



## **KENYA URBAN ROADS AUTHORITY**

*Efficient and Safe Urban Roads*

**PERFORMANCE BASED ROUTINE MAINTENANCE OF VARIOUS ROADS IN NAIROBI 2011-2012**

### **TENDER NO. KURA/187/2011-2012**

#### **TENDER DOCUMENT:**

FORM OF TENDER  
FORM OF TENDER SECURITY  
INSTRUCTIONS TO BIDDERS  
TENDER DATA SHEET  
CONDITIONS OF CONTRACT  
SCHEDULES OF SUPPLEMENTARY INFORMATION  
FORM OF AGREEMENT  
FORM OF PERFORMANCE SECURITY  
SPECIAL SPECIFICATIONS  
PERFORMANCE SPECIFICATIONS

**JANUARY, 2012**

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P.O.BOX 41727-00100  
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Issued on: 9<sup>th</sup> January 2012

for

Procurement of Road Maintenance Works

under

Performance Based Term Contract Tender No. **KURA/187/2011-2012**

for the following roads in Nairobi :

	<b>Road</b>	<b>Length (Km)</b>
1	Fair Acres	2.70
2	Bunyala Road	1.00
3	Karen plains	2.10
4	Commercial Street	0.90
5	Naivasha Road	8.50
6	Factory Street	1.30
7	Kiambu Road	5.30
8	Processional way	1.60
9	Komarock Road (Kangundo - Mowlem)	2.40

Procurement Entity: KENYA URBAN ROADS AUTHORITY

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## **Abbreviations and Acronyms**

CIF	Cost, Insurance and Freight
DRB	Dispute Review Board
DRE	Dispute Review Expert
GCC	General Conditions of Contract
ISO	International Organization for Standardization
ITT	Introduction to Tenderers
JVA	Joint Venture or Association
M&T	Mechanical and Transport Department, Ministry of Roads
ICB	International Competitive Tendering
LCB	National Competitive Tendering
PCC	Particular Conditions of Contract
PE	Procurement Entity
STD	Standard Tender Document
SCC	Special Conditions of Contract
TDS	Tender Data

## Important Notice to Tenderers

- 1) This is a Tendering Document that has been prepared for the Procurement of Works under Performance Based Road Maintenance type of Contract. The contract covers an array of activities needed to achieve and maintain a Specified Service Level for road users, including many activities related to the **Management and Maintenance** (including Routine maintenance, spot improvement, emergency works and Periodic Maintenance) of the road network under contract.
- 2) This Standard Tender Document (STD) for procurement of Works has been prepared for use by Procurement Entities in Kenya in the procurement of road maintenance works through International Competitive Tendering (ICB) and National Competitive **Bidding** (NCB) procedures.
- 3) In the Performance Based Contract (PBC), contractors compete among each, other during the tendering process, by essentially proposing fixed lump-sum prices for bringing the road to required service level and then maintaining it at that level for a specified period. Payments made to the contractors are not based on quantities of works measured by unit prices for works “inputs” or physical works, but on measured ‘outputs’ reflecting the specified and target conditions of the roads under contract. This is expressed through ‘**Service Levels**’, i.e., the Rehabilitation of the road to pre-defined standards (as required by the tendering documents), the maintenance service of ensuring specific Service Levels on the roads under contract, and specific improvements (as required by the tendering documents). All this represents outputs or outcomes. A monthly lump-sum remuneration paid to the Contractor will cover all physical and non-physical maintenance services provided by the Contractor, except for unforeseen emergency works which are remunerated separately as opposed to **traditional road construction and maintenance contracts, where** the Contractor is responsible for the execution of works which are normally defined by the Procurement Entity. The Contractor is paid on the basis of unit prices for different quantities of measured work items, i.e. a contract based on “inputs” to the works.

For example, the contractor is not paid for removing 2 cubic meters of silt from a culvert (his actual work input) in a certain month, but for keeping the culvert clean and free of silt at all times (the output of his efforts). This means that in some months the Contractor will be paid the agreed standard monthly lump sum amount even though much work has not been done. In other words, it is possible that during some months, the contractor will have to carry out a rather large amount of physical works in order to comply with the required Service Levels and very little work during other months.

The agreed monthly payment for maintenance works and services will be made to the Contractor if he has complied during the month for which the payment is to be made with the agreed Service Levels on the road network under contract. Together with his monthly invoice, the Contractor will report the result of his own evaluation of compliance with the required Service Levels, based on his own monitoring system which is mandatory. His statement will then be verified by the Procurement Entity or his representative (supervision consultant) through inspections. If the Service Levels are not met, payments are reduced, based on a schedule given in the contract. Payments may even be suspended, and the contract cancelled, if the contractor fails during an extended period to achieve specified minimum thresholds values of Service Levels. **This contract describes the formulas used to calculate payment reduction and potential contract suspensions.**

- 4) The unit rate based term contract on the hand include:
  - a) Carrying out **Rehabilitation Works** to bring the Road up to pre-defined standards.
  - b) **Improvement Works** specified by the Procurement Entity aiming at adding new characteristics to the Roads in response to new traffic, safety or other conditions.
  - c) **Emergency Works** needed to reinstate the Roads after damage has occurred as a result of natural phenomena with imponderable consequences under the conditions defined in the contract.

- d) The Rehabilitation and Improvement Works which have been explicitly specified by the Procurement Entity in the contract are quoted on the basis of measurable output quantities and paid as performed. In order to be entitled to the monthly payment for maintenance services, the Contractor must ensure that the roads under contract comply with the Service Levels which have been specified in the tendering document.
- 5) When improvement, rehabilitation or emergency works are required, a well-designed bill of quantities defining specific outputs for tenderers to price and, later on, allow measurement and payment of the Contractor is provided. Emergency works, although impossible to quantify in advance, will occasionally be necessary. To allow tenderers to offer prices for Emergency Works, a unit price bill of quantities (similar for civil works under unit prices) / shall be prepared for tenderers to price for tender evaluation purposes. Later on, these unit prices and real measured volumes of Emergency Works executed will be used for payments.
- 6) Another major difference is that the Contractor is responsible for deciding on the works necessary to reach the required Service Levels, and the durability and performance of the roads over a longer period. Although the design of the works and services to be carried out is under the responsibility of the Contractor, a good preparatory engineering work is required to be prepared by the Procurement Entity. It is necessary to prepare comprehensive information on the actual condition of the roads covered by the contract.
- 7) Minimum road conditions and Service Levels are defined through service-level and performance measures, and these are used under the SPBC to define and measure the desired performance of the Contractor. In the SPBC, the defined performance measures are thus the accepted minimum thresholds for the quality levels of service on the roads for which the Contractor is responsible.
- 8) The performance criteria will cover all aspects of the contract and take account of the fact that different sub-areas within the contract area might require different measures of Service Levels. Criteria has been defined at three different measures of levels (although simpler contracts will not use all of the criteria identified below)
- (a) **Road User Service and Comfort** measures,
  - (b) **Road Durability** measures,
  - (c) **Management Performance Measures,**
- 9) A fundamental feature of the PBC is that any type of firm or business venture having the necessary technical, managerial and financial capacity to fulfill the contract is eligible and not necessarily the traditional works contractor. In any case, the contractor is responsible for designing and carrying out the works, services and actions he believes are necessary in order to achieve and maintain the Service Levels stated in the contract. The Service Levels are defined from a road user's perspective and may include factors such as average travel speeds, riding comfort, safety features, etc. If the Service Level is not achieved in any given month, the payment for that month may be reduced or even suspended.
- 10) Under the Performance based Contract (PBC), the Contractor has a strong financial incentive to be both efficient and effective whenever he undertakes work. In order to maximize profits, he is able to reduce his activities to the smallest possible volume of intelligently designed interventions, which nevertheless ensure that pre-defined indicators of Service Level are achieved and maintained over time. This type of contract makes it necessary for the Contractor to have a good management capacity. Here, "management" means the capability to define, optimize and carry out on a timely basis the physical interventions which are needed in the short, medium and long term. This is done in order to guarantee that the roads remain above the agreed Service Levels. In other words, within the contract limitations and those required to comply with local legislation, technical and performance specifications and environmental and social regulations, the Contractor is entitled to independently define: (i) what to do, (ii) where to do it, (iii) how to do it, and (iv) when to do it. The role of the Road Administration and of the Procurement Entity is to enforce the contract by verifying compliance with the agreed Service Levels and with all applicable legislation and regulations.

- 11) Maintaining a road network includes both **routine** and **periodic** tasks. Routine maintenance consists of many different tasks frequently necessary to maintain the function of the road (such as pothole repairs, cleaning of drainage, sealing of cracks, cutting of vegetation, road marking, etc.). Periodic maintenance consists of predictable and more costly measures of a less frequent nature designed to avoid road degradation (such as grading, drainage work, resurfacing, asphaltic concrete overlays, etc.). Intelligent management, the timeliness of interventions and the adequacy of technical solutions are critical.

When Rehabilitation Works and Improvement Works are not specifically required in the tendering documents, it is expected that in order to comply with the contract, the Contractor will most likely have to carry out different types of works, including some small initial rehabilitation and improvements, routine maintenance activities and periodic maintenance works. The definition of the exact nature of the works, their timing, their costing and their implementation is left to the judgment of the Contractor. This means that his capacity must be above the usual capacity of a traditional civil works contractor. In fact, an essential attribute is the capacity to manage roads, while the actual physical execution may either be carried out by the Contractor himself, or by different specialized firms participating in a Joint Venture with the main contractor, or under subcontracts. Joint Ventures may include Engineering firms and medium, small and even micro-enterprises.

Tenderers will present their financial offer as appropriate for:

- the Performance Based **Maintenance Services** in the form of the amount of the monthly lump-sum payment demanded by the tenderer according to the conditions of contract (this will be a monthly amount applicable throughout the duration of the contract);
  - the **Rehabilitation Works** (if so required in the Tender Data Sheet), in the form of a lump-sum amount, while indicating the quantities of measurable outputs to be executed in order that the road achieves the performance standards specified in the tendering documents. Payments will be made in accordance with the progress in the execution of those measured outputs;
  - the **Improvement Works** (if so required and for the improvements indicated in the tendering documents) in the form of unit prices for outputs of each type of improvement works; payments for improvements will be made in accordance with quoted unit prices for those outputs; and
  - Unit prices for **Emergency Works** in the form of a traditional bill of quantities. Payments will be made for each emergency on a case-by-case basis, in the amount of a lump-sum value estimated by the Contractor and approved by the Procurement Entity, on the basis of the estimated quantities and on the quoted unit process.
- 12) Another important aspect in the Performance type of contract is for the contractor and Procurement Entity to enter into a long term relationship whereby the contractor takes over more responsibility for managing the condition of the road and is rewarded by a longer term contract than is traditional; sometimes several years.
- 13) In case of any conflict between the provisions outlined in this standard tender document and The Public Procurement and Disposal Act, 2005 and Regulations 2006, the latter shall prevail.



**KENYA URBAN ROADS AUTHORITY**  
*Efficient and safe urban roads*

**IKM PLACE, Bishops Road, Tel: 254-020-8013844**  
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**P.O. Box 41727-00100, GPO, NAIROBI**

**Procurement No KURA/187/2011-2012**  
**for**

**Performance Based Routine Maintenance of Various Roads in Nairobi 2011-2012**

**Invitation for Tenders**

1. This Invitation for Tenders follows the General Procurement Notice for this Project which appeared in *insert media* Issue no. *insert the issue No* dated *insert dates of issue of GPN*.
2. The Government of Kenya has set aside funds for use by the Kenya Urban Roads Authority during the financial year 2011/2012. It is intended that part of the proceeds of the fund will be used to cover eligible payments under the contract for the **Performance Based Routine Maintenance of Various Roads in Nairobi 2011-2012**.
3. The Kenya Urban Roads Authority now invites sealed tenders from eligible contractors registered in Class **G of the Ministry of Roads** for carrying out the Performance Based Routine Maintenance of Various Roads in Nairobi 2011-2012.
4. Tendering will be conducted through Open Tendering procedures specified in The Public Procurement and Disposal Act 2005 and The Public Procurement and Disposal Regulations 2006.
5. Interested eligible Tenderers may obtain further information from and inspect the Tendering Documents at the office of the procurement unit at the Nairobi Region Office on Machakos Road in Industrial Area, Nairobi, Kenya **during normal working hours**.
6. Interested Tenderers may obtain a complete set of Tendering Document(s) in English from the address given under paragraph 5 above and upon payment of a non-refundable fee of **Five Thousand Shillings (Kshs 5,000)** in form of Banker's Cheque, payable to the Authority.  
  
The Tendering Documents may also be downloaded from [www.kura.go.ke](http://www.kura.go.ke) provided that an amount of **Five Thousand Shillings (Kshs 5,000)** is paid before closing/opening of the tender.
7. All Tenders must be accompanied by a Tender Security in form of a bank guarantee amounting to **One Hundred Thousand Shillings (Kshs 100,000)**.
8. The tenderer shall prepare Two (2) copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. Completed Tender Documents enclosed in separate plain sealed envelopes and clearly marked with the respective Tender Number and Tender Name should be addressed to:

**The Director General,**  
**Kenya Urban Roads Authority,**  
**C/O Regional Manager - Nairobi Region**  
**P.O. Box 17956 -00500**  
**Tel: 254-020-2625478**  
**NAIROBI, KENYA**

and deposited in the Tender Box located at the Nairobi Region Office on Machakos Road in Industrial Area on or before **16<sup>th</sup> February 2012**.

Tenders will be opened immediately thereafter in the boardroom in the presence of tenderers or their representatives who choose to attend. Late bids will not be accepted.

## Manager Procurement

### Summary

A brief description of these documents is given below.

#### Invitation for Bids Form

#### PART 1 – TENDERING PROCEDURES

**Section I: Instructions to Tenderers (ITT)**

This Section provides relevant information to help Tenderers prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of Contracts. **Section I contains provisions that are to be used without modification.**

**Section II: Tender Data Sheet (TDS)**

This Section consists of provisions that are specific to each procurement and that supplement the information or requirements included in Section I, Instructions to Tenderers (Appendix to form of bid).

**Section III: Evaluation and Qualification Criteria**

This Section contains the criteria to determine the lowest evaluated tender and to ascertain the continued qualification of the Tenderer to perform the contract.

**Section IV: Schedules of Supplementary Information**

This Section contains the forms which are to be completed by the Tenderer and submitted as part of his Bid.

**Section V: Technical Evaluation Criteria**

This Section contains the Tenderer's technical proposal with in terms of his corporate capability and previous contract records. This section also contains the technical scores on documents and proposals submitted by the Tenderer as part of his Bid.

#### PART 2 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

**Section VI: General Conditions of Contract (GCC)**

This Section contains the general clauses to be applied in the contract.

**Section VII: Particular Conditions of Contract (PCC)**

This Section consists of **Part A, Contract Data**, which contains data, and **Part B, Specific Provisions**, which contains clauses specific to each contract. The contents of this Section modify or supplement the General Conditions of Contract and shall be prepared by the Procurement Entity.

**Section VIII: Standard Forms**

This Section contains forms which, once completed, will form part of the Contract. The forms for **Performance Security** and **Advance Payment Security**, when required, shall only be completed by the successful Tenderer after contract award.

#### PART 3 – SPECIFICATION

This Section contains the Specification, the Drawings, and supplementary information that describe the Services and Works to be procured.

**Section IX: Performance Specifications (*for Performance-based Road Contract*)**

**Section X: Standard Specification**

**Book of Drawings**

This Section contains the Drawings, and supplementary information that describe the Services and Works to be procured

**Bills of Quantities**

This Section contains the description of quantity of items of work and the Services carried out by the contractor.

## Form of Tender

Date:

Tender Number: **KURA/187/2011-2012**

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

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Tendering Document, including Addenda issued in accordance with Instructions to Tenderers (ITT) 8;

(b) We offer to execute in conformity with the Tendering Document the following Works: \_\_\_\_\_;

(c) Our tender price is composed of the following components:

Description	Amount (in numbers)
(a) Routine Maintenance Services in an amount of _____ <i>Kshs</i> _____ <i>(in words)</i> .	
<b>B. TOTAL</b>	

(d) Our tender shall be valid for a period of \_\_\_\_\_ days from the date fixed for the tender submission deadline in accordance with the Tendering Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(f) If our tender is accepted, we commit to obtain a performance security in accordance with the Tendering Document;

(g) We, including any subcontractors or suppliers for any part of the contract, are eligible in accordance with ITT-4.2;

(h) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITT-4.3;

(i) We are not participating, as a Tenderer or as a subcontractor, in more than one tender in this tendering process in accordance with ITT-4.3;

(j) We, including any of our subcontractors or suppliers for any part of the contract, have not been declared ineligible by the Kenyan laws or official regulations.

(k) We are not a government owned entity;

(m) We understand that this bid, together with your written acceptance thereof included in your notification of award, **shall not** constitute a binding contract between us, until a formal contract is prepared and executed; and

(n) We understand that you are not bound to accept the lowest evaluated tender or any other tender that you may receive.

(o) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in corrupt practices.

Name: \_\_\_\_\_ in the capacity of \_\_\_\_\_

Signed: \_\_\_\_\_

Duly authorized to sign the tender for and on behalf of:

\_\_\_\_\_

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

<sup>6</sup>Tenderer to use as appropriate

## FORM OF TENDER SECURITY

(Note: The tenderer shall complete only this form of bank guarantee. No other Form of Tender Bond or any other forms of security will be accepted. Tenderers who fail to comply with this requirement will be disqualified).

WHEREAS [*Name of tenderer*].  
.....  
.....  
(Hereinafter called “the Tenderer”) has submitted his tender dated .....  
for the.....  
..... hereinafter called “the Bid”

KNOW ALL MEN by these presents that we [*Name of Bank*]  
.....  
.....

Of KENYA.....  
having our registered offices at .....  
(Hereinafter called the Bank) are bound unto **Kenya Urban Roads Authority**, (hereinafter called “the Procurement Entity”) in the sum of

(in words Kshs).....  
.....

(In figures Kshs).....

for which payment will be well and truly made to the said Procurement Entity the Bank binds itself, its successors and assigns by these presents.

Signed for the said Bank this ..... day of .....

THE CONDITIONS of this obligation are:

1. If the tenderer withdraws his Tender during the period of tender validity specified by the Tenderer Onthe Tender Form; or
2. If the Tenderer refuses to accept the correction of errors in his bid; or
3. If the Tenderer having been notified of the acceptance of his tender by the Procurement Entity during the period of Tender Validity
  - (i) Fails or refuses to execute the Form of Agreement in accordance with the Instructions to Tenderers when required or
  - (ii) Fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers.

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

This guarantee will remain in force up to and including **thirty (30) days** after the date of expiration of the tender validity, as stated in the Instructions to Tenderers.

At the request of the Procurement Entity the Tender validity period may be extended by mutual agreement between the Procurement Entity and the Tenderer and we undertake to extend the validity of this surety accordingly without you having to inform us of such an extension of the Tender validity period if within this period the Tenderer has been notified of the acceptance of his Bid. This Surety shall remain valid up to the time the Contract Agreement has been executed.

SIGNATURE AND SEAL OF THE BANK.....  
.....

NAME OF THE SIGNATORY.....DATE.....

TITLE OF THE SIGNATORY.....

NAME OF THE WITNESS.....

SIGNATURE OF WITNESS..... DATE.....

ADDRESS OF THE WITNESS .....

## PART 1 – Tendering Procedures

## Section I. Instructions to Tenderers

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**A. General**

- |          |  |  |
|----------|--|--|
| <b>1</b> | <b>Scope of Bid</b>                      | <p><b>1.1</b> In connection with the Invitation for Bids indicated in the Tender Data Sheet (TDS), the Procurement Entity, as indicated in the TDS, issues these Tendering Documents for the procurement of Works and Services as listed below for the award of a <b>Performance-Based Road Maintenance Contract (PRMC)</b>. The Works and Services under the PRMC will cover the Roads <b>indicated in the TDS</b> and will consist of:</p> <p>(a) Maintenance Services or “Services” consisting of all interventions on the Roads which are to be carried out by the contractor in order to achieve and keep the Road performance standards defined by the Service Level included in the Specifications in Section VI of these Tendering Documents, and all activities related to the management and evaluation of the road network under contract.</p> <p><b>1.2</b> Throughout these Tendering Documents:</p> <p>(a) the term “in writing” means communicated in written form and delivered against receipt;</p> <p>(b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and</p> <p>(c) “day” means calendar day</p> <p>(d) “Service Levels” means predetermined target conditions of the roads under contract or what the roads are supposed to look like’</p> <p>(e) Performance Based Contract’ means contract based on quantities of works measured by unit prices for works inputs</p> <p>(f) ”Off Carriage works” are Routine maintenance consists of many different tasks frequently necessary to maintain the function of the road (such as, cleaning of culverts, ditch cleaning, cutting of vegetation, etc.)</p> <p>(g) “On carriageway works” means Periodic maintenance consists of predictable and more costly measures of a less frequent nature designed to avoid road degradation (such as pothole repairs, grading, regravelling, light grading, spot gravelling, , resurfacing, asphaltic concrete overlays, etc.).</p> <p><b>1.3</b> The project name will be as specified in the TDS</p> |
| <b>2</b> | <b>Source of Funds</b>                   | <p><b>2.1</b> The Government of Kenya has set aside funds for the use of the Procuring Entity (Kenya Urban Roads Authority) <b>in the period April 2012 to June 2013</b>. 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 <b>Tender Data Sheet</b>.</p>  |
| <b>3</b> | <b>Definitions<br/>Corrupt Practices</b> | <p><b>3.1</b> Highest standard of ethics will be observed during the procurement and execution of these contracts. In pursuance of this policy, the Procurement Entity:</p> <p>(a) defines corrupt practices, for the purposes of this provision, the terms set forth below as follows::</p> <p>(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;</p> <p>(ii) “fraudulent or collusive 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</p>  |

- other benefit or to avoid an obligation;
- The Procurement Entity**      **3.2**      The Procurement Entity is Kenya Urban Roads Authority represented by the Director General
- The Engineer**      **3.3.**      The Engineer is the Project Manager appointed by the Procurement Entity to be responsible for the overall administration of the Contract and the supervision of the works and services to be performed by the Contractor. In other words, he fulfills a role similar to that of the Engineer in traditional contracts. He may delegate the actual day-to-day superintendence of the contract to one of his staff, to be named in writing to the Contractor. The Engineer or his delegated representative may be a supervision consultant
- 4. Eligible Tenderers**      **4.1**      A Tenderer may be a natural person or private entity subject to ITT 4.6—or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in the form of a joint venture or association (JVA). In the case of a joint venture or association:
- (a) unless otherwise specified in the TDS, all partners shall be jointly and severally liable, and
  - (b) the JVA shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JVA during the tendering process and, in the event the JVA is awarded the Contract, during contract execution.
- 4.2**      A Tenderer shall be deemed to have the nationality of a country if the Tenderer is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related Services.
- 4.3**      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 :
- a) they have controlling partners in common; or
  - b) they receive or have received any direct or indirect subsidy from any of them; or
  - c) they have the same legal representative for purposes of this bid; or
  - d) they 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 Purchaser regarding this tendering process; or
- tenderer participates in more than one tender in this tendering process. Participation by a Tenderer in more than one Tender will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
- e) a Tenderer participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid;
  - f) a Tenderer was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Procurement Entity as Engineer

for the contract.

- 4.4 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procurement Entity, as the Procurement Entity shall reasonably request
- 4.5 Government-owned entities in the Procurement Entity’s country shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law. Also, they shall not be dependent agencies of the Procurement Entity.
- 4.6 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procurement Entity, as the Procurement Entity shall reasonably request.
- 4.7 This tendering is open **to all eligible Tenderers under the specified registration class**, unless stated otherwise in the **TDS**.

**5 Qualification of the Tenderer**

- 5.1 Tenderers shall as part of their bid:
  - (a) Submit a written power of attorney authorizing the signatory of the tender to commit the tenderer; and
  - (b) Update any information submitted with their bids and in any case the information indicated in the schedules changes. The tenderer shall continue to meet the minimum threshold criteria set out in the tender documents.
- 5.2 As a minimum, tenderers shall update the following:
  - a) Demonstrate availability of working capital and other financial resources
  - b) financial predictions for the current year and the two subsequent years, including the effect of known commitments
  - c) Work commitments
  - d) Current litigation information; and
  - e) availability of critical equipment information:
- 5.3 Tenderers shall also submit proposals of work methods and schedule in sufficient detail to demonstrate the adequacy of the tenderer’s proposals to meet the technical specifications and the completion time referred to in **TDS**

**B. Contents of Tendering Document**

**6 Sections of Tendering Document**

- 6.1 The Tendering Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT 8.
  - PART 1 Tendering Procedures**
    - Section I. Instructions to Tenderers (ITT)
    - Section II. Tender Data Sheet (TDS)
    - Section III. Evaluation and Qualification Criteria
    - Section IV. Schedule of Supplementary Information

- Section V. Technical Evaluation Criteria

**PART 2 Conditions of Contract and Standard Forms**

- Section VI. General Conditions of Contract (GCC)
- Section VII. Particular Conditions of Contract (PCC)
- Section VII. Standard Contract Forms

**PART 3 Specifications**

- Section IX. Performance Specifications
- Section X. Standard Specifications

6.2 The Procurement Entity is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from the source stated by the Procurement Entity in the Invitation for Bids.

6.3 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tendering Document. Failure to furnish all information or documentation required by the Tendering Documents may result in the rejection of the bid

**7 Clarification of Tendering Document, Site Visit, Pre-Tender Meeting**

7.1 A prospective Tenderer requiring any clarification of the Tendering Document shall contact the Procurement Entity in writing at the Procurement Entity’s address **indicated in the TDS** or raise his enquiries during the pre-tender meeting if provided for in accordance with ITT 7.4. The Procurement Entity will respond in writing to any request for clarification, provided that such request is received no later than **Ten (10)** days prior to the deadline for submission of bids. The Procurement Entity shall forward copies of its response to all Tenderers who have acquired the Tendering Document in accordance with ITT 6.2, including a description of the inquiry but without identifying its source. Should the Procurement Entity deem it necessary to amend the Tendering Document as a result of a request for clarification, it shall do so following the procedure under ITT 8 and ITT 22.2

7.2 The Tenderer is required to visit and examine the Site of the Roads and its surroundings and obtain for itself and on its own responsibility 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.

7.3 The Tenderer and any of its personnel or agents will be granted permission by the Procurement Entity to visit the Roads and surrounding lands for the purpose of such visit, but only upon the express condition that the Tenderer, its personnel, and agents will release and indemnify the Procurement Entity and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection

7.4 The Tenderer’s designated representative is required to attend a pre-tender meeting organized by the Procurement entity. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. **Failure to attend the organized site meeting shall lead to disqualification.**

7.5 The Tenderer is requested, as far as possible, to submit any questions in writing, to reach the Procurement Entity not later than **three days** before the meeting.

7.6 Minutes of the pre-tender meeting, including the text of the questions

raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tendering Documents in accordance with ITT 6.2. Any modification to the Tendering Documents that may become necessary as a result of the pre-tender meeting shall be made by the Procurement Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-tender meeting.

**7.7 Nonattendance at the pre-tender meeting shall be a cause for disqualification of a Tenderer.**

**8 Amendment of Tendering Document**

**8.1** At any time prior to the deadline for submission of bids, the Procurement Entity may amend the Tendering Documents by issuing addenda.

**8.2** Any addendum issued shall be part of the Tendering Documents and shall be communicated in writing to all who have obtained the Tendering Document from the Procurement Entity in accordance with ITT 6.2.

**8.3** To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their bids, the Procurement Entity may, at its discretion, extend the deadline for the submission of bids, pursuant to ITT 22.2

**C. Preparation of Bids**

**9 Cost of Tendering**

**9.1** The Tenderer shall bear all costs associated with the preparation and submission of its Bid, and the Procurement Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

**10 Language of Bid**

**10.1** The Bid, as well as all correspondence and documents relating to the tender exchanged by the Tenderer and the Procurement Entity, shall be written in the language **specified in the TDS**. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language **specified in the TDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.

**11 Documents Comprising the Bid**

**11.1** The Tender shall comprise the following:  
 (a) Form of Bid  
 (b) completed schedules as required, including priced Bills of Quantities, in accordance with ITT 12 and 14;  
 (c) Tender Security, in accordance with ITT 19;  
 (e) written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 20.2;  
 (f) documentary evidence in accordance with ITT 17 establishing the Tenderer's qualifications to perform the contract if its Tender is accepted;  
 (g) Technical Proposal in accordance with ITT 16; and  
 (h) any other document required in the TDS.

**11.2** In addition to the requirements under ITT 11.1, bids submitted by a JVA shall include a copy of the Joint Venture Agreement entered into by all partners. 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 bid, together with a copy of the proposed agreement.

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| 12 | <b>Form of Bid, and Schedules</b>  | <p>12.1 The Form of Tender and Schedules, including the Bills of Quantities, shall be prepared using the relevant forms furnished in Section I, Standard Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.</p>   |
| 13 | <b>Alternative Bids</b>            | <p>13.1 Alternative bids shall not be considered, submission of alternative bids shall lead to <b>disqualification</b>.</p> <p>13.2 When alternative times for reaching the required Service Levels or for the completion of Rehabilitation or Improvement Works are explicitly invited, a statement to that effect <b>will be included in the TDS</b>, as will the method of evaluating different times for completion.</p> <p>13.3 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the tendering document must first price the Procurement Entity’s design as described in the tendering document and shall further provide all information necessary for a complete evaluation of the alternative by the Procurement Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procurement Entity</p> <p>13.4 <b>When specified in the TDS</b>, Tenderers are permitted to submit alternative technical solutions for specified parts of the Rehabilitation and/or Improvement Works, and such parts <b>will be identified in the TDS</b>, as will the method for their evaluating, and described in Section V, Work’s Requirements.</p>  |
| 14 | <b>Tender Prices and Discounts</b> | <p>14.1 The prices and discounts quoted by the Tenderer in the Form of Tender and in the Bills of Quantities shall conform to the requirements specified below.</p> <p>14.1.1 The Tenderer shall fill in rates and prices for all items of the Works and Services described in the Bills of Quantities. Items against which no rate or price is entered by the Tenderer will not be paid for by the Procurement Entity when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.</p> <p>14.1.2 The price to be quoted in the Form of Bid, in accordance with ITT 12.1, shall be the total price of the Bid, excluding any discounts offered.</p> <p>14.1.3 <b>Unless otherwise provided in the TDS</b> and the Contract, the rates and prices quoted by the Tenderer are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Procurement Entity may require the Tenderer to justify its proposed indices and weightings.</p> <p>14.1.4 If so indicated in ITT 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Tenderers wishing to offer any price reduction for the award of more than one Contract shall specify in their tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITT 14.1.4, provided the bids for all lots (contracts) are submitted and opened at the same time</p> |

- 14.1.5** All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer
- 15 Currencies of Tender and Payment**
- 15.1** The currency of the tender shall be **Kenya Shillings**.
- 15.2** Tenderers may be required by the Procurement Entity to justify, to the Procurement Entity’s satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Summary of Payment Currency Schedule, in which case a detailed breakdown of the foreign currency requirements shall be provided by Tenderers.
- 16 Documents Comprising the Technical Proposal**
- 16.1** The Tenderer shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, in sufficient detail to demonstrate the adequacy of the Tenderers’ proposal to meet the requirements of Section V, Specifications.
- 17 Documents Establishing the Qualifications of the Tenderer**
- 17.1** To establish its qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Standard Forms.
- 17.2** Domestic Tenderers, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITT 33.
- 18 Period of Validity of Bids**
- 18.1** Bids shall remain valid for the period **specified in the TDS** after the tender submission deadline date prescribed by the Procurement Entity. A tender valid for a shorter period shall be rejected by the Procurement Entity as non-responsive.
- 18.2** In exceptional circumstances, prior to the expiration of the tender validity period, the Procurement Entity may request Tenderers to extend the period of validity of their bids. The request and the responses shall be made in writing. A Tenderer granting the request shall not be required or permitted to modify its bid.
- 19 Tender Security**
- 19.1** **Unless otherwise specified in the TDS**, the Tenderer shall furnish as part of its bid, a tender security in original form and in the amount and currency **specified in the TDS**.
- 19.2** The tender security shall be a demand guarantee at the Tenderer’s option, in any of the following forms  
**(a) an unconditional bank guarantee;**  
**The tender security shall be submitted in the Tender Security Form included in Section IV, Standard Forms, in this case a bank guarantee. The form must include the complete name of the Tenderer. The tender security shall be valid for thirty (30) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITT 18.2**
- 19.3** Any tender not accompanied by an enforceable and compliant tender security, shall be rejected by the Procurement Entity as non-responsive.
- 19.4** The tender security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer’s furnishing of the performance security pursuant to ITT 41.

- 19.5** The tender security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required performance security.
- 19.6** The tender security may be forfeited:
- (a) if a Tenderer withdraws its tender during the period of tender validity specified by the Tenderer on the Form of Tender Form, except as provided in ITT 18.2 or
  - (b) if the successful Tenderer fails to:
    - (i) sign the Contract in accordance with ITT 40; or
    - (ii) furnish a performance security in accordance with ITT 41.
  - (c) **If the bidder does not accept the corrections of its Bid Price, pursuant to ITT31.**
- 20 Format and Signing of Bid**
- 20.1** The Tenderer shall prepare one original of the documents comprising the tender as described in ITT 11 and clearly mark it “ORIGINAL.” In addition, the Tenderer shall submit copies of the bid, in the number **specified in the TDS and** clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2** The original and all copies of the tender shall be typed, printed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation **as specified in the TDS and** shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the tender where entries or amendments have been made shall be signed or initialed by the person signing the bid.
- 20.3** Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.
- D. Submission and Opening of Bids**
- 21 Sealing and Marking of Bids**
- 21.1** The Tenderer shall enclose the original and all copies of the bid, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL,” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 21.2** i) The outer envelope shall:
- a) be addressed to the Procurement Entity in accordance with ITT 22.1;
  - b) bear the specific identification of this tendering process indicated in the TDS 1.1; and
  - c) bear a warning not to open before the time and date for tender opening.
- ii) The inner envelopes shall:
- 1) Bear the name and address of the Tenderer in addition to (i) above.
- 21.3** If all envelopes are not sealed and marked as required, the Procurement Entity will assume no responsibility for the misplacement or premature opening of the bid.
- 22 Deadline for Submission of Bids**
- 22.1** Bids must be received by the Procurement Entity at the address and no later than the date and time **indicated in the TDS.**
- 22.2** The Procurement Entity may, at its discretion, extend the deadline for the

submission of bids by amending the Tendering Document in accordance with ITT 8, in which case all rights and obligations of the Procurement Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

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| 23 | <b>Late Bids</b>  | 23.1 | The Procurement Entity shall not consider any tender that arrives after the deadline for submission of bids, in accordance with ITT 22. Any tender received by the Procurement Entity after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Tenderer.   |
| 24 | <b>Withdrawal, Substitution, and Modification of Bids</b> | 24.1 | A Tenderer may withdraw, substitute, or modify its tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the tender must accompany the respective written notice. All notices must be <ul style="list-style-type: none"> <li>(a) prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and</li> <li>(b) Received by the Procurement Entity prior to the deadline prescribed for submission of bids, in accordance with ITT 22.</li> </ul>   |
|    |   | 24.2 | Bids requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the Tenderers.  |
|    |   | 24.3 | No tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of tender validity specified by the Tenderer on the Form of Tender or any extension thereof.   |
| 25 | <b>Tender Opening</b>                                     | 25.1 | The Procurement Entity shall open the bids in public, in the presence of Tenderers` designated representatives and anyone who choose to attend, and at the address, date and time <b>specified in the TDS</b> .  |
|    |   | 25.2 | First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding tender shall not be opened, but returned to the Tenderer. No tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at tender opening. Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding tender being substituted, and the substituted tender shall not be opened, but returned to the Tenderer. No tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at tender opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding bid. No tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at tender opening. Only envelopes that are opened and read out at tender opening shall be considered further. |
|    |   | 25.3 | All other envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the Tender Price(s);the presence of a tender security; and any other details as the Procurement Entity may consider appropriate. <b>If so requested by the Procurement Entity in the TDS</b> , the Form of Tender and the Bill of Quantities are to be initialed by representatives of the Procurement   |

Entity attending tender opening in the manner indicated in the TDS. No tender shall be rejected at tender opening except for late bids, in accordance with ITT 23.1.

**25.4** The Procurement Entity shall prepare a record of the tender opening that shall include, as a minimum: the name of the Tenderer and whether there is a withdrawal, substitution, or modification; the Tender Price, per lot if applicable, and the presence or absence of a tender security. 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 effect of the record. A copy of the record shall be distributed to all Tenderers.

**E. Evaluation and Comparison of Bids**

**26 Confidentiality** **26.1** Information relating to the evaluation of bids and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all Tenderers.

**26.2** Any attempt by a Tenderer to influence the Procurement Entity in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.

**26.3** Notwithstanding ITT 26.2, from the time of tender opening to the time of Contract award, if any Tenderer wishes to contact the Procurement Entity on any matter related to the tendering process, it may do so in writing.

**27 Clarification of Bids** **27.1** To assist in the examination, evaluation, and comparison of the bids, and qualification of the Tenderers, the Procurement Entity may, at its discretion, ask any Tenderer for a clarification of its bid. Any clarification submitted by a Tenderer that is not in response to a request by the Procurement Entity shall not be considered. The Procurement Entity's 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 Procurement Entity in the evaluation of the bids, in accordance with ITT 31.

**27.2** If a Tenderer does not provide clarifications of its tender by the date and time set in the Procurement Entity's request for clarification, its tender may be rejected.

**28 Deviations, Reservations, and Omissions** **28.1** During the evaluation of bids, the following definitions apply:  
 (a) "Deviation" is a departure from the requirements specified in the Tendering Document;  
 (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tendering Document; and  
 (c) "Omission" is the failure to submit part or all of the information or documentation required in the Tendering Document.

**29 Determination of Responsiveness** **29.1** The Procurement Entity's determination of a bid's responsiveness is to be based on the contents of the tender itself, as defined in ITT11.

**29.2** A substantially responsive tender is one that meets the requirements of the Tendering Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,  
 (a) if accepted, would  
 (i) affect in any substantial way the scope, quality, or performance of the

- Works specified in the Contract; or  
(ii) limit in any substantial way, inconsistent with the Tendering Document, the Procurement Entity’s rights or the Tenderer’s obligations under the proposed Contract; or  
(b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive bids.
- 29.3** The Procurement Entity shall examine the technical aspects of the tender submitted in accordance with ITT 16, Technical Proposal, in particular, to confirm that all requirements of Section V, Specifications have been met without any material deviation or reservation.
- 29.4** If a tender is not substantially responsive to the requirements of the Tendering Document, it shall be rejected by the Procurement Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 31 Correction of Arithmetical Errors**
- 31.1** Provided that the tender is substantially responsive, the Procurement Entity shall correct arithmetical errors on the following basis:  
(a) if there is a discrepancy between the and the **line total price** that is obtained by multiplying the unit price and quantity, the **unit price** shall prevail and the **line total price** shall be corrected,  
(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the total shall prevail and the subtotals shall be corrected; and  
(c) if there is a discrepancy between words and figures, the amount in words shall prevail.
- 31.2** If the Tenderer that submitted the lowest evaluated tender does not accept the correction of errors, its tender shall be disqualified
- 33 Margin of Preference**
- 33.1** Margin of preference shall not apply.
- 34 Evaluation of Bids**
- 34.1** The Procurement Entity shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.
- 34.2** To evaluate a bid, the Procurement Entity shall consider the following:  
(a) the tender price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities;  
(b) price adjustment for correction of arithmetic errors in accordance with ITT 31.1;  
(e) adjustment for nonconformities in accordance with ITT 30.3;  
(f) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria;
- 34.3** The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in tender evaluation.
- 34.4** Separate prices for different lots shall not apply.
- 34.5** If the bid, which results in the lowest Evaluated Tender Price, is seriously unbalanced or front loaded in the opinion of the Procurement Entity, the Procurement Entity may require the Tenderer to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Procurement Entity may require that the amount of the performance security be increased at the expense of the Tenderer to a level sufficient to protect the Procurement Entity against financial loss in the event of

default of the successful Tenderer under the Contract.

- 35 Comparison of Bids**
- 35.1** The Procurement Entity shall compare all substantially responsive bids to determine the lowest evaluated bid, in accordance with ITT 34.2.
- 35.2** After application of the criteria established in Sub-Clauses 34.1 to 34.5, the Evaluated Tender Price for comparison of bids will be:
- (a) The lump-sum price offered by the Tenderer for the Maintenance Services as indicated in the form of bid.

- 37 Procurement Entity’s Right to Accept Any Bid, and to Reject Any or All Bids**
- 37.1** The Procurement Entity reserves the right to accept or reject any bid, and to annul the tendering process and reject all bids at any time prior to contract award, without thereby incurring any liability to Tenderers. In case of annulment, all bids submitted and specifically, tender securities, shall be promptly returned to the Tenderers.

**F. Award of Contract**

- 38 Award Criteria**
- 38.1** The Procurement Entity shall award the Contract to the Tenderer whose offer has been determined to be the lowest evaluated tender and is substantially responsive to the Tendering Document, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily.

- 39 Notification of Award**
- 39.1** Prior to the expiration of the period of tender validity, the Procurement Entity shall notify the successful Tenderer, in writing, that its tender has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Standard Form called the “Letter of Award”) shall specify the sum that the Procurement Entity will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Standard Form called “the Contract Price”) and the requirement for the Contractor to remedy any defects therein as prescribed by the Contract. At the same time, the Procurement Entity shall also notify all other Tenderers of the results of the tendering.
- 39.2** At the same time that the Employer notifies the successful bidder that his bid has been accepted, the Employer shall notify the other bidders that their bids have been unsuccessful and their bid securities will be returned as promptly as possible, in accordance with Clause 19.4.

- 40 Signing of Contract**
- 40.1** The Procurement Entity shall send the successful Tenderer the Contract Agreement upon expiry of (14) days appeal period.
- 40.2** Within thirty (30) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procurement Entity.

- 41 Performance Security**
- 41.1** Within thirty (30) days after receipt of the Letter of Award, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the TDS and the Contract Data Sheet, denominated in the type and proportions of currencies in the Letter of Award and in accordance with the Conditions of Contract.

## Section II. Tender Data Sheet

Note: Section II, Tender Data Sheet, shall be filled in by the Procurement Entity before issuance of the tendering documents

ITT Clause Reference	Tender Data																														
ITT 1.1	The Procurement Entity is: <b><u>Kenya Urban Roads Authority</u></b>																														
ITT 1.1	The name of the NCB is: <b>Performance Based Routine Maintenance of Various Roads in Nairobi 2011 - 2012</b> The identification number of the NCB is: <b><u>KURA/187/2011-2012</u></b>																														
ITT 1.1	The Roads are: <table border="1" data-bbox="537 646 1166 953"> <thead> <tr> <th></th> <th data-bbox="610 646 672 674"><b><u>Road</u></b></th> <th data-bbox="1078 646 1166 674"><b><u>Length</u></b></th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Fair Acres</td> <td>2.70</td> </tr> <tr> <td>2</td> <td>Bunyala Road</td> <td>1.00</td> </tr> <tr> <td>3</td> <td>Karen plains</td> <td>2.10</td> </tr> <tr> <td>4</td> <td>Commercial Street</td> <td>0.90</td> </tr> <tr> <td>5</td> <td>Naivasha Road</td> <td>8.50</td> </tr> <tr> <td>6</td> <td>Factory Street</td> <td>1.30</td> </tr> <tr> <td>7</td> <td>Kiambu Road</td> <td>5.30</td> </tr> <tr> <td>8</td> <td>Processional way</td> <td>1.60</td> </tr> <tr> <td>9</td> <td>Komarock Road (Kangundo - Mowlem)</td> <td>2.40</td> </tr> </tbody> </table>		<b><u>Road</u></b>	<b><u>Length</u></b>	1	Fair Acres	2.70	2	Bunyala Road	1.00	3	Karen plains	2.10	4	Commercial Street	0.90	5	Naivasha Road	8.50	6	Factory Street	1.30	7	Kiambu Road	5.30	8	Processional way	1.60	9	Komarock Road (Kangundo - Mowlem)	2.40
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ITT 1.1	Rehabilitation Works are <b>not</b> required.																														
ITT 1.1	Improvement Works are <b>not</b> required.																														
ITT 1.3	The name of the Project is: <b>Performance Based Routine Maintenance Of Various Roads In Nairobi 2011 - 2012</b>																														
ITT 4.7	Tendering is open to all interested tenderers.																														

<b>B. Tendering Documents</b>	
<b>ITT 7.1</b>	For <b>clarification purposes</b> only, the Procurement Entity's address is Attention: <u>THE DIRECTOR GENERAL,</u> <u>KENYA URBAN ROADS AUTHORITY.</u> Street Address: <u>5<sup>TH</sup> NGONG AVENUE</u> Floor/Room number: <u>IKM BUILDING 1<sup>ST</sup> FLOOR</u> City: <u>NAIROBI</u> Postal Code: <u>41727 - 00100</u> Country: <u>KENYA</u> Telephone: <u>254-020-8013844</u> Electronic mail address: <u><a href="mailto:info@kura.go.ke">info@kura.go.ke</a></u>
<b>ITT 7.4</b>	A Pre-Tender meeting will take place at the following date, time and place: Date: <u>As per tender Notice</u> Time: <u>As per tender Notice</u> Place: <u>As per tender Notice</u> A site visit conducted by the Procurement Entity <b>will be organized.</b>
<b>C. Preparation of Bids</b>	
<b>ITT10.1</b>	The language of the tender is: English
<b>ITT 11.1 (h)</b>	The Tenderer shall submit with its tender the following additional documents: 1. Certificate of incorporation 2. Certificate of registration with the Ministry of Roads. 3. Tax Compliance certificate.
<b>ITT 13.2</b>	Rehabilitation and/or Improvement Works <b>will not be</b> included.
<b>ITT 14.5</b>	The prices quoted by the Tenderer shall be: <b>fixed</b>
<b>ITT 15.1</b>	The currency of the tender shall be <b>Kenya Shillings</b>
<b>ITT 18.1</b>	The tender validity period shall be <b>120 (One Hundred and Twenty)</b> days
<b>ITT 19.1</b>	A tender security <b>shall be required.</b> The amount of the tender security shall be: <b><u>One Hundred Thousand Shillings (Kshs100,000)</u></b>
<b>ITT 19.2 (d)</b>	<b><u>No other bid security shall be accepted other than that listed in ITT 19.2 (a).</u></b>
<b>ITT 20.1</b>	In addition to the original of the bid, the number of copies is: <b>One (1)</b>
<b>ITT 20.2</b>	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: in the form of <b>Power of attorney</b>
<b>D. Submission and Opening of Bids</b>	
<b>ITT 22.1</b>	For <b>tender submission purposes</b> only, the Procurement Entity's address is: Attention: <u>THE DIRECTOR GENERAL,</u> <u>KENYA URBAN ROADS AUTHORITY .</u> Street Address: <u>5<sup>TH</sup> NGONG AVENUE</u>

	<p>Floor/Roomnumber: <u>IKM BUILDING 1<sup>ST</sup> FLOOR</u>.</p> <p>City: <u>NAIROBI</u>.</p> <p>Postal Code :<u>41727 - 00100</u>.</p> <p>Country: <u>KENYA</u>.</p> <p><b>The deadline for tender submission is:</b></p> <p>Date: <u>As per tender Notice</u></p> <p>Time: <u>As per tender Notice</u></p> <p>Tenderers <b>shall not</b> have the option of submitting their bids electronically.</p>
<p><b>ITT 25.1</b></p>	<p>The tender opening shall take place at:</p> <p><u>KENYA URBAN ROADS AUTHORITY.</u></p> <p>Street Address: <u>5<sup>TH</sup> NGONG AVENUE</u>.</p> <p>Floor/Room number: <u>IKM BUILDING, 2nd FLOOR, BOARDROOM.</u></p> <p>Time: <b><u>10:00AM</u></b></p>
<p><b>ITT 25.3</b></p>	<p>The Form of Tender and Summary of Bills of Quantities <b>shall be</b> initialed by representatives of the Procurement Entity attending Tender opening.</p>



## Section III. Evaluation and Qualification Criteria

### 1. Evaluation Following Prequalification

This Section contains the criteria that the Procurement Entity shall use to evaluate bids and qualify Tenderers. In accordance with ITT 34 and ITT 36, no other factors, methods or criteria shall be used. The Tenderer shall provide all the information requested in the forms included in Section IV, Standard Tendering Forms.

<b>1.</b>	<b>Evaluation</b>		
	In addition to the criteria listed in ITT 34.2 (a) – (e). the following criteria shall apply:		
<b>1.1</b>	<b>Assessment of adequacy of Technical Proposal with Requirements</b>		
<b>2.</b>	<b>Qualification</b>		
<b>2.1</b>	<b>Update of Information</b>		
	The Tenderer shall continue to meet the criteria used at the time of prequalification.		
<b>2.2</b>	<b>Financial Resources</b>		
	Using the relevant Schedule of Supplementary Information forms in Section IV, Tendering Forms, the Tenderer must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:		
	(i) the following cash-flow requirement: <u>A cash flow amount of (minimum) Kshs. 15 Million equivalent working capital. This should be shown by submission of audited balance sheets or if not required by the law of the applicant's country, other financial statements acceptable to the Employer, for the last five [5] years.</u>		
<b>2.3</b>	<b>Personnel</b>		
	The Tenderer must demonstrate that it has the personnel for the key positions that meet the following requirements:		
	<b>No</b>	<b>Position</b>	<b>Total Work experience(Yrs)</b>
	<b>1</b>	Site Agent Qualification = BSc. Civil Eng Reg. Eng	5 yrs 3Yrs
	<b>2</b>	Senior Foreman Qualification = Dip Civil Eng	5 yrs 3 Yrs
	The Tenderer shall provide details of the proposed personnel and their experience records in the relevant Information Forms included in Section IV, Tendering Forms.		

<b>2.4</b>	<b>Equipment</b>	
	The Tenderer must demonstrate that it has the key equipment listed hereafter:	
	<b>No</b>	<b>Equipment Type and Characteristics</b>
	<b>1</b>	Vibrating compaction plate (300mm)
	<b>2</b>	Colas sprayer
	<b>3</b>	Pavement cutter
	<b>4</b>	Pedestrian roller
	<b>5</b>	Concrete vibrator
	<b>6</b>	10 tonne tipper
	<b>7</b>	Flat bed lorries
	<b>8</b>	Water tankers (18000-20000 lts)
	<b>9</b>	Wheel loaders
	The Tenderer shall provide further details of proposed items of equipment using the relevant Form in Section IV, Tendering Forms.	

## 2. Evaluation without Prequalification

This Section contains the criteria that the Procurement Entity shall use to evaluate bids and qualify Tenderers. In accordance with ITT 34 and ITT 36, no other factors, methods or criteria shall be used. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms.

### 1. Evaluation

In addition to the criteria listed in ITT 34.2 (a) – (e) the following criteria shall apply:

#### 1.1 Assessment of adequacy of Technical Proposal with Requirements

### 3. Qualification Criteria

<i>Factor</i>	<b>2.1 ELIGIBILITY</b>					
<b>Sub-Factor</b>	<b>Requirement</b>	<b>Tenderer</b>				<b>Documentation Required</b>
		<b>Single Entity</b>	<b>Joint Venture, Consortium or Association</b>			
			<b>All partners combined</b>	<b>Each partner</b>	<b>At least one partner</b>	
2.1.1 Nationality	<i>Nationality in accordance with ITT 4.2.</i>	<i>Must meet requirement</i>	<i>Existing or intended JVA must meet requirement</i>	<i>Must meet requirement</i>	<i>N / A</i>	<i>Attachments as indicated in ITT 11 (h) as specified in TDS Schedule 1- Section IV</i>
2.1.2 Conflict of Interest	<i>No- conflicts of interests as described in ITT 4.3.</i>	<i>Must meet requirement</i>	<i>Existing or intended JVA must meet requirement</i>	<i>Must meet requirement</i>	<i>N / A</i>	<i>Form of Bid</i>
2.1.3 Procurement Entity Ineligibility	<i>Not having been declared ineligible by the Procurement Entity as described in ITT 4.4.</i>	<i>Must meet requirement</i>	<i>Existing JVA must meet</i>	<i>Must meet requirement</i>	<i>N / A</i>	<i>Form of Bid</i>

			<i>requirement</i>			
<b>Factor</b>	<b>2.2 HISTORICAL CONTRACT NON-PERFORMANCE</b>					
<b>Sub-Factor</b>	<b>Requirement</b>	<b>Tenderer</b>				<b>Documentation Required</b>
		<b>Single Entity</b>	<b>Joint Venture, Consortium or Association</b>			
			<b>All partners combined</b>	<b>Each partner</b>	<b>At least one partner</b>	
2.2.1 History of non-performing contracts	<i>Non-performance of a contract did not occur within the last <b>Three (3)</b> years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the tenderer</i>	<i>Must meet requirement by itself or as partner to past or existing JVA</i>	<i>N/A</i>	<i>Must meet requirement by itself or as partner to past or existing JVA</i>	<i>N/A</i>	<i>Schedule 11 section IV</i>
2.2.2 Pending Litigation	<i>No Pending Litigation as described in ITT5.2</i>	<i>Must meet requirement</i>	<i>Existing or intended JVA must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>Schedule 11 section IV</i>

<b>Factor</b>	<b>2.3 FINANCIAL SITUATION</b>					
<b>Sub-Factor</b>	<b>Requirement</b>	<b>Tenderer</b>				<b>Documentation Required</b>
		<b>Single Entity</b>	<b>Joint Venture, Consortium or Association</b>			
			<b>All partners combined</b>	<b>Each partner</b>	<b>At least one partner</b>	
2.3.1. Average Annual Turnover	<i>Minimum average annual turnover of <b>Kshs. 100Million [One Hundred million]</b> calculated as total certified payments received for contracts in progress or completed, within the last <b>Three(3)</b> years</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Schedule 10, Section IV</i>
2.3.2 Historical Financial Performance	<i>Submission of audited balance sheets or if not required by the law of the tenderer's country, other financial statements acceptable to the Procurement Entity, for the last <b>5 [Five ]</b> years to demonstrate the current soundness of the tenderers financial position and its prospective long term profitability ITT 5.2  <i>(a) the current soundness of the applicants financial</i></i>	<i>Must meet requirement</i>	<i>N / A</i>	<i>Must meet requirement</i>	<i>N / A</i>	<i>Schedule 11 with attachments, Section IV</i>

	<p><i>position and its prospective long term profitability, and</i></p> <p><i>(b) capacity to have a cash flow amount of min Kshs. 15 Million equivalent working capital</i></p>					
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<b>Factor</b>	<b>2.3 FINANCIAL SITUATION</b>					
<b>Sub-Factor</b>	<b>Requirement</b>	<b>Tenderer</b>				<b>Documentation Required</b>
		<b>Single Entity</b>	<b>Joint Venture, Consortium or Association</b>			
			<b>All partners combined</b>	<b>Each partner</b>	<b>At least one partner</b>	
2.3.3.Financial Resources	<p><i>The Tenderer must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:</i></p> <p><i>(i) The following cash-flow requirement:</i> <i>min Kshs. 15 Million and</i></p> <p><i>(ii) The overall cash flow requirements for this contract and its current commitments.</i></p>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Provide attachments</i>

<b>Factor</b>	<b>2.4 Experience</b>					
<b>Sub-Factor</b>	<b>Requirement</b>	<b>Tenderer</b>				<b>Documentation Required</b>
		<b>Single Entity</b>	<b>Joint Venture, Consortium or Association</b>			
			<b>All partners combined</b>	<b>Each partner</b>	<b>At least one partner</b>	
2.4.1: Specific Experience	<i>(a) Participation as contractor, management contractor, or subcontractor, in at least Three [3] contracts within the last five [5] years, each with a value of at least Kshs. 5 Million (Five million), that have been successfully and substantially completed and that are similar to the proposed Works and Services. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VI, Procurement Entity's Requirements.</i>	<i>Must meet requirement</i>	<i>Must meet requirements for all characteristics</i>	<i>N / A</i>	<i>Must meet requirement for one characteristic</i>	<i>Schedule 7, Section IV</i>
2.4.1 Specific Experience	<i>b) For the above or other contracts executed during the period stipulated in 2.4.1(a) above, a minimum experience in the following key activities: -Repair &amp; Re-seal Projects -Repair &amp; rehabilitation of bitumen roads.</i>	<i>Must meet requirement</i>	<i>Must meet requirements</i>	<i>N / A</i>	<i>Must meet requirements</i>	<i>Schedule 7, Section IV</i>

## **SECTION IV: Schedule of Supplementary Information**

### **(Tendering Forms)**

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## SCHEDULE 1: CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2(b) or 2(c) 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 .....

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

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

Nature of Business.....

Current Trade License No. .... Expiring Date .....

Maximum value of Business which you can handle at any one time:

Kshs. ....

Name of your Bankers .....

Branch.....

### Part 2(a) - Sole Proprietor:

Your Name in full .....

Age: .....

Nationality ..... Country of Origin.....

\*Citizenship details .....

### Part 2(b) - Partnership:

Give details of partners as follows:

Name	Nationality	Citizenship Details*	Shares
1.....	1.....	1.....	1.....
2.....	2.....	2.....	2.....
2.....	2.....	2.....	2.....

### Part 2 (d) Interest in the Firm:

Are there any person / persons in the Ministry of Roads or Kenya Urban Roads Authority who has interest in this firm? Yes /No\*\*

Date:..... Signature of Tenderer.....

- **\*\* Delete as necessary  
Attach proof of citizenship  
(Compulsory)**

**SCHEDULE 2: FORM OF WRITTEN POWER OF ATTORNEY**

The Tenderer shall state here below the name(s) and address of his representative(s) who is/are authorized 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)

*Alternate:*

.....

(Name of Tenderer's Representative in block letters)

.....

(Address of Tenderer's Representative)

.....

(Signature of Tenderer's Representative)

*\*To be filled by all Tenderers.*

### **SCHEDULE 3: 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 for the

[name and location of the project] held on

..... Day of ..... 20.....

**Signed and Stamped**.....

(Procurement Entity’s Representative)

.....

(Name of Procurement Entity’s Representative)

.....

(Designation)

**NOTE: This form is to be completed at the time of the organized site visit.**

**SCHEDULE 5: MAJOR ITEMS OF CONSTRUCTION PLANT AND EQUIPMENT**

Date of Arrival on Project (Days after commencement)	
Power Rating	
Owned/Leased/Imported	
Source	
Estimated CIF Mombasa Value (If to be Imported)	
Capacity T or m cu	
New or Used	
Year of Manufacture	
No. of each	
Description Type, Model, Make	

The Tenderer shall enter in this schedule all major items of plant and equipment which he proposes to bring to site. Only reliable plant in good working order, and suitable for the work, shall be shown on this Schedule. The Tenderer should attached proof of ownership or authorized letter of hire.

I certify that the above information is correct.

Signature of Tenderer: ..... Date: .....

Name of Signatory: .....

**SCHEDULE 6: KEY PERSONNEL**

**a) Key in-house Personnel proposed by Tenderer**

The Tenderer shall list in this schedule the in-house professional and technical personnel he will employ, list of their current workload together with their qualifications, experience, position held and nationality.

Name Staff	Nationality	Qualification	Designation	General Experience	Current work Load
1) _____ 2) _____ 3) _____ 4) _____					

**b) Personnel employment**

The Tenderer shall list in this schedule the qualified operators and labours he will from the Contractor’s site office to direct and execute the work together with their qualifications, experience, position held, salary scale and condition of employment.

Name Staff	Nationality	Qualification	Designation	General Experience	Current work Load
Operators 1) _____ 2) _____ 3) _____ e.t.c _____ Labour 1) _____ 2) _____ 3) _____ e.t.c _____					

I certify that the above information is correct.

Signature of Tenderer: ..... Date: .....

*The CV's (or resumes) for each of the proposed key personnel are presented informant indicated below*

## Resume of Proposed Personnel

Tenderer name:
----------------

Position		
<b>Personnel information</b>	<b>Name</b>	<b>Date of birth</b>
	<b>Professional qualifications</b>	
<b>Present employment</b>	<b>Name of Procurement Entity</b>	
	<b>Address of Procurement Entity</b>	
	<b>Telephone</b>	<b>Contact (manager / personnel officer)</b>
	<b>Fax</b>	<b>E-mail</b>
	<b>Job title</b>	<b>Years with present Procurement Entity</b>
	<b>Current Work load</b> <i>Summarize the current work load. Indicate particular (if any) the projects the staff is involved</i>	
<b>From</b>	<b>To</b>	<b>Company / Project / Position / Relevant technical and management experience</b>
		<i>(Summarize professional experience, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project)</i>

**SCHEDULE 7: SCHEDULE OF ROADWORKS CARRIED OUT BY THE TENDERER  
IN THE LAST FIVE YEARS**

<b>DESCRIPTION OF WORKS</b>	<b>VALUE OF WORKS (KShs) *</b>	<b>YEAR COMPLETED / REMARKS</b>

I certify that the above works were successfully carried out by this Tenderer (Attach Completion Certificates)

Signature of Tenderer: .....

Date: .....

**SCHEDULE 8: SCHEDULE OF ONGOING PROJECTS**

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

<b>Name of Contract</b>	<b>Procurement Entity's contact address</b>  <b>/fax</b>	<b>date of commencement</b>	<b>date of completion</b>	<b>value of works (kshs)</b>	<b>value completed up to date %</b>	<b>physically completed up to date %</b>

I certify that the above works are being carried out by me and that the above information is correct.

Signature of Tenderer: ..... Date: .....

### **SCHEDULE 9: SCHEDULE OF LOCAL LABOUR BASIC RATES**

The rates inserted in this schedule will be those used in determining changes in cost of local labour market.

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

NOTE: Categories to be generally in accordance with those used by the Kenya Building Construction Engineering and Allied Trade Workers Union and Ministry of labour

I certify that the above information is correct.

Signature of Tenderer: .....

Date:.....

**SCHEDULE 10: FINANCIAL INFORMATION/CURRENT COMMITMENTS**

1. Submit copies of audited profit and loss statements and balance sheet for the last three calendar years and estimated projection for the next two years with certified English translation where appropriate.
2. Give turnover figures for each of the last three (3) financial years. Quote in millions and decimal thereof.

Type of Work	Year	Year	Year
	Kshs.	Kshs.	Kshs.
Roadworks			
Other civil engineering works			
Other (specify)			
Total			

**SUMMARY OF ASSETS AND LIABILITIES OF THE AUDITED FINANCIAL STATEMENTS OF THE LAST THREE (3) FINANCIAL YEARS.**

	Year	Year	Year
	Kshs.	Kshs.	Kshs.
1. Total Assets			
2. Current Assets			
3. Bank credit Line Value			
4. Total Liabilities			
5. Current Liabilities			
6. Net worth (1-4)			
7. Working capital (2+3-4)			

(a) Name/Address of Commercial Bank providing credit line  
 .....  
 .....

(b) Total amount of credit line Kshs. ....

Attach certified copies of financial bank statements of the last three years.

Attach a certified copy of Undertaking of the Bank to providing the credit.

3. Name, address, telephone, telex, fax numbers of the Tenders' Bankers who may provide reference if contacted by the Contracting Authority.

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

4. Information on History of Non performing contract in which the Tenderer is involved.

OTHER PARTY (IES)	CAUSE OF DISPUTE	AMOUNT INVOLVED (KShs)

5. 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 **(Provide a sworn affidavit)**.

Signature of Tenderer: ..... Date:.....

## **SCHEDULE 12: WORK PROGRAMME AND METHOD STATEMENT**

### **1) SCHEDULE 12-A: Program of works method Statements**

To demonstrate a clear understanding of the requirements of the Contract, tenderers shall provide the following:

- a) A bar/graph chart sub-divided into sections for each road showing the major activities to be carried out for Maintenance Services. The activities shall be shown against time, with linkages shown between related/sequential activities as far as possible and appropriate.
- b) A bar chart or schedule showing the usage of major plant, including those listed in Schedule 5 (Contractor's Equipment).
- c) Proposal on material testing and measurement
- d) Proposal on work safety management
- e) Environmental and social management

### **2) SCHEDULE 12-B: Projected Cash Flow**

- i. Tenderers shall tabulate below estimates, based on their preliminary work programme, of:
  - a) On the expenditure side, the value of the work which will be carried out;
  - b) On the revenue side, the net payments to which they will become entitled with due allowance for the advance payment and repayment, materials prepayments, and retention money, but excluding price adjustments for rise and fall and provisional sums for emergency works.
  - c) The projected net cash flow during the contract period.
- ii. The prospective successful tenderer may be required to submit full details to substantiate his estimates.

### **3) SCHEDULE 12-C: Site Organization**

Tenderers shall give below full particulars of the organization they propose to establish, direct, and administer the performance of the Contract. In particular, tenderers shall indicate the location of site camps, stockyard location and the resources they intend to allocate to Self Control Units for planning and monitoring purposes. The Tenderer should provide:

- ✓ SITE ORGANIZATION CHART
- ✓ NARRATIVE DESCRIPTION OF SITE ORGANISATION CHART

### **4) SCHEDULE 12-D: Subcontractor/Partners**

Tenderers shall list below those parts of the Works and Services which they propose to subcontract, and state the approximate value of those parts and the names and addresses of the proposed subcontractors, if those are known at tendering stage. Tenderers shall also list other business partners involved in the execution of the contract and their respective roles and responsibilities.

Part of Works / Services:

Approximate value:

Name and address of proposed subcontractor / partner:

## **SECTION V: Technical Evaluation Criteria**

## **TECHNICAL EVALUATION CRITERIA**

This Section shall apply to qualified tenderers from Qualification Criteria “A” and “B” above. It contains all the factors, methods and criteria that the Procurement Entity shall use for the technical evaluation. The information to be provided in relation to each factor and the definitions of the corresponding terms are included in the respective Application Forms (Schedules).

The Technical Evaluation Committee shall examine tender documents and score them based on their validity, accuracy and quality. Where the tenderer fails to submit the mandatory requirement, the tenderer shall be disqualified.

Tenderers who provide all mandatory requirements and specified percentage score in technical evaluation and above shall proceed to the financial evaluation.

### **1 Technical Proposal**

The tenderer’s Technical Proposal shall be as outlined in the following tables



TABLE-1: PERSONNEL						
Qualification Criteria			Compliance Requirement	Documentation	Score	
No.	Subject	Requirement	Tenderer	Submission Requirements		
1.3	Site base facilities	The following shall be provided; - Proposals on office & stockyard facilities	Must meet requirement	Section IV, Schedule 12-C	0.5	
<b>Total score</b>					0.5	

TABLE-2: EQUIPMENT						
Qualification Criteria			Compliance Requirement	Documentation	Score	
No.	Subject	Requirement	Tenderer	Submission Requirements		
2.1	Equipment holding	The following shall be provided; - Ownership list of required equipment and/ or -Authorization letter of hiring from M&T or reputable hiring company	Must meet requirement	Section IV, Schedule 5	2	
				<b>Total score</b>	2	

TABLE-3: WORK METHODOLOGY						
Qualification Criteria			Compliance Requirement	Documentation	Score	
No.	Subject	Requirement	Tenderer	Submission Requirements		
3.1	Quality and Quantity Management	Tenderer should submit the following shall be provided; - ISO9000/ISO14000 certificate -Proposals on material testing - Proposal on measurements	Requirement	Section IV, Schedule 12-A	0.5 1.0 0.5	
3.2	Working Schedule and Projected Cash flow.	The tenderer shall provide the following; 1. Signed work programme chart 2. Signed Cash flow plan during the contract period: a) On the value of the work which will be carried out; b) On the net payments to which they will become entitled with due allowance for the advance payment and repayment, materials prepayments, and retention money, but excluding	Must meet requirement	Section IV, Schedule 12-A & B	0.5 0.5	

TABLE-3: WORK METHODOLOGY						
Qualification Criteria			Compliance Requirement	Documentation	Score	
No.	Subject	Requirement	Tenderer	Submission Requirements		
		price adjustments for rise and fall and provisional sums for emergency works  3. The prospective successful tenderer may be required to submit full details to substantiate his estimates				
<b>Total score</b>					3.0	

TABLE -4: OTHER REQUIREMENTS						
Qualification Criteria			Compliance Requirement	Documentation	Score	
No.	Subject	Requirement	Tenderer	Submission Requirements		
4.1	Work safety management	Pursuant to sub-clause 18.3 the following shall be provided; - Proposals on traffic control , workers safety & accident prevention	Requirement	Section IV, Schedule 12-A	0.5	
4.2	Environmental and social management	Pursuant to sub-clause 19.2 (h) the following shall be provided;  -Proposal on social mitigation measures	Requirement	Section IV, Schedule 12-A	0.5	
<b>Total Score</b>					1.0	

TABLE-5: PREVIOUS CONTRACTS RECORDS						
Qualification Criteria			Compliance Requirement	Documentation	Score	
No.	Subject	Requirement	Tenderer	Submission Requirements		
5.1	Past relevant work Experience	Tenderer to submit the following; - Completion certificate of relevant work in the previous 5 years	Requirement	Section IV, Schedule 7	0.5	
5.2	Evaluation results of previous contracts	Evaluation scores of previous similar works				
5.3	Contractual misconducts and litigation	Record of contractual misconduct in the previous 5 years  Record of litigation in the previous 5 years		Section IV, Schedule 7 (5)	(-2)	
				<b>Total Score</b>	0.5	

Items	Sub-items		Required References to be submitted in Tendering Forms from Tender for evaluation as indicated in section IV	Class D & Under	
				Reqd	Score
Contractors Capability to supervise and perform the work	1	Equipment holding	<ul style="list-style-type: none"> <li>▪ Ownership list of required equipment</li> <li>▪ Authorized letter of hiring from M&amp;T or reputable hiring Company</li> </ul>	m	2.3
	2	In-house staffing	<ul style="list-style-type: none"> <li>▪ List of professional and technical personnel and their resume</li> <li>▪ List of Current work load</li> </ul>	m	1.5
	3	Personnel employment	<ul style="list-style-type: none"> <li>▪ A copy of certificate of qualified operators and labourors</li> <li>▪ Salary scale and condition of employment</li> </ul>	m	2.3
Technical Proposal and comments	4	Site base facilities	Proposals on office and stockyard location	m	1.0
	5	Work scheduling	<ul style="list-style-type: none"> <li>▪ Signed work progress charts</li> <li>▪ Signed cash flow plan</li> </ul>	m	1.0
	6	Quality and quantity management	<ul style="list-style-type: none"> <li>▪ ISO9000/ISO14000</li> <li>▪ Proposals on material testing</li> <li>▪ Proposals on measurements</li> </ul>	r	1.0
	7	Work safety management	<ul style="list-style-type: none"> <li>▪ Proposal on traffic control, workers safety and accident prevention measures</li> </ul>	r	0.5
	8	Environmental and Social management	<ul style="list-style-type: none"> <li>▪ Proposals on environmental mitigation efforts</li> <li>▪ Proposal on material recycling or spoil reduction,</li> <li>▪ Proposal on social mitigation efforts</li> </ul>		
	9	Cost reduction efforts	<ul style="list-style-type: none"> <li>▪ Proposals on alternative materials,</li> <li>▪ Proposals on new technology, Proposal on schedule shortening and process rationalization</li> </ul>		
Previous Contract records	10	Past relevant work experience	<ul style="list-style-type: none"> <li>▪ Completion certificate of relevant works in the previous 5 Years.</li> </ul>	r	0.4
	11	Evaluation results of previous contracts	<ul style="list-style-type: none"> <li>▪ Evaluation Scores of previous similar contracts</li> </ul>		
	12	Contractual misconduct and litigation	<ul style="list-style-type: none"> <li>▪ Record of contractual misconduct in the last 5 years</li> <li>▪ Record of litigation in the last 5 years</li> </ul>		
Technical Evaluation Sub-Total					
<b>Tendering Price Evaluation</b>					

## **PART 2: Conditions of Contract and Standard Contract Forms**

## **SECTION V: General Conditions of Contract (GCC)**

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**A. CONTRACT AND INTERPRETATION**

**1. Definitions**

**1.1 Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Contractor's Bid.

The **Certificate of Substantial Completion** is a document issued by the Project Manager upon completion of Rehabilitation Works, Improvement Works and Emergency Works, or parts thereof, as applicable, in accordance with GCC 54.1

The **Completion Date** is the date of completion of the Services and Works as certified by the Project Manager, in accordance with Sub-Clause 10.2.

The **Contract** is the Contract between the Procurement Entity and the Contractor to perform the services to be provided by the Contractor, and to execute, complete, and maintain the Works. It consists of the documents listed in Clause 3 below.

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

The **Contractor's Tender** is the completed tendering document submitted by the Contractor to the Procurement Entity.

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

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

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

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

The **Defects Liability Period** is the period specified in the Contract and is applicable for Rehabilitation Works and Improvement Works, with exclusions identified in the PARTICULAR CONDITION OF CONTRACT, if any.

**Dispute Review Board (DRB)** is a board of three members selected and act in accordance with rules and procedures defined in the Contract to seek to resolve any dispute of any kind that may arise between the Procurement Entity and the Contractor in connection with or arising out of the Contract, as provided for in Clause 6 hereunder.

**Dispute Review Expert (DRE)** is one expert selected and acting in accordance with rules and procedures defined in the Contract to seek to resolve any dispute of any kind that may arise between the Procurement Entity and the Contractor in connection with or arising out of the contract, as provided for in Clause 6 hereunder.

**Drawings** include calculations and other information provided by the Contractor for the execution of the Contract.

**Emergency Works** is a set of necessary and sufficient activities to reinstate the Road and reconstruct its structure or right of way strip damaged as a result of natural phenomena with imponderable consequences, such as strong storms, flooding and earthquakes. The need for execution of Emergency Works is jointly identified by the Procurement Entity and the Contractor and for starting of execution of Emergency Works the Procurement Entity shall issue a Work Order.

The **Procurement Entity** is the party who employs the Contractor to carry out the Works and Services

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

The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works and Services. The Intended Completion Date is specified in the Particular Conditions (PARTICULAR CONDITION OF CONTRACT). The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time.

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

The **Project Manager** is **The General Manager Maintenance** appointed by the Procurement Entity to be responsible for the overall administration of the Contract on behalf of the Procurement Entity, and the supervision of works and services to be performed there under. The Project Manager may delegate through a written instrument some of his functions to any other competent person, retaining however the overall responsibility for the actions of that person. The Project Manager may not delegate the overall administrative control of the Contract.

**Road** means the road or network of roads for which the Works and Services are contracted under the Contract.

The **Road Management Office** is the location indicated by the Contractor from which the Road Manager operates, and where the Contractor shall receive notifications.

The **Road Manager** is a person appointed by the Contractor who is in charge of managing all activities of the Contractor under the Contract. He is also the Contractor's Representative for the purposes of this contract

**Services** means all interventions on the Road under the Contract and all activities related to the management and evaluation of the Road which shall be carried out by the Contractor in order to achieve and keep the Road Performance Standards as defined by the Service Levels, and to receive full payment of the monthly fee under the contract

**Service Levels** are the minimum performance standards for the level of quality of conditions of the Road defined in the Specifications which the Contractor shall comply with.

**The Site** is the area of the road reserves of the various roads as stated in **ITT 1.1** in Nairobi.

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

The **Start Date** is the date when the Contractor has started the physical execution of the Works and Services on the site. It does not necessarily coincide with any of the Site Possession Dates.

A **Subcontractor** is a person or corporate body who has a contractual agreement with the Contractor to carry out certain activities related to the services to be provided under the contract, which may include work on the Site.

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

A **Variation** is an instruction given by the Project Manager which varies the Works or Services.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Procurement Entity, as covered under Rehabilitation Works, Improvement Works and Emergency Works.

**Work Order** is an order issued by the Project Manager to the Contractor authorizing the execution of Improvement Works and Emergency Works, as provided for in Clause 27 hereunder.

2      **Interpretation**      2.1      In interpreting these General Conditions of Contract (GCC), singular also means plural, male also means female or neuter, and vice versa. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these General Conditions of Contract (GCC).

3      **Documents Forming the Contract**      3.1      The documents forming the Contract shall be interpreted in the following order of priority:

1. Agreement
2. Letter of Acceptance
3. Contractor's Bid
4. Conditions of Contract
5. Specifications
6. Drawings
7. Bills of Quantities.

If any ambiguity or discrepancy is found in the documents the



<b>Start Date and Completion</b>	<b>5.5</b>	The Start Date shall be <b>not later than 28 days</b> after the issuance of the Letter of Commencement. The Contractor shall attain the required Service Levels within the time specified in the Timetable in the Specifications. The Contract will be completed after the number of months specified in the Timetable has elapsed
6 <b>Settlement of Disputes (Alternative when using a Dispute Review Board)</b>	<b>6.1</b>	<p>Dispute Review Board</p> <p><b>6.1.1</b> If any dispute of any kind whatsoever shall arise between the Procurement Entity and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Works and Services—whether during the progress of the execution or after completion and whether before or after the termination, abandonment or breach of the Contract—the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the matter in dispute shall, in the first place, be referred in writing by either party to the Disputes Review Board (‘the Board’), with a copy to the other party.</p> <p><b>6.1.2</b> The Board shall be established when each of the three Board Members has signed a Board Member’s Declaration of Acceptance as required by the DRB’s Rules and Procedures (which, along with the Declaration of Acceptance form, are attached to the Contract). The Board shall comprise three Members experienced with the type of construction and services involved in the Contract and with the interpretation of contractual documents. One Member shall be selected by each of the Procurement Entity and the Contractor and approved by the other. If either of these Members is not so selected and approved within 28 days of the date of the Letter of Acceptance, then upon the request of either or both parties such Member shall be selected as soon as practicable by the Appointing Authority specified in the PARTICULAR CONDITION OF CONTRACT. The third Member shall be selected by the other two and approved by the parties. If the two Members selected by or on behalf of the parties fail to select the third Member within 14 days after the later of their selections, or if within 14 days after the selection of the third Member, the parties fail to approve that Member, then upon the request of either or both parties such third Member shall be selected promptly by the same Appointing Authority specified in the PARTICULAR CONDITION OF CONTRACT who shall seek the approval of the proposed third Member by the parties before selection but, failing such approval, nevertheless shall select the third Member. The third Member shall serve as Chairman of the Board.</p> <p><b>6.1.3</b> In the event of death, disability, or resignation of any Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member shall fail or be unable to serve, the Chairman (or failing the action of the Chairman then either of the other Members) shall inform the parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within 28 days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by the Appointing Authority in the same manner as described above. Replacement shall be considered completed when the new Member signs the Board Member’s</p>

Declaration of Acceptance. Throughout any replacement process the Members not being replaced shall continue to serve and the Board shall continue to function and its activities shall have the same force and effect as if the vacancy had not occurred, provided, however, that the Board shall not conduct a hearing nor issue a Recommendation until the replacement is completed.

**6.1.4** Either the Procurement Entity or the Contractor may refer a dispute to the Board in accordance with the provisions of the DRB's Rules and Procedures, attached to the Contract. The Recommendation of the Board shall be binding on both parties, who shall promptly give effect to it unless and until the same shall be revised, as hereinafter provided, in an arbitral award. Unless the Contract has already been repudiated or terminated, the Contractor shall continue to proceed with the Works and Services in accordance with the Contract.

**6.1.5** If either the Procurement Entity or the Contractor is dissatisfied with any Recommendation of the Board, or if the Board fails to issue its Recommendation within 56 days after receipt by the Chairman of the Board of the written Request for Recommendation, then either the Procurement Entity or the Contractor may, within 14 days after his receipt of the Recommendation, or within 14 days after the expiry of the said 56-day period, as the case may be, give notice to the other party of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 6.3, no arbitration in respect thereof may be commenced unless such notice is given.

**6.1.6** If the Board has issued a Recommendation to the Procurement Entity and the Contractor within the said 56 days and no notice of intention to commence arbitration as to such dispute has been given by either the Procurement Entity or the Contractor within 14 days after the parties received such Recommendation from the Board, the Recommendation shall become final and binding upon the Procurement Entity and the Contractor.

**6.1.7** Whether or not it has become final and binding upon the Procurement Entity and the Contractor, a Recommendation shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the Recommendation relates.

**6.1.8** All Recommendations that have become final and binding shall be implemented by the parties forthwith.

## **6.2** Arbitration

**6.2.1** If either the Procurement Entity or the Contractor is dissatisfied with the Board's decision, then either the Procurement Entity or the Contractor may, in accordance with Sub-Clause 6.1.5, give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The arbitral tribunal shall have full power to open up, review, and revise any decision, opinion, instruction, determination, certificate, and any

Recommendation(s) of the Board

**6.2.2** Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Sub clause 6.2.1, shall be finally settled by arbitration. Neither party shall be limited in the proceedings before such arbitration tribunal to the evidence nor arguments put before the Board for the purpose of obtaining his Recommendation(s) pursuant to Sub-Clause 6.2.1. No Recommendation shall disqualify the Board from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute. Arbitration may be commenced prior to or after completion of the Works and Services.

**6.2.3** Arbitration proceedings shall be conducted in accordance with the rules of procedure designated in the PARTICULAR CONDITION OF CONTRACT.

**6.3** Where neither the Procurement Entity nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 6.1.5 and the related Recommendation has become final and binding, either party may, if the other party fails to comply with such Recommendation and without prejudice to any other right it may have, refer the failure to arbitration in accordance with Sub-Clause 6.2. The provisions of Sub-Clause 6.1 shall not apply to any such reference

**6.4** Notwithstanding any reference to the Board or Arbitration herein,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree
- (b) the Procurement Entity shall pay the Contractor any monies due the Contractor

**6 Settlement of Disputes (Alternative when using a Dispute Review Expert)**

**6.1** Dispute Review Expert

**6.1.1** If any dispute of any kind whatsoever shall arise between the Procurement Entity and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Works and Services—whether during the progress of the execution or after completion and whether before or after the termination, abandonment or breach of the Contract—the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the matter in dispute shall, in the first place, be referred in writing by either party to the Disputes Review Expert ('DRE'), with a copy to the other party.

**6.1.2** The DRE shall take up his functions after having signed a DRE's Declaration of Acceptance as required by the DRE's Rules and Procedures (which, along with the Declaration of Acceptance form, are attached to the Contract). The DRE shall be a person experienced with the type of construction and services involved in the Contract and with the interpretation of contractual documents and shall be selected by agreement between the Procurement Entity and the Contractor. If the DRE is not selected within 28 days of the date of the Letter of

Acceptance, then upon the request of either or both parties the DRE shall be selected as soon as practicable by the Appointing Authority specified in the PARTICULAR CONDITION OF CONTRACT.

**6.1.3** In the event of death, disability, or resignation of the DRE, the latter shall be replaced by agreement between the Procurement Entity and the Contractor. Any replacement made by the parties shall be completed within 28 days after the event giving rise to the need for a replacement, failing which the replacement shall be made by the same international appointing authority as above.

**6.1.4** Either the Procurement Entity or the Contractor may refer a dispute to the DRE in accordance with the provisions of the DRE's Rules and Procedures, attached to the Contract. The Recommendation of the DRE shall be binding on both parties, who shall promptly give effect to it unless and until the same shall be revised, as hereinafter provided, in an arbitral award. Unless the Contract has already been repudiated or terminated, the Contractor shall continue to proceed with the Works and Services in accordance with the Contract.

**6.1.5** If either the Procurement Entity or the Contractor is dissatisfied with any Recommendation of the DRE, or if the DRE fails to issue his Recommendation within 56 days after he has received the written Request for Recommendation, then either the Procurement Entity or the Contractor may, within 14 days after his receipt of the Recommendation, or within 14 days after the expiry of the said 56-day period, as the case may be, give notice to the other party of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 6.3, no arbitration in respect thereof may be commenced unless such notice is given.

**6.1.6** If the DRE has issued a Recommendation to the Procurement Entity and the Contractor within the said 56 days and no notice of intention to commence arbitration as to such dispute has been given by either the Procurement Entity or the Contractor within 14 days after the parties received such Recommendation from the DRE, the Recommendation shall become final and binding upon the Procurement Entity and the Contractor.

**6.1.7** Whether or not it has become final and binding upon the Procurement Entity and the Contractor, a Recommendation shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the Recommendation relates.

**6.1.8** All Recommendations that have become final and binding shall be implemented by the parties forthwith.

## **6.2** Arbitration

**6.2.1** If either the Procurement Entity or the Contractor is dissatisfied with the DRE's decision, then either the Procurement Entity or the Contractor may, in accordance with Sub-Clause 6.1.5, give notice to the other party of its intention to commence arbitration, as hereinafter

provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The arbitral tribunal shall have full power to open up, review, and revise any decision, opinion, instruction, determination, certificate, and any Recommendation(s) of the DRE.

**6.2.2** Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCCSubclause 6.2.1, shall be finally settled by arbitration. Neither party shall be limited in the proceedings before such arbitration tribunal to the evidence nor arguments put before the DRE for the purpose of obtaining his Recommendation(s) pursuant to Sub-Clause 6.2.1. No Recommendation shall disqualify the DRE from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute Arbitration may be commenced prior to or after completion of the Works and Services.

**6.2.3** Arbitration proceedings shall be conducted in accordance with the rules of procedure designated in the PARTICULAR CONDITION OF CONTRACT.

**6.3** Where neither the Procurement Entity nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 6.1.5 and the related Recommendation has become final and binding, either party may, if the other party fails to comply with such Recommendation and without prejudice to any other right it may have, refer the failure to arbitration in accordance with Sub-Clause 6.2. The provisions of Sub-Clause 6.1 shall not apply to any such reference

**6.4** Notwithstanding any reference to the DRE or Arbitration herein

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

(b) The Procurement Entity shall pay the Contractor any monies due the Contractor.

## **B ASSIGNMENT OF RESPONSIBILITIES**

### **7 Scope of Works and Services**

**7.1** Unless otherwise expressly limited in the Specifications, the Contractor's obligations cover the Design, the carrying out of all Works and the performance of all Services required for keeping the Road in accordance with the Service Levels defined in the Specifications, while at the same time respecting the plans, procedures, specifications, drawings, codes and any other documents as identified in the Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Procurement Entity, if any, as set forth in the corresponding Specifications.

- 8      **Design Responsibility**
- 7.2      The Contractor shall, unless specifically excluded in the Contract, perform all such work, services and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining the Performance Standards (as specified in Clause 24 of GCC) as if such work, services and/or items and materials were expressly mentioned in the Contract.
- 8.1      The Contractor shall be responsible for the design provided to or produced by him and programming of the Works and Services, and for the accuracy and completeness of the information used for that design and programming in accordance with the requirements established in the Specifications.
- 8.2      Specifications and Drawings
- 8.2.1      The Contractor shall implement the basic and detailed design and the engineering work in compliance with the provisions of the Contract and the Specifications, or where not so specified, in accordance with good engineering practice.  
The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Procurement Entity.
- 8.2.2      The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof, provided or designated by, or on behalf of, the Procurement Entity, by giving a notice of such disclaimer to the Project Manager.
- 8.3      Codes and Standards
- Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of tender submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Procurement Entity and shall be treated in accordance with GCC Clause 63.
- 8.4      Approval/Review of Technical Documents by Project Manager
- 8.4.1      For those Works specified in the PARTICULAR CONDITION OF CONTRACT, the Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in the Specifications (List of Documents for Approval or Review) for its approval or review.  
Unless otherwise specified in the PARTICULAR CONDITION OF CONTRACT, the Contractor shall not be required to submit for the Procurement Entity's approval the Design or other technical documents concerning the Maintenance Services remunerated through monthly lump-sum payments.

Any part of the Works covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Sub-Clauses 8.4.2 through 8.4.7 shall apply only to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for his information or review only.

**8.4.2** Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 8.4.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefore and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.

**8.4.3** The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.

**8.4.4** If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 8.4.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

**8.4.5** If any dispute or difference occurs between the Procurement Entity and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to the DRB (or DRE) for determination in accordance with GCC Sub-Clause 6.1 hereof. If such dispute or difference is referred to the DRB (or DRE), the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the DRB (or DRE) upholds the Contractor's view on the dispute and if the Procurement Entity has not given notice under GCC Sub-Clause 6.1.5 hereof, then the Contractor shall be reimbursed by the Procurement Entity for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the DRB (or DRE) shall decide, and the Time for Completion shall be extended accordingly.

**8.4.6** The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

**8.4.7** The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended

document and obtained the Project Manager’s approval thereof, pursuant to the provisions of this GCC Sub-Clause 8.4.  
 If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 63.2 shall apply to such request.

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|----|--------------------------------------|--|
| 9  | <b>Copyright</b>                     | <p><b>9.1</b> The copyright in all drawings, documents and other materials containing data and information furnished to the Procurement Entity by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Procurement Entity directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.</p>  |
| 10 | <b>Start Date and Completion</b>     | <p><b>10.1</b> The Contractor shall start the Works and Services within the period specified in the PARTICULAR CONDITION OF CONTRACT. Upon request from the Contractor, the Procurement Entity shall confirm in writing the Start Date, after verifying that works and services have started on the Site.</p> <p><b>10.2</b> The Contractor shall attain the required Service Levels and the Completion of the Rehabilitation and Improvement Works (or of a part where a separate time for Completion of such part is specified in the Contract) within the time schedules included in the PARTICULAR CONDITION OF CONTRACT and the Specifications, or within such extended time to which the Contractor shall be entitled under GCC Clause 64 hereof</p>   |
| 11 | <b>Contractor’s Responsibilities</b> | <p><b>11.1</b> The Contractor shall design and carry out the Works and Services (including associated purchases and/or subcontracting) necessary to comply with the requirements established in the Specifications with due care and diligence in accordance with the Contract.</p> <p><b>11.2</b> The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Works and Services required, including any data and tests provided by the Procurement Entity, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site and of other data readily available to it relating to the Road as of the date Fourteen (14) days prior to tender submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Works and Services.</p> <p><b>11.3</b> The Contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country of the Procurement Entity that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor’s and Subcontractor’s personnel and entry permits for all imported Contractor’s Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Procurement Entity under GCC Sub-Clause 14.3 hereof and that are necessary for the performance of the Contract.</p> <p><b>11.4</b> The Contractor shall comply with all laws in force in the country of the Procurement Entity and where the Works and Services are carried out. The laws will include all local, state, national or other laws that affect the</p> |

performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Procurement Entity from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 14.1 hereof.

**11.5** Any Plant, Material and Services that will be incorporated in or be required for the Works and Services and other supplies shall have their origin in an eligible Country as defined under the Bank's procurement guidelines.

**11.6** The Contractor shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records of the Contractor and its subcontractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank. The Contractor's attention is drawn to Sub-Clause 59.2.1 which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Sub-Clause 11.6 constitute a prohibited practice subject to contract termination.

**12 Subcontracting**

**12.1** The Contractor may subcontract activities listed in the PARTICULAR CONDITION OF CONTRACT. Any other activity under the Contract may be subcontracted only when approved by the Project Manager. The Contractor may not assign the entire Contract without the approval of the Procurement Entity in writing. Subcontracting shall not alter the Contractor's obligations nor relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

**12.2** Notwithstanding GCC Sub-Clause 12.1, the Contractor may subcontract under his own responsibility and without prior approval of the Procurement Entity the small Works and Services also listed in the PARTICULAR CONDITION OF CONTRACT.

**13 Assignment of Contract**

**13.1** Neither the Procurement Entity nor the Contractor shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or there under, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

**14 Procurement Entity's Responsibilities**

**14.1** The Procurement Entity shall apply due diligence to ensure the accuracy of all information and/or data to be supplied to the Contractor as described in the Specifications, except when otherwise expressly stated in the Contract.

**14.2** The Procurement Entity shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of

way, as specified in the corresponding Specifications. The Procurement Entity shall give full possession of and accord all rights of access thereto on or before the date(s) specified in the PARTICULAR CONDITION OF CONTRACT.

- 14.3** The Procurement Entity shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located, when such authorities or undertakings require the Procurement Entity to obtain them in the Procurement Entity's name, are necessary for the execution of the Contract, and are specified in the corresponding Specifications.
- 14.4** If requested by the Contractor, the Procurement Entity shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
- 14.5** The Procurement Entity shall be responsible for the continued operation of the Road after Completion, in accordance with GCC Sub-Clause 28, and shall be responsible for facilitating the Guarantee Test(s) for the Road, in accordance with GCC Sub-Clause 20.
- 14.6** All costs and expenses involved in the performance of the obligations under this GCC Clause 14 shall be the responsibility of the Procurement Entity, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Sub-Clause 20.

**15 Confidential Information**

- 15.1** The Procurement Entity and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Procurement Entity to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 15.
- 15.2** The Procurement Entity shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Road. Similarly, the Contractor shall not use such documents, data and other information received from the Procurement Entity for any purpose other than the design, procurement of Plant and Equipment, construction or such Works and Services as are required for the performance of the Contract.
- 15.3** The obligation of a party under GCC Sub-Clauses 15.1 and 15.2 above, however, shall not apply to that information which

- (a) now or hereafter enters the public domain through no fault of that party;
- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto;
- (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

**15.4** The above provisions of this GCC Clause 15 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Works and Services or any part thereof.

**15.5** The provisions of this GCC Clause 15 shall survive termination, for whatever reason, of the Contract.

**C EXECUTION OF WORKS AND SERVICES**

**16 Representatives-**

**16.1 Project Manager**

If the Project Manager is not named in the Contract, then within fourteen (14) days of the issuance of signing of the Agreement, the Procurement Entity shall appoint and notify the Contractor in writing of the name of the Project Manager. The Procurement Entity may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of the Works and Services. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Procurement Entity at all times during the period of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Contractor to the Procurement Entity under the Contract shall be given to the Project Manager, except as herein otherwise provided. The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

**16.2 Road Manager**

**16.2.1** If the Road Manager is not named in the Contract, then the Contractor shall appoint the Road Manager before the Start Date and shall request the Procurement Entity in writing to approve the person so appointed. If the Procurement Entity makes no objection to the appointment within fourteen (14) days, the Road Manager shall be deemed to have been approved. If the Procurement Entity objects to the appointment within fourteen (14) days giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 16.2.1 shall apply thereto.

**16.2.2** The Road Manager shall represent and act for the Contractor at all times during the period of the Contract and shall give to the Project

Manager all the Contractor's notices, instructions, information and all other communications under the Contract. The Road Manager shall be in charge of the day-to-day management of the works and services to be provided under the contract on behalf of the Contractor, and shall have legal and all other faculties to take all necessary decisions related to the execution of the contract.

All notices, instructions, information and all other communications given by the Procurement Entity or the Project Manager to the Contractor under the Contract shall be given to the Road Manager or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Road Manager without the Procurement Entity's prior written consent, which shall not be unreasonably withheld. If the Procurement Entity consents thereto, the Contractor shall appoint some other person as the Road Manager, pursuant to the procedure set out in GCC Sub-Clause 16.2.1.

**16.2.3** The Road Manager may, subject to the approval of the Procurement Entity (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice to the Project Manager signed by the Road Manager, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 16.2.3 shall be deemed to be an act or exercise by the Road Manager.

**16.2.4** From the Start Date until Completion, the Road Manager shall supervise all work and services done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Road Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

**16.2.5** The Procurement Entity may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Procurement Entity, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under the Specifications. The Procurement Entity shall provide evidence of the same, whereupon the Contractor shall remove such person from the Site

**16.2.6** If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 16.2.5, the Contractor shall, where required, promptly appoint a replacement.

17      **Work Program**                      **17.1**      Contractor's Organization

The Contractor shall supply to the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out the Works and Services. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed as included in the Contractor's Bid. The Contractor shall promptly inform the Project Manager in writing of any revision or

alteration of such an organization chart.

**17.2** Program of Performance

Not later than the Start Date, the Contractor shall prepare and supply to the Project Manager a program of performance of the Contract, made in the form specified in the Specifications and showing the sequence in which it proposes to design and carry out the Works and Services, as well as the date by which the Contractor reasonably requires that the Procurement Entity shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion in accordance with the Contract. The Contractor shall update and revise the program as and when appropriate, but without modification in the Times for Completion given in the PARTICULAR CONDITION OF CONTRACT and any extension granted in accordance with GCC Clause 64, and shall supply all such revisions to the Project Manager.

**17.3** Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 17.2 above, and supply a progress report to the Project Manager every month together with his Monthly Statement. The progress report shall be in a form acceptable to the Project Manager in accordance with the Specifications.

**17.4** Progress of Execution

If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 17.2, or it becomes apparent that it will so fall behind, the Contractor shall prepare and supply to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Works and Execution of Services activities within the Time for Completion under GCC Sub-Clause 10.2, any extension thereof entitled under GCC Sub-Clause 64, or any extended period as may otherwise be agreed upon between the Procurement Entity and the Contractor.

**17.5** Work Procedures

The Contract shall be executed in accordance with the Contract Documents and the procedures given in the Specifications.

**18 Execution of Works**

**18.1** Setting Out/Supervision/Labour

**18.1.1Bench Mark.** The Contractor shall be responsible for the true and proper setting-out of the Works in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Procurement Entity.

If, at any time during the progress of execution of the Works, any error shall appear in the position, level or alignment of the Works, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect

data provided in writing by or on behalf of the Procurement Entity, the expense of rectifying the same shall be borne by the Procurement Entity.

**18.1.2 Contractor's Supervision.** The Contractor shall give or provide all necessary supervision during the execution of the Works, and the Road Manager or its deputy shall be on the Site to provide full-time supervision of the execution. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

## **18.2 Contractor's Equipment**

**18.2.1** All contractors' Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without informing the Project Manager.

**18.2.2** Unless otherwise specified in the Contract, upon completion of the Works and Services, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

**18.2.3** The Procurement Entity will, if requested, use its best endeavours to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

## **18.3 Site Regulations and Safety**

The Procurement Entity and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Procurement Entity, with a copy to the Project Manager, proposed Site regulations for the Procurement Entity's approval, which approval shall not be unreasonably withheld. Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety, traffic control, accident response, gate control, sanitation, medical care, and fire prevention.

## **18.4 Access to site for Other Contractors**

The Contractor shall, upon written request from the Procurement Entity or the Project Manager, give site access to other contractors employed by the Procurement Entity on or near the site.

## **18.5 Site Clearance**

**18.5.1 Site Clearance in Course of Execution:** In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of

the Contract.

**18.5.2 Clearance of Site after Completion:** After Completion of all parts of the Works and Services, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and the Road clean and safe.

**18.6 Watching and Lighting**

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Works and Services, for the protection of his own installations and his equipment, for the safety of the owners and occupiers of adjacent property and for the safety of the public.

**18.7 Access to the Site**

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

**18.8 Management Meetings**

**18.8.1** Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised by either the Contractor or the Procurement Entity.

**18.8.2** The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procurement Entity. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either during or after the management meeting and stated in writing to all who attended the meeting.

**19 Staff and Labour**

**19.1** The Contractor shall employ the key personnel named in the Contractor's Bid, to carry out the functions stated in the Specifications or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Contractor's Bid.

**19.2 Labour**

(a) The Contractor shall provide and employ on the Site for the execution of the Works and Services such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labour that has the necessary skills.

(b) Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.

(c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of

all labour and personnel to be employed on the Site into the country where the Site is located.

(d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Procurement Entity may provide the same to such personnel and recover the cost of doing so from the Contractor.

(e) The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labour of its Subcontractors.

(f) The Contractor shall provide lodging, medical assistance, alimentation and sanitary installations for the employees living in the contractor's base camps to comply with the Social, Sanitary and Health Conditions of Labour requirements established in the Specifications.

(g) The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of

(h) HIV-AIDS Prevention. If so indicated in the PARTICULAR CONDITION OF CONTRACT, the Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider or specialized NGO, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals. The Contractor shall throughout the contract: (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Sub-Contractors and Consultants' employees working on the Site, and truck drivers and crew making deliveries to the Site for Works and Services executed under the contract, and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labour as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labour.

(i) If so indicated in the PARTICULAR CONDITION OF CONTRACT, the Contractor shall include in the program to be submitted for the execution of the Works and Services under Sub-Clause 17 a program for Site staff and labour and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also

include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose.

**19.3** Removal of staff

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

**19.4** Work at Night and on Holidays

Unless otherwise provided in the Contract, if and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Service Levels and the Time for Completion, and requests the Procurement Entity's consent thereto (if such consent is needed), the Procurement Entity shall not unreasonably withhold such consent.

20 **Test and Inspection**

**20.1** The Contractor shall at its own expense carry out on the Site all such tests and/or inspections as are specified in the Specifications and in accordance with the procedures described in the Specifications.

**20.2** The Procurement Entity and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection

**20.3** For tests to be carried out on the initiative of the Contractor, whenever the Contractor is ready to carry out any such test and/or inspection, he shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall provide the Project Manager with a signed report of the results of any such test and/or inspection.

**20.4** If the Procurement Entity or Project Manager (or their designated representatives) fails to attend a scheduled test and/or inspection, or if it is agreed between the parties that such persons shall not attend, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a signed report of the results thereof.

**20.5** The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of the works and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

**20.6** If Rehabilitation Works, Improvement Works or Emergency Works fail to pass any test and/or inspection, the Contractor shall either rectify or replace such works and shall repeat the test and/or inspection upon giving

a notice under GCC Sub-Clause 20.3.

**20.7** If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Works and Services, or part of them, that cannot be settled between the parties within a reasonable period of time, it may be referred to the RDB (or DRE) for determination in accordance with GCC Sub-Clause 6.1.

**20.8** The Contractor agrees that neither the execution of a test and/or inspection of the Works and Services or any part of them, nor the attendance by the Procurement Entity or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 20.4, shall release the Contractor from any other responsibilities under the Contract.

**20.9** No part or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such part or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

**20.10** The Contractor shall uncover any part of the Works or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Works or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 20.9 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Procurement Entity, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

21 **Rehabilitation Works**

**21.1** If so indicated in the PARTICULAR CONDITION OF CONTRACT, specific Rehabilitation Works shall be carried out explicitly in accordance with the Specifications and as specified in the tendering documents and in the Contractor's Bid. Input quantities for Rehabilitation Works were estimated by the Contractor to achieve the performance criteria for Rehabilitation Works given in the Specifications. The specific Rehabilitation Works were offered by the Contractor at a Lump-Sum price.

22 **Improvement Works**

**22.1** If so indicated in the PARTICULAR CONDITION OF CONTRACT, Improvement Works are required and will consist of a set of interventions that add new characteristics to the roads in response to new traffic and safety or other conditions. Improvement Works quantities were offered at unit prices included in the Bill of Quantities.

**22.2** The execution of Improvement Works shall be requested by the Project Manager, who will issue a Work Order defining the requested works to be carried out by the Contractor, based on the activities priced in the Bill of Quantities. The Work order shall specify the activities to be carried out and the corresponding price. The Road Manager shall confirm his acceptance by signing the Work Order.

23	<b>Maintenance Services</b>	<b>23.1</b>	Maintenance Services are those activities necessary for keeping the Road in compliance with the Performance Standards pursuant to GCC Clause 24. Maintenance Services shall include all activities required to achieve and keep the Road Performance Standards and Service Levels. These Services will be remunerated by Lump-Sum amount for the period of the contract paid in fixed monthly payments during the entire Contract period.
24	<b>Performance Standards</b>	<b>24.1</b>	The Contractor shall carry out the Maintenance Services to achieve and keep the Road complying with the Service Levels defined in the Specifications. He will carry out all Works in accordance with the performance standards indicated in the Specifications.
25	<b>Contractor's Self-Control of Quality and Safety</b>	<b>25.1</b>	The Contractor shall, throughout the execution and completion of the Works and Services, maintain a System which shall ensure that the work methods and procedures are adequate and safe at all times and do not pose any avoidable risks and dangers to the health, safety and property of the workers and agents employed by him or any of his subcontractors, of road users, of persons living in the vicinity of the roads under contract, and any other person who happens to be on or along the roads under contract.
		<b>25.2</b>	Unless specified otherwise in the PARTICULAR CONDITION OF CONTRACT, the Contractor shall establish, within his own organizational structure, a specific Unit staffed with qualified personnel, whose task is to verify continuously the degree of compliance by the Contractor with the required Service Levels. That Unit will also be responsible for the generation and presentation of the information needed by the contractor for the documentation required as defined in the Specifications. The Unit will be responsible for maintaining a detailed and complete knowledge of the condition of the Road and to provide to the Road Manager all the information needed in order to efficiently manage and maintain the Road. The Unit shall also carry out, in close collaboration with the Project Manager, the verifications on the Service Levels.
		<b>25.3</b>	The Contractor's Self-Control Unit mentioned in GCC Sub-Clause 25.2 shall report the level of compliance with the required Service Levels in the standard format presented in the Specifications
26	<b>Environmental and Safety Requirements</b>	<b>26.1</b>	<p>The Contractor shall, throughout the design, execution and completion of the Works and Services, and the remedying of any defects therein:</p> <ul style="list-style-type: none"> <li>(a) have full regard for the safety of all persons employed by him and his subcontractors and keep the Site (so far as the same is under his control) in an orderly state appropriate to the avoidance of danger to such persons;</li> <li>(b) provide and maintain at his own cost all guardrails, fencing, warning signs and watching, when and where necessary or required by Sub-Clause 18.3 of the Contract or by any duly constituted authority, for the protection of the Works and Services or for the safety and convenience of his workers and road users, the public or others; and</li> <li>(c) Take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.</li> </ul>

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| 27 | <b>Work Orders for Improvement Works and Emergency Works</b> | <p><b>27.1</b> Improvement Works and Emergency Works shall be executed by the Contractor on the basis of Work Orders issued by the Project Manager.</p> <p><b>27.2</b> Work Orders shall be issued in writing and shall include the date on which the Work Order was issued and the signature of the Project Manager. Two copies of the Work Order shall be transmitted by the Project Manager to the Contractor, who shall immediately countersign one copy, including the date of acceptance, and return it to the Project Manager.</p> <p><b>27.3</b> If the Contractor has any objection to a Work Order, the Road Manager shall notify the Project Manager of his reasons for such objection within ten (10) days) of the date of issuing the Work Order. Within five (5) days of the Road Manager’s objection, the Project Manager shall cancel, modify or confirm the Work Order in writing.</p>  |
| 28 | <b>Taking Over Procedures</b>                                | <p><b>28.1</b> When the whole of the Works and Services have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Project Manager, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Project Manager to issue a Taking-Over Certificate in respect of the Works and Services. The Project Manager shall, within twenty-one (21) days of the date of delivery of such notice, either issue to the Contractor a Taking-Over Certificate, stating the date on which the Works and Services were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the conditions to be complied with and all the work which is required to be done by the Contractor before the issue of such Certificate. The Project Manager shall also notify the Contractor of any defects in the Works and Services affecting substantial completion that may appear after such instructions and before completion of Taking-Over Certificate within twenty-one (21) days of completion, to the satisfaction of the Project Manager, of the Works and Services so specified and remedying any defects so notified.</p> <p><b>28.2</b> Similarly, in accordance with the procedure set out in Sub-Clause 28.1, the Contractor may request and the Project Manager shall issue a Taking-Over Certificate in respect of:</p> <p>(a) any Section in respect of which a separate Time for Completion is provided in the contract,</p> <p>(b) any substantial part of the Works and Services which has been both completed to the satisfaction of the Project Manager and, otherwise than as provided for in the Contract, occupied or used by the Procurement Entity, or</p> <p>(c) any part of the Works and Services which the Procurement Entity has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).</p> |
| 29 | <b>Emergency Works</b>                                       | <p><b>29.1</b> The need for execution of Emergency Works is jointly identified by the Procurement Entity and the Contractor and the starting of the execution</p>  |

of Emergency Works shall always require a Work Order issued by the Project Manager

**29.2** The execution of Emergency Works shall be requested by the Contractor based on losses or damages occurred as a result of natural phenomena (such as strong storms, flooding or earthquakes) with imponderable consequences, or on the possibility of damages or losses occurring, or the safety of individuals, works, services or equipment being at risk as result of the natural phenomena. In order to characterize the Emergency Works, the Contractor shall forward a Technical Report to the Project Manager requesting the execution of Emergency Works and characterizing the situation. On the basis of the said report, and of his own judgment of the situation, the Project Manager may issue a Work Order to the Contractor.

**29.3** The Procurement Entity or even Government authorities may declare an Emergency Situation on the basis of local legislation. In those cases, the Project Manager may issue a Work Order for Emergency Works to the Contractor even without a request by the Contractor

**29.4** If the Contractor is unable or unwilling to do such work immediately, the Procurement Entity may do or cause such work to be done as the Procurement Entity may determine necessary in order to prevent damage to the Road. In such event the Procurement Entity shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefore. If the work done or caused to be done by the Procurement Entity is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Procurement Entity in connection therewith shall be paid by the Contractor to the Procurement Entity. Otherwise, the cost of such remedial work shall be borne by the Procurement Entity.

30 **Quality of materials used by Contractor**

**30.1** The quality of materials used by the Contractor for the execution of the Contract shall be in compliance with the requirements of the Specifications. If the Contractor is of the opinion that materials of higher quality than those stated in the Specifications need to be used in order to ensure compliance with the Contract, he shall use such better materials, without being entitled to higher prices or remunerations.

**30.2** Under no circumstances may the Contractor make any claim based on the insufficient quality of materials used by him, even if the material used was authorized by the Project Manager.

**30.3** The Contractor shall carry out at his own cost the laboratory and other tests that he needs to verify if materials to be used comply with the Specifications, and shall keep records of such tests. If requested by the Project Manager, the Contractor shall hand over the results of the tests.

31 **Signalling and demarcation of work zones and bypasses**

**31.1** To ensure the safety of road users, including non-motorized road users and pedestrians, the Contractor is responsible to install and maintain at his cost the adequate signalling and demarcation of work sites, which in addition must comply with the applicable legislation.

**31.2** If the execution of services and works under the contract is likely to interfere with traffic, the Contractor shall take at his cost the measures necessary to limit such interference to the strict minimum, or any danger

to the workers or others. For that purpose, he is entitled to install, within the right-of-way of the road, temporary bypasses, structures or other modifications to be used by traffic during the execution of works and services. The Contractor shall notify the Project Manager of any such temporary installations.

**31.3** If the execution of Works and Services by the Contractor makes it necessary to temporarily close a road section, and a traffic detour has to be implemented over other public roads or streets, the Contractor shall be responsible for the adequate signalling of the detour, under the same conditions as stated in GCC Sub-Clause 31.1.

**31.4** The Contractor shall inform the local authorities and the local police about such activities to be carried out by him which may cause any significant interruptions or changes to the normal traffic patterns. Such information shall be made in writing and at least seven (7) days before the beginning of such activities. Upon request from the Contractor, the Procurement Entity shall assist the Contractor in the coordination with the local authorities and the local police.

**D ALLOCATION OF RISKS**

**32 Procurement Entity’s Risks**

**32.1** From the Start Date until the Defects Liability Certificate has been issued, the following are Procurement Entity’s risks insofar as they directly affect the execution of the Works and Services included in this Contract:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, revolution, insurrection, military or usurped power, or civil war;
- (c) ionizing radiations, contamination by radioactivity from any nuclear fuel, or any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (d) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works and Services;
- (e) loss or damage due to the use or occupation by the Procurement Entity of any unfinished Section or part of the Works, except as may be provided for in the Contract;
- (f) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.

**33 Contractor’s Risks**

**33.1** The Procurement Entity carries the risks which this Contract states are Procurement Entity’s risks, and the remaining risks are the Contractor’s risks.

**34 Loss of or Damage to Property; Accident or Injury to Workers; Indemnification**

**34.1** Subject to GCC Sub-Clause 34.3, the Contractor shall indemnify and hold harmless the Procurement Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, in respect of the death or injury of any person or loss of or damage to any property arising in connection with the execution and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of

the Procurement Entity, its contractors, employees, officers or agents.

**34.2** If any proceedings are brought or any claim is made against the Procurement Entity that might subject the Contractor to liability under GCC Sub-Clause 34.1, the Procurement Entity shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Procurement Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Contractor fails to notify the Procurement Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procurement Entity shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Procurement Entity within the twenty-eight (28) day period, the Procurement Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Procurement Entity shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

**34.3** The Procurement Entity shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Procurement Entity, other than the Works not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 35, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

**34.4** The party entitled to the benefit of an indemnity under this GCC Clause 34 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

**35 Insurance**

**35.1** To the extent specified in the PARTICULAR CONDITION OF CONTRACT, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said PARTICULAR CONDITION OF CONTRACT. The identity of the insurers and the form of the policies shall be subject to the approval of the Procurement Entity, who should not unreasonably withhold such approval.

**35.2** The Procurement Entity shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 35.1, except for the Third Party Liability, Workers' Compensation and Procurement Entity's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 35.1 except for the Cargo Insurance During Transport, Workers' Compensation and Procurement Entity's Liability Insurances. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

- 35.3** The Contractor shall deliver to the Procurement Entity certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Procurement Entity by insurers prior to cancellation or material modification of a policy.
- 35.4** The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- 35.5** If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 35.1, the Procurement Entity may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Procurement Entity shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor.
- 35.5** Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GCC Clause 35, and all monies payable by any insurers shall be paid to the Contractor. The Procurement Entity shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Procurement Entity's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Procurement Entity. With respect to insurance claims in which the Contractor's interest is involved, the Procurement Entity shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.
- 36 Unforeseen Conditions**
- 36.1** If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Road (including any data and tests provided by the Procurement Entity), and on the basis of information that it could have obtained from a visual inspection of the Site or other data readily available to it relating to the Road, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant and Equipment or Contractor's Equipment, notify the Project Manager in writing of:
- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;
- (b) the additional work and/or Plant and Equipment and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;

(c) the extent of the anticipated delay;

(d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC Sub-Clause 36.1, the Project Manager decides upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Procurement Entity, of the actions to be taken.

**36.2** Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 36.1 shall be paid by the Procurement Entity to the Contractor as an addition to the Contract Price.

**36.3** If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 36.1, the Time for Completion shall be extended in accordance with GCC Clause 64.

**37 Change in Laws and Regulations**

**37.1** If, after the date twenty-eight (28) days prior to the date of Tender submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PARTICULAR CONDITION OF CONTRACT.

- 38      **Force Majeure**
- 38.1**      “Force Majeure” shall mean any event beyond the reasonable control of the Procurement Entity or of the Contractor, as the case may be, insofar as they directly affect the execution of the Services and Works included in this Contract and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:
- (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war;
  - (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;
  - (c) confiscation, nationalization, mobilization, commandeering, requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
  - (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and
  - (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster;
  - (f) shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure.
- 38.2**      If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.
- 38.3**      The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party’s performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 64.
- 38.4**      The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party’s right to terminate the Contract under GCC Sub-Clause 38.6.
- 38.5**      No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall
- (a) constitute a default or breach of the Contract;
  - (b) give rise to any claim for damages or additional cost or expense occasioned thereby;
- if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure

- 38.6** If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GCC Clause 59.
- 38.7** In the event of termination pursuant to GCC Sub-Clause 38.6, the rights and obligations of the Procurement Entity and the Contractor shall be as specified in GCC Sub-Clauses 59.1.2 and 59.1.3.
- 38.8** Notwithstanding GCC Sub-Clause 38.5, Force Majeure shall not apply to any obligation of the Procurement Entity to make payments to the Contractor herein.

**E GUARANTEES AND LIABILITIES**

**39 Completion Time Guarantee and Liability**

- 39.1** The Contractor guarantees that it shall attain specified Service Levels and the Completion of Rehabilitation and Improvement Works (or a part for which a separate time for completion is specified in the PARTICULAR CONDITION OF CONTRACT) within the time schedules specified in the PARTICULAR CONDITION OF CONTRACT and the Specifications, pursuant to GCC Sub-Clause 10.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 64 hereof.
- 39.2** If the Contractor fails to attain specified Service Levels within the contractually agreed time schedules as given in the Specifications, the contractor shall receive reduced payments for Maintenance Services, for such default and not as a penalty, in accordance with the Specifications.
- 39.3** If the Contractor fails to attain the Completion of Rehabilitation and Improvement Works (or a part for which a separate time for completion is specified in the PARTICULAR CONDITION OF CONTRACT clause 39.1) within the contractually required time schedules, the contractor shall pay to the Procurement Entity liquidated damages for such default and not as a penalty, in accordance with the PARTICULAR CONDITION OF CONTRACT and the Specifications.
- 39.4** The payment reductions and liquidated damages indicated in GCC 39.2 and 39.3 shall be the only monies due from the Contractor for such defaults, and they will be applied for every day of delay, in accordance with the PARTICULAR CONDITION OF CONTRACT and the Specifications. The aggregate amount of such liquidated damages and payment reductions shall in no event exceed the "aggregate liability" in accordance with GCC Clause 42. The payment or deduction of such sums shall not relieve the Contractor from his obligation to complete the Works and Services, or from any other of his obligations and liabilities under the Contract.

**40 Performance Guarantee and Liability**

- 40.1** The Contractor guarantees that during the Performance Tests or Inspections for Rehabilitation and Improvement Works, and for Emergency Works, the Road and all parts thereof shall attain the Performance Standards specified in the corresponding Specifications.

- 40.2** If, for reasons attributable to the Contractor, the minimum level of the Performance Standards specified in the corresponding Specifications are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Road or any part thereof as may be necessary to meet at least the minimum level of such Standards. The Contractor shall notify the Procurement Entity upon completion of the necessary changes, modifications and/or additions, and shall request the Procurement Entity to repeat the Test or Inspection until the minimum level of the Standards has been met. If the Contractor eventually fails to meet the minimum level of Performance Standard, the Procurement Entity may consider termination of the Contract, pursuant to GCC Sub-Clause 59.2.2.
- 40.3** If, for reasons attributable to the Contractor, the Performance Standards relating to Rehabilitation and Improvement Works specified in the corresponding Specifications are not attained either in whole or in part, the Contractor shall, at the Contractor's choice, either
- (a) make such changes, modifications and/or additions to the Works and Services or any part thereof that are necessary to attain the Performance Standards at its cost and expense, and shall request the Procurement Entity to repeat the Test, or
  - (b) pay liquidated damages to the Procurement Entity in respect of the Works and Services which fail to meet the Performance Standards in accordance with the provisions in the corresponding Specifications.
- 40.4** The payment of liquidated damages under GCC Sub-Clause 40.3, up to the limitation of liability specified in the PARTICULAR CONDITION OF CONTRACT, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 40.1, and the Contractor shall have no further liability whatsoever to the Procurement Entity in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Certificate of Completion for the Works or any part thereof in respect of which the liquidated damages have been so paid.
- 41 Defect Liability**
- 41.1** The Contractor warrants that the Works and Services or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Works and Services executed.
- 41.2** The Defect Liability Period shall be six (6) months from the date of Completion of the Contract, or twelve (12) months from the date of Certificate of Completion of the Works (or any part thereof), whichever occurs first, unless specified otherwise in the PARTICULAR CONDITION OF CONTRACT.
- If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Works and Services executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Procurement Entity regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Road caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Road arising out of or resulting from improper operation or maintenance of the Road by the

Procurement Entity after taking over.

- 41.3** The Contractor's obligations under this GCC Clause 41 shall not apply to
- (a) any works or materials that have a normal life shorter than the Defect Liability Period stated herein;
  - (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Procurement Entity or any matters for which the Contractor has disclaimed responsibility herein;
  - (c) any other materials supplied or any other work executed by or on behalf of the Procurement Entity, except for the work executed by the Procurement Entity under GCC Sub-Clause 41.6.
- 41.4** The Procurement Entity shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Procurement Entity shall afford all reasonable opportunity for the Contractor to inspect any such defect.
- 41.5** The Procurement Entity shall afford the Contractor all necessary access to the Site to enable the Contractor to perform its obligations under this GCC Clause 41. The Contractor may remove from the Site any Plant and Equipment that are defective if the nature of the defect is such that repairs cannot be expeditiously carried out at the Site.
- 41.6** If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Road caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Procurement Entity may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Procurement Entity in connection therewith shall be paid to the Procurement Entity by the Contractor or may be deducted by the Procurement Entity from any monies due the Contractor or claimed under the Performance Security.
- 41.7** If the Road or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Road or such part, as the case may be, shall be extended by a period equal to the period during which the Road or such part cannot be used because of any of the aforesaid reason.
- 41.8** Except as provided in GCC Clauses 40 and 41, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Road or any part thereof, the Plant and Equipment, design or engineering or work executed that appear after Completion of the Works and Services, except where such defects are the result of the gross negligence, fraud, criminal or wilful action of the Contractor.

42      **Limitation of Liability**

- 42.1** Except in cases of criminal negligence or willful misconduct,
- (a) the Contractor shall not be liable to the Procurement Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Procurement Entity and

- (b) the aggregate liability of the Contractor to the Procurement Entity, whether under the Contract, in tort or otherwise, shall not exceed the limit specified in the PARTICULAR CONDITION OF CONTRACT.
- 43      **Liability for Damages through Traffic Accidents and Traffic Interruptions**
- 43.1      The Contractor cannot be held liable for losses or damages of any kind arising out of traffic accidents on the roads included in the Contract, unless those traffic accidents have been caused directly by potholes or other major defects of the Road covered by the Contract he failed to repair in a timely manner, criminal acts, wilful misconduct or gross negligence of the Contractor.
- 43.2      Under no circumstances can the Contractor be held liable for losses or damages of any kind and to anyone arising out of interruptions of traffic or traffic delays on the road included in the Contract, including any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs.
- F      PAYMENT**
- 44      **Contract Price**
- 44.1      The Contract Price shall be as specified in the Form of Contract Agreement to be paid in the currencies indicated in the PARTICULAR CONDITION OF CONTRACT.
- 44.2      Unless indicated otherwise in the PARTICULAR CONDITION OF CONTRACT, and except in the event of a Change as provided for in the Contract, the Contract Price shall be:
- (a) For Rehabilitation Works, a firm lump sum not subject to any alteration, to be paid according to work progress;
  - (b) For Maintenance Services, a firm lump sum to be paid in monthly instalments;
  - (c) For Improvement Works, the total price stated in the Bill of Quantities for this item;
  - (d) For Emergency Works, the Provisional Sum reserved for this purpose.
- 44.3      The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
45.      **Advance Payment**
- 45.1      The Procurement Entity shall make advance payment to the Contractor of the amounts and by the date stated in the PARTICULAR CONDITION OF CONTRACT, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procurement Entity in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.
- 45.2      The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for the execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

- 45.3** The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works and Services on a payment basis as indicated in the PARTICULAR CONDITION OF CONTRACT.
- 46. Bill of Quantities**
- 46.1** The Bill of Quantities shall contain items for Groups of Activities which include the provision of Services (measured by performance standards) and Works (measured by unit of outputs or of products). The Bill of Quantities for Works shall include, where applicable, the lump-sum and unit price for Rehabilitation Works, and unit rates for Improvement Works and for Emergency Works.
- 46.2** Maintenance Services shall be measured and billed separately and will be remunerated by lump-sum amount for the period of the contract, and paid in fixed monthly payments during the entire Contract period. The values for remuneration of the Maintenance Services are those stated in the Bill of Quantities.
- 46.3** Rehabilitation Works will be remunerated by Lump-Sum amount for the period of the contract, however, indicating the quantities of measurable outputs to be executed in order that the Road achieves the performance standards specified in the tendering documents. Payments will be made in accordance with the execution of those measured outputs paid by executed works output. The prices shall be those stated in the Bill of Quantities.
- 46.4** Improvement Works will be remunerated after acceptance by the Procurement Entity and shall be paid according to the product unit price using the prices included in the Bill of Quantities.
- 46.5** Each Emergency Work Order issued by the Project Manager will include a lump-sum price for the works to be performed. The Lump-Sum price for the Emergency Works will be submitted by the Contractor to the Project Manager in each emergency pursuant to GCC Clauses 29 and 61 and will be prepared based on the Specifications and on the unit prices included in the Bill of Quantities for Emergency Works, and will remunerate all Emergency Activities. The prices include compliance with all Performance Indices described in the Specifications. Once approved, Emergency Works will be paid as lump sum in accordance with the schedule of payment proposed by the Contractor for the specific Emergency and approved by the Procurement Entity.
- 46.6** The Bill of Quantities is used to calculate the Contract Price. The amounts for Maintenance Services and Rehabilitation Works are the Lump-Sum prices offered in the Contractor's Bid. The Improvement Works amount included in the Contract is an estimate on the basis of the unit prices included in the Contractor's Bid. The Provisional Sum included in the Contract Price is an estimate for use when authorized by the Procurement Entity for Emergency Works and contingencies.
- 47. Measurement**
- 47.1** Maintenance Services will not be measured in volume; however its payment will be affected by compliance with the Performance Standards pursuant to GCC Clause 24. Maintenance Services shall be billed in fixed monthly amounts as per the Bill of Quantities Lump-Sum amount for Maintenance Services, beginning from the Start Date. Payments will be made with Reductions if the Performance Standards are not achieved, as

defined in the Specifications. The Reductions for non-compliance with the Performance Standards will be applied on a daily basis for the period under which the Road does not achieve the Performance Standards, in accordance with the methodology specified in the Specifications.

- 47.2 Rehabilitation Works will be measured on the basis indicated in the PARTICULAR CONDITION OF CONTRACT, based on the quantity of actual work outputs as defined in the Specifications, concluded by the Contractor and approved by the Project Manager. The prices shall be those stated in the Bill of Quantities.
  - 47.3 Improvement Works will be measured on the basis indicated in the PARTICULAR CONDITION OF CONTRACT and in accordance with the unit of measurement used for product unit price included in the Bill of Quantities. The prices shall be those stated in the Bill of Quantities.
  - 47.4 Emergency Works will not be measured and shall be billed in accordance with the Schedule of Payments agreed for each specific Emergency Work as approved by the Procurement Entity.
- 48. Price Adjustments**
- 48.1 Price adjustment shall not be applicable within the contract period
  - 48.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.
- 49. Monthly Statements and Payments**
- 49.1 The Contractor shall submit to the Project Manager monthly statements in the format indicated in the Specifications, of the estimated value of Maintenance Services, Rehabilitation Works, Improvement Works, and Emergency Works in separated items covering the Works and Services for the corresponding month.
  - 49.2 The Project Manager shall check the Contractor's monthly statement and certify within fourteen (14) days the amount to be paid to the Contractor.
  - 49.3 The value of Services executed shall be certified by the Project Manager taking into account the monthly amount included in the Bill of Quantities for Maintenance Services and the achievement of the Performance Standards for the Maintenance Services adjusted for any payment reductions in accordance with GCC Sub-Clause 47.1.
  - 49.4 The value of Works executed shall be certified by the Project Manager taking into account the value of the quantities of products executed and the prices in the Bill of Quantities.
  - 49.5 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 50. Payments**
- 50.1 Payments shall be adjusted for deductions for advance payments, retention, and reductions for not achieving Performance Standards for Maintenance Services. The Procurement Entity shall pay the Contractor the amounts certified by the Project Manager in accordance with

GCC Clause 49, within twenty-eight (28) days of the date of each certificate. If the Procurement Entity makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.

**50.2** If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute. The interest rate shall be determined as per Sub-Clause 50.1

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

**50.4** Items of the Works for which no rate or price has been entered in the Bill of Quantities will not be paid for by the Procurement Entity and shall be deemed covered by other rates and prices in the Contract.

**51 Retention and Reductions**

**51.1** The Procurement Entity shall retain the percentage indicated in the PARTICULAR CONDITION OF CONTRACT from each payment due to the Contractor for Rehabilitation Works and Improvement Works, except for the types of works specified in the PARTICULAR CONDITION OF CONTRACT. The regular monthly lump-sum payments for performance-based Maintenance Services will not be subject to retentions, unless indicated in the PARTICULAR CONDITION OF CONTRACT.

**51.2** On completion of the Rehabilitation and Improvement Works, half the total amount retained shall be repaid to the Contractor and the other half after twelve (12) months have passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor have been corrected before the end of this period.

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

**51.4** Reduction of monthly payments for Maintenance Services due to non compliance with the Service Levels will be made as indicated in GCC Sub-Clause 47.1. The amount of Reduction for the days in which the Road was not complying with the Performance Standards will not be paid or repaid, even after the Contractor re-establishes the quality levels to the standards required by the contract

**52. Taxes and Duties**

**52.1** Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Works and Services in and outside of the country where the Site is located.

**52.2** If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Procurement Entity shall use its best endeavors to enable the Contractor

to benefit from any such tax savings to the maximum allowable extent.

**52.3** For the purpose of the Contract, it is agreed that the Contract Price specified in the Form of Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of tender submission in the country where the Site is located (hereinafter called “Tax”). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 37 hereof.

**53. Securities**

**53.1 Issuance of Securities**

The Contractor shall provide the securities specified below in favor of the Procurement Entity at the times, and in the amount, manner and form specified below.

**53.3 Performance Security**

**53.3.1** The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the Contract in the amount specified in the PARTICULAR CONDITION OF CONTRACT.

**53.3.2** The security shall be denominated in the currency or currencies of the Contract, and shall be in form of the forms of guarantee provided in the tendering documents, as stipulated by the Procurement Entity in the PARTICULAR CONDITION OF CONTRACT.

**53.3.3** The security shall automatically become null and void, twelve (12) months after Completion of all Works and Services under the Contract, provided however, that if the Defects Liability Period has been extended on any part of the Works pursuant to GCC Sub-Clause 41.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration.

**54. Certificate of Completion**

**54.1**

The Contractor shall request the Project Manager to issue a Certificate of Completion of the Rehabilitation Works, Improvement Works and Emergency Works, or parts thereof, as applicable, and the Project Manager will do so upon deciding that the work is completed.

**55. Final Statement**

**55.1**

The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within fifty-six (56) days of receiving the Contractor’s account if it is correct and complete. If it is

not, the Project Manager shall issue within fifty-six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

**56 . Discharge**      **56.1**      Upon submission of the Final Statement, the Contractor shall give to the Project Manager, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 55 has been made and the performance security referred to in Sub-Clause 53.3, if any, has been returned to the Contractor.

**57. As Built Drawings and Manuals**      **57.1**      If “as built” Drawings and/or manuals are required, the Contractor shall supply them by the dates stated in the PARTICULAR CONDITION OF CONTRACT.  
**57.2**      If the Contractor does not supply the Drawings and/or manuals by the dates stated in the PARTICULAR CONDITION OF CONTRACT, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the PARTICULAR CONDITION OF CONTRACT from payments due to the Contractor.

**G. REMEDIES**

**58 Suspension**      **58.1**      The Procurement Entity may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefore. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Site and Works) until ordered in writing to resume such performance by the Project Manager. If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor’s default or breach of the Contract, the Contractor’s performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Procurement Entity shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Sub-Clause 63.1, excluding the performance of the suspended obligations from the Contract.

If the Procurement Entity fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension as termination of the Contract under GCC Sub-Clause 59.1.

**58.2**      If  
 (a) the Procurement Entity has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Contract, or commits a substantial breach of the Contract, the Contractor may give a notice to the Procurement Entity that requires payment of such sum, with interest thereon

as stipulated in GCC Sub-Clause 50.1, requires approval of such invoice or supporting documents, or specifies the breach and requires the Procurement Entity to remedy the same, as the case may be. If the Procurement Entity fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice; or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Procurement Entity, including but not limited to the Procurement Entity's failure to provide possession of or access to the Site, or failure to obtain any governmental permit under the Procurement Entity's responsibility and necessary for the execution and/or completion of the Works and Services,

then the Contractor may by fourteen (14) days' notice to the Procurement Entity suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

**58.3** If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 58, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 64, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Procurement Entity to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

**58.4** During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment or any Contractor's Equipment, without the prior written consent of the Procurement Entity.

## **59. Termination**

**59.1** Termination for Procurement Entity's Convenience

**59.1.1** The Procurement Entity may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Sub-Clause 59.1.

**59.1.2** Upon receipt of the notice of termination under GCC Sub-Clause 59.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination

- (a) cease all further work, except for such work as the Procurement Entity may specify in the notice of termination for the sole purpose of protecting that part of the Works and Services already executed, or any work required to leave the Site in a clean and safe condition,
- (b) terminate all subcontracts, except those to be assigned to the Procurement Entity pursuant to paragraph (d) (ii) below,
- (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a

clean and safe condition.

(d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 59.1.3, shall

(i) deliver to the Procurement Entity the parts of the Works executed by the Contractor up to the date of termination,

(ii) to the extent legally possible, assign to the Procurement Entity all right, title and benefit of the Contractor to the Works and Services and to the Plant and Equipment as of the date of termination, and, as may be required by the Procurement Entity, in any subcontracts concluded between the Contractor and its Subcontractors

(iii) deliver to the Procurement Entity all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works.

**59.1.3** In the event of termination of the Contract under GCC Sub-Clause 59.1.1, the Procurement Entity shall pay to the Contractor the following amounts:

(a) the Contract Price, properly attributable to the parts of the works and services executed by the Contractor as of the date of termination,

(b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel,

(c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges,

(d) the costs incurred by the Contractor in protecting and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 59.1.2,

(e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

**59.2** Termination for Contractor's Default

**59.2.1** The Procurement Entity, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Contractor, referring to this GCC Sub-Clause 59.2:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 13;
- (c) If the Contractor, in the judgment of the Procurement Entity has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract.

For the purpose 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;
- (v) “obstructive practice” is
  - (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - (b) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Sub-Clause 1.15 [Inspections and Audits by the Bank].

**59.2.2 If the Contractor**

- (a) has abandoned or repudiated the Contract

- (b) has without valid reason failed to commence work on the Road promptly or has suspended (other than pursuant to GCC Sub-Clause 58.2) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Procurement Entity to proceed,
- (c) persistently fails to execute the Contract in accordance with the Contract, such failure being defined in the PARTICULAR CONDITION OF CONTRACT, or persistently neglects otherwise to carry out its obligations under the Contract without just cause,
- (d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Works and Services in the manner specified in the program furnished under GCC Clause 17 at rates of progress that give reasonable assurance to the Procurement Entity that the Contractor can attain completion of the works and services by the Time for Completion as extended,

then the Procurement Entity may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Procurement Entity may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 59.2.

**59.2.3** Upon receipt of the notice of termination under GCC Sub-Clauses 59.2.1 or 59.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

- (a) cease all further work, except for such work as the Procurement Entity may specify in the notice of termination for the sole purpose of protecting that part of the Works and Services already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Procurement Entity based on the Procurement Entity's written request,
- (c) deliver to the Procurement Entity all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works and Services.

**59.2.4** The Contractor shall be entitled to be paid the Contract Price attributable to the Works and Services executed as of the date of termination, and the costs, if any, incurred in protecting and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 59.2.3. Any sums due the Procurement Entity from the Contractor accruing prior to the

date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

**59.3 Termination by Contractor**

**59.3.1 If**

(a) the Procurement Entity has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to GCC Clause 50, or commits a substantial breach of the Contract, the Contractor may give a notice to the Procurement Entity that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 50.2, requires approval of such invoice or supporting documents, or specifies the breach and requires the Procurement Entity to remedy the same, as the case may be. If the Procurement Entity fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or

(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Procurement Entity, including but not limited to the Procurement Entity's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit under the Procurement Entity's responsibility and necessary for the execution and/or completion of the Works and Services,

then the Contractor may give a notice to the Procurement Entity thereof, and if the Procurement Entity has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Procurement Entity within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Procurement Entity referring to this GCC Sub-Clause 59.3.1, forthwith terminate the Contract.

**59.3.2** The Contractor may terminate the Contract forthwith by giving a notice to the Procurement Entity to that effect, referring to this GCC Sub-Clause 59.3.2, if the Procurement Entity becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Procurement Entity takes or suffers any other analogous action in consequence of debt.

**59.3.3** If the Contract is terminated under GCC Sub-Clauses 59.3.1 or 59.3.2, then the Contractor shall immediately

(a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Road already executed, or any work required to leave the Site in a clean and safe condition,

(b) terminate all subcontracts, except those to be assigned to the Procurement Entity pursuant to paragraph (d) (ii),

(c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site.

(d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 59.3.4, shall

(i) deliver to the Procurement Entity the parts of the Road executed by the Contractor up to the date of termination,

(ii) to the extent legally possible, assign to the Procurement Entity all right, title and benefit of the Contractor to the Road and to the Plant and Equipment as of the date of termination, and, as may be required by the Procurement Entity, in any subcontracts concluded between the Contractor and its Subcontractors,

(iii) deliver to the Procurement Entity all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works and Services.

**59.3.4** If the Contract is terminated under GCC Sub-Clauses 59.3.1 or 59.3.2, the Procurement Entity shall pay to the Contractor all payments specified in GCC Sub-Clause 59.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

**59.3.5** Termination by the Contractor pursuant to this GCC Sub-Clause 59.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 59.3.

**59.4** In this GCC Clause 59, in calculating any monies due from the Procurement Entity to the Contractor, account shall be taken of any sum previously paid by the Procurement Entity to the Contractor under the Contract, including any advance payment paid pursuant to the Contract.

## **H. PROVISIONAL SUM**

**60 Provisional Sum 60.1** "Provisional Sum" means a sum included in the Contract for use when authorized by the Procurement Entity for Emergency Works and for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Procurement Entity. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Project

Manager shall determine in accordance with this Clause.

- |            |   |   |
|------------|---|---|
| <b>61</b>  | <b>Use of Provisional Sum for Emergency Works</b> | <p><b>61.1</b> After detecting a situation which in the opinion of the Contractor justifies the execution of Emergency Works or otherwise as defined in GCC Clause 29, the Contractor shall submit a Technical Report to the Project Manager characterizing the situation, and state estimated works quantities to correct the emergency situation, and a Lump Sum price quotation for the Emergency Works to be carried out. The price quotation should be based on the Specifications stated in Section VII using the unit prices included in the Bill of Quantities.</p> <p><b>61.2</b> If the execution of the Emergency Works require any activity not priced in the Bill of Quantities, the Contractor will use the price breakdowns included in the Contractor’s Tender in order to form the unit prices of the unpriced items to be included in the Price Quotation of the Emergency Works, all in accordance with agreed methodology for approving new prices.</p> <p><b>61.3</b> Upon receiving the request for Emergency Works including a Price Quotation, the Project Manager may issue a Work Order in accordance with GCC Sub-Clause 29.2 for execution of the Emergency Works for a Lump-Sum amount with a payment Schedule agreed with the Contractor. The cost of these Works will be covered by the amounts included in the Provisional Sum.</p> |
| <b>62.</b> | <b>Use of Provisional Sum for Contingencies</b>   | <p><b>62.1</b> The use of the Provisional Sum to cover for Contingencies will be done under the control and initiative of the Project Manager in accordance with the conditions of the Contract.</p>  |
|            |   | <p><b>I. CHANGE IN CONTRACT ELEMENTS</b></p>  |
| <b>63</b>  | <b>Change in Assignments to Contractor</b>        | <p><b>63.1</b> Introducing a Change</p> <p><b>63.1.1</b> If so indicated in the PARTICULAR CONDITION OF CONTRACT, the Procurement Entity shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Assignments to the Contractor (hereinafter called “Change”), provided that such Change falls within the general scope of the Assignment and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Works and Services and the technical compatibility of the Change envisaged with the nature of the Works and Services as specified in the Contract.</p> <p><b>63.1.2</b> If so indicated in the PARTICULAR CONDITION OF CONTRACT, the Contractor may from time to time during its performance of the Contract propose to the Procurement Entity (with a copy to the Project Manager) any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Works and Services. The Procurement Entity may at its discretion approve or reject any Change proposed by the Contractor.</p>  |

**63.1.3** Notwithstanding GCC Sub-Clauses 63.1.1 and 63.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

**63.1.4** The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 63.2 and 63.3, further details and sample forms are provided in the Sample Forms and Procedures section in the tendering documents.

**63.2** Changes Originating from Procurement Entity

**63.2.1** If the Procurement Entity proposes a Change pursuant to GCC Sub-Clause 63.1.1, it shall send to the Contractor a “Request for Change Proposal,” requiring the Contractor to prepare and furnish to the Project Manager, as soon as reasonably practicable, a “Change Proposal,” which shall include the following:

- (a) brief description of the Change
- (b) effect on the Time for Completion
- (c) estimated cost of the Change
- (d) effect on Functional Guarantees (if any)
- (e) effect on any other provisions of the Contract

**63.2.2** Prior to preparing and submitting the “Change Proposal,” the Contractor shall submit to the Project Manager an “Estimate for Change Proposal,” which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor’s Estimate for Change Proposal, the Procurement Entity shall do one of the following:

- (a) accept the Contractor’s estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal,
- (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate,
- (c) advise the Contractor that the Procurement Entity does not intend to proceed with the Change.

**63.2.3** Upon receipt of the Procurement Entity’s instruction to proceed under GCC Sub-Clause 63.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 63.2.1.

**63.2.4** The pricing of any Change shall, as far as practicable, be

calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

**63.2.5** If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith, and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 63, would be to increase or decrease the Contract Price as originally set forth in the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Procurement Entity accepts the Contractor's objection, the Procurement Entity shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

**63.2.6** Upon receipt of the Change Proposal, the Procurement Entity and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Procurement Entity shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Procurement Entity is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Procurement Entity decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Sub-Clause 63.2.2.

**63.2.7** If the Procurement Entity and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Procurement Entity may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the

Change Proposal.

If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Adjudicator in accordance with the provisions of GCC Sub-Clause 6.1.

**63.3** Changes Originating from Contractor

**63.3.1** If the Contractor proposes a Change pursuant to GCC Sub-Clause 63.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 63.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Sub-Clauses 63.2.6 and 63.2.7. However, should the Procurement Entity choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

**64. Extension Time for Completion**

**64.1** The Time(s) for Completion specified in the PARTICULAR CONDITION OF CONTRACT shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Works and Services as provided in GCC Clause 63,
- (b) any occurrence of Force Majeure as provided in GCC Clause 38 and unforeseen conditions as provided in GCC Clause 36,
- (c) any suspension order given by the Procurement Entity under GCC Clause 58,
- (d) any changes in laws and regulations as provided in GCC Clause 37, or
- (e) any default or breach of the Contract by the Procurement Entity, or any activity, act or omission of any other contractors employed by the Procurement Entity, or
- (f) any other matter specifically mentioned in the Contract

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

**64.2** Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting

particulars of the claim, the Procurement Entity and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Procurement Entity's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to an Adjudicator, pursuant to GCC Sub-Clause 6.1.

- 65. Release from Performance**
- 64.3** The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.
- 65.1** If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Procurement Entity or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

## Section VII: Particular Conditions of Contract (PCC)

The following Particular Conditions shall supplement the GCC. They are to be completed by the Procurement Entity and presented as part of the Tendering Documents. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

### Reference to GCC clauses

1	<p><b>The site</b> is the area the road reserves of all the roads as stated in <b>ITT 1.1</b> The name of the <b>Project Manager</b> is <b>The General Manager Maintenance</b>.</p>
3	<p>The following documents are also part of the Contract: N/A</p>
4	<p>The language of the Contract and the law governing the Contract is <b>English</b></p>
5	<p>The address of the Procurement Entity is: <b>KENYA URBAN ROADS AUTHORITY</b> . Street Address: <u>5<sup>TH</sup> NGONG AVENUE</u> . Floor/Roomnumber: <u>IKM BUILDING 1<sup>ST</sup> FLOOR</u> . City: <u>NAIROBI</u> . PostalAddress/Code : <u>41727 - 00100</u> . Country: <u>KENYA</u> . Telephone: <u>254-020-8013844</u> . Facsimile number: _____ Electronic mail address: <a href="mailto:info@kura.go.ke">info@kura.go.ke</a></p> <p>The address of the Contractor is: Name _____ Street Address: _____ Floor/Roomnumber: _____ City: _____ Postal Code : _____ Country: _____ Telephone: _____ Facsimile number: _____ Electronic mail address: _____ <i>[insert exact street address, including telephone and fax numbers, and E-Mail address]</i></p>
6	<p>Dispute Resolution Method used: DRE.</p>
6.1.2	<p>The Appointing Authority is: <b>Chartered Institute of Arbitrators (Kenya)</b></p>
6.1.3	<p>Arbitration Proceedings shall be conducted in accordance with the following rules of procedure: <b>The Laws of Kenya and the Rules of the Chartered Institute of Arbitrators (Kenya)</b></p>
8.4.1	<p>The Contractor is obliged to prepare and to furnish to the Project Manager for Approval any works on the road that would relate to Rehabilitation, Improvement or Emergency works.</p>

10.1	The Start Date shall be not later than <b>28</b> days after the issuance of the Letter of Commencement by the Procurement Entity.		
10.2		<b>Contract Month</b>	<b>Road Safety</b> Compliance required on % of contract road
		1	50
		2	100
		3	100
		4 until end of Contract	100
12.1	The Contractor is specifically not allowed to sub-contact the any of the activities		
12.2	The Contractor Shall not subcontract under his own responsibility and without prior approval of the Procurement Entity any Works and Services.		
14.2	The Procurement Entity shall give full possession of and access to the Site not later than <b>14 (Fourteen days)</b> after issuing a letter of commencement..		
19.2 (h) i	The provisions concerning HIV-AIDS prevention shall <b>apply</b> .		
21	There shall be no Rehabilitation works in this contract.		
22	There shall be no Improvement works in this contract.		
25.2	The Contractor shall establish a Self Control Unit		
35.1	<p>The Contractor shall take out and maintain in effect insurance on the following:</p> <p>(a) <i>Loss of or damage to the Plant and Materials</i> Covering loss or damage occurring prior to Completion.</p> <p>(b) <i>Third Party Liability Insurance</i> Covering bodily injury or death suffered by third parties (including the Procurement Entity's personnel) and loss of or damage to property occurring in connection with Works and Services.</p> <p>(c) <i>Automobile Liability Insurance</i> Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.</p> <p>(d) <i>Workers' Compensation</i> In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.</p> <p>(e) <i>Procurement Entity's Liability</i> In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.</p> <p>(f) <i>Other Insurances</i> Such other insurances as may be specifically agreed upon by the parties.</p>		
39.1	<p>The Time for Completion is Twelve Months</p> <p>1 (Twelve) Months.</p>		
39.3	<b>No Rehabilitation Works, No Improvement Works,</b>		
41.2	The aggregate liability of the Contractor to the Procurement Entity, excluding payment reductions defined in GCC 47.1, shall not exceed 15% the amount of the Contract amount.		
44.1	The payment of the Contract Price will be made in Kshs		
45.1	No Advance payment Shall be made		
45.3	No Advance payment Shall be made		
47.2	No Rehabilitation Works,		

47.3	No Improvement Works,
48	Price adjustment does not apply.
51	The procurement Entity shall retain 10% of all the payment as retention fees due to the Contractor and shall be refunded to the contractor on completion of then contract.
53.2.1	The amount of the Advance payment security is the same of the advance payment amount.
53.3.1	No Advance payment Shall be made
53.3.2	The form of guarantee is <b>a bank Guarantee.</b>
57.1	The Contractor shall provide as built drawings and/or Manuals to the procurement Entity within fourteen (14) days on written request by the Contractor. Failure by the Contractor to submit the required will result in the Procurement Entity Withholding 50% of the monthly payment due to the Contractor. The withheld funds shall be pegged to 10% of the contract limit.
59.2.2(c)	The condition of persistent failure to execute the contract is given if and when the total amount of payment reductions and liquidated damages applied under the contract reaches 20percent of the total contract amount.
63.1.1	The Procurement Entity has the right to propose a change in the contract.
63.1.2	Contractor's right to propose a change in the contract: Yes

## **SECTION VIII: Standard Contract Forms**

**SF-1: Form of Agreement**

**SF-2: Form of Performance Bank Guarantee(Unconditional)**

## FORM OF AGREEMENT

THIS AGREEMENT is made on the.....day of .....between the

**Kenya Urban Roads Authority (KURA)** of P. O. Box 41727-00100, Nairobi, Kenya hereinafter called "the Procurement Entity" of the one part And .....

hereinafter called "the Contractor" of the other part.

WHEREAS the Procurement Entity is desirous that certain works should be executed, viz.

### **Performance Based Routine Maintenance of Various Roads in Nairobi**

and has accepted a Contract by the Contractor for the execution completion and maintenance of such works NOW THIS AGREEMENT WITNESSES 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.:

- ❖ The Contract Agreement;
- ❖ The Letter of award by the Procurement Entity
- ❖ The Letter of Acceptance by the Contractor;
- ❖ The Form of Contract and Appendix to the Form of Contract;
- ❖ The Conditions of Contract Part I;
- ❖ The Conditions of Contract Part II;
- ❖ The Standard Specification for Road and Bridge Construction, 1986;
- ❖ The Special Specifications;
- ❖ The Drawings;
- ❖ The priced Bill of quantities;
- ❖ Conditions to the Contract and instructions to the Contractor;

All aforesaid documents are hereinafter referred to as "The Contract".

In consideration of the payment to be made by the Procurement Entity to the Contractor, the Contractor hereby covenants with the Procurement Entity to execute, complete and maintain the works in conformity in all respects with the provisions of the Contract.

The Procurement Entity hereby covenants to pay the Contractor in consideration of the execution, completion and maintenance of the works for the Contract Price at the times and in the manner prescribed by the Contract.

IN WITNESS HEREOF the parties that have caused this Agreement to be executed this .....day of .....

SEALED with the Common Seal of **Kenya Urban Roads Authority (KURA)**.

By the said Employer: .....  
(Director General, Kenya Urban Roads Authority)  
For and on behalf of the said Employer

In the presence of: .....  
(Name and Designation of Witness)  
.....  
(Signature of Witness)  
.....  
(Address of witness)

SEALED with the Common Seal of .....  
(**Insert the Name of Tender**)

By the said Contractor: .....  
(Managing Director)

In the presence of: .....  
(Name and Designation of Witness)  
.....  
(Signature of Witness)  
.....  
(Address of witness)

**FORM OF PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)**

To:

**Kenya Urban Roads Authority (KURA)**

P. O. Box 41727-00100,

Nairobi,

Kenya

1. WHEREAS .....  
(hereinafter called the Contractor) has undertaken in pursuance of contract No. RD: .....  
.....dated..... to execute the  
.....  
(hereinafter called the “Contract”)

2 AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified in the Appendix to Form of Tender as security for compliance with his obligations in accordance with the Contract;

3. AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

3. NOW THEREFORE we (name of Bank) .....

(hereinafter called “the Bank”) hereby affirm that we are the Guarantor and responsible to you on behalf of the Contractor up to a total of Kshs.....

Amount in words.....

.....and we undertake to pay to you, upon your first written demand and without cavil or argument, any sum or sums within and up to the limits as aforesaid without your needing to prove or show grounds or reasons for the sum specified therein.

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

We further agree that no change or addition to or other modification of the terms of the Contract or of the 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 such change, addition or modification

This Guarantee shall be valid until 28 days after issuing of the Defects Liability Certificate.

AUTHORISED SIGNATORY FOR THE BANK.....

Name of bank.....

Address.....

Date .....

## **PART 3 – Specifications**

## **SECTIONIX: Performance Specifications**

### **2.1 Description of Project Road**

The project roads are in **Nairobi** district of **Nairobi** region.

It includes the road reserves and the various roads as stated in ITT 1.1 in Nairobi. These are roads in various parts of the town with a total length of 48.7Kms. They are made up of bituminous type surfaced roads.

### **2.2 Scope of Services to be provided**

#### **2.2.1 Performance based Routine Maintenance Services**

The services to be provided by the Contractor include all activities, physical and others, which the Contractor needs to carry out in order to comply with the Service Levels and other output and performance criteria indicated in the contract, or with any other requirements of the contract. In particular, they include management tasks and physical works associated with the following road-related assets and items:

- Inspect road, identify and remove all obstructions
- Clear side drains, mitre drains, cut-off drains
- Repair and replace scour checks
- Repair eroded ditches
- Clean cross culverts, access culverts, outlets and inlets
- Headwall repairs
- Clear stream channels
- Vegetation control: grass slashing, bush clearing, tree pruning
- Maintenance and minor repairs to bridges.
- Fill potholes and minor gullies in the gravel wearing course and shoulders
- Repair carriageway edges
- Road furniture maintenance and repair

Performance based routine maintenance services will be paid for as a fixed **lump sumper km per month, with payment reductions made for non-compliance**, if appropriate.

#### **2.2.2 Rehabilitation and improvement works**

Repairs and Maintenance works will be carried out by the Contractor when specifically instructed by the Project Manager. Activities include:

- Repairs to culverts, replacing rings etc

Repairs and maintenance works will be paid for as measured items in accordance with the unit rates in the Bill of Quantities.

#### **2.2.3 Emergency Works**

Emergency works, by definition, are unforeseen at the time of preparing the contract. Severe weather conditions such as unusually high rainfall can lead to flash floods which may cause wash-outs and other damage to the carriageway and other features of the road and its corridor. While specific items of work are

not known at the start of the Contract it is prudent to include some general items which are indicative of the type of works that may be required. These have been included in the Bill of Quantities for Repairs, Maintenance and Emergency Works as they will probably be the same items, e.g. repairs and maintenance under an emergency situation. The quantities are nominal as they cannot be defined in advance. F

In the event of an emergency the Contractor should draw to the attention of the project manager that certain works need to be carried out to repair the carriageway and other road features to restore the safe passage of traffic along the road and ensure the integrity of the road and its corridor. The Contractor shall give the project manager an estimate of the extent of the required activities and an estimate of the costs based on the Bill of Quantities. The project manager will consider the information and instruct the Contractor to carry out such works as are necessary.

Emergency works will be paid for as measured items in accordance with the unit rates in the Bill of Quantities.

### 2.3 Timetable for Measuring Compliance with Service Level Requirements

In order to respect the Contractor's initial mobilization period, compliance with the service levels will be introduced gradually as shown in Table 2.1.

**Table 2.1 Timetable for Compliance with Service Level Requirements**

<b>Contract Month</b>	<b>Road Safety</b> Compliance required on % of contract road	<b>Durability</b> Compliance required on % of contract road
1	50	50
2	100	75
3	100	100
4 until end of Contract	100	100

### 2.4 Specification for Service Levels for Road Safety

The road user must be able to travel at a certain level of safety, unobstructed by objects, wash-out material and other debris on the gravel wearing course and shoulders. The criteria for determining the service levels for safety are given in Table 2.2. The enforcement of these criteria is expected to be an immediate priority of the contractor due to the critical importance of road safety, and 100% compliance is expected from Month 2, as shown in the Timetable in Table 2.1. Compliance will be determined by Visual Inspection.

**Table 2.2 Service Levels for Road Safety**

<b>Item</b>	<b>Service Level</b>	<b>Time Allowed</b>
Cleanliness of the road gravel surfacing and shoulders	<p>The road must always be clean and free of soil, debris, trash and other objects, which must be removed within the time given if they pose:</p> <ul style="list-style-type: none"> <li>• A high danger to traffic: such as rocks, fallen trees, dead animals, abandoned vehicles, fly tipping and other large obstacles etc:</li> <li>• A lesser (medium) danger to traffic: such as material washed on to the road after storms etc:</li> </ul>	<p>6 hours</p> <p>3 days</p>

## 2.5 Specification for Service Levels for Road Durability

### 2.5.1 Drainage

In general terms the contractor must ensure that all drainage elements and structures are without obstructions which may reduce their normal cross-section and impede the free flow of water.

The Service Level requirements for drainage systems and drainage structures are shown in Table 2.3. Compliance will be determined by Visual Inspection.

Item	Service Level	Time Allowed for Repairs and Tolerances Permitted
Side drains, ditches, mitre drains and unlined vertical drains	Must be clean and free of obstacles	Tolerance permitted: Siltation/Obstructions must less than 50mm in depth.  Siltation/Obstructions must be cleared within 7 days after detection.  Damages must be repaired within 3 weeks after detection.
Culverts	Must be clean and free of obstacles and without structural damage. Must be firmly contained by surrounding soil or material.	As above
Scour checks and other erosion protection structures	Must be de-silted, structurally sound and firmly contained in surrounding soil or material.	As above
Cleaning of manholes and gulleys	Must be clean and free of obstacles and without structural damage..	As above

### 2.5.2 Vegetation

This section specifies the Service Levels to be complied with in the case of vegetation growing within the right-of-way/ road reserve.

Vegetation is to be controlled to the heights, at the locations and with the restrictions as set out in Table 2.4. Compliance will be measured with a tape measure.

Type	Height (mm)	Features applied to:
1. Vegetation Free Zone.	0	Carriageway, shoulders and structures.
2. Inner vegetation zone: from edge of shoulders to back of side drain/ditch or 2m away from edge of shoulder on straights and outside of curves, and 5m on the inside of curves. Also control of vegetation around street furniture and other features.	25 (min) to 150 (max)	Road verges and large vegetated areas, including surface water channels with longitudinal gradients $\geq 3\%$ . Also vegetation control around: <ul style="list-style-type: none"> <li>• Marker posts</li> <li>• Signposts</li> <li>• Bridge and culvert markers</li> <li>• Guardrails</li> <li>• Bridge abutments</li> <li>• Cross culvert ends and headwalls man hole and gulleys</li> </ul>

		<ul style="list-style-type: none"> <li>• Inner side drains</li> </ul>
3. Outer vegetation zone, excluding zone 2.	50 (min) to 300 (max)	Bush clearing and vegetation control around: <ul style="list-style-type: none"> <li>• Marker posts</li> <li>• Access culvert ends and headwalls</li> <li>• Outer side drains</li> <li>• Channels with gradients <math>\leq 3\%</math>.</li> </ul>
4. Growth encroaching into Vegetation Free Zone from the side or top.	Must be removed if within 5m above the road surface.	Applies to vegetation control including trees, scrub or branches hanging over the zone.

### 2.5.3 Structures

The Contractor is responsible for the routine maintenance of all bridges, retaining walls and similar structures along the contract road.

The Service Levels for bridges, retaining walls and similar structures are given in Table 2.5 below. Compliance will be determined by Visual Inspection.

Table 2.5: Service Levels for Structures		
Item	Service Level	Time allowed for repairs or Tolerance permitted
<b>Steel or other metal structures</b>	Guardrails must be present and not deformed. All metal parts of overall structure shall be painted or otherwise protected and free of corrosion. Drainage system (e.g. weep holes) to be kept in good condition and fully functional.	Contractor must immediately notify Project Manager in case of any condition which threatens structural integrity of the structure. Damage and defects must be repaired within seven (7) days.
<b>Concrete structures</b>	Guardrails must be present and painted. Beams and all other structural parts must be in good conditions and fully functional. Drainage system (e.g. weep holes) in good condition and fully functional.	Contractor must immediately notify Project Manager in case of any condition which threatens structural integrity of the structure. Damage and defects must be repaired within seven (7) days.
<b>Expansion joints</b>	Clean and in good condition	Damages and defects must be repaired within seven (7) days.
<b>Retention walls</b>	Contractor must control presence and adequate condition of retention walls and their drainage.	Damage and defects must be repaired within seven (7) days.
<b>Riverbeds</b>	Contractor must ensure free flow of water under bridge and up to 50 metres upstream and downstream. Contractor must maintain design clearance under bridge. The Contractor shall take all reasonable measures to control erosion around bridge abutments and piers.	Causes for non-compliance must be eliminated within fourteen (14) days after water has sufficiently receded to allow minimum working conditions.

### 2.5.4 Pavement and Shoulders

The Contractor is responsible for the routine maintenance of the Pavement and Shoulders of the contract road.

The Service Levels for bridges, retaining walls and similar structures are given in Table 2.5 below. Compliance will be determined by Visual Inspection.

<b>Table 2.5: Service Levels for Structures</b>		
<b>Item</b>	<b>Service Level</b>	<b>Time allowed for repairs or Tolerance permitted</b>
<b>Potholes</b>	The pavement must at all times be kept pothole free. The contractor should ensure that no pot hole exceeds 10cm x 10cm x 5cm in dimension or a volume equivalent to the same.	Contractor must immediately notify Project Manager in case of any potholes greater in size than this. He should otherwise ensure potholes are sealed within seven (7) days of their appearance.
<b>Kerbs and Channels</b>	Kerbs and channels should be maintained in alignment and crack free. <ul style="list-style-type: none"> <li>• Kerbs and Channels that have been broken more than three times should be replaced.</li> <li>• Kerbs that are more than 30mm off the intended alignment should be reinstated.</li> </ul>	Damage and defects must be repaired within seven (7) days.
<b>Shoulders</b>	Shoulders should be maintained erosion free. <ul style="list-style-type: none"> <li>• Shoulder overhung should not exceed 50mm in depth.</li> <li>• Shoulder corrugations should not exceed 50mm.</li> </ul>	Damages and defects must be repaired within seven (7) days.

## 2.6 Procedures for Inspection

The visual inspection will be undertaken as part of the Formal and Informal inspections. The criteria for Service Levels will be checked at sections selected by the Project Manager based on visual appearance. The Project Manager shall be the sole judge of compliance. If a specified criterion is not met, the one-kilometre section in which the deficit occurs will be judged non-compliant.

### **2.6.1 Formal Inspections**

Formal inspections will be carried out jointly by the Project Manager and the Road Manager at the end of each month. The main purpose of the formal inspections is to enable the Project Manager to verify the information presented in the Contractor's Monthly Statement with the actual observed and measured conditions on the site. The Project Manager will prepare a brief Memorandum describing (i) the general circumstances of the site visit, including date, road sections visited, persons present, etc., (ii) any non-compliance which may have been detected, and (iii) the time granted by the Project Manager to the Contractor to remedy the detected defects. Based on the outcome of the formal inspection, the Project Manager will correct any possible errors or misrepresentations in the Contractor's statement, countersign it and present it to the Procurement Entity for payment, and to the Contractor for information.

Formal inspections will also be scheduled for the follow-up site visits, whose purpose is to verify if the Contractor has remedied the causes of earlier non-compliance, within the time frame granted by the Project Manager and specified in the Memorandum.

### **2.6.2 Informal Inspections of Service Levels**

The Project Manager may carry out informal inspections of Service Levels as part of his general mandate given to him by the Procurement Entity. He may do so on his own initiative, at any time and anywhere on the roads included in the contract. If he detects any road sections where the Service Level criteria are not met, he is obliged to inform the Contractor within 24 hours in writing, in order to enable the Contractor to take remedial action as soon as possible. The results of informal inspections may not be used by the Project Manager for purposes of correcting the Contractor's monthly statements or applying penalties, except for cases in which the traffic flow on the road has been completely interrupted.

### **2.7 Payment Method (Monthly Statement)**

The Monthly Statement to be submitted by the Contractor shall have the format shown in Table 2.6, which gives an example of how the statement is filled out. The compliance or non-compliance is reported in the table and is used to determine the degree of compliance and the payment reduction to be made in a particular month.

**Table 2.6 : Monthly Statement for Contract (Sample Only)**

Contract Road: A to B to C Contract No: .....

Road Section: From km: 5.00 To km: 25.00 Length of contract road: 20.00 km

District: Nyandarua Region: Central

Contract Month: 2 , October 2010

Service Level Criteria	Required Compliance Target	Compliance km	Actual Compliance Compliance criteria	Total Length (km) Compliant	Non-compliance Length	% Reduction	Payment Reduction
1. Road Safety	100%	20.00	Cleanliness of carriageway	18.00	2.00	20%	0.40
2. Durability	75%	15.00	Drainage	13.00	2.00	30%	0.60
	75%	15.00	Vegetation height	13.00	2.00	20%	0.40
	75%	15.00	Vegetation clearance	13.00	2.00	10%	0.20
	75%	15.00	Structures and river beds	13.00	2.00	20%	0.40
						<b>Total</b>	<b>2.00</b>

Length of road for payment this month = 'Length of contract road' minus 'Payment reduction length'

= 20.00 - 2.00 = 18.00 km

Less reductions for non-rectified previous non-compliance (Tab 2.8) = 18.00 - 1.00 = 17.00

Total payment due this month = 'Rate per km per month' multiplied by 'Length of road for payment this month'

= xKsh/km x 17.00 km

= x Ksh

## **2.8 Payment Reductions and Liquidated Damages to be applied on Non-Compliance**

In accordance with the relevant clauses of the Conditions of Contract, Payment Reductions are applied in case of non-compliance with Service Level requirements, while Liquidated Damages are applied in the case of non-compliance with required Repair, Maintenance and Emergency Works.

The results of each formal inspection of the Service Levels and other performance criteria will be recorded by the Project Manager in the form of a Memorandum. The Memorandum will state the type and location of any non-compliance detected, in particular those non-compliances already shown in the standard tables provided by the Contractor as part of the monthly statement. For each individual case of non-compliance, the Project Manager will determine a date by which the Contractor must have completed the necessary measures in order to remedy the cause of the non-compliance. A follow-up site visit is therefore necessary at the date fixed by the Project Manager, or soon thereafter, in order to verify that the Contractor has indeed remedied the cause of non-compliance.

If at the date indicated in the Memorandum, the Contractor has not remedied the cause for non-compliance, independent of the reason given for their failure to do so, the Contractor is subject to Payment Reductions in accordance with the relevant clauses of the Conditions of Contract.

Payment Reductions are variable over time. If the Contractor fails to remedy a cause of non-compliance for which a payment reduction has already been applied, the amount of the payment reduction increases month by month for that particular cause of non-compliance, without a ceiling being applied, until compliance is established. The calculation of the initial (first month) amounts of payment reductions, and the formula for their adjustment over time, is to be based on the following rules given in Table 2.8.

**Table 2.8: Amounts of Payment Reductions, and the Formula for Their Adjustment over Time,**

CRITERIA	CONDITIONS FOR APPLICATION OF PAYMENT REDUCTIONS	UNIT RATES FOR NON COMPLIANCE	REFERENCE TO TECHNICAL SPECIFICATIONS (PARAGRAPH NO.)
<b>Road Safety</b>	<i>Cleanliness of road: observed anywhere in a one km section does not comply with the service levels</i>	20% of the monthly lump sum for one km applied to each one-km section which does not comply	2.5
<b>Drainage</b>	<i>Cleanliness and condition of drainage structures (lateral ditches):</i> For a one-km section, to be determined for subsections of 50 m each. If unacceptable obstructions exist in more than one subsection, the one-km section does not comply <i>Cleanliness and condition of drainage structures (CULVERTS):</i> <i>Cleanliness and condition of drainage structures (MANHOLES):</i> <i>Cleanliness and condition of drainage structures (GULLEYS):</i>	30% of the monthly lump sum for one km, applied to each one-km section which does not comply	2.6.1
<b>Vegetation</b>	<i>Vegetation height (maximum):</i> The maximum height measured anywhere in a one-km section is above the threshold value	20% of the monthly lump sum for one km, applied to each on-km section which does not comply.	2.6.2
	<i>Vegetation (clearance above road):</i> The vertical clearance between the road surface and the lowest point of tree or other plan is less than the threshold value	10% of the monthly lump sum for one km, applied to each on-km section which does not comply.	2.6.2
<b>Structures and River Beds</b>	<i>Steel, concrete, expansion joints, retention walls, river beds:</i> For a one km of section, to be determined for each structure. If non-compliant on more than one structure, the one km does not comply	20% of the monthly lump sum for one km, applied to each one-km section which does not comply	2.6.3

Note: (i) The Unit Rates of payment reductions (“PR<sub>u</sub>”) shown in the above table are applicable during the first 30 days of non-compliance.

(ii) If the non-compliance has not been remedied within thirty days, liquidated damages for periods beyond 30 days are calculated based on the following formula:

**PR = 2<sup>n</sup>PR<sub>u</sub>** considering:

J = number of days of non-compliance, and  $n = \left\{ \frac{J - 1}{30} \right\}$  rounded up to full number (without decimals)

## **1.9 Determination of Liquidated Damages**

For **Repair Works**, the liquidated damages are **0.05% of the contract price bill item for repair works**,

**For the particular item delayed**, per calendar day of delay, of the payment normally due for the specific Works for which completion is delayed, the liquidated damages are up to a limit of 10% of the contract price for the Repair Works.

## **2.2.3 Self-Control Unit of Contractor**

The Contractor is obliged to assign a technically qualified and trained person, or persons, to verify continuously the degree of compliance by the Contractor with the Service Levels.

The Self-control Unit is responsible for gathering the information needed by the Contractor to prepare the Monthly Statement. The unit should have a complete knowledge of the road condition, both on and off carriageway, at all times. The unit will also be responsible for carrying out, in close cooperation with the project manager, the formal and scheduled inspections of Service Levels which will take place regularly.

The compliance (or non-compliance) of the Contractor with the service level requirements will be reported by the Self-Control Unit to the Project manager in the form of Table 2.3, given below.

## **2.2.4 Communications Equipment**

The Contractor is to provide and maintain in operation permanently a mobile phone for himself and his road manager on site, whereby the project manager may contact them at any time.

## **2.2.5 Site Regulations, Health and Safety Measures and Work Procedures**

The Contractor shall prepare and submit to the project manager, for approval, his proposed site regulations, health and safety measures (including HIV/AIDS mitigation measures), and Environmental Mitigation Plan and work procedures.

## **2.2.6 Functions of Key Personnel**

The Contractor will provide as a minimum the following permanent key personnel:

- Project director – the owner, director or senior manager of the company to oversee all contractual and operational functions of the contract.
- Road manager – site agent to head the self-control unit and direct and oversee the day-to-day planning and site operations of the contract including staff and public safety issues, the free flow of traffic, liaising with the public and reporting to the project manager. He will also decide what works have to be carried out and supervise the labour force to ensure quality and adherence to the service levels, as well as the duties described in 2.2.4.

The roles could be done by the same person, depending on the size of the firm.

## **SECTIONX: Standard Specifications**

The contractor must familiarize himself with General specification for Road works as contained in.

**"Standard Specification**

for

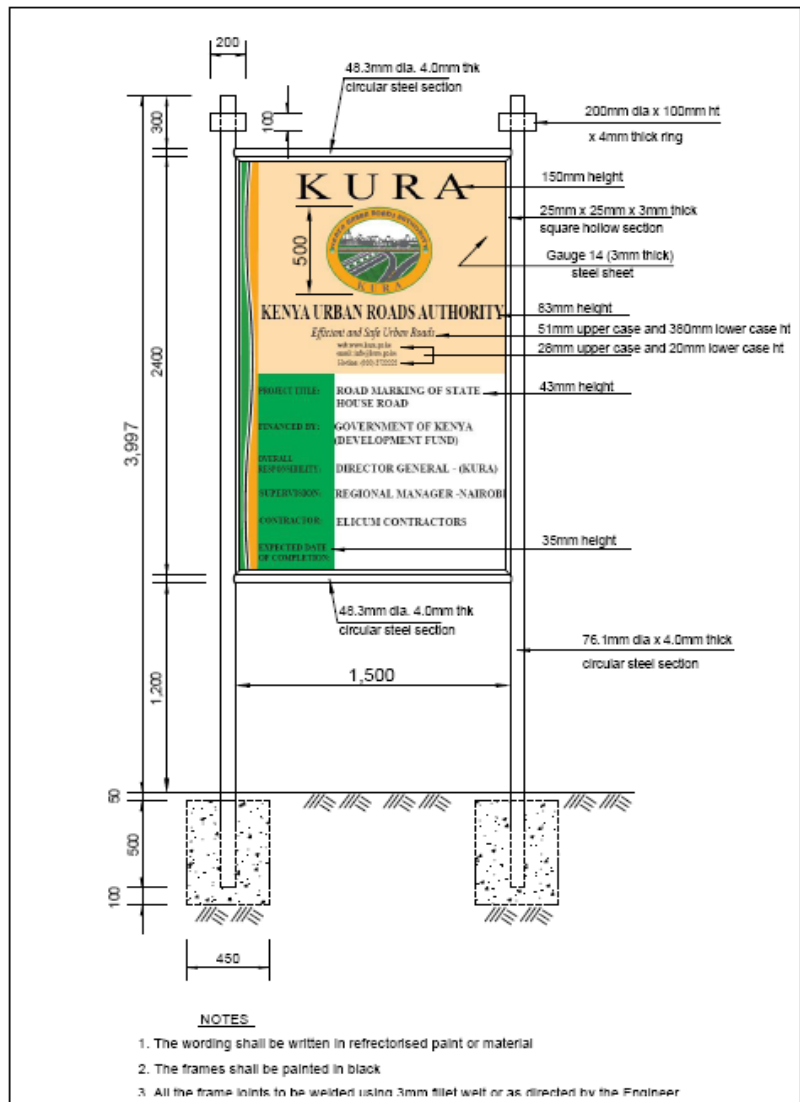
**Road and Bridge Construction**

Published by the Ministry of Transport and Communications of the Republic of Kenya, 1986.

Work shall be carried out in accordance with the Standard Specification except as supplemented, modified or revised in the Special Specification.

# Book of Drawings

FIGURE 1 - PUBLICITY SIGN



## **Bills of Quantities**

The tender includes the following Bills of Quantities:

**Bill of Quantities for Performance Based Contracts**

**Bill of Quantities for Emergency Works** (if those are required under unit rate based contract)

## **Bill of Quantities for Performance Based Maintenance Services**

1. The Bill of Quantities for Maintenance Services shall be read in conjunction with the Instructions to Tenderers, Conditions of Contract, Specifications and the Drawings.
2. This Bill of Quantities is the basis for payment of maintenance services that are to be provided on a lump sum per km basis for maintaining the roads covered under the contract, at the Service Levels defined in the Specifications. The rates given by the tenderer shall, except insofar as is otherwise provided under the Contract, include all plant, equipment, labour, management and supervision, materials, erection, maintenance, insurance, profit, taxes and duties, together with all general risks, liabilities and obligations set out or implied in the Contract.
3. Payment shall be made in accordance with the actual performance of the Contractor and compliance with the Service Level criteria given in the Specifications for each road. Failure to meet the Service Levels will result in payment reductions in accordance with Clause 47 of the General Conditions of Contract and the Performance Specifications.
4. The unit rates and prices shall be quoted entirely in local currency.
5. A unit rate or price shall be entered by the tenderer against each item in the Bill of Quantities. The cost of items against which the tenderer has failed to enter a unit rate or price shall be deemed to be covered by other unit rates and prices entered in the Bill of Quantities.
6. General directions and descriptions of work and materials are not repeated or summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering rates or prices against each item in the Bill of Quantities.
7. The method of measurement of completed work for payment shall be in accordance with the measurement and payment provisions of the relevant section in the Performance Specifications.
8. Arithmetical errors discovered prior to award of the Contract will be corrected by the Procurement Entity pursuant to the Instructions to Tenderers.

## Bill of Quantities and Unit Prices for Maintenance Services

*[To be completed by the tenderer]*

Price N°	Description of Service and Price	Unit Price
		In (Kshs)
1.	Unit Price per kilometer per month.	
	This price is the full remuneration to the Contractor to carry out the services and works required in order to reach and maintain the service levels described in the Specifications and elsewhere in the contract. It further includes the activities of the Contractor related to self-control, quality assurance and material testing. It also includes the provision and maintenance of a project vehicle (Between 2500cc and 300cc) for the supervision and co – ordination of the works by the Engineers office and one publicity sign board per road for the roads below.	
	<p>The Unit Price per kilometer and month is:</p> <p>Road section a: Fair Acres 2.70km</p> <p>Road section b: Bunyala Road 1.00km</p> <p>Road section c: Karen plains 2.10km</p> <p>Road section d: Commercial Street 0.90km</p> <p>Road section e: Lusaka Road 2.30km</p> <p>Road section f: Factory Street 1.30km</p> <p>Ridge ways-Garden Estate Road 6.20km</p> <p>Road section g: Processional way 1.60km</p> <p><i>[Note: There may either be one unit price for all roads or road sections included in the contract, or different prices for different roads.]</i></p>	

## **Bills of Quantities for Emergency Works**

### **General**

1. The Bill of Quantities for Emergency Works shall be read in conjunction with the Instructions to Tenderers, Conditions of Contract, Special Specifications, Ministry of Roads and Transport Standard Specification for Roads and Bridges and the Drawings.
2. The quantities given in the Bill of Quantities are hypothetical and provisional, and are given to provide a common basis for tendering. Actual quantities for Emergency Works will be specified in Work Orders, issued by the Project Manager in accordance with the General Conditions of Contract. The basis of payment for Emergency Works will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Project Manager and valued at the unit rates and prices tender in the priced Bill of Quantities, where applicable, and otherwise at such unit rates and prices as may be agreed or determined by the Project Manager under the provisions of the Contract.
3. The unit rates and prices tender in the priced Bill of Quantities shall, except insofar as is otherwise provided under the Contract, include all plant, equipment, labour, supervision, materials, erection, maintenance, insurance, profit, taxes and duties, together with all general risks, liabilities and obligations set out or implied in the Contract.
4. The unit rates and prices shall be quoted entirely in Kenya Shillings.
5. A unit rate or price shall be entered against each item in the Bill of Quantities. The cost of items against which the Contractor has failed to enter a unit rate or price shall be deemed to be covered by other unit rates and prices entered in the Bill of Quantities.
6. General directions and descriptions of work and materials are not repeated or summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering rates or prices against each item in the Bill of Quantities.
7. The method of measurement of completed work for payment shall be in accordance with the measurement and payment provisions of the relevant section of the Specifications.
8. Arithmetical errors discovered prior to award of the Contract will be corrected by the Procurement Entity pursuant to Clause 29 of the Instructions to Tenderers

### Bill of Quantities for Repairs, Maintenance and Emergency Works (Instructed Works)

1. The Quantities set out in the Bills of Quantities are indicative of the work that may 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 fulfillment of the obligations under the Contract.
2. Tenderers shall price the Bill of Quantities in Kenya Shillings.

Item No	Description	Unit	Nominal Quantity	Unit Rate Ksh	Amount Ksh
<b>Bill 1 Preliminaries</b>					
01-60-005	Publicity sign (supply and erect)	No.	2		
Total for Bill 1 (carried forward to summary)					
<b>Bill 4 Site Clearance</b>					
04-50-010	Excavate, Remove and Disposal of Concrete structures	m <sup>3</sup>			
Total for Bill 4 (carried forward to summary)					
<b>Bill 5 Earthworks</b>					
05-50-008	Cut to spoil in soft material	m <sup>3</sup>			
Total for Bill 5 (carried forward to summary)					

### Bill of Quantities for Repairs, Maintenance and Emergency Works - Summary

<b>Bill no.</b>	<b>Description</b>	<b>Amount Ksh</b>
Bill 1	Preliminaries	
Bill 4	Site Clearance	
Bill 5	Earthworks	
Bill 7	Excavation and Filling for Structures	
Bill 8	Road Drainage and Structures	
Bill 9	Passage of Traffic	
Bill 10	Grading and Graveling	
Bill 20	Road Furniture	
	Provisional Sum for Emergency Works	
<b>Total</b>		

