



**REPUBLIC OF KENYA**

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**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN  
DEVELOPMENT & PUBLIC WORKS**

**STATE DEPARTMENT OF INFRASTRUCTURE**

**MATERIALS TESTING AND RESEARCH DIVISION (MTRD)**

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**TENDER DOCUMENT**

**FOR**

**IMPROVEMENT OF REAR DRIVEWAY AND PARKING**

**TENDER NO.: MOTIHU/MTRD/05/18-19**

**January 22, 2019**

Chief Engineer (Materials)  
P.O. Box 11873 – 00400  
Nairobi

State Department of Infrastructure  
P.O. Box 30260 – 00100  
Nairobi

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## 1 INVITATION TO TENDER

**Date: January 22, 2019**

**Tender No: MOTIHUD/MTRD**

**Tender Name: IMPROVEMENT OF REAR DRIVEWAY AND PARKING**

1.1 The ministry of transport, infrastructure, housing, urban development and public works (The Ministry) invites sealed tenders from eligible candidates for Improvement of Rear Driveway and Parking as indicated below.

Tender no.	Tender Name	Qualification	Tender security	Mandatory Pre-Tender Meeting	Eligibility	Submission deadline
MOTIHUD/MTRD/05/18-19	Improvement Of Rear Driveway & Parking.	NCA 4 and above	2% of tender sum	10.00 Hours on January 29, 2019.	Open-NCA 4 and above	10.00 Hours on February 7, 2019

1.2 Interested eligible candidates may obtain further information from and inspect the tender documents at the **Supply Chain Management Office, Materials Testing and Research Division (MTRD) Machakos Road, Industrial Area** during normal working hours.

1.3 Bid documents with detailed specification and conditions are available from **Supply Chain Management Office Of MTRD, Off Machakos Road, Industrial Area**, P.O. Box 11873 – 00400, Nairobi from 0800 to 1700 hours East African Time on Monday to Friday except during lunch break from 13.00 – 14.00 hours and public holidays upon payment of a non-refundable fee of KShs 1,000.00 at cash office or by bankers' cheque payable to **Principal Secretary, State Department Of Infrastructure, P.O. Box 30260 Nairobi**. The bid documents may also be downloaded from [www.transport.go.ke](http://www.transport.go.ke) or IFMIS supplier portal: [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) free of charge.

1.4 In order to receive any amendments and/or clarification, bidders' who download bid documents and those seeking additional information should send notification to [pmrdexperts@gmail.com](mailto:pmrdexperts@gmail.com). There shall be mandatory pre-tender site visit as indicated above.

1.5 Completed Bids Should Be Clearly Marked with Relevant Tender No. and Tender Name and Deposited at **Tender Box** at **Supply Chain Management Office Situated at Ground Floor, Works Building** Or Posted To Supply Chain Management Office, State Department Of Infrastructure, P.O. Box 30260 – 00400, Nairobi So As To Be Received On Or Before date and time indicated above.

1.6 Prices quoted should be net inclusive of all taxes and delivery must be in Kenya shillings and shall remain valid for (120) days from the closing date of the tender.

1.7 Tenders will be opened immediately thereafter in the presence of the bidders or representatives who choose to attend.

## INSTRUCTION TO BIDDERS

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## **2 INSTRUCTIONS TO TENDERERS**

### **2.1 General**

- 2.1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful Tenderer will be expected to complete the Works by the Intended Completion Date specified in the said Appendix.
- 2.1.2 Tenderers shall include the following information and certified documents with their tenders, unless otherwise stated:
- a. Certified Copies of registration or incorporation certificates;
  - b. Certified copies of Valid current Tax compliance and VAT Registration Certificates
  - c. Certified copies of National Construction Authority (NCA) Registration for the applicable class valid at the date of tender of submission
  - d. Audited accounts for the last 2 years
  - e. Authority to seek references from the Tenderer's bankers.
  - f. Current litigation information (Provide Sworn affidavit)
  - g. Total monetary value of construction work performed for each of the last three years;
  - h. Experience in works of a similar nature and size for each of the last three years;
  - i. Major items of construction equipment owned or leased;
  - j. Qualifications and experience of site management and technical personnel proposed for the Contract;
- 2.1.3 The Tenderer shall bear all costs associated with the preparation and submission of his tender, and the Employer will in no case be responsible or liable for those costs.
- 2.1.4 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Tenderer's own expense.
- 2.1.5 The procurement entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

2.1.6 The price charge for tender document is KShs. 1,000.00.

## **2.2 Tender Documents**

2.2.1 The complete set of tender documents comprises the documents listed here below and any addenda issued in accordance with clause 2.4 here below:

- a. These instructions to Tenderers
- b. Form of Tender
- c. Conditions of Contract and Appendix to Conditions of Contract
- d. Specifications
- e. Drawings
- f. Bills of Quantities
- g. Other materials required to be filled and submitted in accordance with these Instructions and Conditions.

2.2.2 The Tenderer shall examine all instructions, forms and specifications in the tender documents. Failure to furnish all information required by the tender documents may result in rejection of his tender.

2.2.3 A prospective Tenderer making inquiries of the tendering documents may notify the Employer in writing or by e-mail or facsimile at the address indicated in the letter of invitation to tender. The Employer will respond to any request for clarification received earlier than seven [7] days prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.

2.2.4 Before the deadline for submission of tenders, the Employer may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all Tenderers. Prospective Tenderers shall acknowledge receipt of each addendum in writing to the Employer.

2.2.5 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders in accordance with clause 4.2 here below.

### **2.3 Preparation of Tenders**

2.3.1 All documents relating to the tender and any correspondence shall be in English Language.

2.3.2 The tender submitted by the Tenderer shall comprise the following:

- a. The Tender;
- b. Tender Security;
- c. Priced Bill of Quantities for lump-sum Contracts
- d. Any other materials required to be completed and submitted by Tenderers.

2.3.3 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 when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. All duties, taxes and other levies payable by the Contractor under the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the Tenderer.

2.3.4 The rates and prices quoted by the Tenderer shall not be subject to any adjustment during the performance of the Contract.

2.3.5 The unit rates and prices shall be in Kenya Shillings.

2.3.6 Tenders shall remain valid for a period of **One Twenty (120)** days from the date of submission. However, in exceptional circumstances, the Employer 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.

2.3.7 The Tenderer shall prepare one original of the documents comprising the tender documents as described in these Instructions to Tenderers.

- 2.3.8 The original shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the Tenderer. All pages of the tender where alterations or additions have been made shall be initialled by the person or persons signing the tender.
- 2.3.9 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 2.3.10 The procuring entity shall reply to any clarifications sought by the tenderer within **7 days** of receiving the request to enable the tenderer to make timely submission of its tender.

## **2.4 Submission of Tenders**

- 2.4.1 The tender duly filled and sealed in an envelope shall; -
- a. be addressed to the Employer at the address provided in the invitation to tender;
  - b. bear the name and identification number of the Contract as defined in the invitation to tender; and provide a warning not to open before the specified time and date for tender opening.
- 2.4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender.
- 2.4.3 The tenderer shall not submit any alternative offers unless they are specifically required in the tender documents. Only one tender may be submitted by each tenderer. Any tenderer who fails to comply with this requirement will be disqualified.
- 2.4.4 Any tender received after the deadline for opening tenders will be returned to the tenderer un-opened.
- 2.4.5 The Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with sub-clause 2.5 in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will then be subject to the new deadline.



## **2.5 Tender Opening and Evaluation**

- 2.5.1 The tenders will be opened in the presence of the Tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender.
- 2.5.2 The Tenderers' names, the total amount of each tender and such other details as may be considered appropriate, will be announced at the opening by the Employer. Minutes of the tender opening, including the information disclosed to those present will also be prepared by the Employer.
- 2.5.3 Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of the 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. Any effort by a Tenderer to influence the Employer's officials, processing of tenders or award decisions may result in the rejection of his tender.
- 2.5.4 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:
- (a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
  - (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer's representative, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.
  - (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities/Quotation, the amount as stated in the Form of Tender shall prevail.
  - (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the Corrected Builder's Work (i.e. corrected tender sum less P.C. and Provisional Sums).
  - (e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.
  - (f) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and with concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not

accept the corrected amount, the tender may be rejected and the Tender Security forfeited.

- 2.5.5 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 2.5.6 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 2.5.7 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may request [in writing] any Tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the tender price or substance of the tender shall be sought, offered or permitted.
- 2.5.8 The Tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.

## **2.6 Award of Contract**

- 2.6.1 The award of the Contract will be made to the Tenderer who has offered the lowest evaluated tender price.
- 2.6.2 Notwithstanding the provisions of clause 6.1 above, the Employer 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 or any obligation to inform the affected Tenderer or Tenderers of the grounds for the action.

- 2.6.3 The Tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum [hereinafter and in all Contract documents called the "Contract Price" which the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. The contract shall be formed on the parties signing the contract. At the same time the other tenderers shall be informed that their tenders have not been successful.
- 2.6.4 The Contract Agreement will incorporate all agreements between the Employer and the successful Tenderer. It will be signed by the Employer and sent to the successful Tenderer, within 30 days following the notification of award. Within 21 days of receipt, the successful Tenderer will sign the Agreement and return it to the Employer.
- 2.6.5 Within 21 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Employer a Performance Security amount stipulated in the Appendix to Conditions of Contract.
- 2.6.6 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 2.6.7 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.6.8 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

## **2.7 Corrupt and Fraudulent Practices**

- 2.7.1 The procuring entity requires that the tenderer observes the highest standard of ethics during the procurement process and execution of the contract. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.

2.7.2 The procuring entity will reject a tender if it determines that the tenderer recommended for award has engaged in corrupt and fraudulent practices in competing for the contract in question.

2.7.3 Further a tenderer who is found to have indulged in corrupt and fraudulent practices risks being debarred from participating in public procurement in Kenya.

## 2.8 QUALIFICATION CRITERIA

No.	Subject	Qualification Criteria	Requirement	Single Entity Requirements
<b>1.0 Eligibility</b>				
1.1	Eligibility	Nationality in accordance with confidential business Questionnaire.	Must meet requirement	Refer to standard form in section 7
1.2	Incorporation & Registration	Pursuant to sub clause 1.2 the following shall be provided; <ul style="list-style-type: none"> <li>• Copy of Certificate of incorporation of registration in Kenya (Certified by Commissioner of Oaths only)</li> <li>• Proof of registration with the National Construction Authority for NCA 4 and above.</li> </ul>	Must meet requirement	Refer to standard form in section 7
<b>2.0 Litigation</b>				
2.1	History of non-performing contracts	Non-performance of a contract did not occur within the last <b>two (2)</b> years prior to the deadline for application submission based on all information on fully settled disputes or litigation.	Must meet requirement by itself or as party to past	Refer to standard form in section 7
2.2	Pending Litigation	All pending litigation shall in total not represent more than fifty percent (50%) of the Applicant's net worth and shall be treated as resolved against the Applicant. (Provide Sworn Affidavit) (Commissioner of Oaths)	Must meet requirement by itself or as party to past	Refer to standard form in section 7
<b>3.0 Financial capacity</b>				
3.1	Financial performance	Submission of audited balance sheets for the last two [2] years.	Must meet requirement (b)	Refer to standard form in section 7
3.2	Average annual construction turn-over	Minimum average annual construction turnover of KShs. 5 Million, calculated as total certified payments received for contracts in	Must meet requirement	Refer to standard form in section 7

		progress or completed, within the last 3 years.		
4.0 Experience				
4.1	General construction experience	Experience under construction contracts in the role of contractor, subcontractor, or management contractor for at least the last Two (2) Years prior to the applications submission deadline.	Must meet requirement	Refer to standard form in section 7
4.2	Specific construction experience	Participation as contractor, management contractor or subcontractor, in at least Two (2) No. contracts within the last Two (2) Years, that have been successfully and substantially completed and that are like the proposed works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Scope of Works.	Must meet requirement	Refer to standard form in section 7
4.3	Work methodology	Submission of a brief work methodology. Should demonstrate understanding of the scope of works and other general requirements	Must meet requirement	Refer to standard form in section 7
5.0 Equipment Holding				
5.1	Minimum number of	The bidder must indicate the minimum the core plant and equipment considered by the company to be necessary for undertaking the project together with proof of ownership.	Must meet the requirement	Refer to standard form
6.0 Current Commitment				
6.1	On-going contracts	Must state the Ongoing works and should not exceed Two (2) in number.	Must meet requirements	
7.0 Site Staff				
7.1	Site Agent	The site staff shall possess minimum levels set below; ·	Must meet requirements	Refer to guideline notes
		Qualification = Diploma in Civil Engineering with 3 yrs of General Experience and 2 Yrs of Specific Experience		
	Foreman	Qualification = Certificate with 3 yrs of General Experience and 2 Yrs of Specific Experience		

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### **3 CONDITIONS OF CONTRACT**

#### **3.1 Definitions**

3.1.1 In this Contract, except where context otherwise requires, the following terms shall be interpreted as indicated;

"Bills of Quantities" means the priced and completed Bill of Quantities forming part of the tender [where applicable].

"Schedule of Rates" means the priced Schedule of Rates forming part of the tender [where applicable].

"The Completion Date" means the date of completion of the Works as certified by the Employer's Representative.

"The Contract" means the agreement entered into by the Employer and the Contractor as recorded in the Agreement Form and signed by the parties.

"The Contractor" refers to the person or corporate body whose tender to carry out the Works has been accepted by the Employer.

"The Contractor's Tender" is the completed tendering document submitted by the Contractor to the Employer.

"The Contract Price" is the price stated in the Letter of Acceptance.

"Days" are calendar days; "Months" are calendar months.

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

"The Defects Liability Certificate" is the certificate issued by Employer's Representative upon correction of defects by the Contractor.

"The Defects Liability Period" is the period named in the Appendix to Conditions of Contract and calculated from the Completion Date.

"Drawings" include calculations and other information provided or approved by the Employer's Representative for the execution of the Contract.

"Employer" Includes Central or Local Government administration, Universities, Public Institutions and Corporations and is the party who employs the Contractor to carry out the Works.

"Equipment" is the Contractor's machinery and vehicles brought temporarily to the Site for the execution of the Works.

"Site" means the place or places where the permanent Works are to be carried out including workshops where the same is being prepared.

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

"Employer's Representative" is the person appointed by the Employer and notified to the Contractor for the purpose of supervision of the Works.

"Specification" means the Specification of the Works included in the Contract.

"Start Date" is the date when the Contractor shall commence execution of the Works.

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

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

"A Variation" is an instruction given by the Employer's Representative which varies the Works.

"The Works" are what the Contract requires the Contractor to construct, install, and turnover to the Employer.

### **3.2 Contract Documents**

3.2.1 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority:

- i. Agreement,
- ii. Letter of Acceptance,
- iii. Contractor's Tender,
- iv. Conditions of Contract,
- v. Specifications,
- vi. Drawings,
- vii. Bills of Quantities

### **3.3 Employer's Representative's Decisions**

3.3.1 Except where otherwise specifically stated, the Employer's Representative will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

### **3.4 Works, Language and Law of Contract**

3.4.1 The Contractor shall construct and install the Works in accordance with the Contract documents. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Employer's Representative, and complete them by the Intended Completion Date.



3.4.2 The ruling language of the Contract shall be English language and the law governing the Contract shall be the law of the Republic of Kenya.

### **3.5 Safety, Temporary Works and Discoveries**

3.5.1 The Contractor shall be responsible for design of temporary works and shall obtain approval of third parties to the design of the temporary works where required.

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

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

### **3.6 Work Program and Sub-Contracting**

3.6.1 Within seven days after Site possession date, the Contractor shall submit to the Employer's Representative for approval a program showing the general methods, arrangements, order and timing for all the activities in the Works.

3.6.2 The Contractor may sub-contract the Works (but only to a maximum of 25 percent of the Contract Price) with the approval of the Employer's Representative. However, he shall not assign the Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor's obligations.

### **3.7 The Site**

3.7.1 The Employer shall give possession of all parts of the Site to the Contractor.

3.7.2 The Contractor shall allow the Employer's Representative and any other person authorised by the Employer's Representative, access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

### **3.8 Instructions**

3.8.1 The Contractor shall carry out all instructions of the Employer's Representative which are in accordance with the Contract.

### **3.9 Extension of Completion Date**

- 3.9.1 The Employer's Representative shall extend the Completion Date if an occurrence arises which makes it impossible for completion to be achieved by the Intended Completion Date. The Employer's Representative shall decide whether and by how much to extend the Completion Date.
- 3.9.2 For the purposes of this clause, the following occurrences shall be valid for consideration; Delay by:
- a) force majeure, or
  - b) reason of any exceptionally adverse weather conditions, or
  - c) reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
  - d) reason of the Employer's Representative's instructions issued under these Conditions, or
  - e) reason of the contractor not having received in due time necessary instructions, drawings, details or levels from the Employer's Representative for which he specifically applied in writing on a date which having regard to the date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under this clause was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
  - f) delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
  - g) reason of delay by statutory or other services providers or similar bodies engaged directly by the Employer, or
  - h) reason of opening up for inspection of any Work covered up or of the testing or any of the Work, materials or goods in accordance with these conditions unless the inspection or test showed that the Work, materials or goods were not in accordance with this Contract, or
  - i) reason of delay in appointing a replacement Employer's Representative, or
  - j) reason of delay caused by the late supply of goods or materials or in executing Work for which the Employer or his agents are contractually obliged to supply or to execute as the case may be, or
  - k) delay in receiving possession of or access to the Site.

### **3.10 Management Meetings**

3.10.1 A Contract management meeting shall be held regularly and attended by the Employer's Representative and the Contractor. Its business shall be to review the plans for the remaining Work. The Employer's Representative shall record the business of management meetings and provide copies of the record to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Employer's Representative either at the management meeting or after the management meeting and stated in writing to all who attend the meeting.

3.10.2 Communication between parties shall be effective only when in writing.

### **3.11 Defects**

3.11.1 The Employer's Representative shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Employer's Representative may instruct the Contractor to search for a defect and to uncover and test any Work that the Employer's Representative considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor. However if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.

3.11.2 The Employer's Representative shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Form of Agreement.

3.11.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Employer's Representative's notice. If the Contractor has not corrected a defect within the time specified in the Employer's Representative's notice, the Employer's Representative will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

### **3.12 Bills of Quantities**

3.12.1 The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rates in the Bills of Quantities for each item. Items against which no rate is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the rates for other items in the Bills of Quantities.

3.12.2 Where Bills of Quantities do not form part of the Contract, the Contract Price shall be a lump sum (which shall be deemed to have been based on the rates in the Schedule of Rates forming part of the tender) and shall be subject to re-measurement after each stage.

### **3.13 Variations**

3.13.1 The Contractor shall provide the Employer's Representative with a quotation for carrying out the variations when requested to do so. The Employer's Representative shall assess the quotation and shall obtain the necessary authority from the Employer before the variation is ordered.

3.13.2 If the Work in the variation corresponds with an item description in the Bill of Quantities, the rate in the Bill of Quantities shall be used to calculate the value of the variation. If the nature of the Work in the variation does not correspond

3.13.3 with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.

3.13.4 If the Contractor's quotation is unreasonable, the Employer's Representative may order the variation and make a change to the Contract Price, which shall be based on the Employer's Representative's own forecast of the effects of the variation on the Contractor's costs.

### **3.14 Payment Certificates and Final Account**

3.14.1 The Contractor shall be paid after each of the following stages of Work listed here below (subject to re-measurement by the Employer's Representative of the Work done in each stage before payment is made). In case of lump-sum Contracts, the valuation for each stage shall be based on the quantities so obtained in the re-measurement and the rates in the Bill of Quantities.

- (i) Advance payment: **Not Applicable.**
- (ii) On completion: **100% Of Contract Sum.**
- (iii) After defects liability period: **Not applicable.**

- 3.14.2 Upon deciding that Works included in a particular stage are complete, the Contractor shall submit to the Employer's Representative his application for payment. The Employer's Representative shall check, adjust if necessary and certify the amount to be paid to the Contractor within 21 days of receipt of the Contractor's application. The Employer shall pay the Contractor the amounts so certified within 30 days of the date of issue of each Interim Certificate.
- 3.14.3 The Contractor shall supply the Employer's Representative with a detailed final account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Employer's Representative shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Employer's Representative shall issue within 21 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Employer's Representative shall decide on the amount payable to the Contractor and issue a Final Payment Certificate. The Employer shall pay the Contractor the amount so certified within 60 days of the issue of the Final Payment Certificate.
- 3.14.4 If the period laid down for payment to the Contractor upon each of the Employer's Representative's Certificate by the Employer has been exceeded, the Contractor shall be entitled to claim simple interest calculated pro-rata on the basis of the number of days delayed at the Central Bank of Kenya's average base lending rate prevailing on the first day the payment becomes overdue. The Contractor will be required to notify the Employer within 15 days of receipt of delayed payments of his intentions to claim interest.

### **3.15 Insurance**

- 3.15.1 The Contractor shall be responsible for and shall take out appropriate cover against, among other risks, personal injury; loss of or damage to the Works, materials and plant; and loss of or damage to property.

### **3.16 Liquidated Damages**

3.16.1 The Contractor shall pay liquidated damages to the Employer at the rate 0.001 per cent of the Contract price per day for each day that the actual Completion Date is later than the Intended Completion Date except in the case of any of the occurrences listed under clause 9.2. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

### **3.17 Completion and Taking Over**

3.17.1 Upon deciding that the Work is complete the Contractor shall request the Employer's Representative to issue a Certificate of Completion of the Works, upon deciding that the Work is completed. The Employer shall take over the Site and the Works within seven days of the Employer's Representative issuing a Certificate of Completion.

### **3.18 Termination**

3.18.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;

- a. the Contractor stops Work for 30 days continuously without reasonable cause or authority from the Employer's Representative;
- b. the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- c. a payment certified by the Employer's Representative is not paid by the Employer to the Contractor within 30 days after the expiry of the payment periods stated in sub clauses 14.2 and 14.3 hereinabove.
- d. the Employer's Representative gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time.

3.18.2 If the Contract is terminated, the Contractor shall stop Work immediately, and leave the Site as soon as reasonably possible. The Employer's Representative shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

### **3.19 Payment Upon Termination**

- 3.19.1 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on Site, plant, equipment and temporary works.
- 3.19.2 The Contractor shall, during the execution or after the completion of the Works under this clause, remove from the Site as and when required within such reasonable time as the Employer's Representative may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to him, and in default thereof, the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.
- 3.19.3 Until after completion of the Works under this clause, the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefor the Employer's Representative shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

### **3.20 Corrupt Gifts And Payments Of Commission**

- 3.20.1 The Contractor shall not;
- a. Offer or give or agree to give to any person in the service of the Employer any gifts or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract with the Employer.
  - b. Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the Laws of Kenya.

### 3.21 Settlement Of Disputes

3.21.1 Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.

### 3.22 Appendix to Form of Agreement

This Appendix to Form of Agreement forms part of the Agreement.

Item	Data
Name & Address of Employer	The Principal Secretary, State Department of Infrastructure. P.O. Box 30260 - 00100 <b>Nairobi</b>
Priority of Documents	The documents forming the Contract shall be interpreted in the following order of priority: <ul style="list-style-type: none"> <li>• the Contract Agreement and Appendix to form of agreement</li> <li>• the Letter of Acceptance</li> <li>• the Form of Tender</li> <li>• the Conditions of Contract, Part II - Conditions of Particular Application</li> <li>• the Conditions of Contract, Part I - General Conditions of Contract</li> <li>• the Specifications</li> <li>• the Drawings,</li> <li>• the Priced Bill of Quantities</li> </ul>
Employers Representative	Chief Engineer, Material Testing & Research Division P.O. Box 11873-00400 <b>Nairobi</b>
Time for Completion	8-Weeks
Provision of Site	On Commencement Date
Performance Security Amount & Form	5% of sum stated as the Contract Price as Bank Guarantee valid until issuance of the completion certificate.
Time of Submission Program	Within 7-days of Commencement Date
Form of Programme	As directed by the Project Engineer
Liquidated Damages Amount payable.	0.5% of Contract Price per Day to a limit of 5% of Contract Price.
Period of notifying defects	30 days calculated from the date stated in the notice under sub clause 11.2
Valuation of Works	Re-measurements with Bills of Quantities
Minimum Amount of Interim Payment	n/a
Currency of Payment	Kenya Shilling
Rate of Interest	Simple Interest at a rate of 2% above mean Base Lending Rate as issued by the Central Bank of Kenya.



## STANDARD FORMS

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## 4 STANDARD FORMS

### 4.1 Form of Invitation for Tenders

\_\_\_\_\_ [Date]

To: \_\_\_\_\_ [Name of Contractor]

\_\_\_\_\_ [Address]

Dear Sirs:

Reference: \_\_\_\_\_ [Contract Name]

You are qualified to tender for the above Contract.

We hereby invite you and other qualified Tenderers to submit a Tender for the execution and completion of the Works.

A complete set of Tender documents may be purchased from \_\_\_\_\_  
[Mailing address, cable/telex/facsimile numbers].

Upon payment of a non-refundable fee of KShs \_\_\_\_\_

All Tenders shall be accompanied by .....number of copies of the same and a Tender Security in the form and amount of KShs..... and shall be delivered to:  
\_\_\_\_\_ [Address and location]

at or before \_\_\_\_\_ (time and date). Tenders will be opened immediately thereafter, in the presence of those Tenderers' representatives who choose to attend.

Please confirm receipt of this letter and your intention to Tender in writing.

Yours faithfully,

\_\_\_\_\_ Authorized Signature

\_\_\_\_\_ Name and Title.

## 4.2 Form of Tender

TO: \_\_\_\_\_[Name of Employer]

\_\_\_\_\_ [Date]

\_\_\_\_\_ [Name of Contract]

Dear Sir,

In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above Works, We, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of KShs. \_\_\_\_\_ [Amount in figures] Kenya

Shillings \_\_\_\_\_  
\_\_\_\_\_ [Amount in words]

1. We undertake, if our Tender is accepted, to commence the Works on the commencement date and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix.
2. We agree to abide by this Tender until \_\_\_\_\_ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.
3. Unless and until a formal Agreement is prepared and executed this Tender together with your written acceptance thereof, shall constitute a binding Contract between us.
4. We understand that you are not bound to accept the lowest or any Tender you may receive.

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

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

duly authorized to sign Tenders for and on behalf of

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

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

Witness: Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

### 4.3 Letter of Award

[Letterhead paper of the Employer]

\_\_\_\_\_ [Date]

To: \_\_\_\_\_

[Name of the Contractor]

\_\_\_\_\_  
[Address of the Contractor]

Dear Sir,

This is to notify you that your Tender dated \_\_\_\_\_ for the execution of \_\_\_\_\_ [name of the Contract and identification number, as given in the Tender documents] for the

Contract Price of KShs. \_\_\_\_\_ [amount in figures] [Kenya Shillings \_\_\_\_\_ (amount in words) ] in accordance with the Instructions to Tenderers is hereby accepted.

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

Authorized Signature .....

Name and Title of Signatory .....

Attachment :

**4.4 Form Of Tender Security**

WHEREAS .....(hereinafter called "the Tenderer") has submitted a Tender dated ..... for the Rehabilitation/Spot Improvement of .....  
..... (Name of Contract)

KNOW ALL PEOPLE by these presents that WE ..... having our registered office at .....(hereinafter called "the Bank"), are bound unto .....(hereinafter called "the Employer") in the sum of KShs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this ..... Day of .....20.....

THE CONDITIONS of this obligation are:

- i. If after Tender opening the Tenderer withdraws his Tender during the period of Tender validity specified in the Instructions to Tenderers Or
- ii. If the Tenderer, having been notified of the acceptance of his Tender by the Employer during the Period of Tender validity:
  - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Tenderers, if required; or
  - (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;

We undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including forty-five (45) days after the Period of Tender validity, and any demand in respect thereof should reach the Bank not later than the said date.

\_\_\_\_\_  
[Date [Signature of the Bank]

\_\_\_\_\_  
[Witness] [Seal]

**4.5 Performance Bank Guarantee**

To: \_\_\_\_\_(Name of Employer) \_\_\_\_\_(Date)  
\_\_\_\_\_ (Address of Employer)

Dear Sir,

WHEREAS \_\_\_\_\_(hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. \_\_\_\_\_ dated \_\_\_\_\_ to execute \_\_\_\_\_ (hereinafter called "the Works");

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognised bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee:

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of KShs. \_\_\_\_\_ (amount of Guarantee in figures) Kenya Shillings\_\_\_\_\_ (amount of Guarantee in words), and

we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the 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 thereunder 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 be valid until the date of issue of the Employer’s notice under Sub-Clause 8.2 (Taking-Over Notice), of the Conditions of Contract.

SIGNATURE AND SEAL OF THE GUARANTOR \_\_\_\_\_  
Name of Bank \_\_\_\_\_  
Address \_\_\_\_\_  
Date \_\_\_\_\_

**4.6 Form Of Agreement**

**THIS AGREEMENT** is made on the .....day of ..... 2018 between the **Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, Material Testing and Research Division of P.O. BOX 11873 - 00400, Nairobi, Kenya or his representative** hereinafter called the **"Employer"** on the one part and

----- Hereinafter called the **"Contractor"** of the other part.

**WHEREAS** the Employer is desirous that certain works should be executed, on **Improvement of Rear Driveway and Parking** at *KShs.....*

And has accepted a Bid by the Contractor to execute, complete and maintain such works **NOW THIS AGREEMENT WITNESSETH as follows:**

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.

The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:

- o The said BID dated 5-Nov-18
- o Conditions of Contract; Parts I and II
- o The Standard and Special Specifications;
- o Priced Bill of Quantities;
- o Letter of Acceptance;
- o Form of Tender
- o Drawings;
- o Appendix to the Form of Agreement
- o Schedule Of Supplementary Information
- o Other Documents/Materials/Conditions agreed and documented.

All aforesaid documents are hereinafter referred to as **"The Contract"**. In consideration of the payment to be made by the **Employer** to the **Contractor**, the Contractor covenants with the Employer to execute and complete the Works in conformity with the provisions of the Contract.

The Employer hereby covenants to pay the Contractor in consideration of the execution, completion and maintenance of the Works at the Contract Price or such other sum as may become payable under the Contract at the times and in the manner prescribed by the Contract.

**SIGNED AND DELIVERED**

By the said Employer:.....

Signature: .....

Division: Material Testing & Research Division

(The Chief Engineer Materials)  
(For and on behalf of the said Employer.)

In the presence of:.....  
Signature.....

By the said Contractor: .....  
Signature.....  
Designation:.....  
(For and on behalf of the said Contractor)

In the presence of : .....  
Signature:.....  
Address:.....



**4.7 Qualification Information**

**TENDER QUESTIONNAIRE**

Please fill in block letters.

- 1. Full name of Tenderer;  
.....
- 2. Full address of Tenderer to which Tender correspondence is to be sent (unless an agent has been appointed below);  
.....
- 3. Telephone number (s) of Tenderer;  
.....
- 4. Facsimile of Tenderer;  
.....
- 5. Name of Tenderer’s representative to be contacted on matters of the Tender during the Tender period;  
.....
- 6. Details of Tenderer’s nominated agent (if any) to receive Tender notices (name, address, telephone, telefax);  
.....  
.....

\_\_\_\_\_  
Signature of Tenderer

Make copy and deliver to: \_\_\_\_\_(Name of Employer) ( The Tenderer shall leave one copy at the time of purchase of the Tender documents).

**4.8 Confidential Business Questionnaire**

You are requested to give the particulars indicated in Part 1 and either Part 2 (a) or 2 (b) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form.

**Part 1 – General**

Business Name .....

Location of business premises; Country/Town.....

Plot No..... Street/Road .....

Postal Address..... Tel No.....

Nature of Business.....

Current Trade Licensee No..... Expiring date.....

Maximum value of business which you can handle at any time: KShs .....

Name of your Bankers.....

Branch.....

**Part 2 (b) – Partnership**

Give details of partners as follows:

- Name in full Nationality Citizenship Details Shares
- 1.....
- 2.....
- 3.....

**Part 2(c) – Registered Company:**

Private or public.....

State the nominal and issued capital of the Company-  
Nominal KShs.....

Issued KShs.....

Give details of all directors as follows:

Name in full . Nationality. Citizenship Details\*. Shares.

1.....

2.....

3.....

4.....

**Part 2(d) – Interest in the Firm:**

Is there any person / persons in ..... (Name of Employer) who  
has interest in this firm? Yes/No..... (Delete as necessary)

I certify that the information given above is correct.

.....

.....

(Title) (Signature) (Date)

\* Attach proof of citizenship

**4.9 Schedule Of Labour: Basic Rates**

4.9.1 (Reference: Clause 4 of Conditions of Particular Application)

<b>LABOUR CATEGORY</b>	<b>UNIT (MONTH/SHIFT/HOUR)</b>	<b>RATES</b>

Categories to be generally in accordance with those used by the Kenya Building Construction and Engineering and Allied Trades Workers' Union.

I certify that the above information is correct.

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

---

**4.10 Certificate Of Tenderer’s Visit To Site**

This is to certify that

[Name/s].....

.....

Being the authorized representative/Agent of [Name of Tenderer]

.....

.....

participated in the organized inspection visit of the site of the works.

held on ..... day of.....20.....

Signed.....

(Employer’s Representative)

.....

NOTE: This form is to be completed when the site visit is made

**4.11 Form Of Written Power-Of-Attorney**

The Tenderer consisting of a joint venture shall state here below the name and address of his representative who is authorised to receive on his behalf correspondence in connection with the Tender.

.....  
(Name of Tenderer's Representative in block letters)

.....  
(Address of Tenderer's Representative)

.....  
(Signature of Tenderer's Representative)

**4.12 Key Personnel (As Per Qualification Criteria)**

Designation	Name	Nationality	Summary Of Qualifications and Experience
Headquarters: 1. Managing Director  2.  3.  Etc.			
Site Office:  1. Site Agent/ Supervisor  2. Foreman  3.  4.			

I certify that the above information is correct.

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

#### 4.13 Schedule of The Proposed Appropriate Equipment.

Mandatory minimum number of equipment required by the Employer for the execution of the project that the bidder must make available for the Contract

<b>Item No.</b>	<b>Equipment Details</b>	<b>Minimum Number Required</b>	<b>No of Equipment Owned by the Bidder</b>	<b>No. of equipment to be hired</b>
1	Self-propelled single drum vibrating (10Tons)	1		
2	Tippers payload 7 – 10 tonnes	2		
3	Flatbed lorries	1		
4	Asphalt Paver	1		

The Bidder must attach certified copies of log books or lease agreement of the following

I certify that the above information is correct.

.....

(Title) (Signature) (Date)



**4.14 Schedule Of Completed Civil Works.**

Description Of Works And Client	Total Value Of Works (KShs)	Contract Period (Years)	Year Completed

I certify that the above Civil Works were successfully carried out and completed by ourselves.

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

**4.15 Schedule Of Ongoing Projects**

Description of Work And Client	Contract Period	Date Of Commencement	Date Of Completion	Total Value Of Works (KShs.)	% Completed To date

I certify that the above Civil Works are being carried out by ourselves and that the above information is correct.

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

**4.16 Other Supplementary Information**

1. Financial reports for the last three years, balance sheets, profit and loss statements, auditors' reports etc. List them below and attach copies.

.....  
 .....  
 .....

2. Evidence of access to financial resources to meet the qualification requirements. Cash in hand, lines of credit etc. List below and attach copies of supporting documents

.....  
 .....  
 .....

3. Name, address, telephone, telex, fax numbers of the Tenderer's Bankers who may provide reference if contacted by the Employer.

.....  
 .....  
 .....

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

Other Party (Ies)	Cause Of Dispute	Amount Involved (KShs)

I certify that the above information is correct.

.....  
 Title Signature Date

**4.17 Adjudicator’s Agreement**

Identification of Project: .....  
(the "Project")

Name and address of the Employer: .....  
(the "Employer")

Name and address of the Contractor: .....  
(the "Contractor")

Name and address of the Adjudicator: .....  
(the "Adjudicator")

**Whereas** the Employer and the Contractor have entered into a Contract ("the Contract") for the execution of the Project and wish to appoint the Adjudicator to act as adjudicator in accordance with the Rules for Adjudication ["the Rules"].

**The Employer, Contractor and Adjudicator agree as follows:**

- 1. The Rules and dispute provisions of the Contract shall form part of this Agreement.
- 2. The Adjudicator shall be paid:  
A retainer fee of ..... per calendar month (where applicable)  
A daily fee of .....

Expenses (including the cost of telephone calls, courier charges, faxes and telexes incurred in connection with his duties; all reasonable and necessary travel expenses, hotel accommodation and subsistence and other direct travel expenses). Receipts will be required for all expenses.

3. The Adjudicator agrees to act as Adjudicator in accordance with the Rules and has disclosed to the Parties any previous or existing relationship with the Parties or others concerned with the Project.

4. This Agreement shall be governed by the laws of.....

5. The Language of this Agreement shall be  
.....

SIGNED BY .....

For and on behalf of the Employer in the presence of

Witness ..... Name  
..... Address  
..... Date  
.....

SIGNED BY .....

For and on behalf of the Contractor in the presence of

Witness ..... Name  
..... Address  
..... Date  
.....

SIGNED BY .....

For and on behalf of the Adjudicator in the presence of

Witness ..... Name  
..... Address  
..... Date  
.....

**4.18 Fraud & Corruption**

- 1 If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site.
- 2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed.
- 3 For the purposes of this Sub-Clause:
  - (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - (iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - (iv) "Coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- 4 The Contractor declares that:
  - a) They did not engage in any action to influence the Project implementation process to the detriment of the Employer, in particular no collusive practice took place nor will take place, and

The bidding proceedings, contract award, and execution have not and will not be subject to any corrupt practice as defined in the United Nations Convention to combat corruption dated 31 October 2003.

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

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

duly authorized to sign Tenders for and on behalf of

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

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

\_\_\_\_\_ [Seal or Stamp of Tenderer].

**4.19 Environmental And Social Commitment**

I have taken due note of the importance to comply with environmental and social standards and regulations.

I, the undersigned, [.....] acting as the duly authorized representative of [.....],

With respect to the submission of a bid for [.....] in accordance with the invitation to tender No [.....], I undertake to comply, and ensure that our subcontractors, if any, comply with international environmental and labour standards consistent with applicable law and regulations in the country of implementation of the Project, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties

In addition, I also undertake to adopt any environmental and social risk mitigation measures as defined in the environmental and social management plan or the notice of environmental and social impact issued by the Employer.

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

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

duly authorized to sign Tenders for and on behalf of \_\_\_\_\_[Name of Tenderer] of

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

\_\_\_\_\_ [Seal or Stamp of Tenderer]

**4.20 Form Rb 1**

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (Procuring Entity)

Request for review of the decision of the..... (Name of the Procuring Entity) of  
.....dated the...day of .....20.....in the matter of Tender No.....of  
.....20...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical address.....Fax  
No.....Tel. No.....Email ....., hereby request the Public Procurement Administrative Review  
Board to review the whole/part of the above mentioned decision on the following grounds ,  
namely:-

- 1.
- 2.
- etc.

By this memorandum, the Applicant requests the Board for an order/orders that: 1.

- 2.
- etc

SIGNED .....(Applicant)

Dated on.....day of ...../...20...

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**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on ..... day  
of .....20.....

SIGNED

Board Secretary



#### 4.21 Declaration Form

Date

To

---

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The tenderer i.e. (Name and address) \_\_\_\_\_  
\_\_\_\_\_ declare the following:

- a) Has not been debarred from participating in public procurement.
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

\_\_\_\_\_  
Title Signature Date

(To be signed by authorized representative and officially stamped)

**5 SPECIFICATIONS, DRAWINGS AND BILLS OF QUANTITIES..... 59**

**5.1 SPECIFICATIONS..... 59**

**5.2 LAYOUT AND DRAWINGS ..... 60**

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**5.3 BILL OF QUANTITIES..... 61**

## 5 SPECIFICATIONS, DRAWINGS AND BILLS OF QUANTITIES

### 5.1 Specifications

#### 5.1.1 Project Location

The project is located in Nairobi County. The rehabilitation and repair works are to be carried out at Materials Testing and Research Division (MTRD), which is under the Ministry of Transport, Infrastructure, Housing and Urban Development. MTRD is located at Machakos Road, Industrial Area.

#### 5.1.2 Extent Of Contract

The major works to be executed under the Contract comprise mainly of but are not limited to the following:

- A. Improvement of MTRD driveway by overlaying with 35 mm asphalt concrete type II as shown in figure 6.1.
- B. Fencing of Borehole area with a metal grill as per figure 6.2
- C. Supply and Planting of trees and flowers within the compound as per type and quantities in the BOQ
- D. Clearing, supply and planting of trees and flowers without the compound as per type and quantities in the BOQ.

#### 5.1.3 Standard Specifications

The Standard Specifications referred to in this document is the *Standard Specifications for Road and Bridge Construction, 1986 Edition* published by the Ministry of Transport and Communications. This document shall form part of the Contract. Work shall be carried out in accordance with the Standard Specification except as supplemented or revised in the Special Specification.

#### 5.1.4 Special specifications

##### I. **Quality Control Tests**

The Engineer may instruct the Contractor during the progress of the Works to carry out quality control tests to check materials and standards of workmanship, against the Specifications. Where such tests indicate defective standards the Engineer shall instruct the Contractor to rectify the defects to the Engineer's satisfaction and at the Contractor's expense.

**Measurement and Payment:** The Engineer shall include a Provisional Sum for this item to be expended only as and when the Contractor is instructed to carry out tests.

##### II. **Traffic Signs**

The Contractor shall erect traffic signs of the type and at locations as directed by the Engineer. The signs materials and quality are shown on the Drawings. The signs shall be bedded in concrete Class 15/20 and shall be supported vertically until the concrete is set.

**Quality Control:** The Engineer shall check the sign position before concrete is backfilled.

**Measurement Unit:** The measurement shall be the number of signs erected.

**Payment:** The unit rate shall be the full compensation for labour, tools, materials and incidental costs required for carrying out the work.

III. **Section 16: Bituminous mix bases, Binder Courses and Wearing Courses:**  
**Laying of asphalt concrete:** Asphalt Concrete shall be strictly laid using a paver

**5.2 Layout and drawings**

5.2.1 Layout of MTRD Rear Driveway

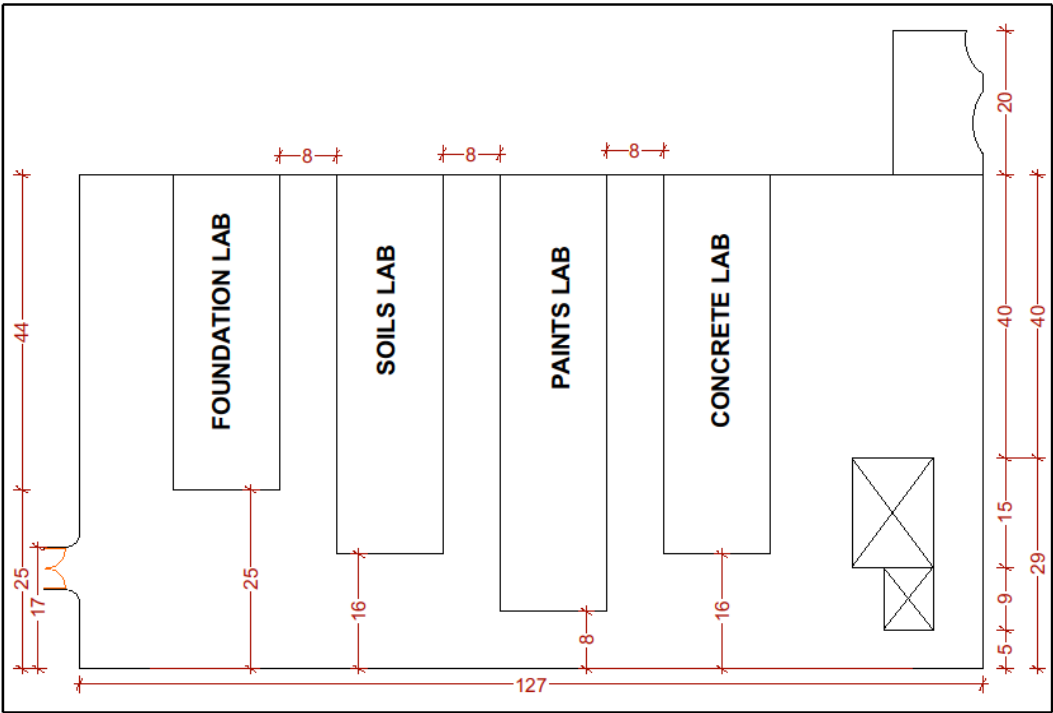
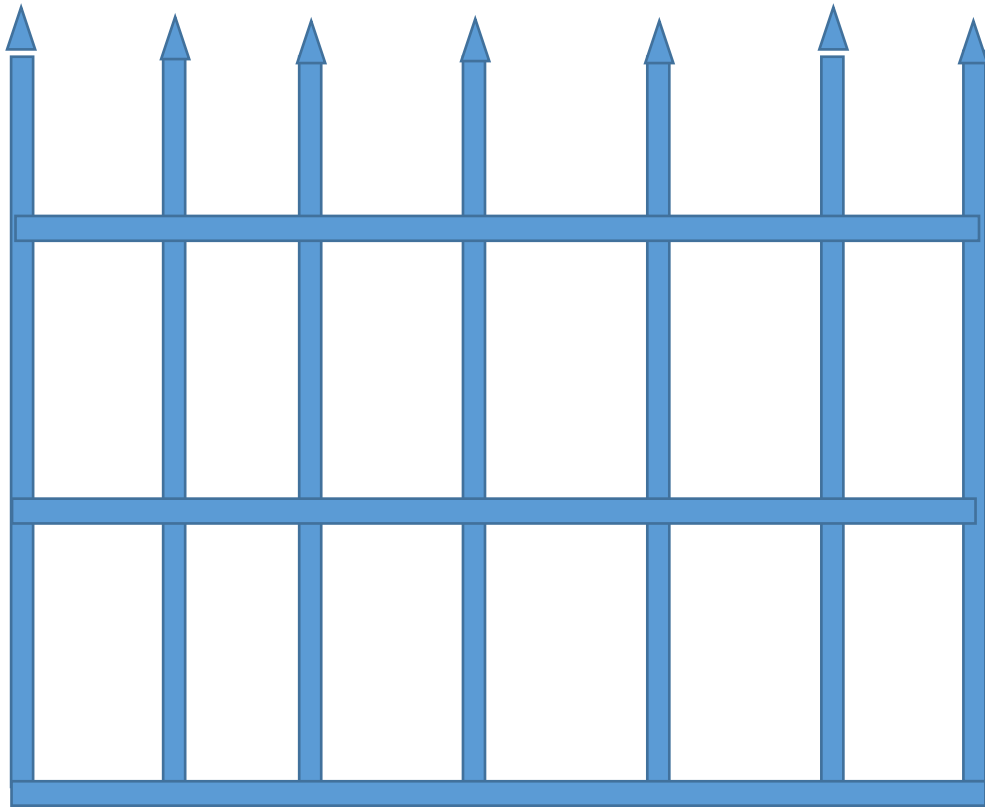


Figure 5.1: MTRD Rear Driveway layout in metres

5.2.2 Borehole Fence metal Grill sketch and description



**Notes :**

- a. Fence size - 6.6m by 4.0m
- b. Material: Mild steel
- c. Door open type: hinged
- d. Surface finish: polished and painted blue coat
- e. Mounting type: wall mounted
- f. Height: 1.65 m
- g. Width: 2.45 m
- h. Spikes: the fence and gate should have spikes at the tip
- i. Length of spikes: 0.15 m
- j. Locking: Have provision for locking with a padlock
- k. Spacing between vertical bars: 0.15 m
- l. Spacing between horizontal bars: 0.3 m

**5.3 Bill of Quantities**

**5.3.1 PREAMBLE TO BILLS OF QUANTITIES**

1. The Bills of Quantities form part of the Contract Documents and are to be read in conjunction with the Instructions to Tenderers and these Documents.
2. The prices and rates to be inserted in the Bills of Quantities are to be the full, inclusive value of the work described under the several items including all costs and expenses which may be required in and for the execution of the work

described and for the Contractor's overheads and profits. The rates shall be VAT exclusive but include all other taxes, levies and fees applicable.

3. Each item in the Bills of Quantities contains only a brief description of the required work. Fuller details and descriptions of the work to be done, the materials to be used, the standards of workmanship, methods of measurement and payment are to be found in the various sections of the Specifications and on the Drawings.
4. The Quantities set out in the Bills of Quantities are estimated and represent substantially the work to be carried out. There is no guarantee that the Contractor will be required to carry out all the quantity of work indicated under any one particular item or group of items in the Bills of Quantities. The basis of payment shall be the Contractor's rates and the quantities of measured work done in fulfilment of the obligations under the Contract.
5. Work shall be carried out under Day-works items only at the direction, and with the approval, of the Engineer. The Contractor shall enter rates in the Day-works Schedule of Rates, which shall reflect the realistic costs, including overheads and profit, of each item. If, in the opinion of the Engineer, a rate is unreasonably high or low, the Contractor may be required to amend the rate to the satisfaction of the Engineer.

### 5.3.2 Bills of Quantities

Item	Description	Unit	Quantity	Rate, KShs	Amount, KShs.
<b>I. MTRD Rear Driveway Improvement</b>					
<b>Bill no. 2: Construction Quality control testing</b>					
A.	Allow a prime cost sum of KShs. 500,000 for the testing of Materials as directed by engineer	PC sum			
B.	E.O. item 1.01 for contractor's overheads and profits.	%			
<b>Bill no. 2 total carried forward to summary</b>					
<b>Bill No. 4: Removal of top soil</b>					
A.	Site clearance including removal of all grass, timber and other vegetation and transport to spoil. <i>Note: No separate payments shall be made for hauling to spoil unsuitable excavation materials and the cost of such shall be included in the rates and prices.</i>	M <sup>3</sup>	82		
<b>Bill no. 4 Total carried forward to summary</b>					
<b>Bill no. 8: Minor drainage structures</b>					

A.	Allow for unblocking of all storm water and waste water drains	m	100		
B.	Fabricate and install grating manhole covers to match existing. Weld 2 pcs of 20 mm thick x 400 mm long chain to the cover and frame at the bottom side.	No	27		
C.	Weld 2 pcs of 20 mm thick x 400 mm long chain to the cover and frame of the existing grating covers at the bottom side.	No	4		
D.	Fabricate and install 65x51 mm RC manhole cover complete with 40x40x3 mm thick angle line framing and R8 handles fixed to the cover to allow for removal	No	5		
<b>Bill no. 8: Total carried forward to summary</b>					
<b>Bill No. 10: Gravel Course</b>					
A.	Fill in soft material as quarry waste or gravel to achieve approved levels. <i>Note: No separate payments shall be made for gravel for blinding and the cost of such shall be included in the rates and prices</i>	m <sup>3</sup>	64		
B.	Extra over item 3.01 for compaction of the top layer to 95% MDD (AASHTO T99)	m <sup>3</sup>	64		
<b>Bill no. 10 total carried forward to summary</b>					
<b>Bill No. 15: Prime and tack coat.</b>					
A	Prepare surface of driveway, provide, heat and spray mc 30 cutback bitumen prime coat at 0.8-1.2 l/m <sup>2</sup> .	Litre	800		
B	Provide & spray K1-60 as tack coat on driveway, rate of 0.5-0.8 litre/m <sup>2</sup>	Litre	4,090		
<b>Bill no. 15 total carried forward to summary</b>					
<b>Bill No. 16: Asphalt concrete for surfacing</b>					
A.	Provide and lay 35 mm asphalt concrete type II (0/10) as directed by the engineer at bitumen content of 5.5 - 7.5%.	m <sup>3</sup>	155		
<b>Bill no. 16 total carried forward to summary</b>					
<b>Bill No. 20: Driveway marking and installation of standard sign</b>					

A.	Provide, deliver, paint and mark the newly paved area as directed by the project engineer, with white reflectionized thermoplastic paint from an approved supplier.	M <sup>2</sup>	78		
B.	By use of an approved foot print stencil, mark the safe pedestrian walkway on either side of the driveway	No	45		
C	Supply and install standard informatory signs as indicated in the specifications, with reflectorized colours, the reflective sheeting shall be applied by mechanical vacuum-heat application method to the approval of the project manager.	No	7		
<b>Bill no. 20: Total carried forward to summary</b>					
<b>II. Fence to borehole</b>					
<b>Bill No. 20.1: Installation of fence and gate Borehole area</b>					
A	Supply and install a mild steel grill as per sketch with 2 coats of zinc bromate primer and 2 coats of final paint (sky blue)	Item	1		
B	Supply and fix reinforced concrete fencing poles 1m below ground and 3m above ground	NO.	21		
C	Supply and fasten galvanized barbed wire around on the concrete poles 3 levels at a spacing of 0.3m per level from above the ground	NO.	1		
D.	Supply and fasten a triple-twist galvanized chain link wire of mesh gauge 11 and mesh length 50mm around the area on the concrete poles	No.	2		
E	Fabricate and fix a lockable metal box cover over the meter with coating like the grill above	Item	1		
G.	Supply a lock for the cover	Item	1		
<b>Bill no. 20.1: Total carried forward to summary</b>					
<b>III. Planting of Trees and flowers</b>					
<b>Bill No. 20.2: Planting of Trees and flowers</b>					
A	Land preparation and including provision of manure	Ha	0.5		



B	Provide and plant Golden palm as directed.	No.	4		
C	Provide and plant Golden Shower as directed.	No.	20		
D.	Provide and plant Crotons, Ornamental Cyprus and/or grafted rose as directed.	No.	8		
E	Provide and plant Creepers/ Covers as directed.	No.	40		
F	Provide and plant Painting brushes as directed.	No.	12		
G.	Provide and plant Duranta (Green and yellow) as directed.	No.	25		
H.	Provide and plant Assorted trees as directed	No.	30		
I	Undertake fumigation on the internally and externally landscaped area.	LS	1		
J.	Provide and plant Assorted roses (assorted colours) as directed.	No.	15		
K	Supply and plant golden duranta as directed.	No.	25		
<b>Bill no. 20.2: total carried forward to summary</b>					
<b>IV. Repair of Masonry Perimeter Fence</b>					
<b>Bill No. 20.3: Repair of Masonry Perimeter Fence</b>					
A.	Demolish 35 m of existing 200 mm thick masonry wall carefully and recover masonry blocks for reuse	Lm	35		
B.	Excavate for starter column bases	M3	50		
C.	Trench excavation for strip foundation	M3	210		
D.	Cart away surplus materials fill up lower grounds, spread evenly and compact as directed	M3	56		
E	Construct 50 mm thick in-situ vibrated plain concrete class 15/20	M3	7.66		
F	In-situ vibrated Reinforced concrete class 25/20 for columns, strip foundation, starter column and Ground beam	M3	3.83		
G.	Install Ribbed steel bars reinforcement measured net including cutting bending labelling, hooking, tying wire, spacers hoisting and supporting all in	Kg	208.0		

	position as prescribed: 10 mm diameter (column bases)				
K	Install Ribbed steel bars reinforcement measured net including cutting bending labelling, hooking, tying wire, spacers hoisting and supporting all in position as prescribed: A142 BRC Mesh (strip foundation)	Kg	165		
L	Install Ribbed steel bars reinforcement measured net including cutting bending labelling, hooking, tying wire, spacers hoisting and supporting all in position as prescribed: 12 mm diameter (Ground Beam)	Pcs	30		
M	Install Ribbed steel bars reinforcement measured net including cutting bending labelling, hooking, tying wire, spacers hoisting and supporting all in position as prescribed: 10 mm diameter (starter and main column)	Kg	282.5		
N.	Install Ribbed steel bars reinforcement measured net including cutting bending labelling, hooking, tying wire, spacers hoisting and supporting all in position as prescribed: 8 mm diameter bidding ( Links)	Kg	535.5		
P	Foundation falling: Supply and construct 200 mm Thick rough chisel dressed stone walling bedded and joined in cement and sand (1:3) mortar and reinforced with and including 20wgx25 mm wide hoop in every alternate course	Sm	100		
Q.	Main Wall: Supply and construct 200 mm Thick machine cut stone walling (minimum strength 7N/mm <sup>2</sup> ) bedded and jointed in cement and sand (1:3) mortar and reinforced with and including 20 swg x 25 wide hoop iron in every alternate course	Sm	210		
R	Finish with neat recessed horizontal joint in slurry mortar (1:1)	Sm	210		
S.	350x250x75 bevelled concrete coping stone including anti capillary grooves all around	Pcs	200		

T.	Construct drainage holes size 100 mm diameter in PVC	No.	21		
<b>Bill no. 20.3: total carried forward to summary</b>					
<b>Grand Total</b>					

### 5.3.3 Summary of Bill of Quantities

Description	Amount, KShs.
Bill no. 2: Construction Quality control testing	
Bill No. 4: Removal of top soil	
Bill no. 8: Minor drainage structures	
Bill No. 10: Gravel Course	
Bill No. 15: Prime and tack coat.	
Bill No. 16: Asphalt concrete for surfacing	
Bill No. 20: Driveway marking and installation of standard sign	
Bill No. 20.1: Installation of fence and gate Borehole area	
Bill No. 20.2: Planting of Trees and flowers	
Bill No. 20.3: Repair of Masonry Perimeter Fence	
Subtotal 1 (a)	
Add 5 % Contingency (b)	
Subtotal 2 (c)=(a)+(b)	
Add 16 % VAT (d)	
Total (e)=(c)+(d) to Form of tender	