall be part of the Tender documents pursuant to sub-Clause 8.1 and shall be communicated in writing, by e-mail or facsimile to all who have obtained the Tendering documents directly from the CGK.
- 10.3 In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the CGK at its discretion shall extend, as necessary, the deadline for submission of Tenders, in accordance with sub-Clause 22.2

**Preparation of Tenders**

**Language of Tender**

- 11.1 The Tender, and all correspondence and documents related to the Tender exchanged by the Tenderer and the CGK shall be written in the Tender language stipulated in the **Tender Data Sheet**. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the above stated language, in which case, for purposes of interpretation of the Tender, the translation shall prevail.

**Documents  
Constituting the  
Tender**

- 12.1 The Tender submitted by the Tenderer shall consist of the following components:
  - a) The Form of Tender (in the format indicated in Section IX) completed in accordance with ITT Clause 15, 16 and 17;
  - b) Information requested by Instructions to Tenderers ITT sub-Clause 13.2; 13.3 and 13.4;
  - c) Tender Security or Tender Securing Declaration in accordance with Instructions to Tenderers ITT Clause 19;

- d) Priced Bill of Quantities;
- e) Qualification Information Form and Documents;
- f) Alternative offers where invited in accordance with Instructions to Tenderers ITT Clause 5;
- g) Written confirmation authorizing the signatory of the Tender to commit the Tenderer in accordance with Instructions to Tenderers ITT sub Clause 19.2; and
- h) And any information or other materials required to be completed and submitted by Tenderers, as specified in the **Tender Data Sheet**.

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

- 13.1** Pursuant to ITT Clause 13, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.
- 13.2** In the event that pre-qualification of potential Tenderers has been undertaken, only Tenders from pre-qualified Tenderers will be considered for award of contract. These qualified Tenderers should submit their Tenders with any information updating the original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission. The update or confirmation should be provided in Section IX.
- 13.3** If the CGK has not undertaken pre-qualification of potential Tenderers, to qualify for award of the contract, Tenderers shall meet the minimum qualifying criteria specified in the **Tender Data Sheet**:
- 13.4** Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **Tender Data Sheet**:
  - a) The Tender shall include all the information listed in the **Tender Data Sheet** pursuant to sub-Clause 13.3 above for each joint venture partner;
  - b) The Tender shall be signed so as to be legally binding on all partners;
  - c) One of the partners will be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
  - d) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of a

joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;

- e) All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms and a statement to this effect shall be included in the authorization mentioned under (c) above as well as in the Tender and in the Agreement (in case of a successful Tender); and
- f) A copy of the joint venture agreement entered into by all partner shall be submitted with the Tender. Alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful Tender shall be signed by all partners and submitted with the Tender, together with a copy of the proposed Agreement.
- g) The Tender Security and Tender Securing Declaration as stated in accordance with ITT Clause 19, and in case of a successful Tender, the Agreement, shall be signed so as to be legally binding on all partners.

**Lots Package**

- 14.1** When Tendering for more than one contract under the lots arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being tendered in regard to:
  - a) Average annual turnover;
  - b) Particular experience including key production rates;
  - c) Financial means, etc;
  - d) Personnel capabilities; and
  - e) Equipment capabilities.
- 14.2** In case the Tenderer fail to fully meet any of these criteria, it may be qualified only for those lots for which the Tenderer meets the above requirement.

**Form of Tender**

- 15.1** The Tenderer shall fill the Form of Tender furnished in the Tendering Documents. The Form of Tender must be completed without any alterations to its format and no substitute shall be accepted.

**Tender Prices**

- 16.1** The Contract shall be for the whole Works, as described in sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Tenderer.
- 16.2** The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Tenderer will not be paid for by the CGK when executed and shall be deemed covered by the other rates and prices in the Bill of quantities.
- 16.3** All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 15 days prior to the

deadline for submission of Tenders, shall be included in the rates, prices and total Tender price submitted by the Tenderer.

**16.4** The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if provided for in the **Tender Data Sheet** and the provisions of the Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the **Contract Data Sheet**.

## **Tender Currencies**

**17.1** The unit rates and prices shall be quoted by the Tenderer in the currency as specified in the **Tender Data Sheet**.

**17.2** Tenderers shall indicate details of their expected foreign currency requirements in the Tender, if any.

The rates of exchange to be used by the Tenderers in arriving at the local currency equivalent shall be the selling rates for similar transactions established by the authority specified in the **Tender Data Sheet** prevailing on the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Tenderer. In any case, payments will be computed using the rates quoted in the Tender.

**17.3** Tenderers may be required by the CGK to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices and in the Contract Data Sheet are reasonable and responsive to sub-Clause 17.1.

## **Tender Validity Period**

**18.1** Tenders shall remain valid for the period specified in the **Tender Data Sheet** after the Tender submission deadline prescribed by the CGK, pursuant to ITT Clause 22. A Tender valid for a shorter period shall be rejected by the CGK as non-responsive.

**18.2** In exceptional circumstances, prior to expiry of the original Tender validity period, the CGK may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing or by cable. A Tenderer may refuse the request without forfeiting its Tender Security or causing to be executed its Tender Securing declaration. A Tenderer agreeing to the request will not be required or permitted to otherwise modify the Tender, but will be required to extend the validity of its Tender Security or Tender Securing declaration for the period of the extension, and in compliance with ITT Clause 19 in all respects.

**18.3** In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial Tender validity period, the contract price will be increased by a factor specified in the request for extension. The Tender evaluation shall be based on the Tender price without taking into consideration on the

above correction.

**Tender Security and  
Tender Securing  
Declaration**

- 19.1** Pursuant to ITT Clause 12, where required in the **Tender Data Sheet**, the Tenderer shall furnish as part of its Tender, a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet**.  
A Tender Securing Declaration as specified in the **Tender Data Sheet** in the format provided in section X shall be provided as a mandatory requirement.
- 19.2** The Tender Security or Tender Securing Declaration is required to protect the CGK against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to ITT sub-Clause 19.9.
- 19.3** The Tender Security shall be denominated in the currency of the Tender and shall be in one of the following forms:
- a) Cash;
  - b) A Bank Guarantee;
  - c) An Insurance Bond issued by an insurance firm approved by the PPOA located in Kenya;
  - d) An irrevocable letter of credit issued by a reputable bank.
- 19.4** The Tender Security shall be in accordance with the Form of the Tender Security included in Section X or another form approved by the CGK prior to the Tender submission.
- 19.5** The Tender Security shall be payable promptly upon written demand by the CGK in case any of the conditions listed in sub-Clause 19.8 are invoked.
- 19.6** Any Tender not accompanied by a Tender Security in accordance with sub-Clauses 19.1 or 19.3 shall be rejected by the CGK as non-responsive, pursuant to ITT Clause 28.
- 19.7** The CGK shall immediately release any Tender Security if:
- a) The procuring proceedings are terminated;
  - b) The CGK determines that none of the submitted Tenders is responsive;
  - c) A contract for the procurement is entered into.
- 19.8** The Tender Security shall be forfeited and the Tender Securing Declaration executed if the Tenderer:

- a) Withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which Tenders must remain valid;
- b) Rejects a correction of an arithmetic error pursuant to sub-Clause 29.2;
- c) Refuse to enter into a written contract in accordance with ITT Clause 40;
- d) Fails to furnish the Performance Security in accordance with ITT Clause 41.

**19.9** The Tender Security and Tender Securing Declaration of a joint venture must be in the name of the joint venture submitting the Tender.

**19.10** A Tenderer shall be suspended from being eligible for Tendering in any contract with the CGK for the period of time indicated in the Tender Securing Declaration:

- a) If the Tenderer withdraws its Tender, except as provided in ITT sub-Clauses 18.2 and 29.2; or
- b) In the case of a successful Tenderer, if the Tenderer fails within the specified time limit to:
  - (i) Sign the contract; or
  - (ii) Furnish the required Performance Security.

**Format and Signing of Tender**

**20.1** The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT Clause 12 of these Instructions to Tenderers, with the Form of Tender, and clearly marked **Appropriately as per the tender Number being bided for.**

**20.2** The original and all copies of the Tenders shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **Tender Data Sheet** 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, except for un-amended printed literature, shall be initialled by the person or persons signing the Tender.

**20.3** Any interlineations, erasures, or overwriting shall be valid only if they are initialled by the person or persons signing the Tender.

**20.4** The Tenderer shall furnish information as described in the Form of

Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to contract execution if the Tenderer is awarded the contract

### **Submission of Tenders**

#### **Sealing and Marking of Tenders**

**21.1** The Tenderer shall seal the Tender in a properly sealed Envelope clearly marked with the contract/Tender No. The envelope shall then be sealed in such a manner that opening and resealing cannot be achieved undetected.

**21.2** The envelope shall:

a) Be addressed to the address below

The County Secretary  
County Government of Kisumu  
P.o. Box 2738  
Kisumu.

b) Bear the Project name **SUPPLY, INSTALLATION AND COMMISSIONING OF TWO NUMBER, 15M HIGH MAST FLOOD LIGHTS (LOT2) IN SUB COUNTIES:**  
**“DO NOT OPEN BEFORE Date 16/12/ 2019 at Time:12.00 Noon**

**21.3** In addition to the identification required in sub-Clause 21.2, the inner envelopes shall also indicate the name and address of the Tenderer to enable the Tender be returned unopened in case it is declared late, pursuant to sub-Clause 22.1 and for matching purpose under ITT Clause 23

**21.4** If the outer envelope is not sealed and marked as required by ITT sub clause 21.2, the CGK shall assume no responsibility for misplacement or premature opening of the Tender.

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

**22.1** Tenders shall be received by the CGK at the address specified under ITT sub-Clause 21.2 no later than the date and time specified in the **Tender Data Sheet.**

**22.2** The CGK may, in exceptional circumstances and at its discretion, extend the deadline for the submission of Tenders by amending the Tendering documents in accordance with ITT Clause 9, in which case all rights and obligations of the CGK and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.

**22.3** The extension of the deadline for submission of Tenders shall not be made later than the period specified in the **Tender Data Sheet** before the expiry of the original deadline.

#### **Late Tenders**

**23.1** The CGK shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 22.

**Modification,  
Substitution  
and  
Withdrawal of  
Tenders**

- 23.2 Any Tender received by the CGK after the deadline for submission of Tenders shall be declared late, rejected and returned unopened to the Tenderer
- 24.1 A Tenderer may modify or substitute or withdraw its Tender after it has been submitted, provided that written notice of the modification, including substitution or withdrawal of the Tender, is received by the CGK prior to the deadline prescribed for submission of Tenders prescribed under ITT sub-Clause 22.1.
- 24.2 The Tenderer’s modification or substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 20 and 21 with the outer and inner envelopes additionally marked “**MODIFICATION**” or **SUBSTITUTION** or “**WITHDRAWAL**” as appropriate. The notice may also be sent by electronic mail and facsimile, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders.
- 24.3 No Tender may be withdrawn, replaced 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 Tender Form. Withdrawal of a Tender during this interval shall result in the Tenderer’s forfeiture of its Tender Security or execution of Tender Securing Declaration, pursuant to the ITT sub-Clause 19.9.
- 24.4 Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the **Tender Data Sheet** or as extended pursuant to sub-Clause 22.2 shall result in the forfeiture of the Tender Security and execution of Tender Securing Declaration pursuant to ITT sub-Clause 19.9.
- 24.5 Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender modifications in accordance with this Clause, or included in the original Tender submission.

**Opening and Evaluation of Tenders**

**Opening of Tenders**

- 25.1 The CGK will open all Tenders including modifications, substitution or withdraw notices made pursuant to ITT Clause 24, in public, in the presence of Tenderers or their representatives who choose to attend and other parties with legitimate interest and Tender proceedings, at the place on the date and at time specified in the **Tender Data Sheet**. The Tenderers’ representatives who are present shall sign a register as proof of their attendance.
- 25.2 Envelopes marked “**WITHDRAWAL**” shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 24 shall not be opened but returned to



the Tenderer. If the withdrawal envelope does not contain a copy of the "Power of Attorney" confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. Subsequently, all envelopes marked "MODIFICATION" shall be opened and the submissions therein read out in appropriate detail. Thereafter all envelopes marked or "SUBSTITUTION" opened and the submissions therein read out in appropriate detail.

- 25.3** All other envelopes shall be opened one at a time. The Tenderers' names, the Tender prices, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, the presence or absence of Tender security, and such other details as the appropriate tender opening committee may consider appropriate, will be announced by the Secretary of the Tender Opening Committee at the opening.
- 25.4** Tenders or modifications that are not opened and not read out at Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.
- 25.5** Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer's representative shall indemnify the CGK against any claim or failure to read out the correct information contained in the Tenderer's Tender.
- 25.6** No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 23.
- 25.7** The Secretary of the appropriate tender opening committee shall prepare minutes of the Tender opening. The record of the Tender opening shall include, as a minimum: the name of the Tenderers and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security or Tender Securing Declaration.
- 25.8** The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and affect the record.
- 25.9** A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request.

- Confidentiality**
- 26.1** Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.
- 26.2** Any effort by a Tenderer to influence the CGK's processing of Tenders or award decisions may result in the rejection of his Tender.
- 26.3** Notwithstanding sub-Clause 26.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the CGK on any matter related to the Tendering process, it should do so in writing.
- Clarification of Tenders**
- 27.1** To assist in the examination, evaluation, comparison of Tenders and post-qualification of the Tenderer, the CGK may, at its discretion, ask a Tenderer for clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the CGK shall not be considered.
- 27.2** The request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the CGK in the evaluation of Tenders in accordance with ITT Clause 29.
- 27.3** From the time of Tender opening to the time of Contract award if any Tenderer wishes to contact the CGK on any matter related to the Tender it should do so in writing.
- Preliminary Examination of Tenders**
- 28.1** Prior to the detailed evaluation of Tenders, the CGK will determine whether:
- a) The Tender has been submitted in the required format;
  - b) Any Tender Security submitted is in the required form, amount and validity period;
  - c) The Tender has been signed by the person lawfully authorized to do so;
  - d) The required number of copies of the Tender have been submitted;
  - e) The Tender is valid for the period required;
  - f) All required documents and information have been submitted; and
  - g) Any required samples have been submitted.
- 28.2** The CGK will confirm that the documents and information specified under ITT Clause 12 and ITT Clause 13 have been provided in the

Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected.

**28.3** The CGK may waive any minor informality, nonconformity, or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer

**28.4** A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tendering documents, without material deviation or reservation. A material deviation or reservation is one that:

- a) Affects in any substantial way the scope, quality, or execution of the Works;
- b) Limits in any substantial way, inconsistent with the Tendering documents, the CGK's rights or the Tenderer's obligations under the Contract; or
- c) If rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

**28.5** If a Tender is not substantially responsive, it will be rejected by the CGK, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

**Conversion to  
Single Currency**

**30.1** To facilitate the evaluation and comparison, the CGK will convert all Tender prices expressed in the amounts in various currencies in which the Tender prices are payable to Kenya Shillings at the selling exchange rate established for similar transactions by the Central Bank of Kenya ruling on the date specified in the **Tender Data Sheet**.

**Comparison of  
Tenders**

**31.1** The CGK shall evaluate and compare only the Tenders determined to be substantially responsive in accordance with ITT Clause 28.

**31.2** In evaluating the Tenders, the CGK will determine for each Tender the evaluated Tender price by adjusting the Tender price as follows:  
Making any correction for errors pursuant to ITT Clause 29;  
Excluding provisional sums and the provision, if any for contingencies in the Bill of Quantities, but including Day work , where priced competitively ; and  
Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with sub-Clause 24.5.

**31.3** The CGK may waive any minor informality or non-conformity, which does not constitute a material deviation, provided such waiver does not

prejudice or affect the relative standing of any Tenderer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the Tendering documents or otherwise result in unsolicited benefits for the CGK will not be taken into account in Tender evaluation.

**National Preference**

**32.1** In the evaluation of Tenders the CGK shall apply exclusive preference to citizens of Kenya where:

a) The funding is 100% from the Government of Kenya or a Kenyan body;

**32.2** To qualify for the preference the candidate shall provide evidence of eligibility by:

a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or

b) Providing proof of being a “citizen contractor” in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya.

**32.3** The Minister of Finance may prescribe additional preference and/or reservation schemes, for example for procurements above these thresholds. If such additional preference schemes apply, details will be given in the **Tender Data Sheet**.

**Determination of the Lowest Evaluated Tender**

**33.1** The Tender with the lowest evaluated price from among those which are eligible, compliant and substantially responsive shall be the lowest evaluated Tender.

**Post-qualification of Tenderer**

**34.1** If specified in the **Tender Data Sheet**, post-qualification shall be undertaken.

**34.2** The CGK will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in sub-Clause 13.3.

**34.3** The determination will take into account the Tenderer’s financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer’s qualifications submitted by the Tenderer, pursuant to sub-Clause 13.3, as well as such other information as the CGK deems necessary and appropriate. Factors not included in these Tendering documents shall not be used in the evaluation of the Tenderer’s qualifications.

**34.4** An affirmative determination will be a prerequisite for award of the

contract to the Tenderer. A negative determination will result in rejection of the Tenderer's Tender, in which event the CGK will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

## **Award of Contract**

### **Criteria of Award**

**35.1** Subject to ITT Clause 35 and 36, the CGK will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tendering documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:

- a) Eligible in accordance with the provisions of ITT Clause 3;
- b) Is determined to be qualified to perform the Contract satisfactorily;
- c) Successful negotiations have been concluded.

**35.2** If, pursuant to sub-Clause 14.1, this Contract is being awarded on a "lot and package" basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderer for award of more than one Contract.

### **Clarifications**

**36.1** Clarifications may be undertaken with the lowest evaluated Tenderer relating to the following areas:

- a) A minor alteration to the technical details of the statement of requirements;
- b) Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the Tendering documents;
- c) A minor amendment to the Contract Data Sheet;
- d) Finalizing payment arrangements;
- e) Mobilization arrangements;
- f) Agreeing final delivery or work schedule to accommodate any changes required by the CGK;
- g) The methodology or staffing; or

- h) Clarifying details that were not apparent or could not be finalized at the time of Tendering.
- 36.2** Clarifications shall not change the substance of the tender.
- CGK's Right to accept any Tender and to reject any or all Tenders**
- 37.1** Notwithstanding ITT Clause 35, the CGK reserves the right to accept or reject any Tender, and to cancel the Tendering process and reject all Tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers.
- 37.2** Notice of the rejection of all Tenders shall be given promptly within 14 days to all Contractors that have submitted Tenders.
- 37.3** The CGK shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds.
- CGK Right to Vary Quantities at the Time of Award**
- 38.1** The CGK reserves the right at the time of contract award to increase or decrease the quantity of goods or related services originally specified in these Tendering documents (schedule of requirements) provided this does not exceed by the percentage indicated in the **Tender Data Sheet**, without any change in unit price or other terms and conditions of the Tender and Tendering documents.
- Notification of Award**
- 39.1** The Tenderer whose Tender has been accepted will be notified of the award by the CGK prior to expiration of the Tender validity period by e-mail or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the CGK will pay the Contractor in consideration of the provision and maintenance of the Work(s) as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").
- 39.2** The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security in accordance with ITT Clause 41 and signing the Contract in accordance with sub-Clause 40.2
- 39.3** At the same time as the person submitting the successful Tender is notified, the CGK will notify each unsuccessful Tenderer, the name of the successful Tenderer and the Contract amount and will discharge the Tender Security

and Tender Securing Declaration of the Tenderer pursuant to ITT sub Clause 19.7.

- 39.4** If, after notification of award, a Tenderer wishes to ascertain the grounds on which its Tender or application for pre-qualification was unsuccessful, it should address its request to the secretary of the Tender Committee that authorized the award of contract.

The secretary of the Tender Committee shall, within fourteen days after a request, provide written reasons as to why the Tender, proposal or application to be pre-qualified was unsuccessful. However, failure to take this opportunity to clarify the grounds for rejection does not affect the Tenderer's right to seek immediate review by the Public Procurement Administrative Review Board under Clause 45.

### **Signing of Contract**

- 40.1** Promptly, and in no case later than 14 days, after notification, CGK shall send the successful Tenderer the Agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.
- 40.2** Within the period specified in the notification or Tender Data Sheet but not earlier than fourteen (14) days since notification of award of contract, the successful Tenderer shall sign and date the contract and return it to the CGK.

### **Performance Security**

- 41.1** Within thirty (30) days but after 14 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the CGK a Performance Security in the amount and in the form stipulated in the Tender Data Sheet and the Contract Data Sheet, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.
- 41.2** If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee or Insurance Bond, it shall be issued either:
- a) At the Tenderer's option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm through a correspondent bank or insurance firm located in Kenya;
  - b) With the consent of the CGK, directly by a foreign bank acceptable to the CGK.
- 41.3** Failure of the successful Tenderer to comply with the

requirement of sub-Clause 41.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security, in which event the CGK may make the award to the next lowest evaluated Tenderer or call for new Tenders.

## **Advance Payment**

**42.1** The CGK will provide an Advance Payment as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the Tender Data Sheet.

**42.2** The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section X.

For the purpose of receiving the Advance Payment, the Tenderer shall make an estimate of, and include in its Tender, the expenses that will be incurred in order to commence work. These expenses will relate to the purchase of equipment, machinery, materials, and on the engagement of labour during the first month beginning with the date of the CGK's "Notice to Commence" as specified in the Contract Data Sheet.

## **Adjudicator**

**43.1** The CGK proposes the person named in the Tender Data Sheet to be appointed as Adjudicator under the Contract, at an hourly fee specified in the Tender Data Sheet, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the CGK has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data Sheet at the request of either party.

## **Review of Procurement Decisions**

### **Right to Review**

**44.1** A Tenderer who claims to have suffered or risk suffering, loss or damage or injury as a result of breach of a duty imposed on a CGK or an Approving Authority by the Public Procurement and Disposal Act, 2015 and the Public Procurement and Disposal Regulations 2006, the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:

- a) The choice of procurement method;
- b) a decision by the CGK to reject all Tenders, proposals or quotations;
- c) Where a contract is signed in accordance to Section 68 of the Public Procurement and Disposal Act,2015;



d) Where an appeal is frivolous.

**Time Limit on Review**

**45.1** The Tenderer shall submit an application for review in the number of copies and pay fees as prescribed by the Public Procurement and Disposal Regulations 2006 within fourteen (14) days of the time the Tenderer became or should have become aware of the circumstances giving rise to the complaint or dispute.

**Submission of  
Applications for  
Review by the Public  
Procurement  
Administrative Review  
Board**

**46.1** Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 at the address shown in the Tender Data Sheet.

The secretary to the review board shall immediately after filing of the request, serve a copy thereof on the CGK or Director-General as the case may be.

**46.2** The application for administrative review shall be in accordance with the requirements of Regulation 73 of the Public Procurement and Disposals Regulations, 2006, including:

- a) Reasons for the complaint ,including any alleged breach of the Act or Regulations;
- b) An explanation of how the provisions of the Act and or Regulation has been breached or omitted, including the dates and name of the responsible public officer, where known;
- c) Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request;
- d) Remedies sought;
- e) Any other information relevant to the complaint.

**Decision by the Public  
Procurement  
Administrative Review  
Board**

**47.1** The Administrative Review Board shall within thirty days after receipt of an application for administrative review deliver a written decision which shall indicate:

- a) Annuling anything the CGK has done in the procurement proceedings, including annulling the procurement proceedings in their entirety;
- b) Giving directions to the CGK with respect to anything to be done or redone in the procurement proceedings;
- c) Substituting the decision of the Review Board for any decision of the CGK in the procurement proceedings;

d) Order the payment of costs as between parties to the review.

**47.2** The decision made by the Review Board shall, be final and binding on the parties unless judicial review thereof commences within fourteen (14) days from the date of the Review Board's decision.

**Appeal on the decision of  
the Review Board**

**48.1** Any party to the review aggrieved by the decision of the Review Board may appeal to the High Court and the decision of the High Court shall be final.

**SECTION V: TENDER DATA SHEET**  
**Tender Data Sheet (TDS)**

**Instructions to Tenderer's Clause Reference**

<b>TDS Reference Number</b>	<b>ITT Clause Number</b>	<b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b>
<b>A. Introduction</b>		
<b>1.</b>	<b>1.1</b>	The Procuring Entity is County Government of Kisumu
<b>2.</b>	<b>1.1</b>	Name of Project: <b>SUPPLY, INSTALLATION AND COMMISSIONING OF TWO NUMBER 15M HIGH MAST FLOOD LIGHTS (LOT2) IN KISUMU COUNTY</b>
<b>3.</b>	<b>1.2</b>	The expected completion date of the works is: <b>60 days (2 months)</b> from commencement date.
<b>4.</b>	<b>1.3</b>	The Objectives of the Project is to provide flood lights to designated points within the <b>sub counties</b> to enhance social and economic wellbeing of the Residents through improved security.
<b>5.</b>	<b>2.1</b>	Name of financing institution: <b>County Government of Kisumu</b> Name of the Procuring Entity: <b>Department of Energy and industrialization</b> Financial Year: <b>2019-20</b> Description of Works under the contract: 1) <b>High Mast 15M Galvanised heavy duty high mast complete with mounting bracket for 6 No. Floodlights.</b> 2) <b>200W High powered LED floodlights X 60 degree lens. To conform to OSRRAM/CREE Chip standards producing 120 lumens per watt, with a working life of at least 50000 hours and a five year warranty complete with mounting bracket. Light power rating to be 240 VAC. Product to have ISO and KEBS certification.</b>
<b>6.</b>	<b>2.2</b>	The loan/ credit number: Not Applicable.
<b>7.</b>	<b>5.1</b>	Alternative Tenders: Not allowed in this Tender.
<b>8.</b>	<b>5.2</b>	Alternative time for completion: Not Applicable.
<b>9.</b>	<b>3.1</b>	This is an open Tender for eligible bidders.
<b>10.</b>	<b>7.5</b>	The minutes of the pre-Tender meeting: N/A.
	<b>7.6</b>	Non-attendance at the pre-tender meeting: N/A.

<b>B. Tendering Documents</b>		
<b>12.</b>	<b>8.2</b>	The number of copies to be completed and returned with the Tender is One (1) Original and One (1) Copy.
<b>13.</b>	<b>8.1</b>	Address for clarification of Tender Document is: Director Supply Chain Management, County Government of Kisumu P. O. Box 2738 Kisumu
<b>14.</b>	<b>8.2</b>	Period to Respond to request for clarification by CGK: <b>5 days</b> .  Period Prior to deadline for submission of Tenders for Tenderers' request for clarification: <b>7 days</b> .

<b>C. Preparation of Tenders</b>		
<b>15.</b>	<b>11.1</b>	Language of Tender and all correspondence shall be in English.
<b>16.</b>	<b>13.3</b>	Other information or materials required to be completed and submitted by Tenderers : a) Copies of original documents defining the constitution or legal status, place of registration, and principal, place of business; written power of attorney authorizes the signatory of the Tender to commit the Tenderer.  b) The minimum required annual volume of construction work for the successful Tenderer in any of the last 2 years shall be: 5 Million Kenya Shillings  c) Experience as prime contractor in the construction of at least one project of a similar nature and complexity equivalent to the Works for the last 2 years or the period stated in a) above (to comply with this requirement, works cited should be at least 70 percent complete).  i) The essential minimum equipment to be made available for the Contract by the successful Tenderer (proposals for timely acquisition or own, lease, hire, etc)  d) A Site Manager with a minimum of 5 years' experience in works of an equivalent nature  e) Evidence of adequate working capital for this contract.  f) Information regarding litigation, current if any
<b>17.</b>	<b>13.4</b>	In the case of joint venture each partner shall submit information required

		under Clause ITT Clause 13.4. In addition the Tenderer shall furnish the following ,  a) A Joint Venture deed executed by the Commissioner of Oaths b) Payment modality c) Specific responsibility of each partner in Joint Venture
<b>18.</b>	<b>17.1</b>	The currency in which the prices shall be quoted shall be in Kenyan Shillings
<b>19.</b>	<b>17.2</b>	The authority for establishing the rates of exchange shall be Central Bank of Kenya.  The applicable date for exchange rates for tendering and evaluation purposes is 28 days earlier than the final deadline for the submission of tenders.
<b>20.</b>	<b>18.1</b>	The Tender validity period shall be 90 days after tender opening.
<b>21.</b>	<b>20.1</b>	The Tenderer should submit (1) original tender (1) copy.
<b>22.</b>	<b>20.2</b>	Written confirmation of authorization is: <b>Power of Attorney.</b>

<b>D. Submission of Tenders</b>		
<b>23.</b>	<b>21.2 a)</b>	Tenders shall be submitted to tender box situated at: <b>The County Secretary County Government of Kisumu P. O. Box 2738 Kisumu</b>
<b>24.</b>	<b>21.2 b)</b>	Project name: <b>SUPPLY, INSTALLATION AND COMMISSIONING OF TWO NUMBER 15M HIGH MAST FLOOD LIGHTS (LOT 2) IN KISUMU COUNTY(CGK/E&amp;I/FL/2019/2020/022)</b>
<b>25.</b>	<b>22.1</b>	The deadline for Tender submission is: a) Day: <b>MONDAY</b> b) Date: <b>16/12/ 2019</b> c) Time: <b>12.00 NOON</b>
<b>26.</b>	<b>22.3</b>	The extension of the deadline for submission of Tenders shall be made not later than: <b>Before the expiry of the original deadline.</b>

		N/A
<b>E. Opening of Tenders</b>		
<b>27.</b>	<b>25.1</b>	The Tender opening shall take place at: Street address: Off Owuor Otiende Road, Milimani  Building: Prosperity House  Floor/Room: <b>8<sup>TH</sup> Floor, Board Room Wing B</b>  City/Town: Kisumu  Country: Kenya <b>Date: 16/12/ 2019                      Time: 12.00 noon</b>
<b>29.</b>	<b>32.3</b>	Additional Preference: Not Applicable.
<b>30.</b>	<b>33.4</b>	Post- qualification N/A
<b>31.</b>	<b>33.5</b>	Percentage for quantities increase or decrease is: <b>10%</b> .
<b>F. Award of Contract</b>		
<b>32.</b>	<b>33.6</b>	The amount of Performance Security shall be: <b>10% of the Contract Sum.</b>
<b>33.</b>	<b>33.7</b>	The proposed adjudicator for the project is: Appointee by Chairman Institute of Arbitrators, Kenya Branch.

## SECTION IV: GENERAL CONDITIONS OF CONTRACT

### General Conditions

#### Definitions

1.1 Boldface type is used to identify defined terms.

The **Adjudicator** is the person appointed jointly by the CGK and the Contractor to resolve disputes in the first instance, as provided for in Clauses 27 and 28 hereunder.

**Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Tender.

**Compensation Events** are those defined in Clause 47 hereunder.

The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 58.1.

The **Contract** is the Contract between the CGK and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3 below.

The **Contractor** is a person or corporate body whose Tender to carry out the Works has been accepted by the CGK

The **Contractor's Tender** is the completed Tendering document submitted by the Contractor to the CGK.

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

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

**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.

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

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

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

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

The **CGK** is the party who employs the Contractor to carry out

the Works.

**Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The **Initial Contract Price** is the Contract Price listed in the CGK's Letter of Acceptance.

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 **Contract Data Sheet**. **The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.**

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

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

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

The **Site** is the area defined as such in the **Contract Data Sheet**.

**Site Investigation Reports** are those that were included in the Tendering documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

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

The **Start Date** is given in the **Contract Data Sheet**. 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.

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

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

A **Variation** is an instruction given by the Project Manager that varies the Works.



The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the CGK, as defined in the **Contract Data Sheet**.

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

## **Interpretation**

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way round. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the **Contract Data Sheet**, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the order of priority given in the **Contract Data Sheet**:
  - (1) **Agreement;**
  - (2) **Letter of Acceptance;**
  - (3) **Contract Data Sheet;**
  - (4) **Conditions of Contract;**
  - (5) **Technical Specifications;**
  - (6) **Contractor’s Tender;**
  - (7) **Drawings;**
  - (8) **Bill of Quantities; and**
  - (9) **Any other document listed in the Contract Data Sheet as forming part of the Contract.**

## **Language, Law, Fraud and Corruption**

- 3.1 The language of the Contract and the law governing the Contract are stated in English.
- 3.2 The Government requires that County Government of Kisumu (including beneficiaries of Government funded projects) as well as Tenderers/Suppliers/Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. It is the responsibility of the CGK to ensure that Tenderers, suppliers, and contractors and their subcontractors observe the

highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy:

For the purpose of this provision, the following definitions are provided:

- (i). “**Corruption**” has the meaning assigned to it in the Anti-Corruption and Economic Crime Act 2003 and includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;
- (ii). “**Fraudulent Practice**” includes a misrepresentation of fact in order to influence a procurement or disposal process or the execution of a contract to the detriment of the CGK and includes collusive practices amongst Tenderers prior to or after Tender submission designed to establish Tender prices at artificial non-competitive levels and deprive the CGK of the benefits of free and open competition;
- (iii). “**Collusive Practice**” means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of the CGK prior to or after Tender submission, designed to establish Tender prices at artificial non-competitive levels and to deprive the CGK of the benefit of free and open competition;
- (iv). “**Coercive Practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of any of them to influence improperly the actions of a CGK;
- (v). “**Obstructive Practice**” means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation 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.

A CGK has the right to require that Tenderers, suppliers, and contractors and their subcontractors permit persons duly appointed by EACC/PPOA/OAG to inspect their accounts and records and other documents relating to the Tender submission and contract performance;

The CGK will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt, fraudulent practices or others stated under Clause 44.1.a in competing for the contract;

In pursuit of the policy defined in sub-Clause 44.1 the CGK will cancel the portion of the funds allocated to a contract for goods, works, or services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the CGK or Approving Authority or of a beneficiary of the funds during the procurement or the execution of that contract;

In the event that the CGK or Approving Authority does not take timely and appropriate action satisfactory to the Government of Kenya to remedy the situation, then the Director-General may order an investigation of procurement proceedings for the purpose of determining whether there has been a breach of the Public Procurement and Disposal Act, 2015.

3.3 The Director-General may, on the advice of the Advisory Board, debar a person from participating in procurement proceedings on the ground that the person has committed an offence under the Public Procurement and Disposal Act, 2015. A debarment shall be for a period of time of not less than five years. Before a person is so debarred, he/she will be given an opportunity to make representations to the Director-General and may request the Review Board to review the debarment.

3.4 Any communication between the Tenderers and the CGK related to matters of alleged fraud or corruption must be made in writing.

**Confidentiality**

4.1 The Service Providers, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the CGK's business or operations without the prior written consent of the CGK.

**Project Manager's Decisions**

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

**Delegation**

6.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

**Communication**

7.1 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.

- Subcontracting** 8.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the CGK in writing. Subcontracting shall not alter the Contractor's obligations.
- Other Contractors** 9.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the CGK between the dates given in the Schedule of Other Contractors, as referred to in the **Contract Data Sheet**. The Contractor shall also provide facilities and services for them as described in the Schedule. The CGK may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification
- Personnel** 10.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the **Contract Data Sheet**, who shall be appropriately qualified and registered with the appropriate bodies to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.
- 10.2 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.
- CGK's and Contractor's Risks** 11.1 The CGK carries the risks which this Contract states are CGK's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- CGK's Risks** 12.1 From the Start Date until the Defects Correction Certificate has been issued, the following are CGK's risks:
- a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:
    - (i) Use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or
    - (ii) Negligence, breach of statutory duty, or interference with any legal right by the CGK or by any person employed by or contracted to him except the Contractor.
  - b) The risk of damage to the Works, Plant, Materials, and Equipment

to the extent that it is due to a fault of the CGK or in the CGK's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

12.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an CGK'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 an CGK's risk; or
- (c) The activities of the Contractor on the Site after the Completion Date.

**Contractor's Risks**

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

**Insurance**

14.1 The Contractor shall provide, in the joint names of the CGK 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 **Contract Data Sheet** 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.

14.2 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.

14.3 If the Contractor does not provide any of the policies and certificates required, the CGK may affect the insurance which the Contractor should have provided and recover the premiums the CGK 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.

14.4 Alterations to the terms of insurance shall not be made without

	the approval of the Project Manager.
	14.5 Both parties shall comply with any conditions of the insurance policies.
<b>Site Investigation Reports</b>	15.1 The Contractor, in preparing the Tender, shall rely on any Site Investigation Reports referred to in the <b>Contract Data Sheet</b> , supplemented by any information available to the Tenderers.
<b>Queries about the Contract Data Sheet</b>	16.1 The Project Manager will clarify queries on the <b>Contract Data Sheet</b> .
<b>Contractor to Construct the Works</b>	17.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
<b>Commencement and Completion</b>	<b>18.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.</b>
<b>Approval by the Project Manager</b>	19.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
	19.2 The Contractor shall be responsible for the design of Temporary Works.
	19.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
	19.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
	19.5 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 their use.
<b>Protection of the Environment</b>	20.1 The Contractors shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.
	20.2 The Contractors shall ensure that emissions, surface discharges and effluent from his activities shall not exceed prescribed values in the environmental laws.
<b>Labour Laws</b>	21.2 The Contractor shall comply with all the relevant labour laws applicable in the Country, including laws relating to workers employment, working hours, health, safety, welfare, and immigration, and shall allow them all their legal rights.

- 21.2 The Contractor shall require his employees to obey all applicable laws, including those concerning safety at work.
- Health and Safety**
- 22.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of his personnel.
- 22.2 The Contractor shall ensure that first aid facilities are available at all times at the site and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- 22.3 The Contractor shall notify the CGK details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to the property, as the CGK may reasonably require.
- 22.4 The Contractor shall conduct an HIV-Aids awareness programme, and shall take other such measures as specified in the **Contract Data Sheet** to reduce the risk of transfer of HIV virus between and among Contractor personnel, the CGK's Staff and the surrounding community.
- Discoveries**
- 23.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the CGK. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
- Possession of the Site**
- 24.1 The CGK 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 **Contract Data Sheet**, the CGK will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.
- Access to the Site**
- 25.1 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.
- Instructions, Inspections and Audits**
- 26.1 **The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.**
- 26.2 The Contractor shall permit the County Government to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the County Government, if so required by the Kenya Government
- Disputes**
- 27.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project

Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.

**Procedure for Disputes**

- 28.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 28.2 The Adjudicator shall be paid by the hour at the rate specified in the **Tender Data Sheet** and **Contract Data Sheet**, together with reimbursable expenses of the types specified in the **Contract Data Sheet**, and the cost shall be divided equally between the CGK and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.
- 28.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the **Contract Data Sheet**.

**Replacement of Adjudicator**

- 29.1 Should the Adjudicator resign or die, or should the CGK and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the CGK and the Contractor. In case of disagreement between the CGK and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the **Contract Data Sheet** at the request of either party, within 14 days of receipt of such request.



## **Time Control**

### **Programme**

- 30.1 Within the time stated in the **Contract Data Sheet**, the Contractor shall submit to the Project Manager for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 30.2 An update of the Programme shall be a programme 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.
- 30.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the **Contract Data Sheet**. If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the **Contract Data Sheet** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.
- 30.4 The Project Manager's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events

### **Extension of the Intended Completion Date**

- 31.1 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.
- 31.2 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.

- Acceleration**
- 32.1 When the CGK wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the CGK accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the CGK and the Contractor.
- 32.2 If the Contractor's priced proposals for acceleration are accepted by the CGK, they shall be incorporated in the Contract Price and treated as a Variation.
- Delays Ordered by the Project Manager**
- Management Meetings**
- 33.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 34.1 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.
- 34.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the CGK. 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.
- Early Warning**
- 35.1 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.
- 35.2 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.

## **Quality Control**

- Identifying Defects**
- 36.1 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.

**Tests**

37.1 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.

**Correction of Defects**

38.1 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 **Contract Data Sheet**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

38.2 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.

38.3 If the Contractor has not corrected a defect within the time specified in the CGK's notice, a penalty for lack of performance will be paid by the Contractor. The amount to be paid will be calculated as a percentage of the cost of having the defect correct, assessed as described in Clause 39.

**Uncorrected Defects**

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

**Cost Control**

**Bill of Quantities**

40.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

40.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

**Changes in the Quantities**

41.1 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.

41.2 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 the CGK.

41.3 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.

**Variations**

42.1 All Variations shall be included in the updated Programmes produced by the Contractor.

**Payments for Variations**

43.1 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 days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

43.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work is above the limit stated in Sub-Clause 41.1 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.

43.3 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.

43.4 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.

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

**Cash Flow Forecasts**

44.1 When the Programme 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.

**Payment Certificates**

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

45.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor within twenty eight 28 days of receipt of the certificate from the contractor.

45.3 The value of work executed shall be determined by the Project

Manager.

- 45.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.
- 45.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 45.6 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.
- 45.7 The Project Manager shall not be bound to certify any payment, if the net amount, after all retentions and deductions would be less than minimum amount of Interim Payment Certificate stated in the **Contract Data Sheet**.

## **Payments**

- 46.1 Payments shall be adjusted for deductions for advance payments and retention. The CGK shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the CGK 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 as indicated in the **Contract Data Sheet**.
- 46.2 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.
- 46.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.
- 46.4 Items of the Works for which no rate or price has been entered in will not be paid for by the CGK and shall be deemed covered by other rates and prices in the Contract.

## **Compensation Events**

- 47.1 The following shall be Compensation Events:
  - (a) The CGK does not give access to a part of the Site by the Site Possession Date stated in the **Contract Data Sheet**.
  - (b) The CGK modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.

- (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the CGK, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the CGK does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the CGK's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.
- (l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.

47.2 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.

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

Manager will assume that the Contractor will react competently and promptly to the event.

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

**Taxes**

48.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders 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 Clause 50.

**Currencies**

49.1 Where payments are made in currencies other than the Kenya Shillings, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Tender.

**Price Adjustment**

50.1 The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 45.1, shall be adjusted in respect of the rise or fall in the cost of labour, Contractor's Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause based on the prevailing consumer price index obtained from the Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya.

50.2 To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

- any amounts for any other items based on actual cost or current prices; or
  - any sums for increase or decreases in the Contract Price paid under this Sub-Clause
- and
- (i) the amount calculated in accordance with (i) above of this Sub-clause and included in the last preceding statement.

50.4 The sources of indices shall be those listed in the **Appendix to Tender**, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor's proposed source of supply of inputs on the basis of which his Contract Price and expected foreign currency requirements shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his Tender

the tabulation of Weightings and Source of Indices in the **Appendix to Tender**, which shall be subject to approval by the Engineer.

50.5 The base cost indices or prices shall be those prevailing on the day 28 days prior to the latest date for submission of Tenders. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.

50.6 If the Contractor fails to complete the Works within the time for completion prescribed under Clause 58 adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favourable to the CGK, provided that if an extension of time is granted pursuant to Clause 28, the above provision shall apply only to adjustments made after the expiry of such extension of time.

50.7 The weightings for each of the factors of cost given in the **Appendix to Tender** shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced, or inapplicable as a result of varied or additional work already executed or instructed under Clause 43 or for any other reason.

## **Retention**

51.1 The CGK shall retain from each payment due to the Contractor the proportion stated in the **Contract Data Sheet** until Completion of the whole of the Works.

51.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the other 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.

51.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” Bank guarantee.

## **Liquidated Damages**

52.1 The Contractor shall pay liquidated damages to the CGK at the rate per day stated in the **Contract Data Sheet** 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 **Contract Data Sheet**. The CGK may deduct liquidated damages from payments due to the



Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

52.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 46.1.

52.3 If the Contractor has not corrected a defects within the time specified in the CGK's notice, the CGK will assess the cost of having the defect corrected, the Contractor will pay this amount, and a penalty for lack of performance calculated as described in Clause 38.

**Bonus**

53.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the **Contract Data Sheet** 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.

**Advance Payment**

54.1 The CGK shall make advance payment to the Contractor of the amounts stated in the **Contract Data Sheet** by the date stated in the **Contract Data Sheet**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the CGK 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 will not be charged on the advance payment.

54.2 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.

54.3 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.

**Performance**

55.1 The Performance Security shall be provided to the CGK no later

**Securities**

than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the CGK, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the 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.

**Day works**

- 56.1 If applicable, the Day works rates in the Contractor’s Tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 56.2 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.
- 56.3 The Contractor shall be paid for Day works subject to obtaining signed Day works forms.

**Cost of Repairs**

- 57.1 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.

**Finishing the Contract**

**Completion Certificate**

- 58.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.

**Taking Over**

- 59.1 The CGK shall take over the Site and the Works within seven days of the Project Manager’s issuing a certificate of Completion.

**Final Account**

- 60.1 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.

**Operating and  
Maintenance  
Manuals**

- 61.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **Contract Data Sheet**.
- 61.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **Contract Data Sheet**, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the **Contract Data Sheet** from payments due to the Contractor.

**Termination**

- 62.1 The CGK or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 62.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
  - (a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme 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 28 days;
  - (c) The CGK or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (d) A payment certified by the Project Manager is not paid by the CGK 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; and
  - (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 **Contract Data Sheet**.
  - (h) If the Contractor, in the judgment of the CGK has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph:

“corrupt practice” means the offering, giving, receiving or

soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution and includes inter alia, bribery and extortion or coercion which involves threats of injury to person ,property or reputation, and.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the CGK, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the CGK of the benefits of free and open competition.

- 62.3 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 Sub-Clause 62.2 above, the Project Manager shall decide whether the breach is fundamental or not.
- 62.4 Notwithstanding the above, the CGK may terminate the Contract for convenience.
- 62.5 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.

**Payment upon Termination**

- 63.1 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 indicated in the **Contract Data Sheet**. Additional Liquidated Damages shall not apply. If the total amount due to the CGK exceeds any payment due to the Contractor, the difference shall be a debt payable to the CGK.
- 63.2 If the Contract is terminated for the CGK’s convenience or because of a fundamental breach of Contract by the CGK, 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.

**Property**

- 64.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the CGK if the Contract is terminated because of the Contractor’s default.

**Release from Performance**

- 65.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the CGK 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 was made.

**Suspension of  
Financing**

- 66.1 In the event that the source of financing is suspended to the CGK, from which part of the payments to the Contractor are being made:
- (a) The CGK is obligated to notify the Contractor of such suspension within 7 days of having received the financing agency's suspension notice.
  - (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 46.1, the Contractor may immediately issue a 14-day termination notice.

## SECTION VII: CONTRACT DATA SHEET (CDS)

### Contract Data Sheet (CDS)

#### Instructions for completing the Contract Data Sheet

CDS Clause	GCC Clause	Description
1	1.1	<p style="text-align: center;"><b>A. General</b></p> <p>County Government of Kisumu  <b>The County Secretary</b>  <b>County Government of Kisumu</b>  <b>P. O. Box 2738</b>  <b>Kisumu</b></p> <p>The Defects Liability Period is: <b>Six (6) Months.</b></p> <p>The Project Manager is the Chief Officer-Energy and Mining</p> <p>The name and identification number of the Contract is Tender for <b>SUPPLY, INSTALLATION AND COMMISSIONING OF - TWO NUMBER, 15M HIGH MAST FLOOD LIGHTS (LOT 2)</b>  <b>Tender No. CGK/E&amp;I/FL/2019/2020/022</b></p> <p>The Works consist of:</p> <ul style="list-style-type: none"> <li>▪ Installing Flood lighting points at the designated centres complete with the requisite accessories as specified in the BOQs.</li> </ul> <p>The Objectives of the Project is to provide flood lights to designated points within the County to enhance social and economic wellbeing of the Residents through improved security.</p> <p>The Start Date shall be: <b>14 days after tender award.</b></p> <p>The Intended Completion Date for the whole of the Works shall be: <b>60 Days (2 Months) after tender award.</b></p> <p>The following documents also form part of the Contract:</p> <ul style="list-style-type: none"> <li>• Form of Bid</li> <li>• Appendix to form of Bid</li> <li>• Instructions to Bidders</li> </ul>

		<ul style="list-style-type: none"> <li>• Schedules of Supplementary Information</li> <li>• Articles of Agreement</li> <li>• Conditions of Contract Part I (general)</li> <li>• Conditions of Contract Part I (Conditions of Particular Application)</li> <li>• Technical Specifications</li> <li>• Bill of Quantities</li> <li>• BID SECURITY OF 2% OF THE BID PRICE</li> </ul> <p style="color: red;">The Sites are located in the attached Sub-counties(See Annex)</p>
2.	2.2	Indicate whether there is sectional completion: N/A
3.	2.3(9)	List other documents that form part of the contract if any: N/A.
4.	3.1	The language of the Contract documents is: English. The law that applies to the Contract is: Kenyan Law.
5.	9.1	Include the Schedule of Other Contractors: N/A
6.	10.1	Include the Schedule of Key Personnel
7.	14.1	The minimum insurance covers shall be: 5% of the Project Cost
8.	15.1	Site Investigation Reports available to the Tenderers are: N/A.
9.	22.4	The other measures include: Contractor to ensure security against vandalism and theft until after commissioning of the works.
10.	24.1 &47.1	The Site Possession Date shall be: <b>14 days after award.</b>
11.	28.2	Hourly rate of Fees payable to the Adjudicator is: N/A.
12.	28.3	Arbitration will take place at <b>CGK</b> in accordance with rules and regulations published by Engineers' Registration Board.
13.	29.1	Appointing Authority for the Adjudicator: <b>Chairman Institute of Arbitrators, Kenya Chapter</b>
<b>B. Time Control</b>		
14.	30.1	The Contractor shall Submit a Programme for the Works within: <b>Seven (7) days of delivery of the Letter of Acceptance.</b>
15.	30.3	The period between Programme of Works update is: <b>Thirty (30) Days.</b>
16.	30.3	The amount to be withheld by the Project Manager in the case the contractor does not submit an updated programme is: <b>50,000</b>
<b>C. Quality Control</b>		

17.	38.1	The Defects Liability Period is: <b>Six (6) Months.</b>
<b>D. Cost Control</b>		
18.	45.7	Minimum Amount of Interim Payment Certificate will be: <b>10% of the Contract Sum.</b>
19.	46.1	The interest rate shall be .....% above prevailing interest rate for commercial borrowing from the contractors' bank: <b>N/A.</b>
20.	47.1(a)	The Site Possession Date shall be: <b>not more than Twenty Eight (28) after Commencement Date.</b>
21.	50	The contract <i>is</i> subject to price adjustment in accordance with Clause 50 of the General Conditions of Contract.
22.	51.1	The amount of retention is: <b>10%</b> of value of works of Interim Payment Certificate.
23.	52.1	The rate of liquidated damages is: <b>0.1% of contract Sum Per Day.</b>
	52.1 62.2 (g)	The maximum amount of liquidated damages is: <b>2% of the contract sum.</b>
24.	53.1	The bonus for early completion is: <b>N/A.</b>
25.	54.1	The amount of advance payment shall be <b>0%</b> of the Contract Sum payable by: <b>N/A.</b>
		Monthly Recovery of Advance Payment: <b>N/A</b>
26.	55.1	The Performance Security shall be: <b>10% of the Contract Price.</b>
<b>E. Finishing the Contract</b>		
27.	61.1	As built drawings shall be supplied by the contractor by: <b>Fourteen (14) days after Completion Date.</b>  Operating manual shall be supplied by the contractor by: <b>Fourteen (14) days after Completion Date.</b>
28.	61.2	The amount to be withheld by the Project Manager in the case the contractor does not submit as built drawings is: <b>N/A</b>  The amount to be withheld by the Project Manager in the case the contractor does not submit operating manual is: <b>1%</b>
29.	63.1	The percentage to apply to the value of the work not completed, representing the CGK's additional cost for completing the Works is: <b>N/A</b>



**SECTION VIII: BILL OF QUANTITIES.**

**SCHEDULE NO. 1**  
**CONTRACT PRELIMINARIES**

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
1.01	Employer's Use of Contractor's Documents				
1.02	Compliance with laws ( <b>ERC class A B</b> ), (NCA 5)				
1.03	Permits, Licenses or Approvals				
1.04	Contractor's General Obligations ( <b>Tax compliance up to date, company registration</b> )				
1.05	Performance Security				
1.06	Co-operation				
1.07	Setting out				
1.08	Safety Procedures				
1.09	Quality Assurance				
1.10	Site Data				
1.11	Rights of Way and Facilities				
1.12	Avoidance of Interference				
1.13	Access Route				
1.14	Transport of Goods				
1.15	Contractor's Equipment				
1.16	Protection of Environment				
1.17	Electricity, Water and Gas				
1.18	<b>5% Administrative fee (Paid to PMC, supervisory team and office of the project manager)</b>				<b>100,000</b>
	<b>Total for page BQ/1 (carried forward to Summary page BQ/4)</b>				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
1.18	Employer's Equipment and Free- Issue Materials				
1.19	Progress Reports				
1.20	Security of the site				
1.21	Contractor's Operations on site				
1.22	Fossils				
1.23	Health and Safety				
1.24	Foreign Personnel				
1.25	Supply of water				
1.26	Samples				
1.27	Testing				
1.28	Programme				
1.29	Contractor's Obligations				
1.30	Taking over of the work and sections				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
1.31	Adjustments for changes in Cost				
1.32	Indemnities				
1.33	Contractor's Care of the Works				
1.34	General Requirements for Insurances				
1.35	Insurance for works and Contractor's Equipment				
1.36	Insurance against Injury to Persons and Damage to Property				
	<b>Total for page BQ/2(carried forward to Summary page BQ/4)</b>				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
1.36	Insurance against Injury to Persons and Damage to Property				
1.37	Insurance for Contractor's Personnel				
1.38	Provide, erect and maintain contract sign boards as directed by the Engineer				
1.39	Allow for maintenance of Works for 6 months after completion				
1.40	Provide diversion road				
1.41	Provide for cleaning up the site on completion(clause 11.11)				
1.42	Provisional sum for the project engineer's supervisory staff				
1.43	Allow for contractors overheads and profit on item 1.09				
1.44	Transport operation, telephone and field operation expenses				
1.45	Allow for the contractor's overheads and profit on item 1.11				
1.46	Allow P.C for repair and relocation of utility services				
1.47	Allow for contractor's overheads and profit on item 1.13				
1.48	Allow a pc sum for materials sampling and testing at an approved materials testing laboratory in compliance with section 2 of the standard specification and to the satisfaction of the Engineer.				
1.49	Allow for contractors overheads and profits on item 1.09.				
	<b>Total for page BQ/3 (carried forward to Summary page BQ/4)</b>				
ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	Sub – total brought from page BQ/1				
	Sub – total brought forward from page BQ/2				
	Sub-total brought from page BQ/3				
	<b>TOTAL FOR SCHEDULE NO. 1- BQ/4 PRELIMINARIES-C/F TO PRICE SUMMARY PAGE</b>				

**SCHEDULE 2: FLOOD LIGHTING AND OTHER SERVICES**

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
1.00	<b>HIGH MAST UNIPOLE FLOOD LIGHT</b>				
1.01	<b>15M galvanized heavy duty high mast complete with mounting bracket for 6No. floodlights</b>	1	NO		
1.02	<b>200 W High Powered LED Floodlights X 60 degree lens. To conform to OSRRAM/ CREE Chip standards producing 120 lumens per watt, with a working life of at least 50000 hours and a 5 year warranty complete with mounting bracket. Light power rating to be 240 VAC. Product to have ISO and KEBS certification</b>	6	NO		
1.03	Wiring from lighting fitting to the cut out fuses with 6.0sq-mm 4core copper flex cable	20	M		
1.04	Assemble mechanical (manual operated) winch for lowering and raising in each mast	1	NO		
1.05	Burglar proof Metal Copper Pillar (Meter Box) with opening for reading of meter	1	NO		
1.06	<b>Install the following in the metal control pillar:-</b>		NO		
	a) 100A, 4-way consumer unit as Crabtree or approved equivalent	1	ITEM		
	b) Miniature circuit breakers for above item				
	i) 40A DP MCB	1	NO		
	ii) 20A SP MCB	2	NO		
	iii) 5A SP MCB	1	NO		
	iv) Blanking Plates	4	NO		
	c) 240V, 63A 4-pole contactor as Telemecanique or approved equivalent	1	NO		
	d) 40A, 500mA sensitive 4-pole RCBO as Crabtree or approved equivalent	2	NO		
	e) 24Hrs Digital Timer switch with 100 hours reserve	1	NO		
	f) Full spectrum radio with GPRS/EDGE (Class 12), GSM Dimensions (W x L x H) (202.73mm x 267.45mm x 60.00mm) 0.70kg plastic Warranty 12 months Battery type lithium ion, 3.7V/1500mAh, 5.55Wh Processor & memory .8bit AVR Micro controller with 131 instructions. 12MHz (External crystal). 128KB Flash memory. 16KB Data memory. 4KB EEPROM Input voltage and current 100-240V; 200mA maximum				
	<b>Sub-total c/f next page</b>				

Item	Description	Qty	Unit	Rate	Sum
	Sub-total b/f from previous page				
	g) Automatic Voltage Switch (Voltage Stabiliser) 250V rating	1	NO		
2.00	<b>EARTHING</b>				
2.10	Earth inspection concrete chamber 300mm x 300mm x 300mm with an air tight inspection cover to approval	1	NO		
2.20	16mm nominal diameter by 1500mm threaded copper bond earth rod driven to ground	1	NO		
2.30	Driving stud for the above item	1	NO		
2.40	Earth electrode rod-to-cable clamps	1	NO		
2.50	16.0mm <sup>2</sup> SC/PVC/SWA/PVC earth copper cable c/w appropriate cable lugs	5	LM		
3.00	<b>UNDERGROUND POWER CABLES</b>				
3.10	6.0mm <sup>2</sup> 4-C PVC/SWA/PVC copper cable c/w appropriate cable lugs from meter board to Monopole	25	LM		
3.20	i. Cable glands for above cable	4	NO		
3.30	Trenching at an average depth of 750mm cable laying, tilling(with HATARI tiles) and backfilling for the above cables to engineers approval	25	LM		
3.40	Standard cable loop in box	4	NO		
3.50	80A lucy cutouts c/w neutral block	4	NO		
	<b>SUB TOTAL FOR SCHEDULE 2: BQ/5 FLOODLIGHTING AND OTHER SERVICES C/F TO PRICE SUMMARY PAGE</b>				
ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	<b>EXCAVATIONS</b>				
1.01	Excavation over site top soil average 200mm deep load and cart away	CM	2		
1.02	Excavation for base starting from stripped level to a minimum of 2.0 metres deep.	CM	16.3		
1.03	Allow a provisional sum for strutting and planking to keep the excavation free from mud, debris etc.	ITEM			
	<b>Disposal and Filling</b>				

1.04	Load surplus excavation material and spread on site as directed by the Project Manager	CM	21		
	<b>Concrete Works</b>				
1.05	100mm thick concrete blinding under foundations(mix 1:4:8)	CM	1		
	<b>Vibrated reinforced concrete: (mix 1:1.5:3) Grade 25 (20mm aggregate) in:-</b>				
1.06	Foundation Bases	CM	12.2		
1.07	Column stanchion	CM	2		
	<b>High yield square twisted bar reinforcement to BS 4449; including bends, hooks, binding wire, distance blocks and spacers supporting all in position.</b>				
1.08	25mm diameter	KG	241		
1.09	20mm diameter	KG	156		
1.10	16mm diameter	KG	100		
1.11	12mm diameter	KG	183		
1.12	8mm diameter	KG	31		
	<b>Hold Down Bolts/Foundation Bolts</b>				
1.13	Supply and cast in reinforced concrete column stanchion M24 Grade 8.8 high tensile steel bolts 450mm long 60mm diameter to BS 7419 supplied with nuts and washers	NO	6		
1.14	Supply metal base plate matching or superior gusset plate supplied/fabricated on unipole minimum thickness 25mm	NO	1		
	<b>SUB TOTAL FOR SCHEDULE 3: BQ/6 FOUNDATION WORKS C/F TO PRICE SUMMARY PAGE</b>				

ITEM	DESCRIPTION	UNIT	COST KES
A	Testing and Commissioning	ITEM	
B	Allow for KPLC service line charges	ITEM	
	<b>SUB TOTAL FOR SCHEDULE 4: BQ/7 TESTING AND COMMISSIONING AND PROVISIONAL SUMS C/F TO PRICE SUMMARY PAGE</b>		

**SUMMARY PAGE**

<b>Item</b>	<b>Description</b>	<b>Cost Kshs.</b>
	Subtotal from page BQ/4 for Schedule 1: -Preliminaries	
	Sub-total from page BQ/5 for Schedule 2: floodlighting and other services	
	Sub-total from page BQ/6 for Schedule 3: foundation works	
	Sub-total from page BQ/7 for schedule 4: Testing and commissioning and provisional sums	
	<b>Total for 1 No. High mast Floodlight</b>	
	<b>ADD 16% V.A.T</b>	
	<b>TOTAL AMOUNT CARRIED TO FORM OF BID</b>	

**ANNEX**

**LIST OF CENTERS FOR -- NO FLOOD LIGHTING IN NYAKACH AND KISUMU EAST SUB-COUNTIES**

<b>MARKET</b>	<b>SUB-COUNTY</b>	<b>WARD</b>	<b>No. OF LIGHTING POINTS</b>	<b>REMARKS</b>
Riat floodlight	Nyakach	South West Nyakach	1	15M HIGHMAST POLE 200W(6NO) LIGHTS
Floodlights at Kolanda	Kisumu East	Kajulu	1	15M HIGHMAST POLE 200W(6NO) LIGHTS