

COUNTY GOVERNMENT OF ELGEYO MARAKWET



P.O. BOX 220- 30700

ITEN.

COUNTY DEPARTMENT OF AGRICULTURE

CHEBARA ATC DINNING HALL PROJECT

CONTRACT NO: EMC/T/AGRI/046/2014-15

TENDER DOCUMENTS

FOR

PROPOSED CONSTRUCTION OF CHEBARA ATC DINING HALL

APRIL 2015

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SECTION I: INVITATION FOR TENDERS (IFT)

Tender No. EMC/T/AGRI/046/2014-15

For

Chebara Dinning hall Project

Invitation for Tenders

Date: 2-4-2015

1. The County government of Elgeyo Marakwet - **Ministry of Agriculture**, now invites sealed Tenders from eligible contractors registered or capable of being registered in the National Construction Authority's current regulations on registration of contractors for roads and other Civil Works under category **NCA 5 and above** for carrying out construction of chebara ATC dining hall project.
2. The Procuring Entity has funds for use during the financial year 2014/2015 FY. It is intended that part of the proceeds of the fund will be used to cover eligible payments under the contract for the rehabilitation and construction at Chebara ATC dining hall project.
3. Tendering will be conducted through the open tendering procedures specified in the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006 and is open to all Tenderers as defined in the Regulations.
4. Interested eligible Tenderers may obtain further information from the offices of the Procurement Unit at County offices Iten, Box 220-30700, from 8.00 am to 5.00pm Mondays to Fridays inclusive except on public holidays.
5. A complete set of Tendering Document(s) can be downloaded by interested Tenderers from the county website: www.elgeyomarakwet.go.ke
6. All Tenders in one original plus one (1) copy, properly filled in, and enclosed in plain envelopes must be delivered to the tender box located at former Iten Tambach Town Council offices on or before **16th April, 2015 at 10.00 am**. Tenders will be opened promptly thereafter in the new county boardroom in the presence of Tenderers' representatives who choose to attend the opening.

The Head of Supply Chain Management,
Elgeyo Marakwet County,
P.O. Box 220-30700,
Iten

7. Late or incomplete Tenders shall not be accepted.

Head of Procurement Unit

For county secretary

SECTION II: INSTRUCTIONS TO TENDERERS (ITT)

Introduction

1. Scope of Tender

- 1.1 The Procuring Entity indicated in the **Tender Data Sheet** (TDS) invites Tenders for the construction of works as specified in the **Tender Data Sheet** and Sections VI (Technical Specifications) and VII (Drawings).
- 1.2 The successful Tenderer will be expected to complete the works by the required completion date specified in the **Tender Data Sheet**.
- 1.3 The objectives of the works are listed in the **Tender Data Sheet**. These are mandatory requirements. Any subsequent detail is offered to support these objectives and must not be used to dilute their importance.

2. Source of Funds

- 2.1 The Government of Kenya has set aside funds for the use of the Procuring Entity named 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**.

Or

The Government of Kenya through Procuring Entity named in the **Tender Data Sheet** has applied for/received/ intends to apply for a [loan/credit/grant] from the financing institution named in the **Tender Data Sheet** towards the cost of the Project named in the **Tender Data Sheet**. The Government of Kenya intends to apply a part of the proceeds of this [loan/credit/grant] to payments under the Contract described in the **Tender Data Sheet**.

- 2.2 Payments will be made directly by the Procuring Entity (or by financing institution specified in the **Tender Data Sheet** upon request of the Procuring Entity to so pay) and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring Entity.

3. 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 all suppliers as defined in the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006 except as provided hereinafter.
- 3.3 National Tenderers shall satisfy all relevant licensing and/or registration with

the appropriate statutory bodies in Kenya, such as the Ministry of Public Works or the Energy Regulatory Commission.

- 3.4** 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 Procuring Entity or a member of a board or committee of the Procuring Entity;
 - 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 Procuring Entity 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 Procuring Entity 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 Procuring Entity, as the Procuring Entity shall reasonably request.

4. One Tender per

- 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

Tenderer

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.
- 4.4 A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.

5. Alternative Tenders by Tenderers

- 5.1 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 **Tender Data Sheet**. If so allowed, sub-Clause 5.2 and 5.3 shall govern.
- 5.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **Tender Data Sheet** as will the method of evaluating different times for completion.
- 5.3 If so allowed in the **Tender Data Sheet**, 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 Procuring Entity, 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 Procuring Entity.

6. Cost of Tendering

- 6.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

7. Site Visit and Pre-Tender Meeting

- 7.1 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.
- 7.2 The Procuring Entity 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.
- 7.3 The Tenderer's designated representative is invited to attend a site visit and pre-Tender meeting which, if convened, will take place at the venue and time

stipulated in the **Tender Data Sheet**.

- 7.4** The Tenderer is requested as far as possible, to submit any questions in writing or by electronic means to reach the procuring Entity 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.
- 7.5** 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 **Tender Data Sheet** 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 Procuring Entity exclusively through the issue of an Addendum pursuant to ITT sub Clause 10.2 and not through the 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

8. 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 II Instructions to Tenderers
- Section III Tender Data Sheet
- Section IV General Conditions of Contract
- Section V Contract Data Sheet
- Section VI Specifications
- Section VII Drawings
- Section VIII Bill of Quantities
- Section IX Forms of Tender
 - Form of Tender
 - Appendix to Tender
 - Confidential Business Questionnaire
 - Integrity Declaration
 - Letter of Acceptance
 - Form of Contract Agreement
- Section X Forms of Security
 - Tender Security Form
 - Tender Securing Declaration
 - Performance Bank or Insurance Guarantee
 - Advance Payment Guarantee
- Section XI Form RB 1 Application to Public Procurement Administrative Review Board

- 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 Procuring Entity 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 Procuring Entity 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 Procuring Entity.
- 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.

9. Clarification of Tendering Documents

- 9.1** A prospective Tenderer requiring any clarification of the Tendering documents may notify the Procuring Entity in writing, e-mail or facsimile at the Procuring Entity's address indicated in the **Tender Data Sheet**.
- 9.2** The Procuring Entity 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 procuring entity'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 Procuring Entity 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.

10. Amendments of the Tendering Documents

- 10.1** Before the deadline for submission of Tenders, the Procuring Entity 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 Procuring Entity.
- 10.3** In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity at its discretion shall extend, as necessary, the deadline for

submission of Tenders, in accordance with sub-Clause 22.2

Preparation of Tenders

11. Language of Tender

11.1 The Tender, and all correspondence and documents related to the Tender exchanged by the Tenderer and the Procuring Entity 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.

12. 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**.

13. 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 Procuring Entity 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.

14. 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.

15. 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.

16. 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 Procuring Entity 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**.

17. 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 Procuring Entity 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.

18. 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 Procuring Entity, pursuant to ITT Clause 22. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non responsive.

18.2 In exceptional circumstances, prior to expiry of the original Tender validity period, the Procuring Entity 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.

19. 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 Procuring Entity 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 Procuring Entity prior to the Tender submission.

19.5 The Tender Security shall be payable promptly upon written demand by the Procuring Entity 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 Procuring Entity as non-responsive, pursuant to ITT Clause 28.

19.7 The Procuring Entity shall immediately release any Tender Security if:

- a) The procuring proceedings are terminated;
- b) The Procuring Entity 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 Procuring Entity 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.

20. 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 “**ORIGINAL**”. In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **Tender Data Sheet**, and clearly marked as “**COPIES**”. In the event of discrepancy between them, the original shall prevail.
- 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

21. Sealing and Marking of Tenders

- 21.1** The Tenderer shall seal the original and each copy of the Tender in separate envelopes, duly marking the envelopes as “**ORIGINAL**” and “**COPY**”. The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 21.2** The inner and outer envelopes shall:
- a) Be addressed to the Procuring Entity at the address given in the **Tender Data Sheet**; and

b) Bear the Project name indicated in the **Tender Data Sheet**, the Invitation for Tenders (IFB) title and number indicated in the **Tender Data Sheet**, and a statement: “**DO NOT OPEN BEFORE,**” to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to ITT sub-Clause 22.1.

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 Procuring Entity shall assume no responsibility for misplacement or premature opening of the Tender.

22. Deadline for Submission of Tenders

22.1 Tenders shall be received by the Procuring Entity 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 Procuring Entity 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 Procuring Entity 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.

23. Late Tenders

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

23.2 Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected and returned unopened to the Tenderer

24. Modification, Substitution and Withdrawal of Tenders

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 Procuring Entity 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

25. Opening of Tenders

- 25.1 The Procuring Entity 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 Procuring Entity 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.

26. 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 Procuring Entity'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 Procuring Entity on any matter related to the Tendering process, it should do so in writing.

27. Clarification of Tenders

- 27.1** To assist in the examination, evaluation, comparison of Tenders and post-qualification of the Tenderer, the Procuring Entity 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 Procuring Entity shall not be considered.

28. Preliminary Examination of Tenders

- 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 Procuring Entity 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 Procuring Entity on any matter related to the Tender it should do so in writing.
- 28.1** Prior to the detailed evaluation of Tenders, the Procuring Entity 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 Procuring Entity 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 Procuring Entity 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 Procuring Entity'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 Procuring Entity, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

29. Correction of Errors

29.1 Tenders determined to be substantially responsive will be checked by the Procuring Entity for any arithmetic errors. Errors will be corrected by the Procuring Entity as follows:

a) If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;

b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

c) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.

29.2 The amount stated in the Tender will, be adjusted by the Procuring Entity in accordance with the above procedure for the correction of errors and, with, the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and the Tender Security may be forfeited and the Tender Securing Declaration may be executed in accordance with sub-Clause 19.9.

30. Conversion to Single Currency

30.1 To facilitate the evaluation and comparison, the Procuring Entity 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**.

31. Comparison of Tenders

31.1 The Procuring Entity 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 Procuring Entity 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 Procuring Entity 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 Procuring Entity will not be taken into account in Tender evaluation.

32. National Preference

32.1 In the evaluation of Tenders the Procuring Entity shall apply exclusive preference to citizens of Kenya where:

- a) The funding is 100% from the Government of Kenya or a Kenyan body;
- b) The amounts are below the prescribed threshold of KShs.200 million;

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**.

33. 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.

34. Post-qualification of Tenderer

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

34.2 The Procuring Entity 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 Procuring Entity 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 Procuring Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

Award of Contract

35. Criteria of Award

- 35.1** Subject to ITT Clause 35 and 36, the Procuring Entity 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.

36. 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 Procuring Entity;
- 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.

37. Procuring Entity's Right to Accept any Tender and to Reject any or all Tenders

37.1 Notwithstanding ITT Clause 35, the Procuring Entity 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 Procuring Entity shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds.

38. Procuring Entities Right to Vary Quantities at the Time of Award

38.1 The Procuring Entity 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.

39. Notification of Award

39.1 The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity 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 Procuring Entity 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 Procuring Entity 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.

40. Signing of Contract

40.1 Promptly, and in no case later than 14 days, after notification, Procuring Entity 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 Procuring Entity.

41. 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 Procuring Entity 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 Procuring entity, directly by a foreign bank acceptable to the Procuring entity.

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 Procuring Entity may make the award to the next lowest evaluated Tenderer or call for new Tenders.

42. Advance Payment

42.1 The Procuring Entity 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 Procuring Entity's "Notice to Commence" as specified in the Contract Data Sheet.

43. Adjudicator

43.1 The Procuring Entity 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 Procuring Entity 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

44. 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 Procuring Entity or an Approving Authority by the Public Procurement and Disposal Act, 2005 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 Procuring Entity 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,2005;
- d) Where an appeal is frivolous.

45. 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.

46. 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 Procuring Entity 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.

47. 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) Annulling anything the Procuring Entity has done in the

procurement proceedings, including annulling the procurement proceedings in their entirety;

- b) Giving directions to the Procuring Entity 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 Procuring Entity 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.

48. 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 III: TENDER DATA SHEET

Tender Data Sheet (TDS)

Instructions to Tenderers Clause Reference

TDS Reference Number	ITT Clause Number	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
A. Introduction		
1.	1.1	The Procuring Entity is Ministry of Agriculture, Livestock and Fisheries, Elgeyo Marakwet County.
2.	1.1	Name of Project is Chebara ATC dining hall construction Project: Contract No: EMC/T/AGRI/046/2014-15
3.	1.2	The expected completion date of the works is within 90 days after date of commencement
4.	1.3	The Objectives of the Project is to construct a dining hall that shall be utilized during farmers and other stakeholders training in the County.
5.	2.1	Name of financing institution is County Government of Elgeyo Marakwet. Name of the Procuring entity: County Government of Elgeyo Marakwet. Financial Year:2014/2015 Describe works under the contracts: Construction of the Dinning hall
6.	2.2	Not applicable
7.	5.1	Alternative Tenders are not allowed in this tender
	5.2	Alternative time for completion shall not be permitted.
9.	3.1	Only Tenderers registered with National Construction Authority and other civil works under category NCA5 and above

		This Tender is for both National and County contractors who meet the requirements.
10.	7.3	Pre-Tender meeting shall not be held. However, a Pre-Tender site visit will be conducted by the Engineer on a date to be communicated to interested Tenderers.
11.	7.5	Not applicable
	7.6	Non-attendance at the pre-tender site visit will result in disqualification

B. Tendering Documents

12.	8.2	The number of copies to be completed and returned with the Tender is One original and two copies.
13.	8.1	Address for clarification of Tendering Document is [<i>Head of supply chain management. box 220-30700 Iten</i>]
14.	8.2	Period to Respond to request for clarification by the Procuring Entity [<i>3days</i>] Period Prior to deadline for submission of Tenders for Tenderers to request clarification [<i>7 days</i>]

C. Preparation of Tenders

15.	11.1	Language of Tender and all correspondence shall be English
16.	13.3	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 authorizing 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: Kshs 20,000,000. c) Experience as prime contractor in the construction of at least one

		<p>project of a nature and complexity equivalent to the Works 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).</p> <p>d) The essential equipment to be made available for the Contract by the successful Tenderer (proposals for timely acquisition or own, lease, hire, etc) shall be:</p> <p style="padding-left: 40px;">i) Concrete poker vibrator 2 No.</p> <p style="padding-left: 40px;">ii) Concrete Mixer.</p> <p style="padding-left: 40px;">iii) Tipper Lorry.</p> <p style="padding-left: 40px;">iv) Wheelbarrows.</p> <p>e) A Site Manager with a minimum of Five (5) years experience in works of an equivalent nature and volume.</p> <p>f) Evidence of adequate working capital for this contract.</p> <p>g) Information regarding litigation, current</p> <p>h) KRA tax compliance certificate</p>
17.	13.4	Not applicable
18.	16.4	The rates and prices shall be fixed and shall not be subject to adjustment.
19.	17.1	The currency in which the prices shall be quoted shall be: <i>Kenyan Shilling</i>
20.	17.2 30.2	Not applicable.
21.	18.1	The Tender validity period shall be 120 days.
22.	19.1	The amount of Tender Security shall be 2% of the Tender amount.
23.	20.1	In addition to the original of the Tender, the Tenderer should submit Two (2) copies of the
24.	20.2	Written confirmation of authorization are power of attorney in a form similar to the specimen shown in the tender document.

D. Submission of Tenders		
25.	21.2 a)	<p>Tenders shall be submitted to following address: The Head of Supply chain management. Box 220-30700 Iten Street Address: Building/Plot No: New County Offices Floor/Room No.</p>

		<p>Public Procurement Administrative Review Board , The Public Procurement Oversight Authority, 10th Floor ,National Bank House, P.O. Box 58583-00200, NAIROBI, Kenya. Tel: +254 (0) 20 3244000 Email: info@ppoa.go.ke Website: www.ppoa.go.ke</p>
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SECTION IV: GENERAL CONDITIONS OF CONTRACT

GENERAL:

Procurement of works is carried out in accordance with policies and procedures laid down in the public Procurement and Disposal Act 2005 and The Procurement and Disposal regulation 2006.

The Conditions of contract of this contract are:

Part I – General conditions, which are the version of 19th December 2009 contained in the standard Tendering Document Procurement of works, Small works, prepared by the Public Procurement Oversight Authority (PPOA).

Part II – Conditions of Particular application to the contract which prescribe variations and extensions of Part I and prevail over Part I in the event of any discrepancies are contained in the Contract Data sheet.

SECTION V: CONTRACT DATA SHEET (CDS)

Contract Data Sheet

Instructions for completing the Contract Data Sheet

CDS Clause	GCC Clause	Description
1	1.1	<p style="text-align: center;">A. General</p> <p>(Itemise Definitions to take the same numbering as per the General Conditions)</p> <p>The Procuring Entity is: Elgeyo marakwet county: Ministry of Agriculture, Livestock and Fisheries P.O. Box 220-30700 Iten. Authorized Representative: The Chief Officer – Agriculture, Livestock and Fisheries.</p> <p>The Defects Liability Period is 180 days (Six Months).</p> <p>The Project Manager is: The County Director of Public Works P.O. Box 312-30700 Iten. Authorized Representative: Chief officer agriculture livestock and fisheries.</p> <p>The name and identification number of the Contract is: Chebara dinning hall construction Project, Contract No: EMC/T/AGRI/046/2014-15</p> <p>The Works consist of: a) Substructures b) Waling superstructures c) Roof work</p> <p>The objectives of the contract are: To provide adequate space to be used in preparation of food and feeding of farmers and other stakeholders during training..</p> <p>The Start Date shall be any day within two weeks after contract signing.</p> <p>The Intended Completion Date for the whole of the Works shall be as</p>

		<p>specified in the contract agreement.</p> <p>The following documents also form part of the Contract:</p> <ul style="list-style-type: none"> a) The said Tender b) The conditions of Contract c) The Specifications d) The Priced Bill of Quantities e) The Drawings f) Contract Agreement g) Any tender addenda and other relevant pre-tender correspondence. <p>The Site is located at: chebara ward, Marakwet west Sub-County.</p>
2.	2.2	There is no sectional completion.
3.	2.3(9)	<p>List other documents that form part of the contract if any:</p> <ul style="list-style-type: none"> a) Procurement Manual for works, April 2009. b) Public procurement Regulations, 2006. c) Public Procurement and Disposal Act, 2005. d) Legal Notice No. 109/13 on procurement regulations.
4.	3.1	<p>The language of the Contract documents is English.</p> <p>The law that applies to the Contract is the Kenyan Law.</p>
5.	9.1	Include the Schedule of Other Contractors, if any. Not applicable.
6.	10.1	Include the Schedule of Key Personnel.
7.	14.1	<p>The minimum insurance covers shall be:</p> <ul style="list-style-type: none"> (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 (d) Personal injury or death.
8.	15.1	Site Investigation Reports available to the Tenderers are: Not applicable.
9.	22.4	
10.	24.1 & 47.1	The Site Possession Date shall be 7 days after contract signing or as agreed during Contract signing.
11.	28.2	Hourly rate of Fees payable to the Adjudicator is: Not applicable.
12.	28.3	Arbitration will take place at: Not applicable.

13.	29.1	Appointing Authority for the Adjudicator: Not applicable.
B. Time Control		
14.	30.1	The Contractor shall Submit a Programme for the Works within seven (7) days of delivery of the Letter of Acceptance.
15.	30.3	The period between Programme updates is Thirty (30) days.
16.	30.3	The amount to be withheld by the Project Manager in the case the contractor does not submit an updated programme is: Ksh 50,000 per instance.
C. Quality Control		
17.	38.1	The Defects Liability Period is 180 days.
D. Cost Control		
18.	45.7	Minimum Amount of Interim Payment Certificate will be 25% of contract price.
19.	46.1	The interest rate shall be 0% above prevailing interest rate for commercial borrowing from the contractors bank
20.	47.1(a)	The Site Possession Date shall be: As agreed during Contract signing.
21.	50	The contract is not subject to price adjustment in accordance with Clause 50 of the General Conditions of Contract.
22.	51.1	The amount of retention is 10% of value of works of Interim Payment Certificate'.
		Limit of retention will be 5% of contract price.
23.	52.1	The rate of liquidated damages is 0.1% of Contract price per day.
	52.1 62.2 (g)	The maximum amount of liquidated damages is 10% of contract price.
24.	53.1	The bonus for early completion is: NIL.
25.	54.1	Not applicable.
		Not applicable.
26.	55.1	The Performance Security shall be 10% of the contract price.
E. Finishing the Contract		

27.	61.1	As built drawings shall be supplied by the contractor by: Not applicable. Operating manual shall be supplied by the contractor by: Not applicable.
28.	61.2	The amount to be withheld by the Project Manager in the case the contractor does not submit as built drawings is: Not applicable. The amount to be withheld by the Project Manager in the case the contractor does not submit operating manual is: Not applicable.
29.	63.1	The percentage to apply to the value of the work not completed, representing the Procuring Entity's additional cost for completing the Works, is 20%.

SECTION VI: TECHNICAL SPECIFICATIONS

Waling superstructures
Roof work

1.0 GENERAL

1.1 General Description of the Works

Works to be undertaken by the Contractor:

The main works to be undertaken under this contract are:

- Substructures
- Waling superstructures
- Roof work

1.2 Location of the works:

Chebara ATC is located in Moiben /Kuserwa Ward, Marakwet west Sub county, Elgeyo Marakwet County. The project area is approximately 49.50 acres and is approximately 40 km north of ITEN TOWN

1.3 Site meetings:

The contractor shall be obliged to attend all meetings at the appropriate time. The discussions of such meetings shall include but not limited to the progress of work and problems having direct bearing on the immediate and long term activities (construction, procurement, transport, labour ect.)

The project manager shall invite the Employer to such meetings.

Such meetings will normally be monthly and may require the updating of the Contractor's construction programme. The contractor shall thereupon adhere to the updated programme.

The contractor shall also attend informal weekly meetings with the project manager and provide a weekly estimate of the work anticipated on each work section.

1.4 Progress Photographs:

The contractor shall furnish the Project manager with soft copies of coloured photographs of the work in progress throughout the contract period. The photographs shall be taken at the start, during and at the completion of each major task of the work as directed by the Project manager. A brief description and date of each photograph shall be included.

1.5 Construction and checking work:

The contractor shall be solely responsible for and shall provide all labour, tools, lifting tackle and other equipment required for the construction and checking of the works.

No operatives shall be allowed to execute any type of work, which is normally carried out by a skilled tradesman, unless the operatives are thoroughly experienced and proficient in the trade concerned. Supervisors and operatives may be required to demonstrate their proficiency or produce certificate of competence to the satisfaction of the Project Manager.

As each part of the work is carried out it shall be subject to the approval of the Project Manager.

1.6 Supervision and Labour:

The Contractor will be required to maintain a competent supervising site agent and staff on the site throughout the construction period until completion of the works, and thereafter as may be required during the defects liability period. The Project manager shall give prior approval to the appointment of this supervising Site agent and key staff and shall have authority to withdraw the approval at any time in accordance with the Conditions of Contract..

All staff and labour employed on the Works shall be employed in accordance with the local labour and employment laws and regulations.

1.7 Definition and Use of the site:

The Site shall include all those areas of land which, being public or private:

- a) Are being provided by the employer for the purpose of constructing the permanent works.
- b) Are being provided by the employer for temporary works, including camps, offices and stores.
- c) Are acquired, leased or operated by the contractor as borrow pits or spoil tips for the permanent works, including all access roads.

The Contractor shall not use any portion of the site for any purpose not connected with the Works unless the written permission of the Project manager has been obtained.

1.8 Possession of Site:

The contractor shall restrict his activities to those areas of the Site adjacent to the works being executed and shall avoid any encroachment upon land outside the areas of which possession has been given. Any trespass or damage or any claim arising from such encroachment shall be the Contractor's sole responsibility and he shall hold the Employer indemnified against all claims arising from such trespass or damage.

1.9 Interference with the Works:

The Contractor shall not interfere in any way with any existing works, whether the property of the Employer or of a third party, whether or not the position of such works is indicated to the Contractor by the Project manager, except where such interference is specifically described as part of the Works, either in the contract or in an instruction from the Project manager.

1.10 Materials for the works:

All materials shall comply with appropriate Standard Specifications unless otherwise required hereinafter.

The Contractor shall not place any order for goods and materials for incorporation in the works until he has submitted the names of the respective suppliers to the Engineer, together with samples, and evidence of compliance with the relevant standards, if required, and obtained the Engineer's approval.

Any materials, which, in the opinion of the Engineer, are unsatisfactory, shall be removed from the site and alternative materials supplied at the Contractor's expense.

The contractor shall make his own arrangements for the supply of all materials and construction equipment necessary for the execution of the Contract and will not be compensated for any delays caused by shortages of materials or construction equipment.

1.11 Sign Boards:

Before the erection of any sign boards or posters by the Contractor, the Contractor shall obtain the approval of the Employer and the Project manager to the size, location and wording of such sign boards or posters.

1.12 Inspection by Project Manager during the Defects Liability period:

The project manager will give the Contractor due notice of his intention to carry out any inspection during the defects liability period. The Contractor shall, upon receipt of such notice, arrange for a responsible representative to be present at the times and dates named by the Project manager. This representative shall render all necessary assistance and shall take note of all matters and things to which his attention is directed by the Project Manager.

2.0 EARTHWORKS:

2.1 Site Clearance and stripping:

General clearance is defined as the clearing, grubbing, removal and disposal of all vegetation, grass, debris, bushes, dense bush, tress, hedges, undergrowth, stumps, roots, shrubs, plants and backfilling of holes left by the removal of stumps and roots.

The width and length over which site clearance is to be carried out shall be instructed by the Project manager. The Project manager may give instructions that specific trees, stumps or objects shall not be removed during site clearance operation.

Trees shall not be removed unless they are within the area to be occupied by permanent works. All cleared vegetation shall be carted away and burnt in a controlled manner. The rates for clearing and stripping areas to be occupied by the permanent works shall include for the removal of all vegetation, including top soil to a depth of 150mm, and trees, roots and stumps.

2.2 Excavation General:

Excavation shall be carried out with the allowance for working space given in the method of measurement to the Bill of Quantities, unless otherwise shown as lines, levels and profiles on the Drawings or to touch such other lines, levels and profiles as the Project manager may direct or approve in writing. The work shall be carried out by the Contractor in such a way as to avoid disturbance to the surrounding ground. Particular care shall be taken to maintain stability when excavating in close proximity to existing works.

The contractor shall dispose of all material arising from excavations. If it is suitable and required for the permanent works it shall be placed directly in such works or set aside for use as and when required in suitable approved dumps, otherwise it shall be removed to tips provided by the Contractor unless otherwise provided or directed by the Project manager.

The Contractor shall notify the Project manager without delay of any permeable strata, fissures or unusual ground encountered during excavation.

2.3 Excavation for structures:

Open excavation to form foundation for a structure shall be carried out to the lines necessary to permit the proper construction of the structure to the approval of the Project manager.

Where a structure is to be founded on soft ground, the excavation shall be taken down until the required formation is exposed and prepared to the approval of the Project manager. Where concrete has to be placed on a soft foundation, the Project manager may direct that a blinding layer of lean concrete be placed beneath the structural concrete immediately after completion and approval of excavation, or require the contractor to remove the last 100mm of excavation immediately prior to placing the concrete.

Where a structure is required to be founded on rock but is not required to penetrate into it, all soft overburden shall be removed and the surface of the rock cleared of any loose material by barring and wedging.

No concrete shall be placed in the foundations until the contractor has obtained the Project manager's agreement that a secure foundation has been reached and that the excavation has been carried out to the lines and levels required.

2.4 Backfilling of structural Excavations:

Backfilling of structural excavations shall be carried out with excavated material selected or approved by the Project manager. The material shall be placed in layers not exceeding 150 mm compacted thicknesses or such other thickness as the Project manager may approve or direct.

3.0 CONCRETE

3.1 Concrete General:

Concrete shall consist of cement, graded aggregates and water carefully proportioned, thoroughly mixed, placed and compacted as specified.

The rates for provision of concrete shall include supply of all the constituent materials and placing and will therefore be deemed to cover all other operations in respect thereof up to discharge from the mixer.

The volume of concrete shall be calculated from the drawings. No adjustment will be made for reinforcement, embedded steel or for pipes and other voids of volume less than 0.2m³.

3.2 Cement:

Unless otherwise specified or instructed, all cement shall be Ordinary Portland Cement conforming in all respects with B.S.12: or other equivalent approved standard.

Cement shall be protected from the weather in transit and shall be stored on the Works in weatherproof buildings and on dry floors, raised above the ground level if delivered in bags. The store shall be divided into bays to separate the several consignments and the cement used in the order of delivery. If bulk supply cement is to be used, it shall be stored in completely weatherproof silos which shall be of adequate

capacity to ensure that concreting may proceed without interruption. Dump or partially set cement, or cement containing lumps, or which has deteriorated in any way, shall not be used in the works.

3.3 Aggregate for concrete:

Samples of all aggregates, including fine aggregates and sand, shall be submitted to the Engineer for his approval. All samples shall be taken in accordance with B.S.812, and shall weigh not less than the minimum weight.

The contractor shall produce, with each consignment or at intervals directed by the Project manager, a certificate signed by the Suppliers, or other approved analyst, giving fully detailed chemical and physical properties of coarse and fine aggregates together with a sieve analysis carried out in accordance with the appropriate British Standard.

Any changes in the particulars of the aggregates which occur during the course of the contract must be notified to the Project manager without delay.

The aggregates shall be stored on Site in separate stockpiles so arranged as to prevent the intermingling of the various sizes of aggregates. The stockpiles shall be suitably protected to prevent contamination of the aggregates from the ground, rubbish, or by leaves, dust or other windblown materials. Any aggregate so contaminated shall not be used in the works, and the bottom 300mm layer of any stockpile shall only be used if approved.

3.4 Fine Aggregates:

Building sand for mortar and similar uses shall be perfectly clean, sharp siliceous sand free from shell, argillaceous limestone, clay, dirt or any impurity and otherwise in accordance with B.S.1198, 1199 or 1200, depending on its use in the works.

3.5 Coarse Aggregates:

All coarse aggregate for concrete shall also conform in all respects, including grading, to B.S.882 and shall be perfectly clean and free from all foreign matter and shall not consist of, nor contain, argillaceous limestone or shell. In exceptional circumstances the Engineer may approve the use of crushed limestone.

3.6 Admixtures:

Admixtures for improving workability, accelerating or retarding setting of concrete, or for any other purpose, shall comply with BS EN 934 and only be used with the Project manager's written approval.

The use of Calcium Chloride or admixtures containing chloride shall not be permitted in the construction of water retaining structures.

3.7 Water for concrete:

Clean fresh water complying with BS EN 1008 is to be used for the mixing of all concrete and mortar, and is to be from a source approved by the Project manager.

3.8 Water/Cement ratio:

The water cement ratio shall be determined as required by the Project manager and shall not exceed the specified maximum value by more than 5% of that value.

3.9 Mortar:

Where cement mortar is specified, it shall consist of one part cement and three parts and thoroughly mixed to an approved consistency, unless otherwise required by the Contract.

When mixing mortar, only sufficient clear water shall be added to ensure efficient mixing and a workable mix. No mortar that has commenced to set shall be knocked-up for re-use in the works.

3.10 Formwork:

Formwork shall be made of sound and properly seasoned timber, shall be suitably braced and be of sufficient thickness to resist the pressures applied without distortion occurring.

3.11 Steel reinforcement:

Unless otherwise directed or otherwise shown on the drawings, hot rolled high yield reinforcement shall be used throughout the works.

Where required, mild steel reinforcement, medium tensile steel reinforcement and high tensile steel reinforcement shall comply with BS 4449. Cold twisted wire for reinforcement of concrete shall comply with BS 4482.

Tying wire shall be 1.6mm diameter soft annealed iron wire.

The billed rates for reinforcement shall include for all waste, rolling margins, tying wire, spacers and all necessary supports. In case of mesh fabric reinforcement, only the net area shall be measured in computing the quantity for payment and thus the rates shall include for laps.

The concrete cover to reinforcement shall be 50mm unless otherwise shown on the Drawings.

3.12 Curing and protection:

Concrete shall be protected during the first stage of hardening from the harmful effects of sunshine, dry winds, cold, rains or running water. The Contractor shall pay particular attention to the need to protect concrete immediately after the finishing operation and prior to its final set.

The use of saline water for curing purposes will not be permitted.

4.0 STONEMWORK

4.1 Stones:

Stones for all purposes shall be the best of its kind, sound and durable, free from flaws and from soft, weathered or decomposing parts. The stones used shall be clean and must be washed if deemed necessary in the opinion of the Project manager. The stone and the quarry from which it is obtained shall be subject to the approval of the project manager.

4.2 Stone Masonry:

Masonry shall be built to the lines and levels shown on the Drawings.

The stones shall be set in mortar with their natural bedding plane (if any) as near as possible to the face or normal to the line of thrust in the case of load bearing structures. Particular care must be given to obtaining a sound bond both longitudinally and transversely and there shall be at least one bonder, or length not less than two thirds of the wall thickness, in each square yard of wall face.

The mortar, unless otherwise specified, shall be machine mixed and sand in the proportion of one part to three (1:3) parts generally as described in the specification. Mortar shall completely fill all interstices between the stones.

4.3 Hardcore:

Hardcore shall consist of broken rock, concrete or other approved hard material, clean and free from extraneous matter, having a maximum particle size of 100mm. It shall be spread and levelled, watered and compacted, and then blinded with a layer of fine material grading 3mm to dust, watered and compacted all to the Project manager's approval.

SECTION VII: DRAWINGS

(To be provided as an annex)

SECTION VIII: BILL OF QUANTITIES

See annex.

SECTION IX: TENDER FORMS

A. Form of Tender

[date]

To: [name and address of Procuring Entity]

We offer to execute the [name and identification number of contract] in accordance with the Conditions of Contract accompanying this Tender for the Contract Price of[amount in numbers],..... [amount in words]..... [name of currency].

The Contract shall be paid in Kenya shillings

We are not participating, as Tenders, in more than one Tender in this Tendering process other than alternative Tenders in accordance with the Tendering documents.

Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the contract has not been declared ineligible by the Kenya Government under Kenya's laws or any other official regulations.

This Tender and your written acceptance of it shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any Tender you receive.

We hereby confirm that this Tender complies with the Tender validity and Tender Security required by the Tendering documents and specified in the Tender Data Sheet.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Tenderer: _____

Address: _____

Tender-Securing Declaration (Mandatory)

Date: *[insert **date** (as day, month and year)]*

Tender No.: *[insert **number of Tendering process**]*

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

To: *[insert **complete name of Procuring Entity**]*

We, the undersigned, declare that:

We understand that, according to your conditions, Tenders must be supported by a Tender-Securing Declaration.

We accept that we will automatically be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time of *[insert **number of months or years**]* starting on *[insert **date**]*, if we are in breach of our obligation(s) under the Tender conditions, because we;

- a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender;
or
- b) Having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity,
 - (i). Fail or refuse to execute the Contract, if required, or
 - (ii). Fail or refuse to furnish the Performance Security, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of;

- 1) Our receipt of your notification to us of the name of the successful Tenderer; or
- 2) Thirty days after the expiration of our Tender.

Signed: *[insert **signature of person whose name and capacity are shown**]* In the capacity of *[insert **legal capacity of person signing the Tender Securing Declaration**]*

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

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

Dated on _____ day of _____, _____ *[insert **date of signing**]*

Corporate Seal (where appropriate)

Confidential Business Questionnaire

- 1 **Individual Tenderer or Individual Members of joint Ventures**
- 1.1 Constitution or legal status of Tenderer: [*attach copy*]
- Place of registration: [*insert*]
- Principal place of business: [*insert*]
- Power of attorney of signatory of Tender: [*attach*]
- Registration certificate [*attach*] current Business License [*attach*]
- 1.2 Total annual volume of construction work performed in two years, in Kenyan shillings as specified in the Tender Data Sheet; [*insert*]
- 1.3 Work performed as prime Contractor on works of a similar nature and volume over the last two years or as specified in the Tender Data Sheet in Kenyan Shillings. Also list details of work under way or committed, including expected completion dates.

Project name and country	Name of client and contact person	Contractors Participation	Type of work performed and year of completion	Value of contract
(a)				
(b)				

- 1.4 Major items of Contractor's Equipment proposed for carrying out the works. List all information requested below. Refer also to sub-Clause 12.3 of the Instructions to Tenderers.

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

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical

data. Refer also to sub-Clause 12.3 of the Instructions to Tenderers and Sub- Clause 10.1 of the General Conditions of Contract.

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

1.6 Proposed sub-contractor and firms involved. Refer to Clause 7 of General Conditions of Contract.

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

1.7 Financial reports for the number of years specified in the Tender Data Sheet.

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

1.9 Name, address, and telephone, e-mail address, and facsimile numbers of banks that may provide references if contracted by the Procuring Entity.

1.10 Information on current litigation in which the Tenderer is involved.

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

1.11 Statement of compliance with the requirements of sub-Clause 3.2 of the Instructions to Tenderers.

1.12 Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Tendering documents.

2. **Joint Ventures**

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

2.2 The information in 1.12 above shall be provided for the joint venture.

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

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

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

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

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

3. **Additional Requirements**

3.1 Tenderers should provide any additional information required in the **Tender Data Sheet** or to fulfil the requirements of sub-Clauses 12.1 of the Instructions to Tenderers, if applicable.

Integrity Declaration

UNDERTAKING BY TENDERER ON ANTI – BRIBERY POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME

1. Each Tenderer must submit a statement, as part of the Tender documents, in either of the two given formats which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the Tendering company and, where relevant, of its subsidiary in the Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
2. Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the Tenderer may cover the subcontractors and consortium partners in its own statement, provided the Tenderer assumes full responsibility.
3.
 - a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
 - b) Each Tenderer will make full disclosure in the Tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the Tender and, if successful, the implementation of the contract.
 - c) The successful Tenderer will also make full disclosure [quarterly or semi- annually] of all payments to agents and other third parties during the execution of the contract.
 - d) Within six months of the completion of the performance of the contract, the successful Tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that they are sufficient to establish the legitimacy of the payments made.
 - e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
4. Tenders which do not conform to these requirements shall not be considered.
5. If the successful Tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
 - a) Cancellation of the contract;
 - b) Liability for damages to the public authority and/or the unsuccessful competitors in the Tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated).

6. Tenderers shall make available, as part of their Tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.
7. The Government of Kenya has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by Tenderers for this contract, and to which in turn all Tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a Tenderer may be disclosed to another Tenderer or to the public).

ANTI-CORRUPTION DECLARATION COMITMENT/ PLEDGE

(Sections 39, 40, 41, 42, 43 & of the PPD Act, 2005)

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

A. Letter of Acceptance

[Letter head paper of the Procuring Entity]

[date]

To: *[name and address of the Contractor]*

This is to notify you that your Tender dated [date] for execution of the [name of the Contract and identification number, as given in the Contract Data Sheet] for the Contract Price of the equivalent of [amount in numbers and works] [name of currency], as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us.

We confirm that *[insert name proposed by the procuring entity]* to be the Adjudicator.

We accept that *[name proposed by Tenderer]* be appointed as Adjudicator.

Or

We do not accept that *[name proposed by Tenderer]* be appointed as adjudicator, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the adjudicator in accordance with Clause 44.1 of the Instructions to Tenderers.

You are hereby instructed to proceed with the execution of the said works in accordance with the Contract documents.

Please return the contract dully signed.

Authorized Signature: _____

Name and Title of Signatory:_____

Name of Agency:_____

Attachment: Form of Contract

Form of Contract Agreement

This Agreement, made the [day] day of [month], [year] between [name and address of Procuring Entity] (hereinafter called “the Procuring Entity”) and [name and address of Contractor] (hereinafter called “the Contractor”) of the other part.

Whereas the Procuring Entity is desirous that the Contractor execute [name and identification number of contract] (hereinafter called “the Works”) with the objectives of [insert functional objectives of the works] and the Procuring Entity has accepted the Tender by the Contractor for the execution and completion of such works and the remedying of any defects therein in the sum of [contract price in words and figures] (hereinafter called “Contract Price”).

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement;
2. In consideration of the payments to be made by the Procuring Entity to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Procuring Entity to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract;
3. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

In Witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of _____

Was hereunto affixed in the presence of: _____

Signed, Sealed, and Delivered by the said _____

In the presence of: _____

Tendering Signature of Procuring Entity _____

Binding Signature of Contractor _____

SECTION X: FORMS OF SECURITY

B. Tender Security (Bank or Insurance Guarantee) (Optional)

*[If required, the **Bank or Insurance Company/Tenderer** shall fill in this Guarantee form in accordance with the instructions indicated in brackets.]*

[insert bank's or insurance company's name, and address of issuing branch or office]

Beneficiary: *[insert name and address of Procuring Entity]*

Date: *[insert date]*

TENDER GUARANTEE No.: *[insert number]*

We have been informed that *[insert name of the Tenderer; if a joint venture, list complete legal names of partners]* (hereinafter called "the Tenderer") has submitted to you its Tender dated *[insert date]* (hereinafter called "the Tender") for the execution of *[insert name of Contract]* under Invitation for Tenders No. *[insert IFT number]* ("the IFT").

Furthermore, we understand that, according to your conditions, Tenders must be supported by a Tender Guarantee.

At the request of the Tenderer, we *[insert name of bank or insurance company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in the currency of the Purchaser's Country or the equivalent amount in an international freely convertible currency]* (*[insert amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer;

- a) Has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender; or
- b) Does not accept the correction of errors in accordance with the Instructions to Tenderers (hereinafter "the ITT") of the IFT; or
- c) Having been notified of the acceptance of its Tender by the Procuring Entity during the period of Tender validity;
 - (i). Fails or refuses to execute the Contract Form, if required, or
 - (ii). Fails or refuses to furnish the Performance Security, in accordance with the ITT.

This Guarantee shall expire;

- a) If the Tenderer is the successful Tenderer, upon our receipt of copies of the Contract signed by the Tenderer and of the Performance Security issued to you by the Tenderer; or
- b) If the Tenderer is not the successful Tenderer, upon the earlier of;
 - (i) Our receipt of a copy of your notification to the Tenderer that the Tenderer was unsuccessful, or
 - (ii) Thirty days after the expiration of the Tenderer's Tender.

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

[signature(s) of authorized representative(s)]

A. Performance Bank or Insurance Guarantee [Unconditional]

[The **Bank or Insurance Company/successful Tenderer** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if the Procuring Entity requires this type of security.]

[insert bank's or insurance company's name, and address of issuing branch or office]

Beneficiary: *[insert name and address of Procuring Entity]*

Date: *[insert date]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Contractor, we *[insert name of Bank or Insurance Company]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

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

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

This guarantee shall expire not later than thirty days from the date of issuance of the Taking-Over Certificate.

[signature(s) of an authorized representative(s) of the Bank or Insurance Company]

EVALUATION CRITERIA:

Evaluation will done as per the provisions of the evaluation criteria stated below:-

- 1) **Mandatory Requirements (MR):** At this stage, the tenderer's submission would either be responsive or non-responsive. The non-responsive submissions would be eliminated from the entire evaluation process and will not be considered further.
- 2) **Technical Evaluation:** This section would be marked out of 100% and would determine the technical score (TS). Only bidders who score 70% and above would be subjected to financial evaluation. Those who score below 70% would be eliminated at this stage from the entire evaluation process and would not be considered further.
- 3) **Financial Evaluation:** The formulae for determining the Financial Score (FS) shall be as follows:-

$FS = 100 \times \frac{FM}{F}$ where FS is the financial score; Fm is the lowest priced bidder and F is the price of the bidder under consideration.

i) MANDATORY REQUIREMENTS

All bids were examined on mandatory requirements as stated in the bid document as follows:

No.	Requirements
MR1	Must Submit a copy of certificate of Registration/Incorporation
MR2	Must Submit a copy of Valid Tax Compliance certificate
MR3	Must submit copy of business license
MR4	Must submit copy of VAT certificate
MR5	Must Fill the Form of Tender in the Format provided
MR6	Must Submit NCA registration certificate
MR7	Must provide bid bond of 2% of total bid sum
MR8	Must submit a dully filled up Confidential Business Questionnaire in format provided

2) TECHNICAL EVALUATION

This will be marked out of 100% as below:-

No.	Evaluation Attribute	Weighting Score
T.S. 1	Provide a list of clients and references to which the company has done similar work.	<ul style="list-style-type: none"> • Clients with references letters from the clients – 30 marks
T.S. 2	Financial Strength Provide audited accounts for the last two years	<ul style="list-style-type: none"> • audited accounts - 20 marks
T.S. 3	Provide Details of any relevant certifications and/or trainings. Such certifications / trainings may be for	<ul style="list-style-type: none"> • Details of certifications and/or trainings with proof – 20 marks

No.	Evaluation Attribute	Weighting Score
	your company or for your individual staff as relevant to the mentioned project. . <i>Attach evidence.</i>	
T.S. 4	Equipment and accessories owned or leased by the company during the contract period.	Provide details / list of equipment and accessories. 20 marks
T.S. 5	Organization structure	Give structure with details of responsibilities 10 marks
TOTAL		100%

3) FINANCIAL EVALUATION:

The formulae for determining the Financial Score (FS) shall be as follows:-

$FS = 100 \times \frac{FM}{F}$ where FS is the financial score; FM is the lowest priced bidder and F is the price of the bidder under consideration.