

REPUBLIC OF KENYA



MIGORI COUNTY GOVERNMENT

**PROPOSED MAINTENANCE OF MIGORI-NYADUONG-MACALDER-RABUOR-
STELLA B-BWARE ROAD**

TENDER NO. MC/17/29/2016-2017

MARCH 2017

DIRECTOR ROADS AND TRANSPORT
DEPARTMENT OF ROADS, PUBLIC WORKS
AND TRANSPORT
P. O. BOX 195, MIGORI

CHIEF OFFICER
DEPARTMENT OF ROADS, PUBLIC WORKS
AND TRANSPORT
P. O. BOX 195, MIGORI

INVITATION FOR TENDERS

TENDER FOR PROPOSED MAINTENANCE OF MIGORI-NYADUONG-MACALDER-RABUOR-STELLA B-BWARE ROAD IN MIGORI COUNTY

The County Government of Migori invites sealed tenders from interested prequalified contractors within Migori County under the relevant category for the **Maintenance of Migori-Nyaduong-Macalder-Rabuor-Stella B-Bware Road in Migori County.**

SCOPE OF WORK

The scope of works shall be as described in the tender document.

QUALIFICATION FOR TENDERING

Mandatory Requirements

The following must be submitted together with bid:

1. Certified copy of Certificate of incorporation
2. Copy of Registration Certificate with the National Construction Authority (NCA) in Category 5 and above (Will be verified on NCA checker).
3. Copy of Valid Tax Compliance Certificate (Will be verified on the KRA TCC Checker)
4. Bidders must serialize all pages for each bid document submitted.

Note: Certification of documents must be original and executed by a commissioner for oaths.

Other Requirements

As specified in the tender documents covering the following:-

1. Similar previous experience
2. Equipment holding as per Appendix 1
3. Professional and technical personnel
4. Current work load
5. Litigation history Current Sworn Affidavit (i.e. within three months of the tender opening date)
6. Eligibility
 - a. To enhance equity Bidders shall bid for a maximum of TWO (2) tenders from the list of advertised road tenders. Bidders who participate in more than TWO (2) tenders from the list of advertised road tenders SHALL BE DISQUALIFIED.
 - b. Only those bidders registered in the NCA category as indicated in the tender document shall bid for the respective tenders.
 - c. Bidders with history of Non-performance (e.g. failure to complete the projects for

the last three (3) Financial Years, Notice of termination or termination of contracts in the last three (3) Financial Years will be disqualified.

7. Any form of canvassing will lead to disqualification.

The above details will be submitted with the priced bid.

➤ There shall be a mandatory pre-tender site visit as specified in the below

Date	30 TH MARCH 2017
Time	9.00AM
Venue	MIGORI MACALDER JUNCTION

NOTE: Every Bidder shall be represented by one person bearing a letter from the company authorizing them to represent the company in the pre tender site visit. One (1) person shall only represent one (1) company.

The letter shall be in the official company letter head giving name and ID/Passport No. of the representative who shall be required to present their Original identification during the pre-tender site visit.

Interested bidders may obtain detailed tender documents by downloading from the county website www.migori.go.ke

Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for a period of **120 days** from the closing date of the tender.

Completed tender documents are to be enclosed in plain sealed envelopes marked with TENDER NAME and the TENDER NUMBER and addressed to;

**THE ACCOUNTING OFFICER,
MIGORI COUNTY GOVERNMENT
P.O. BOX 195 – 40400,
SUNA- MIGORI**

And deposited in the Tender Box located at the entrance of Supply Chain Management Office so as to be received not later than 5th April 2017 **at 10.00am**

Tenders shall be opened immediately thereafter in the presence of the bidders or their representatives who may choose to attend. Late bids will be rejected.

**Ag. HEAD OF SUPPLY CHAIN MANAGEMENT SERVICES
FOR: COUNTY SECRETARY
MIGORI COUNTY GOVERNMENT**

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SECTION 1: INSTRUCTIONS TO BIDDERS

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CONDITIONS OF BID AND INSTRUCTIONS TO BIDDERS

A. GENERAL

1 SCOPE OF BID

- 1.1 The Employer, as defined in the Conditions of Contract Part II hereinafter “the Employer” wishes to receive bids for the construction of works as described in Section 1, clause 102 of the Special Specifications –“Location and extent of the Works”
- 1.2 The successful bidder will be expected to complete the Works within the period stated in the Appendix to Bid from the date of commencement of the Works.
- 1.3 Throughout these bidding documents, the terms bid and BID and their derivatives (bidder/Bidder, bid/Bided, bidding/Bidding etc) are synonymous, and day means calendar day. Singular also means plural.

2 SOURCE OF FUNDS

- 2.1 The source of funding is the County Government of Migori

3 CORRUPT PRACTICES

- 3.1 The government requires that the bidders, suppliers, sub-contractors and supervisors observe the highest standard of ethics during the procurement and execution of such contracts. in this pursuit of this policy, the government;
 - (a) Defines for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in the execution, and
 - (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Employer of the benefits of free and open competition
 - (b) Will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the Contract, and
 - (c) Will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a government contract if it at any times determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Government financed contract.

4 ELIGIBLE BIDDERS

- a) The invitation to Tender is open to all firms as defined in the Public Procurement and Disposal of Assets Act 2015 and the Public Procurement and Disposal Regulations of 2006.
- b) A firm debarred from participating in Public Procurement by the Public Procurement Directorate shall not be eligible to bid during the period of time determined.

5 QUALIFICATION OF THE BIDDER

5.1 Bidders shall as part of their bid:

- (a) Submit a written power of attorney authorizing the signatory of the bid to commit the bidder; and
- (b) Update any information submitted with their bids and update in any case the information indicated in the schedules and continue to meet the minimum threshold criteria set out in the bid documents.

5.2 As a minimum, Bidders shall provide latest information set out below:

- (a) evidence of access to lines of credit and availability of 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

5.3 Bidders shall also submit proposals of work methods and schedule in sufficient detail in not less than five (5) pages of write-up to demonstrate the adequacy of the bidders proposals to meet the technical specifications and the completion time referred to in Clause 1.2 above.

6 ONE BID PER BIDDER

6.1 Each bidder shall submit only one bid. A bidder who submits or participates in more than one bid will be disqualified.

7 COST OF BIDDING

7.1 The bidder shall bear all costs associated with the preparation and submission of his bid and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

8 SITE VISIT

8.1 **The bidder is informed that pre-BID site visit is mandatory and he/she shall examine the Site of Works and its surroundings and obtain for himself all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the site shall be at the bidder's own expense.**

8.2 The bidder and any of his personnel or agents will be granted permission by the Employer to enter its premises and lands for the purpose of such inspection, but only on the express condition that the bidder, its personnel and agents, will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission would not have arisen.

8.3 The Employer will conduct a Site Visit concurrently with the pre-bid meeting referred to in Clause 19, attendance for which is mandatory for all bidders. Failure to attend the site visit by any bidder will lead to disqualification of his /her bid.

B. BIDDING DOCUMENTS

9 CONTENTS OF BIDDING DOCUMENTS

9.1 The set of documents comprising the BID includes the following together with any addenda issued in accordance with Clause 11:

- (a) Invitation to Bid
- (b) Instructions to bidders
- (c) Qualification Criteria
- (d) Conditions of Contract - Part II
- (e) Conditions of Contract - Part I
- (f) Standard Specifications
- (g) Special Specifications
- (h) Form of Bid, Appendix to Form of Bid and Bid Security
- (i) Bills of Quantities
- (j) Schedules of Supplementary information
- (k) Form of Contract Agreement
- (l) Form of Performance Security
- (m) Drawings

9.2 The bidder is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the bidding documents. Failure to comply with the requirements of bid submission **will be at the bidder's own risk. Bids** that are not substantially responsive to the requirements of the bidding documents will be rejected.

10 CLARIFICATION OF BIDDING DOCUMENTS

- 10.1 The prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable (**hereinafter the term cable is deemed to include telex and facsimile**) at the **Employer's** mailing address indicated in the Bidding Data.
- 10.2 The Employer will respond in writing to any request for clarification that he receives earlier than 7 days prior to **the deadline for the submission of bids. Copies of the Employer's response to queries raised by bidders** (including an explanation of the query but without identifying the sources of the inquiry) will be sent to all prospective bidders who will have purchased the bidding documents.

11 AMENDMENT OF BIDDING DOCUMENTS

- 11.1 At any time prior to the deadline for submission of bids, the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective bidder, modify the bidding documents by issuing subsequent Addenda.
- 11.2 The Addendum thus issued shall be part of the bidding documents pursuant to Sub-Clause 10.1 and shall be communicated in writing or cable to all purchasers of the bidding documents. Prospective bidders shall promptly acknowledge receipt of each Addendum in writing or by cable to the Employer.
- 11.3 In order to afford prospective bidders reasonable time in which to take an Addendum into account in preparing their bids, the Employer may, at his discretion, extend the deadline for the submission of bids in accordance with Clause 22.

C. PREPARATION OF BIDS

12 LANGUAGE OF BID

- 12.1 The bid prepared by the bidder and all correspondences and documents relating to the bid exchanged by the bidder and the Employer shall be written in the English Language. Supporting documents and printed literature furnished by the bidder may be in another language provided they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the bid, the English language shall prevail.

13 DOCUMENTS COMPRISING THE BID

13.1 The bid to be prepared by the bidder shall comprise:

- (a) Duly filled-in the Form of Bid and Appendix to form of bid;
- (b) Bid security;
- (c) Priced Bills of Quantities;
- (d) Schedules of information
- (e) Qualification Criteria
- (f) Any other materials required to be completed and submitted in accordance with the Instructions to Bidders embodied in these bidding documents.

13.2 These Forms, Bills of Quantities and Schedules provided in these bidding documents shall be used without exception (subject to extensions of the Schedules in the same format).

14 BID PRICES

14.1 Unless explicitly stated otherwise in the bidding documents, the contract shall be for the whole works as described in Sub-Clause 1.1, based on the basic unit rates and prices in the Bill of Quantities submitted by the bidder.

14.2 The bidder shall fill in rates and prices for all items of Works described in the Bills of Quantities, whether quantities are stated or not.

14.3 All duties, taxes (excluding VAT) 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 Bid Price submitted by the bidder.

14.4 Unless otherwise provided in the Bidding Data and Conditions of Particular Application the rates and prices quoted by the bidder are subject to adjustment during the performance of the contract in accordance with the provisions of Clause 70 of the Conditions of Contract.

15 CURRENCIES OF BID AND PAYMENT

15.1 Bids shall be priced in Kenya Shillings.

16 BID VALIDITY

16.1 The bid shall remain valid and open for acceptance for a period of 120 days from the specified date of bid opening specified in Clause 22.

16.2 In exceptional circumstances prior to expiry of the original bid validity period, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by cable. A bidder may refuse the request without forfeiting his bid security. A bidder agreeing to the request will not be required nor permitted to modify his bid, but will be required to extend the validity of his bid security for the period of the extension, and in compliance with Clause 17 in all respects.

17 BID SECURITY

17.1 The bidder shall furnish, as part of his bid, a bid security in the amount shown in the Appendix to form of Bid.

17.2 The bid security shall be in the form of unconditional bank guarantee from a reputable bank selected by the bidder and located in Kenya. The format of the bank guarantee shall be in accordance with bid security included in Section 1. The bid security shall remain valid for a period of 28 days beyond the original validity period for the bid, and beyond any period of extension subsequently requested under Sub-Clause 16.2.

- 17.3 Any bid not accompanied by an acceptable bid security will be rejected by the Employer as non-responsive.
- 17.4 The bid securities of unsuccessful bidders will be discharged/ returned as promptly as possible but not later than 28 days after the expiration of the period of bid security validity.
- 17.5 The bid security of the successful bidder will be discharged upon the bidder signing the Contract Agreement and furnishing the required performance security.
- 17.6 The bid security may be forfeited:
- (a) If a bidder withdraws his bid, except as provided in Sub-Clause 24.2.
 - (b) If the bidder does not accept the correction of any errors, pursuant to Sub-Clause 28.2 or
 - (c) In the case of a successful bidder, if he fails within the specified time limit to:
 - (i) Sign the Contract Agreement or
 - (ii) Furnish the necessary performance security

18 NO ALTERNATIVE OFFERS

- 18.1 The bidder shall submit one offer, which complies fully with the requirements of the bidding documents.
- 18.2 The bid submitted shall be solely on behalf of the bidder. A bidder who submits or participates in more than one bid will be disqualified.
- 18.3 A price or rate shall be entered in indelible ink against every item in the Bills of Quantities with the exception of items which already have Prime Cost or Provisional sums affixed thereto. The bidders are reminded that no “nil” or “included” rates or “lump-sum” discounts will be accepted. The rates for various items should include discounts if any. Bidders who fail to comply will be disqualified.
- 18.4 Bidders are informed that there are two options on recycling existing pavement material and the Bidder shall choose either of the two options and not both. The bid price shall therefore be of the option chosen. Submitting two bid prices for the two options will lead to disqualification.

19 PRE-BID MEETING

- 19.1 The bidders designated representative is invited to attend a pre-tender meeting, which will take place on the date indicated in the Advertisement Notice or as amended in any subsequent addenda. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 19.2 The bidder is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than one week before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the bidding documents. Any modification of the bidding documents listed in Sub-Clause 8.1, which may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to Clause 10 or through the minutes of the pre-bid meeting.
- 19.3 Non-attendance at the pre-bid meeting by a Bidder will be a cause for disqualification of his BID.

20 FORMAT AND SIGNING OF BIDS

- 20.1 The bidder shall prepare one original of the documents comprising the bid as described in Clause 13 of these Instructions to Bidders, bound with the section containing the Form of Bid and Appendix to Bid, and clearly marked “ORIGINAL”. In addition, the bidder shall submit two copies of the bid clearly marked “COPIES”. In the event of discrepancy between them, the original shall prevail.

- 20.2 The original and copies of the bid shall be typed or written in indelible ink (in the case of copies, photocopies are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the bidder pursuant to Sub-Clause 5.1(a) or 4.3(c) as the case may be. The person or persons signing the bid shall initial all pages of the bid where entries or amendments have been made.
- 20.3 The bid shall be without alterations, omissions or conditions except as necessary to correct errors made by the bidder, in which case such corrections shall be initialled by the person or persons signing the bid.

D. SUBMISSION OF BIDS

21 SEALING AND MARKING OF BIDS

- 21.1 The bidder shall seal the original and each copy of the bid in separate envelopes duly marking the envelopes "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer separate envelope.
- 21.2 The inner and outer envelopes shall be:
- (a) addressed to the Employer at the address provided in the Appendix to Form of Bid.
 - (b) bear the name and identification number of the contract. In addition to the identification required in sub-Clause 21.2, the inner envelopes shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared "late" pursuant to Clause 23.1, and for matching purposes under Clause 24.
- 21.3 If the outer envelope is not sealed and marked as instructed above, the Employer will assume no responsibility for the misplacement or premature opening of the bid. If the outer envelope discloses the bidder's identity the Employer will not guarantee the anonymity of the bid submission, but this shall not constitute grounds for rejection of the bid.

22 DEADLINE FOR SUBMISSION OF BIDS

- 22.1 Bids must be received by the Employer at the address specified in Sub Clause 21.2 at the time and date specified in the Invitation for Tenders (Advertisement Notice).
- 22.2 The Employer may, at his discretion, extend the deadline for the submission of bids through the issue of an Addendum in accordance with Clause 11 in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline shall thereafter be subject to the new deadline as extended.

23 LATE BIDS

- 23.1 Any bid received by the Employer after the deadline for submission of bids prescribed in Clause 22 will be returned unopened to the bidder.

24 MODIFICATION, SUBSTITUTION AND WITHDRAWAL OF BIDS

- 24.1 The bidder may modify, substitute or withdraw his bid after bid submission, provided that written notice of modification or withdrawal is received by the Employer prior to the prescribed deadline for submission of bids.
- 24.2 **The bidder's modification, substitution or withdrawal notice shall be prepared, sealed, marked and** delivered in accordance with the provisions of Clause 21, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.
- 24.3 No bid may be modified subsequent to the deadline for submission of bids, except in accordance with Sub-Clause 28.2.
- 24.4 Any withdrawal of a bid during the interval between the deadline for submission of bids and expiration of the period of bid validity specified in Clause 17 may result in the forfeiture of the bid security pursuant to Sub-Clause 17.6.

E. BID OPENING AND EVALUATION

25 BID OPENING

- 25.1 The Employer will open the bids, including withdrawals and modifications made pursuant to Clause 23, in the presence of bidders' designated representatives who choose to attend, **at COUNTY OFFICES at the venue as will be indicated in invitation to bid document.** The bidders' representatives who are present shall sign a register evidencing their attendance.
- 25.2 Envelopes marked "WITHDRAWAL" and "SUBSTITUTION" shall be opened first and the name of the bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 24 shall not be opened.
- 25.3 The bidder's name, the Bid Prices, including any bid modifications and withdrawals, the presence (or absence) of bid security, and any such details as the Employer may consider appropriate, will be announced by the Employer at the opening. Subsequently, all envelopes marked "MODIFICATION" shall be opened and the submissions therein read out in appropriate detail. No bid shall be rejected at bid opening except for late bids pursuant to Clause 22.
- 25.4 The Employer shall prepare minutes of the bid opening, including the information disclosed to those present in accordance with Sub-Clause 24.3.
- 25.5 Bids not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances.\

26 PROCESS TO BE CONFIDENTIAL

- 26.1 Information relating to the examination, evaluation and comparison of bids, and recommendations for the award of contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful bidder has been announced. Any effort by a bidder to influence the Employer's processing of bids or award decisions may result in the rejection of the bidder's bid.

27 CLARIFICATION OF BIDS AND CONTACTING OF THE EMPLOYER

- 27.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at its discretion, ask any bidder for clarification of its bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, but no change in the price or substance of the bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 28.
- 27.2 Subject to Sub-Clause 26.1, no bidder shall contact the Employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the bidder wishes to bring additional information to the notice of the Employer, it should do so in writing.
- 27.3 Any effort by the bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the bidder's bid.

28 EXAMINATION OF BIDS AND DETERMINATION OF RESPONSIVENESS

- 28.1 Prior to the detailed evaluation of bids, the Employer will determine whether each bid (a) has been properly signed; (b) is accompanied by the required securities; (c) is substantially responsive to the requirements of the bidding documents; and (d) provides any clarification and/or substantiation that the Employer may require to determine responsiveness pursuant to Sub-Clause 28.2.
- 28.2 A substantially responsive bid is one that conforms to all the terms, conditions, and specifications of the bidding documents without material deviation or reservation and has a valid BID bank guarantee. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or

performance of the works; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the bidder's obligations under the contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

28.3 If a bid is not substantially responsive, it will be rejected by the Employer and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

29. EVALUATION AND COMPARISON OF BIDS

29.1 The Employer will carry out evaluation of the details and information provided in accordance with the guidelines given in Section 5; Qualification Criteria and any Bidder who does qualify shall not have his/her bid evaluated further.

29.2 The Employer will then evaluate and compare only the bids determined to be substantially responsive in accordance with Clauses 27 and 28.

29.3 If the bid, which results in the lowest Evaluated Bid Price is seriously unbalanced or front loaded in relation to the Engineer's estimate of the items of work to be performed under the contract, the Employer may require the bidder to produce detailed price analyses for any or all items of the Bills 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 Employer may require that the amount of the Performance Security set forth in Clause 35 be increased at the expense of the bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the contract.

30. QUALIFICATION AND EVALUATION CRITERIA

30.1. Post-qualification will be based on meeting all of the following minimum point scale criteria regarding the Applicant's general and particular experience, personnel and equipment capabilities as well as financial position. The Employer reserves the right to waive minor deviations, if they do not materially affect the capacity of an applicant to perform the contract. Subcontractor's experience and resources shall not be taken into account in determining the Applicant's compliance with qualifying criteria.

30.2. General Experience.

The Applicant shall meet the following minimum criteria: -

(a) Average annual turnover for the last 2 years - KShs. 50,000,000/-.

(b) Successful completion as a prime contractor or sub-contractor in the execution of at least three roads rehabilitation/new construction /maintenance projects of a similar nature and comparable in complexity to the proposed contract within the last three years, for which at least one was located in Kenya.

30.3. *Personnel Capabilities.* The Applicant should list down personnel of minimum qualification of Bsc in Civil Engineering and Registered Engineer with the Engineers Board of Kenya for Site Agent, Higher National Diploma for the surveyor and an ordinary diploma in Civil Engineering for other supervisory staff.

30.4. *Equipment Capabilities.* The Applicant should list down, the plants and equipment that are in his ownership and the ones proposed for hire which should be suitable for executing contract works. – Applicants must attaché evidence of ownership or hiring arrangements.

- 30.5. *Cash flow statement.* The Applicant should demonstrate that he has access to or has available, liquid assets, unencumbered real assets, lines or credit, and other financial means sufficient to meet the construction cash flow for a period of 3 months.
- 30.6 *Balance Sheets.* Signed and stamped Audited balance sheets for the last two years should be submitted and must demonstrate the soundness of the Applicant's financial position, availability of working capital and net worth
- 30.7. *Financial position/Ratios.* The applicant's financial information will be assessed in terms of ROCE, current ratio and return on equity, and the point scale criteria on their financial position given on this basis. Where necessary, the Employer may make inquiries with the Applicant's bankers.
- 30.8. *Litigation History.* The Applicant should provide accurate information on any litigation or arbitration resulting from contracts complete or under execution by him over the last five years. A consistent history of litigation against the Applicant may result in failure of the application.
- 30.9. Post-qualification criteria are as provided in the Appendix to instruction to tenderers.
- The pass mark shall be 75%.
- The bidders who pass the technical criteria will be subjected to financial evaluation.

E. FINANCIAL EVALUATION

31. COMPARISON OF MAJOR RATES OF ITEMS OF CONSTRUCTION & CREDIBILITY OF TENDERERS RATES

The Employer will compare the tenderers' rates with the Engineer's estimates for major items of construction. If some bids are seriously unbalanced or front loaded in relation to the Engineer's estimates for the major items of work to be performed under the contract, the Employer may require the bidder to produce detailed price analyses for any or all items of the Bills 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 Employer may require that the amount of the Performance Security set forth in Clause 35 be increased at the expense of the bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the contract.

32. PREFERENCE FOR DOMESTIC BIDDERS

This will not be applicable for this bid.

F. AWARD OF CONTRACT

33. AWARD

33.1 Subject to Clause 32, the Employer will award the contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest Evaluated Bid Price pursuant to Clause 29, provided that such bidder has been determined to be (a) eligible in accordance with the provisions of Sub-Clause 3.1, and (b) qualified in accordance with the provisions of Clause 4.

34.0 EMPLOYER'S RIGHT TO ACCEPT ANY BID AND TO REJECT ANY OR ALL BIDS

34.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the Employer's action.

35 NOTIFICATION OF AWARD

35.1. Prior to expiration of the period of bid validity prescribed by the Employer, the Employer will notify the successful bidder in writing or by cable confirmed by registered letter that its bid has been accepted. This letter (hereinafter and in the Conditions of Contract called "Letter of Acceptance") shall specify the sum, which the Employer will pay the Contractor in consideration of the execution and completion of the works and the remedying of any defects therein by the Contractor as prescribed by the contract (hereinafter and in the Conditions of Contract called "the Contract Price").

35.2. 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 that their bid security will be returned as promptly as possible, in accordance with subclause 16.4.

36 SIGNING OF AGREEMENT

36.1 After 14 days of receipt of the Agreement, the successful bidder shall sign the Form of Agreement and return it to the Employer, together with the required performance security.

37. PERFORMANCE SECURITY

37.1. After 21 days of receipt of the Letter of Acceptance from the Employer, the successful bidder shall furnish to the Employer a performance security in the form stipulated in the Conditions of contract. The form of performance security provided in Section 8 of the bidding documents shall be used.

37.2. The successful bidder shall provide a performance security in the form of an Unconditional Bank Guarantee from a reputable bank located in Kenya.

37.3. Failure by the successful Bidder to lodge the required Performance Guarantee within 60 days of the receipt of the Letter of Acceptance shall constitute sufficient grounds for the annulment of the Award and forfeiture of the Bid Surety; in which event the Employer may make the award to another bidder or call for new bids.

38 CONTRACT EFFECTIVENESS

38.1. The Contract will be effective only upon signature of the Agreement between the Contractor and the Employer.

39. EXECUTION OF WORKS

The work execution will be carried out based on the documents as listed below.

- a. Conditions of Contract Part I: General Conditions of Contract
- b. Conditions of Contract Part II (Conditions of Particular Application)
- c. Road Maintenance Manual
- d. Standard Specifications
- e. Special Specifications
- f. Supervision and Contract Evaluation Manual
- g. Bills of Quantities

SECTION 2: APPENDIX TO INSTRUCTION TO TENDERERS

TABLE 1: PRE- QUALIFICATION CHECKLIST FOR COMPLETENESS AND RESPONSIVENESS

S/No.	Completeness and Responsiveness Criteria	References	Requirement
1.	Form of Bid	Section 4 Clause 20.2	- Amount must be indicated - Properly fill and sign
2.	Appendix to Form of Bid	Clause 20.2 Section 5	- Form properly sign
3.	Bid Security	Section 6 Clause 16/17	- Unconditional bank guarantee - In the format provided with all conditions
4.	Confidential Business Questionnaire	Section 8; Schedule 1	- Properly fill and sign - Provide all required information
5.	Form of Power of Attorney	Section 8; Schedule 2 Clause 5.1(a)	- Properly fill and sign - Provide copies of National Identification card or Passport.
6.	Tax Compliance Certificate	Employer's notice	- Copy of certificate - Valid
7.	Serialization of submitted bid document	Employer's notice	All pages in submitted bid documents must be serialized
8.	Registration with National Construction Authority	Employer's notice Item 1.4 of QC	- Category as advertised - Copy of certificate Certified by Commissioner of Oaths
9.	Certificate of Incorporation	Employer's notice Item 1.4 of QC	- Copy of certificate Certified by Commissioner of Oaths
10.	Priced Bill of Quantities	Clause 14.1 Section 15	- Fill all rates, prices and amounts
11.	Eligibility	Section 8; Schedule 1 Clause 4.1/4.2	- Copies of National ID or passport for all directors
12.	Conflict of interest	Section 8; Schedule 1 Clause 4.2	- to state explicitly
13.	Debarment	Section 8; Schedule 11 Item 1.3 of QC	- Properly fill and sign
14.	Pending Litigation	Item 2.2 of QC	- Provide Sworn affidavit (sworn within 3 months to date of tender opening)
15.	Litigation History	Section 8; Schedule 9	- Fill in information and sign
16.	History of Non performance	Section 8; Schedule 6 Item 2.1 of QC	- Fill information on non-completed works
17.	Certificate of Tenderers Visit to Site	Clause 8.1/8.3 Section 8; Schedule 3	- Attend pre-bid meeting/visit - Bidders to sign attendance register - Certificate must be signed by the Employer's representative
18.	Schedule of Major Items of Plant	Item 9 of QC Section 8; Schedule 4	- Properly fill and sign
19.	Schedule of Key Personnel	Item 6 of QC Section 8; Schedule 5	- Properly fill and sign
20.	Roadwork Completed Satisfactorily	Item 4 of QC Section 8; Schedule 6	- Properly fill and sign
21.	Schedule of Ongoing Projects	Item 5.1 of QC Section 8; Schedule 7	- Properly fill and sign

22.	Schedule of other Supplementary Information / Financial Standings	Item 5.1 of QC Section 8; Schedule 9	- Properly fill and sign
23.	Copy of Bid Document	Clause 20.1	- Replica of the original
REMARKS		Clause 13.1/20.2	- Bid document to be complete, properly filled and signed.

Key:QC–Qualification Criteria

TABLE 2: POST- QUALIFICATION SCORE

ITEM	DESCRIPTION	POINT SCALE	SCORE	
1	FINANCIAL CAPACITY	Max 24		
	a Audited Statements	0-6		
	b Line of credit	0-5		
	c Bank statement (Last six months to the date of tender)	0-5		
	d Turnover	0-8		
2	EXPERIENCE	Max 19		
	General Experience	0-6		
	Specific (local) experience in related works	0-13		
3	CURRENT COMMITMENTS	Max 4		
	On-going works	0-4		
4	KEY PERSONNEL	Max 18		
	Site Agent (Max 10 marks)	Registration Qualification	Registered Engineer Degree	4 2
		Relevant experience	15 years and above	4
			7-14years	3
			3-6 years	2
			0-3years	1
	Surveyor (Max 4marks)	Qualification	Degree	2
			HND	2
			Diploma	1
		Relevant experience	15 years and above	2
			7-14years	1.5
	3-6 years		1	
	Foreman (Max 4marks)	Qualification	Degree	1.5
			HND	1.5
			Diploma	1
		Relevant experience	15 years and above	2.5
			7-14years	2
	3-6 years		1.5	
	0-3years	1		
5	PLANT AND EQUIPMENT	Max 17		
	Relevant Equipment	Owned (Max 17marks)	0-17	
		50% Owned, 50% Leased (Max 15marks)	0-15	

ITEM	DESCRIPTION	POINT SCALE	SCORE
6	WORK METHODOLOGY	Max 16	
		Program of works	0-3
		Detailed Methodology	0-8
		Proposed Equipment Scheduling/Work statement.	0-3
		Methodology on safety during the construction period.	0-2
7	LITIGATION HISTORY	Max 2	
	With or without Litigation	0 or 2;	
	TOTAL	MAX 100	

The County will verify information submitted. Any form of forgery or misinformation from the bidder shall lead to cancellation of the bid/award, institution of legal proceedings and blacklisting for all future County contracts.

Signature of Tenderer..... Date

SECTION 3: FORM OF BID

FORM OF BID

Pursuant to sub-clause 13.1 of the Conditions of Bid and Instruction to Bidders, all Tenderers shall
fill the attached Form of Bid

FORM OF BID

NAME OF CONTRACT:

(NOTE: The Appendix forms part of the Bid. Bidders are required to fill all the blank spaces in this form of Bid and Appendix)

TO: The County Secretary
County Government of Migori
P. O. Box 195-40400
SUNA MIGORI, KENYA

Sir,

1. Having examined the Conditions of Contract, Specifications, Bills of Quantities, and Drawings for the execution of the above-named works we, the undersigned, offer to construct and install such works and remedy any defects therein in conformity with the said Bills of Quantities, Conditions of Contract, Specifications and Drawings for the sum of

(Insert amount in words)

.....

.....

.....

(Insert amount in figures).....

as specified in the Appendix to Bid or such other sums as may be ascertained in accordance with the said Conditions.

2. We undertake, if our bid is accepted, to commence the works within twenty-eight (28) days of **receipt of the Engineer's order to commence**, and to complete and deliver the whole of the works comprised in the contract within the time stated in the Appendix to Bid.
3. If our bid is accepted we will, within 14 days of the written notice of acceptance (by The County Secretary, County Government of Migori) of our tender, execute the formal agreement and obtain the performance guarantee (to be approved by you) to be bound to the County Government of Migori to the sum stated in the appendix hereto, for the due performance of the Contract, in accordance to Sub-Clause 10 of the Conditions of Contract.
4. We agree to abide by this bid for the period of one hundred and twenty (120) days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. We understand that you are not bound to accept the lowest or any bid you may receive.
6. On the basis of our previous experience we are fully experienced and competent in the type of work included in this BID and we have adequate financial resources to carry out the works described within the period for completion. We are in a position to fulfil the contract for which we have Bided.

Dated this **Day of** **20**

Signature.....**in the capacity of**

Duly authorized to sign bids on behalf of (Name of Bidder)

.....

(Address of Bidder).....

(Name of Witness).....

(Signature of Witness).....

(Address of Witness).....

(Occupation of Witness).....

SECTION 4: APPENDIX TO FORM OF BID

APPENDIX TO FORM OF BID
(This appendix forms part of the bid)

CONDITIONS OF CONTRACT	CLAUSE	AMOUNT (Kshs)
Bid Security (Bank Guarantee Only)		Kshs.50,000
Amount of Performance Security (Unconditional Bank Guarantee)	10.1	5% of Contract Price in the Form of Unconditional Bank Guarantee
Program to be submitted	14.1	Not later than 7 (seven) days after issuance of Order to Commence
Cash flow estimate to be submitted	14.3	Not later than 7 (seven) days after issuance of Order to Commence
Minimum amount of Third Party Insurance	23..2	Not applicable
Period for commencement, from Engineer's order to commence	41.1	As directed
Time for completion	43.1	2.Months
Amount of liquidated damages	47.1	Kshs. 5,000 (Five Thousand only) per day
Limit of liquidated damages	47.1	10% of Contract Value
Defects Liability period	49.1	Not applicable
Percentage of Retention	60..3	Not applicable
Limit of Retention Money	60. 3	Not applicable
Minimum amount of interim certificates	60.2	Payments after completion of works
Time within which payment to be made after Interim Payment Certificate is signed by Engineer	60.10	90 (Ninety) days
Time within which payment to be made after Final Payment Certificate signed by Engineer	60.10	90 (Ninety) days
Amount of Advance	60.12	Not applicable
Advance Payment Security	60.12	Not applicable
Appointer of Arbitrator/ Adjudicator	67..3	The Chairman, Chartered Institute of Arbitrators (Kenya)
Notice to Employer and Engineer	68..2	<p>The Employers address is: CHIEF OFFICER DEPARTMENT OF ROADS, PUBLIC WORKS AND TRANSPORT P.O BOX 195, 40400 SUNA MIGORI</p> <p>The Engineer's address is: DIRECTOR ROADS AND TRANSPORT DEPARTMENT OF ROADS, PUBLIC WORKS AND TRANSPORT P.O BOX 195, 40400 SUNA MIGORI</p>

Signature of Bidder..... Date

SECTION 5: FORM OF BID SECURITY.

BID BANK GUARANTEE

Note: The bidder shall complete only this form of Bank guarantee. No other Form of Bid Bond or any other forms of security will be accepted. Bidders who fail to comply with this requirement will be disqualified.

WHEREAS [Name of bidder].

.....

.....

(herein after called “the Bidder”) has submitted his bid

dated

FOR THE

, hereinafter called “the bid”

KNOW ALL MEN by these presents that we [NAME OF BANK]

.....

.....

of [Name of Country]

.....

having our registered offices at

.....

(hereinafter called the Bank) are bound unto the Chief officer, Public works, roads ,transport and energy (hereinafter called “the Employer”) in the sum of

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

.....

(In figures **Kshs**).....

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

Signed for the said Bank thisday of20.....

THE CONDITIONS of this obligation are:

COUNTY ROADS

- 1.0. If the bidder withdraws his Bid during the period of bid validity specified by the Bidder on the Bid Form; or
- 2.0. If the Bidder refuses to accept the correction of errors in his bid; or
- 3.0. If the Bidder having been notified of the acceptance of his bid by the Employer during the period of Bid Validity
 - a. fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders when required or
 - b. fails or refuses to furnish the Performance Security, in accordance with the Instructions to Bidders.

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

This guarantee will remain in force up to and including twenty-eight (28) days after the date of expiration of the bid validity, as stated in the Instructions to Bidders.

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

AUTHORIZED SIGNATURE OF THE BANK

.....

NAME OF SIGNATORY

..... **DATE**.....

TITLE OF SIGNATORY

NAME OF THE WITNESS

SIGNATURE OF THE WITNESS **DATE**

ADDRESS OF THE WITNESS

SECTION 5: QUALIFICATION CRITERIA

This Section contains all the factors, methods and criteria that the Employer shall use to evaluate applications. The information to be provided in relation to each factor and the definitions of the corresponding terms are included in the respective Application Forms.

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Qualification Criteria		Compliance Requirement	Documentation	
No.	Subject	Requirement	Bidder	Submission Requirements
1. Eligibility				
1.1	Eligibility	Nationality in accordance with Sub-Clause 4.1.	Must meet requirement	Section 8, Schedule 1
1.2	Conflict of Interest	No conflicts of interest in Sub-Clause 4.2.	Must meet requirement	Section 8, Schedule 1
1.3	Debarment	Not having been declared ineligible by the Employer, as described in Sub-Clause 4.3. Must fill the Declaration form	Must meet requirement	Section 8, Schedule 11
1.4	Incorporation & Registration	Pursuant to sub-clause 4.1 the following shall be provided; - Copy of Certificate of incorporation certified by a Commissioner of Oaths or issuing authority to show that the applicant is a registered company and legally authorized to do business in Kenya - Proof of registration with the National Construction Authority in Class indicated in advert as Roads/bridges Contractor	Must meet requirement	Section 8, Schedule 1
2. Historical Contract Non-Performance				
2.1	History of Non-Performing Contracts	Non performance of a contract did not occur within the last Three (3) 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 applicant have been exhausted.	Must meet requirement	Section 8, Schedule 6

Qualification Criteria		Compliance Requirement	Documentation	
No.	Subject	Requirement	Bidder	
			Submission Requirements	
2.2	Pending Litigation	All pending litigation shall in total not represent more than fifty percent (50%) of the Applicant's net worth and shall be treated as resolved against the Applicant. The applicant to provide Sworn affidavit.	Score • 0 - 2 Marks	Section 8, Schedule 9
3. Financial Situation				
3.1	Financial Performance	(a) Submission of audited balance sheets and other financial statements acceptable to the Employer, for the last three [3] years to demonstrate: (b) A reliable line of credit and/or capacity to have a cash flow equivalent to 10% of the tender sum (c) Bank statements for six (6) months upto date of tender opening	(a) Score • 0 - 6 Marks (b) Score • 0 - 5 Marks (c) Score • 0 - 5 Marks	Section 7, Schedule 8 (a) All pages must be initialized and stamped by both a practicing Auditor registered with ICPAK and one of the Directors. Auditor's practicing membership number from ICPAK must be indicated. (b) All pages must be initialized and stamped by the issuing bank
3.2	Average Annual Construction Turnover	(e) Average annual construction turnover as indicated on subsection 30.2, calculated as total certified payments received for contracts in progress or completed, within the last two [(2)] years	(e) Score • 0 - 8 Marks	Section 7, Schedule 8
4. Experience				
4.1(a)	General Construction Experience	Experience under construction contracts in the role as a main contractor or subcontractor for at least the last Three [3] years prior to the applications submission deadline. Grading shall be based on general projects handled. Five projects and above earns maximum points and prorated downwards.	Score • 0 - 6 Marks	Section 8, Schedule 6

Qualification Criteria		Compliance Requirement	Documentation	
No.	Subject	Requirement	Bidder	Submission Requirements
4.1(b)	Specific/local Construction Experience	Participation as a roads contractor, management contractor or subcontractor, in at least three (3) local contracts each with a value of at least KShs. 20 Million (twenty million), successfully and substantially completed. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics.	Score <ul style="list-style-type: none"> • 0-13 2Marks 	Section 8, Schedule 6
4.2	Work Methodology	Submission work methodology in accordance with sub-clause 5.3 <ul style="list-style-type: none"> • A detailed resource based program of works • Work Methodology detailing ways of execution of the works • Equipment scheduling methodology for the different various activities • Methodology on safety observation during construction works 	Score <ul style="list-style-type: none"> • 0-3 Marks • 0-8 Marks • 0-3 Marks • 0-2 Marks 	Section 8, Schedule 10
5. Current Commitments				
5.1	On-going contracts	The total value of outstanding works on the on-going contracts should not exceed the average annual turnover for the last two years. An ongoing project with Migori County loses two marks	Score <ul style="list-style-type: none"> • 0 -4 Marks 	Section 8, Schedule 7
6. Site Staff				
		The site staff shall possess minimum levels set below <i>NB: Attachment of CVs and certified copies of Annual Practicing Licenses (for Engineers) and Academic Certificates for all staff is mandatory;</i>		
		The site staff shall possess minimum levels of qualifications set below;	Score <ul style="list-style-type: none"> • 18 Marks 	Section 8, Schedule 5

		Qualification Criteria		Compliance Requirement		Documentation		
No.	Subject	Requirement		Bidder		Submission Requirements		
		KEY PERSONNEL				Max 18		
	Site Agent (Max 10 marks)	Registration	Registered Engineer	4				
			Qualification	Degree	2			
		Relevant experience	15 years and above		4			
			7-14years		3			
			3-6 years		2			
	0-3years		1					
	Surveyor (Max 4marks)	Qualification	Degree	2				
			HND		2			
			Diploma		1			
		Relevant experience	15 years and above		2			
			7-14years		1.5			
			3-6 years		1			
	0-3years		0.5					
	Foreman (Max 4marks)	Qualification	Degree	1.5				
			HND		1.5			
			Diploma		1			
		Relevant experience	15 years and above		2.5			
			7-14years		2			
			3-6 years		1.5			
	0-3years		1					

7 Schedule of the Major Items of Plant to be used on the Proposed Contract.

The Bidder must indicate the main plant and equipment owned as well as those considered by the company to be available for undertaking the project together with proof of ownership.

Item No.	Equipment Details	*Minimum Number Required	No. of equipment to be availed for the works	No of Equipment Owned by the Bidder
1	<p>A) General Plant</p> <p>1. Primary/Secondary Crusher Unit/Power Screen Min capacity – 60t/hr.</p>			
2	<p>B) Bituminous Plants</p> <p>1. Bitumen Pressure distributor</p> <p>2. Self propelled chip spreader</p> <p>3. Asphalt plant</p> <p>4. Pavers</p>			
3	<p>C) Compactors</p> <p>1. Vibrating compaction plate 300 mm wide</p> <p>2. Vibrating compaction plate 600mm wide</p>	2		
4	<p>D) Mobile Compressors</p> <p>1. Single tool (1.8 m³/min)</p> <p>2. Two tool (2.8 – 7.3 m³/min)</p>	1		

Item No.	Equipment Details	*Minimum Number Required	No. of equipment to be availed for the works	No of Equipment Owned by the Bidder
5	E) Concrete Equipment 1.Mobile concrete mixers 2. Concrete vibrators	1 1		
6	F) Transport (Tippers, dumpers, water tankers) 1. 4X2 tippers payload 7 – 12 tonnes 2. 6X4 tippers payload 16 – 20 tonnes 3. Flat bed lorries 4. Water tankers (18,000 – 20,000 lits capacity)	1 1 1 1		
7	G) Earth – Moving Equipment 1. Tractor dozers with dozer attachment (D6-D9 equivalent) 2. Tracked loaders 3. Wheeled loaders 4. Motor graders (93 - 205kW) 5. Trench excavator	1 1 1 1		
8	H) Diesel Generators 1. Diesel generators (15 – 200Kva)	1		
9	I) Excavators 1. Hydraulic crawler mounted (7 – 16 tonnes) – 0.25 – 0.6 m ³ SAE bucket.	1		

Item No.	Equipment Details	*Minimum Number Required	No. of equipment to be availed for the works	No of Equipment Owned by the Bidder
	<p>J) Rollers</p> <ol style="list-style-type: none"> 1. (vibro-various types) 2. Pneumatic rubber tyre (1-2 tonnes/wheel) 3. Double drum vibrating pedestrian roller 	<p>1</p> <p>1</p>		

We hereby certify that not withstanding the list of plant detailed above, we will provide sufficient, suitable and adequate plant in good working order for the successful completion of works

.....

.....

.....
(Signature of Contractor)

(Date)

SECTION 6: CONDITIONS OF CONTRACT

**SECTION 6A CONDITIONS OF CONTRACT PART I: GENERAL
CONDITIONS OF CONTRACT**

The Conditions Of Contract Part 1 – General Conditions shall be those forming Part 1 of the Conditions Of Contract for works of Civil engineering construction Fourth Edition 1987, reprinted in 1992 with further amendments, prepared by the Federation Internationale des IngenieursConseils (FIDIC)

Copies of the FIDIC Conditions of Contract can be obtained from:

FIDIC Secretariat
P.O.Box 86
1000 Lausanne 12

Switzerland

Fax: 41 21 653 5432

Telephone: 41 21 653 5003

SECTION 6B: CONDITIONS OF CONTRACT PART II: (CONDITIONS OF PARTICULAR APPLICATION)

The following Conditions of Particular Application shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The Particular Condition is preceded by the corresponding clause number of the General Conditions to which it relates.

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CONDITIONS OF CONTRACT PART II (CONDITIONS OF PARTICULAR APPLICATION)

SUBCLAUSE 1.1 – DEFINITIONS

Amend this sub-clause as follows:

- (a) (i) The “Employer” is the County Government of Migori, represented by the Chief Officer, Ministry of Roads Transport and Energy.
- (iv) The “Engineer” is the County Director of Roads and Transport.

(b) (i) Insert in line 2 after the Bills Of Quantities”, the following, “the rates entered by the Contractor (whether or not such rate be employed in computation of the Contract Price),”

Amend subparagraph (b) (v) of SubClause 1.1 by adding the following words at the end: The word “BID” is synonymous with “bid” and the word “Appendix to BID” with “Appendix to Bid” and the word “BID documents” with “bidding documents”.

Add the following at the end of this subclause:

- (h) (i) “Materials” means materials and other things intended to form or forming part of the Permanent Works.

SUBCLAUSE 2.1 -ENGINEER’S DUTIES AND AUTHORITY.

With reference to SubClause 2.1 (b), the following shall also apply: The Engineer shall obtain the specific approval of the Employer before:

- (a) Consenting to the subletting of any part of the works under Clause 4;
- (b) Certifying additional cost determined under Clause 12;
- (c) Determining an extension of time under Clause 44;
- (d) Issuing a variation under Clause 51
- (e) Fixing rates or prices under Clause 52

SUBCLAUSE 5.1 - LANGUAGE AND LAW

The Contract document shall be drawn up in the ENGLISH LANGUAGE. Communication between **the Contractor and the Engineer’s Representative shall be in this given language.**

The Laws applicable to this Contract shall be the Laws of the Republic of Kenya.

SUBCLAUSE 5.2 – PRIORITY OF CONTRACT DOCUMENTS

Delete the documents listed 1-6 and substitute:

- (1) The Contract Agreement (if completed)
- (2) The Letter Of Acceptance;
- (3) The Bid and Appendix to Bid;
- (4) The Conditions of Contract Part II;
- (5) The Conditions of Contract Part I;
- (6) The Special Specifications;
- (7) The Standard Specification for Road and Bridge Construction, 1986;
- (8) The Drawings;
- (9) The priced Bills of Quantities
- (10) Other documents as listed in the Appendix to form of Bid

SUBCLAUSE 10.1 - PERFORMANCE SECURITY

Replace the text of Subclause 10.1 with the following:

“The Contractor shall provide security for his proper performance of the Contract within 60 days after receipt of the Letter of Acceptance. The Performance Security shall be in the form of a bank guarantee as stipulated by the Employer in the Appendix to Bid. The Performance Security shall be issued by a bank incorporated in Kenya. The Contractor shall notify the Engineer when providing the Performance Security to the Employer.

“Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost, the Contractor, at the Engineer's written request, shall promptly increase the value of the Performance Security by an equal percentage.

SUBCLAUSE 10.2 - VALIDITY OF PERFORMANCE SECURITY

The Performance Security shall be valid until a date 28 days after the date of issue of the Defects Liability Certificate. The security shall be returned to the Contractor within 14 days of expiration.

SUBCLAUSE 10.3- CLAIMS UNDER PERFORMANCE SECURITY

Delete the entire sub-clause 10.3.

SUBCLAUSE 10.4- COST OF PERFORMANCE SECURITY

The cost of complying with the requirements of this clause shall be borne by the Contractor.

SUBCLAUSE 11.1- INSPECTION OF SITE

In line 17 after “affect his BID” add

“and the Contractor shall be deemed to have based his BID on all the aforementioned” Delete the last paragraph completely and replace with the following:

“The Employer in no way guarantees completeness nor accuracy of the soil, materials, subsurface and hydrological information made available to the Contractor at the time of Bidding or at any other time during the period of the Contract, and the Contractor shall be responsible for ascertaining for himself all information as aforesaid for the execution of works and his BID shall be deemed to have been priced accordingly.

SUBCLAUSE 11.2 - ACCESS TO DATA

Data made available by the Employer in accordance with Clause 11.1 shall be deemed to include data listed elsewhere in the Contract as open for inspection at the address stipulated in the Appendix to Bid.

SUBCLAUSE 14.1 PROGRAM TO BE SUBMITTED

The time within which the program shall be submitted shall be as specified in the Appendix to the Form of Bid.

This detailed program shall be based upon the program submitted by the Contractor as part of his BID, where this was required, and shall in no material manner deviate from the said program.

The program shall be in the form of a Critical Path Method Network (CPM Network) showing the order of procedure and a description of the construction methods and arrangements by which the Contractor proposes to carry out the works. It should also be supplemented by a time –bar chart of

the same program. The program shall be coordinated with climatic, groundwater and other conditions to provide for completion of the works in the order and by the time specified. The program shall be revised at three-month intervals and should include a chart of the principle quantities of work forecast for execution monthly.

The Contractor shall submit to the Engineer not later than the day or date mentioned in the Appendix to the Form of Bid, a general description of his proposed arrangements and methods for the execution of the Works, including temporary offices, buildings, access roads, construction plant and its intended production output, working shift arrangements, labour strength, skilled and unskilled, supervision arrangements, power supply arrangements, supply of materials including a materials utilization program, stone crushing, aggregate production and storage, cement handling, concrete mixing and handling, methods of excavation, dealing with water, testing methods and facilities.

During the execution of the works, the Contractor shall submit to the Engineer full and detailed particulars of any proposed amendments to the arrangements and methods submitted in accordance with the foregoing.

If details of the Contractors proposals for Temporary Works are required by the Engineer for his own information the Contractor shall submit such details within fourteen days of being requested to do so.

The various operations pertaining to the works shall be carried out in such a progressive sequence as will achieve a continuous and consecutive output of fully completed road works inclusive of all bridge works and culverts within the time limits specified in the Contract. Generally the Contractor shall start at one end of the road and progress continuously towards the other without leaving any isolated section or sections of uncompleted road provided always that the site of the works has been acquired in its entirety and the encumbrances and services thereon removed.

The Contractor shall allow in his programme for the following public holidays per calendar year during which the Contractor shall not be permitted to work.

- New Years Day (1st January)
- Good Friday
- Easter Monday
- Labour day (1st May)
- Madaraka Day (1st June)
- IddUIFitr
- Moi Day (10th October)
- Kenyatta Day (20th October)
- Jamhuri day (12th December)
- Christmas Day (25th December)
- Boxing day (26th December)

The Contractor shall also allow per calendar year for a further 2 unspecified public holidays which may be announced by the Government of Kenya with no prior notification upon which he shall not be permitted to work.

SUBCLAUSE 14.3- CASH FLOW ESTIMATE

The time within which the detailed cash flow estimate shall be submitted shall be as specified in the Appendix to the Form of Bid.

SUBCLAUSE 15.1- CONTRACTOR'S SUPERINTENDENCE

Add the following at the end of the first paragraph of subclause 15.1:

“The Contractor shall, within seven (7) days of receipt of the Engineer’s order to commence the works inform the Engineer in writing the name of the Contractor’s Representative and the anticipated date of his arrival on site.”

Add the following Sub-clause 15.2

SUBCLAUSE 15.2- LANGUAGE ABILITY AND QUALIFICATIONS OF CONTRACTOR’S AUTHORISED AGENT

The Contractor’s Agent or Representative on the site shall be a Registered Engineer as registered by the Engineer’s Registration Board of Kenya in accordance with the Laws of Kenya Cap 530 or have equivalent status approved by the Engineer and shall be able to read and write English fluently. The Contractor’s Agent or Representative shall have at least 10 years of relevant experience as an Engineer.

SUBClause 16.2- ENGINEER AT LIBERTY TO OBJECT

At the end of this Clause add

“by a competent substitute approved by the Engineer and at the Contractors own expense.” Add the following Sub-Clauses 16.3 and 16.4:

SUBClause 16.3- QUALIFICATION AND LANGUAGE ABILITY OF SUPERINTENDING STAFF

The Contractor’s superintending staff shall meet the following minimum qualifications:

Should have a working knowledge of English or Kiswahili. Should any of the superintending staff not be able to meet this condition, the Contractor shall propose to the Engineer arrangements for provision of a sufficient number of interpreters of approved qualifications. The Engineer, at his discretion, may amend, approve or reject such arrangements or reject deployment of superintending staff not meeting the language requirements. The Engineer may at any time during the duration of the Contract amend any approved arrangements made for interpreters, which shall be implemented at the Contractors expense.

The key staff listed below must have academic qualifications from government-recognized institutions or equivalent institutions of the levels set out in Section 5, Part 6.

- Site Agent
- Site Surveyor
- Foremen

b. Qualifications as above shall be subject to verification and approval on site by the Engineer or his representative on site before commencement of the said works.

SUBCLAUSE 16.4 – EMPLOYMENT OF LOCAL PERSONNEL

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience who are Kenya citizens.

SUBCLAUSE 19.1- SAFETY, SECURITY AND PROTECTION OF THE ENVIRONMENT

Add Sub-Clause-paragraph (d) of Sub-Clause 19 as follows:

Notwithstanding the Contractor’s obligation under Sub-Clause-paragraph (a), (b) and 9(c) of Sub-Clause 19.1 of the Conditions Of Contract, the Contractor shall observe the following measures with a view to reducing or elimination adverse environmental effects by the site works:

- (i) All quarries and borrow pits shall be filled and landscaped to their original state after extraction of construction material
- (ii) Soil erosion due to surface runoff or water from culverts or other drainage structures should be avoided by putting in place proper erosion control measures that shall include, but are not limited to grassing and planting if trees

- (iii) Long traffic diversion roads shall be avoided so as to minimize the effect of dust on the surrounding environment. In any case all diversions shall be kept damp and dust free
- (iv) Spillage of oils, fuels and lubricants shall be avoided and if spilt, shall be collected and disposed off in such a way as not to adversely affect the environment
- (v) Rock blasting near settlement areas shall be properly coordinated with the relevant officers of the Government (National and county) so as to minimize noise pollution and community interference.

SUBCLAUSE 20.4 - EMPLOYERS RISKS

Delete Sub-Clause (h) and substitute with;

(h) Any operation of the forces of nature (insofar as it occurs on site) which an experienced contractor:

- (i) Could not have reasonably foreseen, or
- (ii) Could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures:
 - (A) Prevent loss or damage to physical property from occurring by taking appropriate measures or
 - (B) Insure against such loss or damage

SUBCLAUSE 21.1 - INSURANCE OF WORKS AND CONTRACTOR 'S EQUIPMENT

Add the following words at the end of Sub-paragraph (a) and immediately before the last word of Sub-paragraph (b) of Sub-Clause 21.1:

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“It being understood that such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred”

Delete the first sentence of this Clause and replace with the following:

“prior to commencement of the Works the Contractor shall, without limiting his or the Employer’s obligations and responsibilities under Clause 20, insure to the satisfaction of the Employer:

SUBCLAUSE 21.2 – SCOPE OF COVER

Amend sub-paragraph (a) of Sub-Clause 21.2 as follows:

Delete words “from the start of work at the site” and substitute the words “from the first working day after the Commencement Date”

Add the following as Sub-Clause (c) under Sub-Clause 21.2

(c) It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract.

SUBCLAUSE 21.4 – EXCLUSIONS

Amend Sub-Clause 21.4 to read as follows:

“There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by the risks listed under Sub-Clause 20.4 sub-paragraph (a) (i) to (iv) of the Conditions of Particular Application.”

SUBCLAUSE 23.2 – MINIMUM AMOUNT OF INSURANCE

Add the following at the end of this Clause:

“.. with no limits to the number of occurrences”.

SUBCLAUSE 25.1 – EVIDENCE AND TERMS

Amend Sub-Clause OF INSURANCE 25.1 as follows:

Insert the words “as soon as practicable after the respective insurances have been taken out but in any case” before the words “prior to the start of work at the site”

Add the following Sub-Clauses 25.5, 25.6.

SUBCLAUSE 25.6 – INSURANCE NOTICES

Each policy of insurance effected by the Contractor for purposes of the Contract shall include a provision to the effect that the Insurer shall have a duty to give notice in writing to the Contractor and Employer of the date when a premium becomes payable. This shall not be more than thirty (30) days before that date and the policy shall remain in force until thirty (30) days after the giving of such notice.

SUBCLAUSE 25.7 – NOTIFICATION TO INSURERS

It shall be the responsibility of the Contractor to notify insurers under any of the insurance referred to in the preceding clauses 21, 23 and 24 on any matter or event, which by the terms of such insurance are required to be so notified. The Contractor shall indemnify and keep indemnified the Employer against all losses, claims, demands, proceedings, costs, charges and expenses whatsoever arising out of or in consequence of any default by the Contractor in complying with the requirements of this Sub-Clause whether as a result of avoidance of such insurance or otherwise.

SUBCLAUSE 28.2 – ROYALTIES

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Add at the end of this Sub-Clause the following sentence:

“The Contractor shall also be liable for all payments or compensation if any that are levied in connection with the dumping of part or all of any such material.”

SUBCLAUSE 29.1 – INTERFERENCE WITH TRAFFIC

Supplement Sub-Clause 29.1 by adding the following sentence at the end:

“The Contractor will be permitted to use existing public roads for access to the site. The Contractor shall pay vehicle license tax and road maintenance duty in accordance with relevant regulations and shall obtain any necessary permits or licenses from relevant authorities for transporting his equipment.”

Add the following subclause 29.2:

SUBCLAUSE 29.2– REINSTATEMENT AND COMPENSATION FOR DAMAGES TO PERSONS AND PROPERTY

The Contractor shall reinstate all properties whether public or private which are damaged in consequence of the construction and, maintenance of the works to a condition as specified and at least equal to that prevailing before his first entry on them.

If in the opinion of the Engineer the Contractor shall have failed to take reasonable and prompt action to discharge his obligations in the matter of reinstatement, the Engineer will inform the Contractor in writing of his opinion, in which circumstances the Employer reserves the right to employ others to do the necessary work of reinstatement and to deduct the cost thereof from any money due or which shall become due to the Contractor.

The Contractor shall refer to the Employer without delay all claims which may be considered to fall within the provisions of Clause 22.1.

Add the following Sub-Clause 34.2 to 34.8

SUBCLAUSE 34.2 – CONDITIONS OF EMPLOYMENT OF LABOUR

The Contractor shall be responsible for making all arrangements for and shall bear all costs relating to recruitment, obtaining of all necessary visas, permits or other official permission for movements of staff and labour.

SUBCLAUSE 34.3 – FAIR WAGES

The Contractor shall, in respect of all persons employed anywhere by him in the execution of the Contract, and further in respect of all persons employed by him otherwise than in the execution of the Contract in every factory, Workshop or place occupied or used by him for the execution of the Contract, observe and fulfil the following conditions:

- (a) The Contractor shall pay rates of wages, observe hours of labour and provide conditions of labour, housing, amenities and facilities not less favourable than those required by the latest Regulation of Wages (Building and Construction Industry) Order as of the time of bid submission, and subsequent amendments thereto, or in any wage scales, hours of work or conditions agreed by the Ministry of Labour or other National and County Government Departments in consultation with the appropriate wage fixing authority and generally recognized by other employees in the district whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- (b) In the absence of any rates of wages, hours or conditions of labour so established the Contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable

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than the general level of wages, hours and conditions observed by other Employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

(c) Where the absence of established rates of wages, hours and conditions of labour or the dissimilarity of the general circumstances in the trade or industry in which the Contractor is engaged prevent the Contractor from observing rates of wages, hours and conditions of labour ascertained under subparagraph (a) and (b) above the Contractor in fixing the rates of wages, hours and conditions of labour of his employees shall be guided by the advice of the Labour Department.

(d) The Contractor shall recognize the freedom of his employees to be members of trade unions.

(e) The Contractor shall maintain records in English of the time worked by, and the wages paid to, his employees. The Contractor shall furnish to the Engineer or Employer, if called upon to do so, such particulars of the rates, wages and conditions of labour as the Employer or Engineer may direct.

(f) The Contractor shall at all times during the continuance of the contract display, for the information of his employees in every factory, workshop or place occupied or used by him for the execution of the Contract, a copy of this clause together with a notice setting out the general rates of wages, hours and conditions of labour of his employees.

(g) The Contractor shall be responsible for the observance of this clause by sub-Contractors employed in the execution of the works.

SUBCLAUSE 34.4 – BREACH OF FAIR WAGES CLAUSE

Any Contractor or Sub-Contractor who is found to be in breach of Fair Wages Clause shall cease to be approved as a Contractor or Sub-Contractor for such period as the County Secretary, County Government of Migori, may determine.

Should a claim be made to the Employer alleging the Contractor's default in payment of Fair Wages of any workman employed on the Contract and if proof thereof satisfactory to the Employer is furnished by the Labour Authority, the Employer may, failing payment by the Contractor, pay the claims out of any monies due or which may become due to the Contractor under the Contract.

SUBCLAUSE 34.5 – RECRUITMENT OF UNSKILLED LABOUR

Any additional unskilled labour which is required by the Contractor for the works and which is not in his employ at the time of the acceptance of the BID shall be recruited by the Contractor from the Labour Exchange or Exchange or Exchanges nearest to the site or sites of the work.

SUBCLAUSE 34.6 – COMPENSATION FOR INJURY

The Contractor shall in accordance with the Workmen's Compensation Act of the Laws of Kenya and any other regulations in force from time to time pay compensation for loss or damage suffered in consequence of any accident or injury or disease resulting from his work to any workman or other person in the employment of the Contractor or any Subcontractor.

SUBCLAUSE 34.7 – LABOUR STANDARDS

(a) The Contractor shall comply with the existing local labour laws, regulations and labour standards

(b) the Contractor shall formulate and enforce an adequate safety program with respect to all work under his contract, whether performed by the Contractor or subcontractor. The Contractor has assurance from the Employer of cooperation where the implementation of these safety measures requires joint cooperation.

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(c) Upon written request of the Employer the Contractor shall remove or replace any of his employees employed under this Contract.

Add the following Sub-Clause 35.2 and 35.3.

SUBCLAUSE 35.2 – RECORDS OF SAFETY AND HEALTH

The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Engineer may from time to time prescribe.

SUBCLAUSE 35.3 – REPORTING OF ACCIDENTS

The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means. The Contractor shall also notify the relevant authority whenever the Laws of Kenya require such a report.

SUBCLAUSE 41.1 – COMMENCEMENT OF WORKS

Amend Sub-Clause 41.1 as follows:

Delete the words “as soon as is reasonably possible” in the first sentence and replace with “within the period stated in the Appendix to Bid”.

SUBCLAUSE 43.1 – TIME FOR COMPLETION

Amend Sub-Clause 43.1 as follows:

Delete the words “within the time” to “such extended time” and substitute “by the date or dates stated or implied in Clause 14 of these Conditions of Particular Application.

SUBCLAUSE 44.1 – EXTENSION OF TIME FOR COMPLETION

Add at the end of Sub-Clause 44.1 the following:

“Neither rains falling within the rainy seasons as occurs in Kenya nor floods caused by such rains shall be deemed exceptional weather conditions such as may fairly entitle the Contractor to an extension of time for the completion of the work.”

SUBCLAUSE 45.1 – RESTRICTION ON WORKING HOURS

Add at the end of Sub-Clause 45.1 the following:

“If the Contractor requests permission to work by night as well as by day, then if the Engineer shall grant such permission the Contractor shall not be entitled to any additional payments for so doing. All such work at night shall be carried out without unreasonable noise or other disturbance and the Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while or in carrying out night work and from and against all claims, demands, proceedings, costs, charges and expenses whatsoever in regard or in relation to such liability.

“In addition the Contractor will be required to provide, for any work carried out at night or recognized days of rest, adequate lighting and other facilities so that the work is carried out safely and properly.

“In the event of the Engineer granting permission to the Contractor to work double or rotary shifts or on Sundays, the Contractor shall be required to meet any additional costs to the Employer in the administration and supervision of the Contract arising from the granting of this permission.”

SUBCLAUSE 47.2 – REDUCTION OF LIQUIDATED DAMAGES

Add the following paragraphs at the end of this Sub-Clause:

“There shall be no reduction in the amount of liquidated damages in the event that a part or a section of the Works within the Contract is certified as completed before the whole of the Works comprising that Contract.

The Employer shall pay no bonus for early completion of the Works to the Contractor. The sum stated in the Appendix to Bid as liquidated damages shall be increased by a sum equivalent to any additional amount payable by the Employer to the Contractor under clause 70.1 in respect of an increase in costs in such a period that would not have been incurred by the Contractor if the works had been completed by the due date for completion prescribed by Clause 43.”

SUBCLAUSE 52.1 – VALUATION AND VARIATIONS

Add new Clause 52.2(c)

No change in the unit rates or prices quoted shall be considered for items included in the schedule of Dayworks rates, or Provisional Sums and items, or for any item in the BOQ.

Modification to Clause 52(3)

SUBCLAUSE 52.4 – DAYWORKS

Add the following at the end of Sub-Clause 52.4:

The work so ordered shall immediately become part of the works under the contract. The Contractor shall, as soon as practicable after receiving the Dayworks order from the Engineer undertake the necessary steps for due execution such work. Prior to commencement of any work to be done on a Dayworks basis, the Contractor shall give an advance notice to the Engineer stating the exact time of such commencement.

SUBCLAUSE 54.1 – CONTRACTORS EQUIPMENT, TEMPORARY WORKS AND MATERIALS

: EXCLUSIVE USE FOR THE WORKS

Amend Sub-Clause 54.1 as follows:

Line 5: add “written” between “the” and “consent”.

Delete Sub-Clauses 54.2 and 54.5.

SUBCLAUSE 55.2 – OMISSIONS OF QUANTITIES

Items of Works described in the Bills of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Employer.

Add the following Sub-Clause 58.4:

SUBCLAUSE 58.4 – PROVISIONAL ITEMS

Provisional items shall be read as Provisional Sums and shall be operated as such in accordance with Sub-Clauses 58.1 to 58.3.

Clause 60 of the General Conditions is deleted and substituted with the following:-

SUBCLAUSE 60.1 – MONTHLY STATEMENT

The Contractor shall submit a statement to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable;

- the value of the Permanent Work executed up to the end of previous month

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- such an amount (not exceeding 75 percent of the value) as the Engineer may consider proper on account of materials for permanent work delivered by the Contractor in the site
- such amount as the Engineer may consider fair and reasonable for any Temporary Works for which separate amounts are provided in the Bill of Quantities
- any amount to be withheld under retention provisions of Subclause 60.3
- any other sum to which the Contractor may be entitled under the Contract

If the Engineer disagrees with or cannot verify any part of the statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes and corrections in the statement as may be directed by the Engineer. In cases where there is difference **in opinion as to the value of any item, the Engineer's view shall prevail.**

SUBCLAUSE 60.2 INTERIM PAYMENT CERTIFICATE

The Contractor shall forward to the Engineer an Interim Payment Certificate based on the statement as corrected above and, should it be necessary in the Engineers opinion, shall promptly make any further amendments and corrections to the Interim Payment Certificate.

The Engineer shall not unreasonably withhold certifying an Interim Payment Certificate and in case of likely delay in establishing the value of an item, such item may be set aside and the remainder certified for payment.

Within 30 days after receipt of the Interim Payment Certificate and subject to the Contractor having made such further amendments and corrections as the Engineer may require, the Engineer will forward to the Employer the certified Interim Payment Certificate.

Provided that the Engineer shall not be bound to certify any payment under this Clause if the net amount thereof, after all retentions and deductions, would be less than the minimum amount of **Interim Payment Certificate's stated in the Appendix to Form of Bid. However in such a case, the** uncertified amount will be added to the next interim payment, and the cumulative unpaid certified amount will be compared to the minimum amount of interim payment.

SUBCLAUSE 60.3 – PAYMENT OF RETENTION MONEY

A retention amounting to the percentage stipulated in the Appendix to Bid shall be made by the Engineer in the first and following Interim Payment Certificates until the amount retained shall reach the "Limit of Retention Money" named in the Appendix to Form of BID.

Upon the issue of the Taking-Over Certificate, with respect to the whole of the works one half of the retention money shall become due and shall be paid to the Contractor when the Engineer shall certify in writing that the last section of the whole works has been substantially completed.

Upon expiration of the Defects Liability Period for the works, the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor.

Provided that in the event of different Defects Liability Periods being applicable to different Sections of the Permanent Works pursuant to Clause 48, the expression "expiration of the Defects Liability Period" shall, for the purpose of this subclause, be deemed to mean the expiration of the latest of such periods.

Provided also that if at such time, there remain to be executed by the Contractor any work instructed, pursuant to Clause 49 and 50, in respect of the works, the Engineer shall be entitled to withhold certification until completion of any such work or so much of the balance of the Retention money as shall in the opinion of the Engineer, represents the cost of the remaining work to be executed.

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SUBCLAUSE 60.4– CORRECTION OF CERTIFICATES

The Engineer may in any Interim Payment Certificate make any correction or modification to any previous Interim Payment Certificate signed by him and shall have authority, if any work is not being carried out to his satisfaction to omit or reduce the value of such work in any Interim Payment Certificate.

SUBCLAUSE 60.5– STATEMENT AT COMPLETION

Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the works, the Contractor shall submit to the Engineer a statement at completion showing in detail, in a form approved by the Engineer;

The final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate.

- (a) Any further sums which the Contractor considers to be due; and
- (b) An estimate of amounts that the Contractor considers will become due to him under the Contract.

Estimate amounts shall be shown separately in the Statement at Completion. The Contractor shall amend and correct the Statement as directed by the Engineer and submit a Certificate at Completion to be processed as in SubClause 60.2.

SUBClause 60.6 – FINAL STATEMENT

Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration a draft final statement with supporting documents showing in detail, in the form approved by the Engineer;

The final value of all work done in accordance with the Contract;

- (a) Any further sums which the Contractor considers to be due to him.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonable require and shall make such changes in the draft as may be required.

SUBClause 60.7– DISCHARGE

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, 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 under the Final Payment Certificate issued pursuant to Sub-Clause 60.8 has been made and the Performance Security referred to in Sub-Clause 10.1 has been returned to the Contractor.

SUBClause 60.8 – FINAL PAYMENT CERTIFICATE

Upon acceptance of the Final Statement as given in Sub-Clause 60.6, the Engineer shall prepare a Final Payment Certificate which shall be delivered to the Contractor's authorized agent or representative for his signature. The Final Payment Certificate shall state:

- (a) The final value of all work done in accordance with the Contract;

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- (b) After giving credit to the Employer for all amounts previously paid by the Employer, the balance, if any, due from the Employer to the Contractor or the Contractor to the Employer.

Final Certificate shall be issued for any sum due to the Contractor even if such is less than the sum named in the Appendix to the Form of BID.

SUBClause 60.9– CESSATION OF EMPLOYERS LIABILITY

Unless the Contractor notifies the Engineer of his objection to the Final Certificate within fourteen days of delivery thereof he shall be deemed to have agreed that he accepts the total Contract Price as set out in the Final Certificate as full settlement for all work done under the Contract including any variations and omissions thereof but excluding any variations and claims previously made in writing.

SUBClause 60.10 – TIME FOR PAYMENT

The amount due to the Contractor under any Interim Payment Certificate or Final Payment Certificate issued pursuant to this Clause or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor as follows:

- In the case of Interim Payment Certificate, within the time stated in the Appendix to Form Of Bid, after the Engineer has signed the Interim Payment Certificate.
- In the case of the Final Payment Certificate pursuant to Subclause 60.8, within the time stated in the Appendix to Form Of Bid, after the Engineer has signed the Final Payment Certificate.
- In the event of the failure of the Employer to make payment within the times stated, the Employer shall make payment to the Contractor of simple interest at a rate equal to 2% (two percentages) points above the commercial averaged Base Lending Rate obtained from the Central Bank of Kenya. The provisions of **this subclause are without prejudice to the Contractor's entitlements under Clause 69 or otherwise.**

SUBCLAUSE 60.11 – CURRENCY OF PAYMENT

The Contract Price shall be designated in Kenyan Currency.

All work performed by the Contractor under the Contract shall be valued in Kenya Shillings using the rates and prices entered in the Bills of Quantities together with such other increases to the Contract Price, except for variation of price payments in accordance with Clause 70.1.

SUB-CLAUSE 60.12 – ADVANCE PAYMENT

An Advance Payment equivalent to 10% of the Contract Sum shall not be made under this Contract.

SUBCLAUSE 60.13 MATERIALS FOR PERMANENT WORKS

With respect to materials brought by the Contractor to the site for incorporation into the permanent works, the Contractor shall,

- Receive a credit in the month, in which these materials are brought to site,
- Be charged a debit in the month in which these materials are incorporated in the permanent works.

Both such credit and debit to be determined by the Engineer in accordance with the following provisions.

- (a) No credit shall be given unless the following conditions shall have been met to the Engineers satisfaction
- (i) The materials are in accordance with the specifications for the works;
 - (ii) The materials have been delivered to site and are properly stored and protected against loss, damage or deterioration;
 - (iii) The Contractors record of the requirements, orders receipts and use of materials are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;

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- (iv) The Contractor has submitted a statement of his cost of acquiring and delivering the materials and plant to the Site, together with such documents as may be required for the purpose of evidencing such cost;
- (v) The materials are to be used within a reasonable time.
- (b) **The amount to be credited to the Contractor shall not be more than 75% of the Contractor's reasonable cost of the materials delivered to site, as determined by the Engineer after review of the documents listed in subparagraphs (a) (iv) above;**
- (c) The amount to be debited to the Contractor for any materials incorporated into the works shall be equivalent to the credit previously granted to the Contractor for such materials pursuant to Clause (b) above as determined by the Engineer.

SUBClause 67.1 – **ENGINEER'S DECISION**

Delete the entire subclause 67.1 and add the following;

“If a dispute of any kind whatsoever arises between the Employer and the Contractor in any connection with, or arising out of, the Contract or the execution of the works, whether during the execution of the works or after their completion and whether before or after repudiation or other termination of the Contract including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state it is made pursuant to this clause. No later than 28 (twenty eight) day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state it is made pursuant to this clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter **provided, in an Amicable Settlement, Adjudicator's or Arbitrator's award.**

If either the Employer or the Contractor be dissatisfied with the any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the 28th (twenty eighth) after the day on which he received the reference, then either the Employer or the Contractor may, on or before the 28th (twenty eighth) day after the day on which he received notice of such decision, or on or before the 28th (twenty eighth) day after the day on which the said period of 28 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence Adjudication, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence Adjudication, as hereinafter provided, as to such dispute; no adjudication in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence adjudication as to such dispute has been given by either the Employer or the Contractor on or before the twenty eighth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor. “

SUBClause 67.2 – **AMICABLE SETTLEMENT**

Delete the entire subclause 67.2 and add the following;

“Where notice to of intention to commence adjudication as to dispute has been given in accordance with subclause 67.1; the parties shall attempt to settle such dispute in amicably before the

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commencement of Adjudication; provided that, unless the parties otherwise agree, Adjudication may be commenced on or after the 14th (fourteenth) day after the day on which notice of intention to commence adjudication of such dispute was given, even if an attempt at amicable settlement thereto has been made.”

SUBCLAUSE 67.3 – ADJUDICATION

Delete the entire subclause 67.3 and add the following;

“The Adjudicator shall be appointed by the Chartered Institute of Arbitrators (Kenya) unless the appointment is agreed by the parties within 7 (seven) days of the notice to adjudication.

The adjudication process shall be conducted according to the Laws of Kenya and the Rules of the Chartered Institute of Arbitrators (Kenya).”

SUBCLAUSE 67.4 – ARBITRATION

Delete the entire subclause 67.3 and add the following;

“Any dispute in respect of which:

- a) The decision, if any, of the Adjudicator has not become final and binding pursuant to subclause 67.1, and
- b) Amicable settlement has not been reached within the period stated in subclause 67.2,

shall be finally settled, under the Laws of Kenya and the Arbitration Rules of the Chartered Institute of Arbitrators (Kenya Branch) by one or more arbitrators appointed by the Chartered Institute of Arbitrators (Kenya Branch).

Neither party shall be limited in the in the proceedings before such arbitrator/s to the evidence or arguments put before the Adjudicator for the purpose of obtaining his said decision pursuant to subclause 67.1.

Arbitration may be commenced prior to or after completion of the works, provided that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the works.

SUBCLAUSE 68.2 – NOTICES TO EMPLOYER AND ENGINEER

Delete in Sub-Clause 68.2 the words "nominated for that purpose in Part II of these conditions".

a. The Employer’s address is:

CHIEF OFFICER

DEPARTMENT OF ROADS, PUBLIC WORKS AND TRANSPORT
P.O BOX 195, 40400 SUNA MIGORI

b. The Engineer’s address is:

DIRECTOR ROADS AND TRANSPORT

DEPARTMENT OF ROADS, PUBLIC WORKS AND TRANSPORT
P.O BOX 195, 40400 SUNA MIGORI

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SUBCLAUSE 68.4 – All letters and notices from the Contractor to the Employer and/Engineer must be signed by the Managing Director or the person given written power of Attorney.

CLAUSE 69 – DEFAULT OF EMPLOYER

Delete in Sub-Clause 69.(a) the words ("28 days") and insert the words "sixty (60) days".
Delete Sub-Clause 69.1 (c)

In Sub-Clause 69.4 add at the end of first paragraph the following “ the period of such suspension shall be as agreed upon by both parties and in any case not more than six (6) months”.

In Subclause 69.4 of General Conditions of Contract Part I, insert at the end -----“The amounts of such costs which shall be added to the Contract Price shall exclude any cost due to idle time for equipment, plant and labour.”

CLAUSE 72 – RATES OF EXCHANGE COST

Delete clause 72 in its entirety and substitute the following:

The currency of BID and payment is Kenya Shillings and rates of exchange requirements are not applicable.

CLAUSE 73 – BRIBERY AND COLLUSION

Add new Clause 73.1:

“The Contractor shall not:

(a) Offer or give or agree to give to any person in the service of either the County Government of Migori or the National Government any gift or consideration or any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract to which either the County Government of Migori or the National Government is a party or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the Government of Kenya.

(b) Enter into this or any other contract with the County Government of Migori in connection with which commission has been paid or agreed to be paid by or on his behalf or to his knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.

Any breach of this condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf in relation to this or any other contract to which the County Government of Migori is a party shall entitle the Employer to determine the Contract (See Condition 63 hereof) and/ or to recover from the Contractor the amount or value of any such gift, consideration or commission.

Any dispute or difference of opinion arising in respect of either the interpretation, effect or application of this condition or of the amount recoverable hereunder by the Employer from the Contractor shall be decided by the Employer, whose decision shall be final and conclusive.

CLAUSE 74: - CONTRACT CONFIDENTIAL

Add new Clause 74.1:

The Contractor shall treat the details of this Contract as Private and Confidential and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere (save in so far as may be necessary for the purpose thereof) without the previous consent in writing

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of the Government. If any dispute arises as to the necessity of any publication or disclosures for the purposes of this Contract the same shall be referred to the decision of the Engineer mentioned in the said Conditions of Contract whose award shall be final.

SECTION 7: SCHEDULES OF SUPPLEMENTARY INFORMATION

SECTION 7: SCHEDULES OF SUPPLEMENTARY INFORMATION

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SCHEDULE 1: CONFIDENTIAL BUSINESS QUESTIONNAIRE

This Confidential Business Questionnaire of the County Government of Migori shall be completed by the Bidder.

COUNTY GOVERNMENT OF MIGORI

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 Licence No.Expiring date

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

Kshs.....

Name of your bankers.....

Branch.....

Are you an agent of the Kenya National Trading Corporation? YES/NO

Part 2(a) - Sole Proprietor:

Your name in full

Age.....

NationalityCountry of origin

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*Citizenship details

Part 2(b) - Partnership:

Give details of partners as follows:

Name	Nationality	Citizenship Details*	Shares
1.....			
2.....			
3.....			
4.....			
5.....			

Part 2(c) - Registered Company:

Private or public

State the nominal and issued capital of the company-

Nominal Kshs.

Issued Kshs.

Give details of all directors as follows:

Name	Nationality	Citizenship Details*	Shares
1.....			
2.....			
3.....			
4.....			
5.....			

Part 2(d)- Interest in the Firm:

Is there any person / persons in the Ministry of Roads & Public Works who has interest in this firm?

Yes /No**

.....
 .Date Signature of Bidder



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

SCHEDULE 2: FORM OF WRITTEN POWER OF ATTORNEY

The Bidder 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 Bid.

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

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

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

Alternate:

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

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

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

*To be filled by all Bidders.

SCHEDULE 3: CERTIFICATE OF BIDDER'S VISIT TO SITE

This is to certify that

[NAME/S].....

.....

Being the authorized representative/Agent of [NAME OF BIDDER]

.....

..

.....

participated in the organised inspection visit of the site of the works for the

HELD ON

.....day of.....20.....

Signed.....

(Employer's Representative)

.....

.....
(Name of Employer'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	
New or Used	
Year of Manufacture	
No. of each	
Description on Type, Model, Make	

The Bidder 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 required of it shall be shown on this Schedule. Summary of the same shall be entered in Section 5: Qualification Criteria, Part 7.

I certify that the above information is correct.

.....
(Signature of Bidder)

.....
(Date)

SCHEDULE 6: KEY PERSONNEL

DESIGNATION	NAME	NATIONALITY	SUMMARY OF QUALIFICATIONS AND EXPERIENCE		
			Qualifications	General Experience (Yrs)	Specific Experience (Yrs)
<p>Headquarters</p> <p>Partner/Director or other key staff (give designation)</p>					
<p>Site Office</p> <p>Site Agent</p> <p>Deputy Site Agent/Site Engineer.</p> <p>Senior Foreman</p> <p>Construction supervisors</p> <p>Site Surveyor</p> <p>Other Key Staff</p> <p>Foremen</p> <p>(i) Earthworks</p> <p>(ii) Concrete</p> <p>(iii) Pavement</p> <p>(iv) Drainage</p>					

Note: The Bidder shall list in this schedule the key personnel he will employ from the Contractor’s headquarters and from the Contractor’s site office to direct and execute the work together with their qualifications, experience, position held and nationality in accordance with Clause 15.2 and 16.3 of the Conditions of Contract Part II (where required, use separate sheets to add extra data for column 4). Bidders shall attach signed and certified CVs of all key staff.

I certify that the above information is correct.

.....
 (Signature of Bidder)

.....
 (Date)

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

DESCRIPTION OF WORKS	NAME & ADDRESS OF CLIENT	VALUE OF WORKS (KSHS) *	YEAR COMPLETED/REMARKS
<u>A) Non-completed Works</u>			
<u>B) Completed Works</u>			
<u>C) Specific Construction Experience</u>			

I certify that the above works were successfully carried out by Me (the Bidder).

.....
(Signature of Bidder)

.....
(Date)

* Value in KShs using Central Bank of Kenya mean exchange rate at a reference date 7 days before date of BID opening

SCHEDULE 8: SCHEDULE OF ONGOING PROJECTS

DESCRIPTION OF WORKS	NAME & ADDRESS OF CLIENT	DATE OF COMMENCEMENT	DATE OF COMPLETION	VALUE OF WORKS (KSHS)	VALUE COMPLETED UP TO DATE %	PHYSICALLY COMPLETED UP TO DATE %

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

.....
(Signature of Bidder)

.....
(Date)

SCHEDULE 10: FINANCIAL STANDING

- 1 Submit copies of audited profit and loss statements and balance sheet for the last five 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 five (5) financial years. Quote in millions and decimal thereof.

	Year	Year	Year	Year	Year
	Ksh.	Ksh.	Ksh.	Ksh.	Ksh.
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.

SCHEDULE 11: OTHER SUPPLEMENTARY INFORMATION

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

.....

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

.....

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

.....

4. **Information on current litigation in which the Bidder is involved.**

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

I certify that the above information is correct.

.....
 Date

.....
 Signature of Bidder

SCHEDULE 12: WORK METHODOLOGY

Give a brief description of how you intend to carry out the work including traffic management, quality assurance of works and any designs to be carried out by the Bidder, in not less than three (3) pages and not more than five (5) pages.

SECTION 8: FORM OF AGREEMENT

SECTION 8: FORM OF AGREEMENT

THIS AGREEMENT is made on the day of 20
between the The Chief Officer Public Works, Roads, Transport and Energy County Government of Migori of P. O. Box 195 - 40400, Suna, Migori Kenya hereinafter called "the Employer" of the one **part and** **hereinafter called** "the Contractor" of the other part.

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

and has accepted a Bid by the Contractor for the execution completion and maintenance of such works NOW THIS AGREEMENT WITNESSETH as follows:

In this agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

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

- **The said BID dated**
- The Conditions of Contract
- The Standard and Special Specification
- The Priced Bill of Quantities
- The Letter of Acceptance
- Schedules Of Supplementary Information
- The Drawings
- Other documents as may be agreed and listed

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

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

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

IN WITNESS WHEREOF the parties hereto have caused their respective common seals to be hereto affixed (or have hereunto set their respective hands and seals) on the day and year first above written.

SIGNED AND DELIVERED

By the said Employer:
(Public Works, Roads, Transport & Energy)
For and on behalf of the said Employer.

In the presence of:
(Name and Designation of Witness)

.....
(Signature of Witness)

.....
(Address of witness)

Countersigned by:
(Finance)

In the presence of:
(Name and Designation of Witness)

.....
(Signature of Witness)

.....
(Address Of witness)

By the said Contractor:

In the presence of:
(Name and Designation of Witness)

.....
(Signature of Witness)

.....
(Address of witness)

**SECTION 9: FORM OF PERFORMANCE BANK GUARANTEE
(UNCONDITIONAL)**

SECTION 9: FORM OF ADVANCE PAYMENT AND PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)

Samples of acceptable forms of Bank Guarantee for Advance Payment and Performance Guarantee are annexed. Tenderers should not complete the forms at this time. Only the successful Tenderer will be required to provide Performance Guarantee in accordance with one of the samples, or in a similar form acceptable to the Employer.

FORM OF BANK GUARANTEE FOR ADVANCE PAYMENT

To: The Chief Officer,
Public works, Roads, Transport and Energy ,
County Government of Migori,
P.O. Box 195 40400,
SUNA MIGORI.

Dear Sir,

In accordance with the provision of the Conditions of Contract, sub-clause 60.12 ("Advance Payment") of the above – mentioned contract,.....

.....
(hereinafter called the "Contractor") shall deposit with the Chief Officer, Public works, Roads, Transport and Energy, County Government of Migori, , a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the contract in an amount equal to ten (10) % of the contract price, i.e.

Kshs.....(amount in figures)

Kshs.....

.....**(amount in words)**

We, (The Bank)..... as instructed by the

Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to the Chief Officer, Public works, Roads, Transport and Energy, County Government of Migori, on his first demand without what-so-ever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding,

Kshs.....(amount in figures)

Kshs.....

.....**(amount in words)**

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in the event that the obligations expressed in the said clause of the above mentioned contract have not been fulfilled by the Contractor giving right of claim to the Employer for recovery of the whole or part of the advance payment from the Contractor under the contract.

We further agree that no additional to or other modification of the terms of the Contract or of the Works to be performed there under or of the Contract documents which may be made between the Chief Officer, Public works, Roads, Transport and Energy, County Government of Migori, and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any change or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment under the contract until the Chief Officer, Public works, Roads, Transport and Energy, County Government of Migori, P. O. Box 195 40400 SunaMigori- Kenya, receives full payment of the same amount from the Contractor.

This guarantee shall be reduced pro rata with the deductions from the down payment made on the Interim Certificates in Accordance with Sub – Clause 60.12 of the Conditions of Contract.

Any dispute over the interpretation of the conditions of this letter of Guarantee shall be subject to the Laws of the Republic of Kenya.

After expiry, this document shall be returned to us for cancellation.

SIGNATURE AND SEAL OF BANK:

Name of Signatory Designation

Name of Bank

Address Date

FORM OF PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)

The Chief Officer,
Public works, Roads, Transport and Energy,
County Government of Migori,
P.O. Box 195 40400,
SUNA MIGORI

WHEREAS (hereinafter called
“the Contractor”)
has undertaken in pursuance of Contract No**Dated****to execute the**

(HEREINAFTER CALLED THE “CONTRACT”)

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 Bid as security for compliance with his obligations in accordance with the Contract;

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

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you on behalf of the Contractor, up to a total of

Kshs.....(amount in
figures)**Kshs**. (amount in
words)

and we undertake to payment 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 Taking Over Certificate at Substantial Completion.

AUTHORIZED SIGNATURE OF THE BANK

Name of Signatory.....

Name of bank.....

Address.....**Date**

SECTION 10: STANDARD SPECIFICATIONS

SECTION 10: STANDARD SPECIFICATIONS

Standard Specifications refers to the Standard Specifications for Road and Bridge Construction, 1986 Edition.

SECTION 11: SPECIAL SPECIFICATIONS

SECTION 11: SPECIAL SPECIFICATIONS

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SECTION 1 - GENERAL

101 SPECIAL SPECIFICATIONS.

Special specification is supplementary to the Standard Specifications and the two must be read in conjunction. In any case where there appears to be conflict between the two then the Special Specifications will take precedence

102 EXTENT OF CONTRACT.

The project is located in Migori County in the Republic of Kenya

The works consist of but not limited to the following;

- (a) Clearance of site including removal of hedges, bushes, trees, vegetation and any other objectionable items
- (b) Grading and gravel patching where applicable
- (c) Culvert Works where applicable
- (d) Protection works

103 PROGRAMME OF EXECUTION OF THE WORKS

The contractor shall provide the works programme, required under clause 14 of the Conditions of Contract, within 5 days of receipt of the Engineer's Order to commence work.

The programme shall be co-ordinated with climatic and other conditions to provide for the completion of the works in the order and by the time specified.

The Contractor shall carry out the contract in accordance with the programme agreed with the Engineer, but he shall in no manner be relieved by the Engineer's approval of the programme, of his obligation to complete the works in the prescribed order and by the prescribed completion date and he shall from time to time review his progress and make such amendments to his rate of execution of the works as may be necessary to fulfil his obligations.

104 ORDER OF EXECUTION OF WORKS

In addition to Clause 105 of the Standard Specification the Contractor shall carry out the Works such that a continuous and consecutive output of fully completed work is achieved.

105 TAKING OVER CERTIFICATE

The minimum length of the road for which a certificate will be issued under clause 48 of the Conditions of Contract shall be the whole of the project.

106 NOTICE OF OPERATIONS

Add the following sub- Clause.

Notification Terms

It shall be the Contractor's responsibility to notify the Engineer when any item of works scheduled are completed and ready for approval, and the contractor shall give sufficient notice to allow control test to be performed.

Explosive and Blasting

- (a) The requirements of the Laws of Kenya governing explosives and other requirements and regulations of Government of Kenya and other authorities shall be complied with.
- (b) No explosives of any kind shall be used without prior written consent of the Engineer.
- (c) The Contractor shall be solely responsible for the provision, handling, storage and transporting of all explosives, ancillary materials and all other items of related kind whatsoever required for blasting.

107 HEALTH, SAFETY AND ACCIDENTS

Add to section 117 the following.

In addition to providing, equipping and maintaining adequate first aid stations throughout the works in accordance with the laws of County Government of Migori and the National Government, the contractor shall provide and maintain on site during the duration of the Contract, a fully equipped dispensary. This shall be with a qualified Clinical Officer / Nurse who shall offer the necessary medical advice on **HIV and related diseases to the Engineer's and Contractor's Site staff. The Contractor shall allow for this in the rates and be responsible for all site welfare arrangements at his own cost.**

108 DIVERSION OF SERVICES

- (a) The Contractor shall acquaint himself with the location of all existing services such as telephone lines, electricity cables, water pipes, sewers etc., before execution of any works that may affect the services. The cost of determining the location of the existing services together with making good or repairing of any damage caused all to the satisfaction of the Engineer shall be included in the BID rates.
- (b) Subject to the agreement with the Engineer, the Contractor shall be responsible for removal of alteration and relocation of existing services.
- (c) The Contractor shall indemnify the Employer against claims originating from damage to existing services or works.

109 LIAISON WITH GOVERNMENT AND POLICE OFFICIALS

The Contractor shall keep in close touch with the Police and the other County Government and National Government officials of the area regarding their requirements in the control of traffic or other matters, and shall provide all assistance or facilities, which may be required by such officials in the execution of their duties.

112 TEST CERTIFICATES

When instructed by the Engineer the Contractor shall submit certificates of test from the suppliers of materials and goods required in connection with the works as the Engineer may require.
Such certificates shall certify that the materials or goods concerned have been tested

in accordance with the requirements of the specifications and shall give the results of all the tests carried out. The Contractor shall provide adequate means of identifying the materials and goods delivered to the site with the corresponding certificates.

113 SIGNBOARDS

The Contractor shall provide and erect publicity signboards on the site as directed. The Engineer shall, as shown in the Drawings, direct the minimum dimensions of the boards. The boards shall be prepared, primed and painted cream and lettered in black. The boards shall be of stout construction, resistant to the effects of weather.

116 ATTENDANCE UPON THE ENGINEER AND HIS STAFF

The Contractor shall provide pay (including all overtime) attendant staff to fulfil the requirements of Clause 137 of the Standard Specification.

118 RECEIPTED ACCOUNTS

The Contractor maybe instructed by the Engineer to make payments of general miscellaneous accounts for such items as stationary, stores and equipment and miscellaneous supervision personnel and claims or the Engineer may direct the Contractor to purchase or pay for the above. The Contractor will be paid on a prime cost basis plus a percentage for overheads and profits under appropriate items in the Bills of Quantities.

142 LIQUIDATED DAMAGES

Liquidated Damages at the rate of Kshs 5,000/= per day shall apply in the event of the works not being completed within the time for completion plus any extension of time which may be determined by the Engineer.

143 ENVIRONMENTAL PROTECTION

The Contractor shall ensure so far as is reasonably practicable and to the satisfaction of the Engineer; that the impact of the construction on the environment shall be kept to a minimum and that appropriate measures are taken to mitigate any adverse effects during the construction.

COUNTY ROADS

- (a) After extraction of materials, all borrows pits shall be backfilled to the satisfaction of the Engineer. In particular borrow pits near the project road shall be backfilled in such a way that no water collects in them.
- (b) Spilling of bitumen, fuels, Oils and other pollutants shall be cleared up.

SECTION 2 - MATERIALS AND TESTING OF MATERIALS

205 SOILS AND GRAVEL

Whenever in the contract document a minimum California Bearing Ratio (CBR) is specified, the CBR of the material shall be determined at the specified state of compaction.

- a) After four (4) day soaking in the case of neat materials and
- b) After seven (7) days curing plus seven (7) days soaking in the case of cement improved materials.

SECTION 4- SITE CLEARANCE AND TOP SOIL STRIPPING

401 SITE CLEARANCE

Site Clearance shall be carried out as directed by the Engineer.

402 REMOVAL OF TOPSOIL

Topsoil shall include up to 200mm depth of any unsuitable material encountered in existing or newly constructed drains, drainage channels, and accesses.

403 REMOVAL OF STRUCTURES, FENCES AND OBSTRUCTIONS

When instructed by the Engineer, the Contractor shall demolish or remove any structure and payment for this shall be made on day works basis.

SECTION 5 – EARTHWORKS

502 SWAMPS

503 Where directed by the Engineer, the Contractor shall excavate and spoil the material below the embankment in the swamps to an approximate depth of between 2m to 4m.

On completion of the excavation, the bed shall be prepared to receive rockfill. Rockfill shall be placed and compacted, in accordance to clause 507 of the Standard Specifications.

504 PREPARATION PRIOR TO FORMING EMBANKMENT

Where benching is required for existing pavement to accommodate earthworks subgrade or subbase for widening the road, the rate for compaction of existing ground shall be deemed to cover this activity.

Excavation in the pavement of the existing road shall be kept dry. In the event of water penetrating the underlying layer, construction of the subsequent layers shall be postponed until the underlying layers are dry enough to accommodate the construction plant without deforming or otherwise showing distress.

Step construction shall be carried out per layer at the joint where excavating both vertically and perpendicular to the direction of the travel. The step shall be 500mm perpendicular to the direction of the travel and 150mm vertical unless otherwise instructed by the Engineer.

Special care shall be taken when compacting the new material at the joint ensuring that specified density is achieved.

505 CONSTRUCTION OF EMBANKMENTS

Only material approved by the Engineer shall be used for fill in embankments. Material with high swelling characteristics or high organic matter content and any other undesirable material shall not be used, unless specifically directed by the Engineer. Unsuitable material shall include:

- (i) All material containing more than 5% by weight or organic matter (such as topsoil, material from swamps, mud, logs, stumps and other perishable material)
- (ii) All material with a swell of more than 3% (such as black cotton soil)
- (iii) All clay of plasticity index exceeding 50.
- (iv) All material having moisture content greater than 105% of optimum moisture content (Standard Compaction)

Subgrade: Shall mean upper 300mm of earthworks either insitu or in fill and subgrade shall be provided for as part of earthworks operation and payment shall be made as “fill”. The material for subgrade shall have a CBR of not less than 8% measured after a 4 day soak in a laboratory mix compacted to a dry density of 100% MDD (AASHTO T99) and a swell of less than 1%.

Embankment repair: Where directed by the Engineer, any localized failure in the embankment shall be repaired by filling in soft, hard or natural selected material requirements shall be in accordance with clause 505.

511 BORROW PITS

The first part of the Standard Specification is amended as follows:-

Fill material which is required in addition to that provided by excavation shall be obtained from borrow pits to be located and provided by the Contractor but to the approval of the Engineer contrary to what has been stated.

517 MEASUREMENT AND PAYMENT

Notwithstanding the provisions of clause 517 of the standard specifications, the rate for compaction of fill in soft material shall allow for the requirements of clause 508 of the special specification and no extra payment shall be made for compaction around pipe culverts (100% MDD AASHTO T.99).

Item : Excavation in swamps

Unit : m3

Excavation in swamps shall be measured by the cubic metre calculated as the product of the plan area and the average depth of excavation instructed by the Engineer. No allowance will be made for working space or for battering the sides of the excavation to a stable slope.

The rate for excavation in swamps shall include for the items specified in Clause 517 (i) of the Standard Specification and for complying with this Clause.

Item : Rockfill

Unit : m3

Notwithstanding Clause 517(j) of the Standard Specification, rockfill shall be measured by the cubic metre calculated as the product of the plan and the depth of rockfill instructed to be placed. The rate for rockfill shall include for the cost of providing the material, all hauls as necessary and complying with the requirements of Clause 507 for the Standard Specification

Costs associated with pumping of water from the excavated area for the purpose of placing rockfill or for any other reason shall be included in the rate for placement of rockfill.

SECTION 6 - QUARRIES, BORROW PITS, STOCKPILES AND SPOIL AREAS

602 MATERIAL SITES

The Bidders are advised to conduct their own investigation as the information contained therein is neither guaranteed nor warranted.

603 PROVISION OF LAND

Notwithstanding any indications to the contrary in the Standard specification the Engineer will not make available to the Contractor any land for quarries, borrow pits, stockpiles and spoil areas, except for those areas in road reserves specifically approved by him.

The Contractor will be entirely responsible for locating suitable sources of materials complying with the standard and Special Specifications and for procurement, wining, haulage to site of these materials and all costs involved in providing suitable areas for stockpiling materials and spoil dumps. Should there be suitable sites for spoil dumps or stockpiles within the road reserve forming the site of the works the contractor may utilise these subject to the approval of the engineer.

No additional payment will be made to the contractor to cover costs arising from the requirements for this clause and contractor must include these costs in the rates inserted into the Bills of Quantities

604 SAFETY AND PUBLIC HEALTH REQUIREMENTS

In addition to clause 605, the contractor shall allow for professionals to conduct lectures to the workers regarding the spread of HIV/AIDS

SECTION 8 - CULVERTS AND DRAINAGE WORKS

801 SCOPE OF SECTION

The operations specified in this section apply to the installation of drainage works.

804 EXCAVATION FOR CULVERTS AND DRAINAGE WORKS

The Contractor shall carry out all excavations for new culverts and drainage works to the lines, levels, inclinations, and dimensions shown on the drawings or as instructed by the Engineer.

805 EXCAVATION IN HARD MATERIAL

In the Standard Specifications, Sub-clauses 805(a) and 805 (b) delete "95%" and insert "100%".

In sub-clause 809(a), paragraph 1, line 1, substitute "95%" with "100%".

In sub-clause 809(c), paragraph 2, line 4, between the words "compacted" and "and shaped" insert the words "to 100% MDD (AASHTO T.99)".

Hard material is material that can be excavated only after blasting with explosives or barring and wedging or the use of a mechanical breaker fitted with a rock point in good condition and operated correctly. Boulders of more than 0.2m³ occurring in soft material shall be classified as hard material.

809 BEDDING AND LAYING OF PIPE CULVERTS

Concrete pipes shall be laid on a 150mm thick concrete bed of class 15/40 and the pipes shall be bedded on a 1:3 cement: sand mortar at least 50mm thick, 150mm wide and extending the full length of the barrel.

The rates inserted shall allow for compaction of the bottom of excavation to 100% MDD (AASHTO T.99).

810 JOINTING CONCRETE PIPES

The concrete pipes for the culverts shall have ogee joints and will be jointed by 1:2 cement: sand mortar and provided with fillets on the outside as described in clause 810 of the Standard Specification.

812 BACKFILLING OVER PIPE CULVERTS

In the Standard Specifications, clause 812

- a) Delete entirely paragraph 6 starting with “**for pipe culverts...and ending with...depth of 150mm**”.
- b) Wherever the expression "dry density of 95% MDD (AASHTO T. 99)" occurs delete and replace with "dry density of 100% MDD (AASHTO T.99)".

The rates entered for laying of pipe culverts shall allow for backfilling to pipe culverts and compacting to 100% MDD (AASHTO T.99) and these works shall not be measured and paid for separately.

818 SCOUR CHECKS

Scour checks are to be constructed in mass concrete in accordance with clause 818 of the standard Specifications.

819 CLEANING AND MAINTENANCE

819.1 Desilting of Pipe Culverts

Where instructed Contractor shall de-silt the existing pipe culverts by removing all the material from the pipe to make them clean and free flowing.

Measurement and payment shall be by the linear metres of pipes de-silted, regardless of diameter size.

SECTION 10: GRADING AND GRAVELLING

10.1. Heavy Grading.

Heavy grading shall only be done when there is sufficient moisture in the material and the material can be compacted by traffic.

The Contractor shall scarify the existing carriageway surface, cutting high spots and moving materials to fill potholes, corrugations and wheel ruts and reshape the surface to the specified camber, using a Motor grader unless otherwise directed by the Engineer. All loose rocks, roots and grasses shall be removed first and disposed of well clear of the drains.

Pegs 300 to 400mm long shall be placed at 20 m intervals to mark edge of the carriageway.

The material shall be graded toward the centre of the road starting from both edges until the specified camber is achieved. Suitable material from the side drains may be used as additional material. Any further material needed to achieve the correct camber shall be from an approved source. **The side drains shall be done so as to achieve a 'V' ditch**

No grading shall be carried out in dry conditions.

The Contractor shall use **Equipment** to carry out this item.

Work Method: MB

Quality Control

- The width of the carriageway shall be checked at every 50m intervals and have a tolerance of + 50mm or .20mm.
- The camber shall be checked with a camber board at 25m intervals and shall have a tolerance of +/- 1%

Measurement Unit: m²

The measurement shall be the area of carriageway graded, measured net according to the specified width and measured length graded.

Payment

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

10.2. Gravel Patching

(Excavation, Free haul, spreading and Compaction of Gravel)

Excavation of Gravel

Gravel shall be excavated from quarries approved by the Engineer, and the Contractor shall inform the Engineer if the quality/availability of the gravel changes during the course of excavation.

Stones and boulders with one dimension greater than 80mm shall be removed from the excavated gravel and deposited outside the quarry at locations approved by the Engineer. Such stones and boulders may be reused in other parts of Works with the approval of the Engineer.

Excavation and loading shall normally be by labour unless, at the request of the Contractor, the Engineer allows the use of equipment.

The Contractor shall use **Labour** and/or **Equipment** to carry out this work, as directed by the Engineer.

Work Method: LB or MB

Quality Control:

- Oversize stones and boulders shall not be loaded for haulage to the road.
- Areas containing deleterious material shall not be excavated.

Free haul, preparation, spreading and Compaction of Gravel

Free haul involves the transportation of gravel material for the first 1.5 km from the quarry. The Contractor shall prepare the area to be patched by removing excessive water and loose material. The contractor shall then dump, spread and compact gravel material, in a manner to ensure a uniform thickness of the layer across the full width of the carriageway and shaped to the specified camber. Spreading also includes the removal of any oversized stones or boulders, which cannot be broken down to the required size, to spoil dumps. Gravel shall be spread within 24 hours of off-loading.

Compaction of the gravel material shall be carried by overlapping passes of the compaction equipment. The number of passes shall be as directed by the Engineer dependent upon the equipment used and the material being compacted. Unless otherwise instructed the moisture content of the material shall be within $\pm 2\%$ of optimum

Where additional moisture is required water shall be applied in an even manner and the rate of application shall be such that no transverse or longitudinal flows occur.

The Engineer may instruct the Contractor to carry out density tests on the compacted material to ensure that an acceptable standard has been achieved.

The Contractor shall use Equipment for haulage and **Labour** for spreading unless the Engineer instructs otherwise.

Work Method: LB-MB

Quality Control:

- The gravel surface width shall be checked at 100m intervals and shall have a tolerance of $+ / - 50\text{mm}$
- Trial holes shall be dug as directed by the Engineer to check the gravel thickness and shall have a tolerance of $+ 5\text{mm} / - 0\text{mm}$
- The camber shall be checked at 50m intervals and the maximum tolerance shall be $+ / - 1\%$
- The longitudinal profile shall be checked after the compaction of each load to ensure a smooth surface with no corrugations or depressions, tolerance of $\pm 10\text{mm}$.
- Compaction shall show no movement of material under the roller, minimum of 6 passes.
- Compaction test standard shall be 95% MDD (AASHTO T180)

Measurement Unit: m^3

The measurement shall be the volume of compacted gravel surfacing measured net according to the Drawings and shall include the excavation and the 1.5km 'free' haul distance

Payment

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

Site clearance of borrow area.

This activity should be done in accordance with Bill 4, sub clauses 4.01 to 4.05 in the Standard Specifications for Roads and Bridges 1986.

10.3. Removal of Overburden

The Contractor shall remove overburden from quarries and borrow pits, which includes excavation, loading, hauling and stockpiling at approved locations. The thickness of the overburden layer to be removed shall be determined from trial pits dug on a 30 metre grid within the quarry area.

The overburden shall be deposited neatly for re-use to reinstate the quarry on completion of the Works, as directed by the Engineer.

The Contractor shall use **Labour** to carry out this item unless the Engineer instructs otherwise.

Work Method: LB or MB

Quality Control

- The location and manner of stock piling of the overburden for the reinstatement of the quarry shall be to the approval of the Engineer.

Measurement Unit: m^3

The measurement shall be the volume of overburden removed as calculated from the cleared area and the mean depth indicated from the trial pits.

Payment

The unit rate shall include full compensation for labour, tools materials and equipment, haulage, stockpiling and incidental costs required for carrying out the work.

10.4 Restoration of Quarries and Borrow Pits

The Contractor shall level the ground, return the topsoil from the stockpiles, and uniformly spread the material over the full excavation area.

Adequate drainage provisions shall be made to protect the excavation areas, and where necessary appropriate protection measures shall be taken to avoid erosion of the spread topsoil layer. Grass and trees shall be replanted as directed by the Engineer.

The Contractor shall use **Labour** and/or **Equipment** to carry out this item as agreed by the Engineer.

Work Method: LB, LM-MB

Quality Control

The Engineer shall check that the required measures have been satisfactorily taken.

Measurement and Payment: Provisional Sum

Payment shall be made on a Dayworks basis for the labour and equipment as directed by the Engineer

SECTION 12: BILLS OF QUANTITIES

PREAMBLE TO BILL OF QUANTITIES

1. The Bills of Quantities forms part of the Contract Documents and are to be read in conjunction with the Instructions to Bidders, Conditions of Contract Parts I and II, Specifications and Drawings.
2. The brief description of the items in the Bills of Quantities is purely for the purpose of identification, and in no way modifies or supersedes the detailed descriptions given in the conditions of Contract and Specifications for the full direction and description of work and materials.
3. The Quantities set forth in the Bills of Quantities are estimated, representing substantially the work to be carried out, and are given to provide a common basis for bidding and comparing of Bids. There is no guarantee to the Contractor that he will be required to carry out all the quantities of work indicated under any one particular item or group of items in the Bill of Quantities. The basis of payment shall be the Contractor's rates and the quantities of work actually done in fulfilment of his obligation under the Contract.
4. The prices and rates inserted in the Bills of Quantities will be used for valuing the work executed, and the Engineer will only measure the whole of the works executed in accordance with this Contract.
5. A price or rate shall be entered in ink against every item in the Bills of Quantities with the exception of items that already have Provisional sums affixed thereto. The bidders are reminded that no "nil" or "included" rates or "lump-sum" discounts will be accepted. The rates for various items should include discounts if any. Bidders who fail to comply will be disqualified.
6. Provisional sums (including Dayworks) in the Bills of Quantities shall be expended in whole or in part at the discretion of the Engineer.
7. The price and rates entered in the Bills of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional plant to be used, labour, insurance, supervision, compliance testing, materials, erection, maintenance of works, overheads and profits, taxes and duties together with all general risks, liabilities and obligations set out or implied in the Contract, transport, electricity and telephones, water, use and replenishment of all consumables, including those required under the contract by the Engineer and his staff.
8. "Authorised", "directed" or "approved" shall mean the authority, direction or approval of the Engineer.

PRELIMINARIES AND GENERAL COSTS

BILL 1	DESCRIPTION	UNIT	QUANTITY	RATE (KSHS)	AMOUNT
1.	Provision and erection of publicity sign board	NO	4		
	Total carried forward to summary				

SETTING OUT HORIZONTAL ALIGNMENT

BILL 2	DESCRIPTION	UNIT	QUANTITY	RATE (KSHS)	AMOUNT
1.	Setting out horizontal alignment	LM	-		
	Total carried forward to summary				

SITE CLEARANCE

BILL 4	DESCRIPTION	UNIT	QUANTITY	RATE (KSHS)	AMOUNT
	i. Light bush clearing	M ²			
	ii. Heavy bush clearing	M ²	24,000		
	iii. Clearing obstruction s(boulders and debris)	HRS			
	Total carried forward to summary				

EARTH WORKS

BILL 5	DESCRIPTION	UNIT	QUANTITY	RATE KSHS	AMOUNT
5.01.	Selected backfill materials for shoulder rebuilding	M ³			
.	Total carried to summary				

ROAD DRAINAGE AND STRUCTURES WORKS

BILL 8	DESCRIPTION	UNIT	QUAN TITY	RATE (KSHS)	AMOUNT
8.01	Culvert Cleaning- Partially blocked - 600mm	M	128		
8.02	Culvert Cleaning- Partially blocked - 900mm	M	-		
8.03	Culvert Cleaning- Fully blocked - 600mm	M	-		
8.04	Culvert Cleaning- Fully blocked - 600mm	M	-		
8.05	Culvert Installation 600mm with surround	M	60		
8.06	Culvert Installation 900 mm with surround	M	8		
8.07	Provide materials for construction of scour checks(Masonry)	NO.			
	Total carried forward to summary				

GRADING AND GRAVELLING WORKS

BILL 10	DESCRIPTION	UNIT	QTY	RATE KSHS	AMOUN T KSHS
10.1	Light grading	M ²	64,000		
10.2	Heavy grading	M ²	456,100		
10.3	Gravel patching	M ³	800		
	Total carried forward to summary				

SUMMARY

ITEM	SUMMARY	AMOUNT KSHS.
1.	Preliminaries and general costs items	
2.	Setting out	
4	Site clearance	
5	Earthworks	
8	Road drainage and structure works	
10	Grading and gravelling works	
A.	Sub Total: 1	
B.	5 % contingencies	
C.	Sub Total: 2	
D.	Add 16% VAT	
E.	Carried to page on the form of tender	

