



**KenGen**

**Kenya Electricity Generating Company PLC**

**KGN-HYD-29-2018**

**TENDER FOR REHABILITATION OF GITARU  
POWER HOUSE FLOOR AT GITARU POWER  
STATION.**

**(Reserved for firms belonging to PWDs)**

**Kenya Electricity Generating Company PLC,  
Stima Plaza Phase III, Kolobot Road, Parklands,  
P.O. Box 47936,  
Nairobi, Kenya.**

**September, 2018**

## **SECTION I: INVITATION FOR TENDERS (IFT)**

The Company invites sealed tenders from eligible **PWDS FIRMS** for **rehabilitation of Gitaru power house floor (approximately 170 km from Nairobi)**. The scope of work is as detailed in the tender documents.

Interested eligible candidates may obtain further information from, and inspect the Tender Documents at the office of:

Supply Chain Director

Tel: **(254) (020)3666000**

Email: [tenders@kengen.co.ke](mailto:tenders@kengen.co.ke)

Cc: [jtheuri@kengen.co.ke](mailto:jtheuri@kengen.co.ke); [skireri@kengen.co.ke](mailto:skireri@kengen.co.ke)

You may obtain further information from the office of the **Supply Chain Director**, Tel: (254) (020) 3666230. Email: [tenders@kengen.co.ke](mailto:tenders@kengen.co.ke); [eprocurement@kengen.co.ke](mailto:eprocurement@kengen.co.ke)

Tender documents detailing the requirements may be obtained from the KenGen E- Procurement Portal found on KenGen's website ([www.kengen.co.ke](http://www.kengen.co.ke))

There shall be **Mandatory Site Visit** on **18<sup>th</sup> September 2018 starting from 10.00 a.m.** At **Gitaru Power Station 170 km from Nairobi**

Tenders must be submitted online on or before **3<sup>rd</sup> October 2018 at 10.00 a.m.** unless otherwise stated, tenders **MUST** be accompanied by a **TENDER SECURING DECLARATION FORM** in the format specified in the tender documents.

Tenders will be opened **online** on: **3<sup>rd</sup> October 2018 at 10.30 a.m.** in the presence of tenderers' representative who choose to attend at the KenGen Pension Plaza 2, Tender Opening Room, Ground Floor.

*KenGen adheres to high standards of integrity in its business operations.*

*Report any unethical behavior immediately to any of the provided anonymous hotline service.*

1) *Call Toll Free: 0800722626;*

2) *Free-Fax: 00800 007788;*

3) *Email: [kengen@tip-offs.com](mailto:kengen@tip-offs.com)*

4) *Website: [www.tip-offs.com](http://www.tip-offs.com)*

Bidders are advised from time to time to be checking the website and E- Procurement portal for any uploaded further information on this tender.

**SUPPLY CHAIN DIRECTOR**

**SECTION II: INTRODUCTION**  
**A. INSTRUCTION TO TENDERERS**

- 1 Scope of Tender**
- 1.1 The Procuring Entity indicated in the **Tender Data Sheet** (TDS) invites Tenders for the construction of works as specified in the **Tender Data Sheet**.
- 1.2 The successful Tenderer will be expected to complete the works by the completion date he/she has indicated.
- 1.3 The objectives of the works are listed in the **Technical Specifications**.
- 2 Eligible Tenderers**
- 2.1 A Tenderer may be a natural person, private or public company, government-owned institution, subject to sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, all parties shall be jointly and severally liable.
- 2.2 National Tenderers shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya, such as the Ministry of Public Works, National Construction Authority or the Energy Regulatory Commission.
- 2.3 A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if they:
- a) Are associated or have been associated in the past directly or indirectly with employees or agents of the Procuring Entity or a member of a board or committee of the Procuring Entity;
  - b) Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the Procuring Entity to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the works under this Invitation for Tenders;
  - c) Have controlling shareholders in common; or
  - d) Receive or have received any direct or indirect subsidy from any of them; or
  - e) Have the same legal representative for purposes of this Tender; or
  - f) Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
  - g) Submit more than one Tender in this Tendering process. However, this does not limit the participation of subcontractors in more than one Tender, or as Tenderer and subcontractor simultaneously.
- 2.5 A Tenderer will be considered to have a conflict of interest if they participated as a consultant in the preparation of the design or technical specification of the project and related services that are the subject of

## B. TENDERING DOCUMENTS

- 7 **Content of Tendering Documents** 7.1 The works required, Tendering procedures, and contract terms are prescribed in the Tendering Documents. In addition to the Section I Invitation for Tenders, Tendering documents which should be read in conjunction with any addenda issued in accordance with ITT sub Clause 9.2 include:
- Section II Instructions to Tenderers
  - Section III Tender Data Sheet
  - Section IV General Conditions of Contract
  - Section V Contract Data Sheet
  - Section VI Specifications
  - Section VII Drawings
  - Section VIII Bill of Quantities
  - Section IX Forms of Tender
    - Form of Tender
    - Appendix to Tender
    - Confidential Business Questionnaire
    - Integrity Declaration
    - Letter of Acceptance
    - Form of Contract Agreement
  - Section X Forms of Security
    - Tender Security Form
    - Performance Bank or Insurance Guarantee
    - Advance Payment Guarantee
- 7.2 The number of copies to be completed and returned with the Tender is specified in the **Tender Data Sheet**.
- 7.3 The Invitation for Tenders (Section I) issued by the Procuring Entity is not part of the Tendering Documents and is included for reference purposes only. In case of discrepancies between the Invitation for Tenders and the Tendering Documents listed in sub-Clause 7.1 above, the said Tendering Documents will take precedence.
- 7.4 The Procuring Entity is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from the authorized staff of the Procuring Entity.
- 7.5 The Tenderer is expected to examine all instructions, forms, terms and specifications in the Tendering documents. Failure to furnish all information required by the Tendering Documents or to submit a Tender substantially responsive to the Tendering documents in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.
- 8 **Clarification of** 8.1 A prospective Tenderer requiring any clarification of the

**Tendering Documents**

Tendering documents may notify the Procuring Entity in writing, e-mail or facsimile at the Procuring Entity's address indicated in the **Tender Data Sheet**.

- 8.2 The Procuring Entity will within the period stated in the **Tender Data Sheet** respond in writing to any request for clarification provided that such request is received no later than the period indicated in the **Tender Data Sheet** prior to the deadline for the submission of Tenders prescribed in sub-Clause 21.1.
- 8.3 Copies of the procuring entity's response will be forwarded to all Purchasers of the Tendering documents, including a description of the inquiry, but without identifying its source.
- 8.4 Should the Procuring Entity deem it necessary to amend the Tendering documents as a result of a clarification, it shall do so following the procedure under ITT Clause 9.

9 **Amendments of the Tendering Documents**

- 9.1 Before the deadline for submission of Tenders, the Procuring Entity may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, modify the Tendering documents by issuing addenda.
- 9.2 Any addendum issued shall be part of the Tender documents pursuant to sub-Clause 7.1 and shall be communicated in writing, by e-mail or facsimile to all who have obtained the Tendering documents directly from the Procuring Entity.
- 9.3 In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity at its discretion shall extend, as necessary, the deadline for submission of Tenders, in accordance with sub-Clause 21.2

**C. PREPARATION OF TENDERS**

10 **Language of Tender**

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

11 **Documents Constituting the Tender**

- 11.1 The Tender submitted by the Tenderer shall consist of the following components:

- a) The Form of Tender (in the format indicated in Section IX) completed in accordance with ITT Clause 14, 15 and 16;
- b) Information requested by Instructions to Tenderers ITT sub-Clause 12.2; 12.3 and 12.4;
- c) Tender Security or Tender Securing Declaration in accordance with Instructions to Tenderers ITT Clause 18;
- d) Priced Bill of Quantities;
- e) Qualification Information Form and Documents;
- f) Alternative offers where invited in accordance with Instructions to Tenderers ITT Clause 4;
- g) Written confirmation authorizing the signatory of the Tender to commit the Tenderer in accordance with Instructions to Tenderers ITT sub Clause 18.2; and
- h) And any information or other materials required to be completed and submitted by Tenderers, as specified in the **Tender Data Sheet**.

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

- 12.1 Pursuant to ITT Clause 12, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.
- 12.2 In the event that pre-qualification of potential Tenderers has been undertaken, only Tenders from pre-qualified Tenderers will be considered for award of contract. These qualified Tenderers should submit their Tenders with any information updating the original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission. The update or confirmation should be provided in Section IX.
- 12.3 If the Procuring Entity has not undertaken pre-qualification of potential Tenderers, to qualify for award of the contract, Tenderers shall meet the minimum qualifying criteria specified in the **Tender Data Sheet**:
- 12.4 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **Tender Data Sheet**:
  - a) The Tender shall include all the information listed in the **Tender Data Sheet** pursuant to sub-Clause 12.3 above for each joint venture partner;
  - b) The Tender shall be signed so as to be legally binding on all partners;
  - c) One of the partners will be nominated as being in

charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;

- d) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of a joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
- e) All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms and a statement to this effect shall be included in the authorization mentioned under (c) above as well as in the Tender and in the Agreement (in case of a successful Tender); and
- f) A copy of the joint venture agreement entered into by all partner shall be submitted with the Tender. Alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful Tender shall be signed by all partners and submitted with the Tender, together with a copy of the proposed Agreement.
- g) The Tender Security and Tender Securing Declaration as stated in accordance with ITT Clause 18, and in case of a successful Tender, the Agreement, shall be signed so as to be legally binding on all partners.

- 13 Lots Package**
  - 13.1 When Tendering for more than one contract under the lots arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being tendered in regard to:
    - a) Average annual turnover;
    - b) Particular experience including key production rates;
    - c) Financial means, etc.;
    - d) Personnel capabilities; and
    - e) Equipment capabilities.
  - 13.2 In case the Tenderer fail to fully meet any of these criteria, it may be qualified only for those lots for which the Tenderer meets the above requirement.
- 14 Form of Tender**
  - 14.1 The Tenderer shall fill the Form of Tender furnished in the Tendering Documents. The Form of Tender must be completed without any alterations to its format and no substitute shall be accepted.
- 15 Tender Prices**
  - 15.1 The Contract shall be for the whole Works, as described



- in sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Tenderer.
- 15.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Bill of quantities.
- 15.3 All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 15 days prior to the deadline for submission of Tenders, shall be included in the rates, prices and total Tender price submitted by the Tenderer.
- 15.4 The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if provided for in the **Tender Data Sheet** and the provisions of the Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the **Contract Data Sheet**.
- 16 **Tender Currencies**
- 16.1 The unit rates and prices shall be quoted by the Tenderer in the currency as specified in the **Tender Data Sheet**.
- 16.2 Tenderers shall indicate details of their expected foreign currency requirements in the Tender, if any. The rates of exchange to be used by the Tenderers in arriving at the local currency equivalent shall be the selling rates for similar transactions established by the authority specified in the **Tender Data Sheet** prevailing on the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Tenderer. In any case, payments will be computed using the rates quoted in the Tender.
- 16.3 Tenderers may be required by the Procuring Entity to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices and in the Contract Data Sheet are reasonable and responsive to sub-Clause 16.1.
- 17 **Tender Period** **Validity**
- 17.1 Tenders shall remain valid for the period specified in the **Tender Data Sheet** after the Tender submission deadline prescribed by the Procuring Entity, pursuant to ITT Clause 21. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 17.2 In exceptional circumstances, prior to expiry of the original Tender validity period, the Procuring Entity may request that the Tenderers extend the period of validity for a specified additional period. The request and the

Tenderers' responses shall be made in writing or by cable. A Tenderer may refuse the request without forfeiting its Tender Security or causing to be executed its Tender Securing declaration. A Tenderer agreeing to the request will not be required or permitted to otherwise modify the Tender, but will be required to extend the validity of its Tender Security or Tender Securing declaration for the period of the extension, and in compliance with ITT Clause 18 in all respects.

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

18 **Tender Security and Tender Securing Declaration**

18.1 Pursuant to ITT Clause 11, where required in the **Tender Data Sheet**, the Tenderer shall furnish as part of its Tender, a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet**.

A Tender Securing Declaration as specified in the **Tender Data Sheet** in the format provided in section X shall be provided as a mandatory requirement.

18.2 The Tender Security or Tender Securing Declaration is required to protect the Procuring Entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to ITT sub-Clause 18.9.

18.3 The Tender Security shall be denominated in the currency of the Tender and shall be in one of the following forms:

- a) Cash;
- b) A Bank Guarantee;
- c) An Insurance Bond issued by an insurance firm approved by the PPOA located in Kenya;
- d) An irrevocable letter of credit issued by a reputable bank.

18.4 The Tender Security shall be in accordance with the Form of the Tender Security included in Section X or another form approved by the Procuring Entity prior to the Tender submission.

18.5 The Tender Security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 18.8 are invoked.

18.6 Any Tender not accompanied by a Tender Security in accordance with sub-Clauses 18.1 or 18.3 shall be

rejected by the Procuring Entity as non-responsive, pursuant to ITT Clause 27.

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

- a) The procuring proceedings are terminated;
- b) The Procuring Entity determines that none of the submitted Tenders is responsive;
- c) A contract for the procurement is entered into.

18.8 The Tender Security shall be forfeited and the Tender Securing Declaration executed if the Tenderer:

- a) Withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which Tenders must remain valid;
- b) Rejects a correction of an arithmetic error pursuant to sub-Clause 28.2;
- c) Refuse to enter into a written contract in accordance with ITT Clause 39;
- d) Fails to furnish the Performance Security in accordance with ITT Clause 40.

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

18.10 A Tenderer shall be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time indicated in the Tender Securing Declaration:

- a) If the Tenderer withdraws its Tender, except as provided in ITT sub-Clauses 17.2 and 28.2; or
- b) In the case of a successful Tenderer, if the Tenderer fails within the specified time limit to:
  - (i) Sign the contract; or
  - (ii) Furnish the required Performance Security.

**19 Tender Format and Signing of Tender**

19.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT Clause 11 of these Instructions to Tenderers, with the Form of Tender, and clearly marked **“ORIGINAL”**. In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **Tender Data Sheet**, and clearly marked as **“COPIES”**. In the event of discrepancy between them, the original shall prevail.

19.2 The original and all copies of the Tenders shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written

confirmation as specified in the **Tender Data Sheet** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender, except for un-amended printed literature, shall be initialled by the person or persons signing the Tender.

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

19.4 The Tenderer shall furnish information as described in the Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to contract execution if the Tenderer is awarded the contract

#### **D. SUBMISSION OF TENDERS**

20 **Sealing and Marking of Tenders** 20.1 The Tenderer shall seal the original and each copy of the Tender in separate envelopes, duly marking the envelopes as **“ORIGINAL”** and **“COPY”**. The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.

20.2 The inner and outer envelopes shall:

- a) Be addressed to the Procuring Entity at the address given in the **Tender Data Sheet**; and
- b) Bear the Project name indicated in the **Tender Data Sheet**, the Invitation for Tenders (IFT) title and number indicated in the **Tender Data Sheet**, and a statement: **“DO NOT OPEN BEFORE,”** to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to ITT sub-Clause 21.1.

20.3 In addition to the identification required in sub-Clause 20.2, the inner envelopes shall also indicate the name and address of the Tenderer to enable the Tender be returned unopened in case it is declared late, pursuant to sub-Clause 21.1 and for matching purpose under ITT Clause 22

20.4 If the outer envelope is not sealed and marked as required by ITT sub clause 20.2, the Procuring Entity shall assume no responsibility for misplacement or premature opening of the Tender.

21 **Deadline for Submission of Tenders** 21.1 Tenders shall be received by the Procuring Entity at the address specified under ITT sub-Clause 20.2 no later than the date and time specified in the **Tender Data Sheet**.

21.2 The Procuring Entity may, in exceptional circumstances and at its discretion, extend the deadline for the submission of Tenders by amending the Tendering

- documents in accordance with ITT Clause 8, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.
- 21.3 The extension of the deadline for submission of Tenders shall not be made later than the period specified in the **Tender Data Sheet** before the expiry of the original deadline.
- 22 **Late Tenders**
- 22.1 The Procuring Entity shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 21.
- 22.2 Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected and returned unopened to the Tenderer
- 23 **Modification, Substitution and Withdrawal of Tenders**
- 23.1 A Tenderer may modify or substitute or withdraw its Tender after it has been submitted, provided that written notice of the modification, including substitution or withdrawal of the Tender, is received by the Procuring Entity prior to the deadline prescribed for submission of Tenders prescribed under ITT sub-Clause 21.1.
- 23.2 The Tenderer's modification or substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 19 and 20 with the outer and inner envelopes additionally marked "**MODIFICATION**" or "**SUBSTITUTION**" or "**WITHDRAWAL**" as appropriate. The notice may also be sent by electronic mail and facsimile, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders.
- 23.3 No Tender may be withdrawn, replaced or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Tender Form. Withdrawal of a Tender during this interval shall result in the Tenderer's forfeiture of its Tender Security or execution of Tender Securing Declaration, pursuant to the ITT sub-Clause 18.9.
- 23.4 Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the **Tender Data Sheet** or as extended pursuant to sub-Clause 21.2 shall result in the forfeiture of the Tender Security and execution of Tender Securing Declaration pursuant to ITT sub-Clause 18.9.
- 23.5 Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender

modifications in accordance with this Clause, or included in the original Tender submission.

## E. OPENING AND EVALUATION OF TENDERS

- 24 **Opening Tenders** of 24.1 The Procuring Entity will open all Tenders including modifications, substitution or withdraw notices made pursuant to ITT Clause 23, in public, in the presence of Tenderers or their representatives who choose to attend and other parties with legitimate interest and Tender proceedings, at the place on the date and at time specified in the **Tender Data Sheet**. The Tenderers' representatives who are present shall sign a register as proof of their attendance.
- 24.2 Envelopes marked "**WITHDRAWAL**" shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 23 shall not be opened but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the "Power of Attorney" confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. Subsequently, all envelopes marked "**MODIFICATION**" shall be opened and the submissions therein read out in appropriate detail. Thereafter all envelopes marked or "**SUBSTITUTION**" opened and the submissions therein read out in appropriate detail.
- 24.3 All other envelopes shall be opened one at a time. The Tenderers' names, the Tender prices, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, the presence or absence of Tender security, and such other details as the appropriate tender opening committee may consider appropriate, will be announced by the Secretary of the Tender Opening Committee at the opening.
- 24.4 Tenders or modifications that are not opened and not read out at Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.
- 24.5 Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer's representative shall indemnify the Procuring Entity against any claim or

- failure to read out the correct information contained in the Tenderer's Tender.
- 24.6 No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 22.
- 24.7 The Secretary of the appropriate tender opening committee shall prepare minutes of the Tender opening. The record of the Tender opening shall include, as a minimum: the name of the Tenderers and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security or Tender Securing Declaration.
- 24.8 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and affect the record.
- 24.9 A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request.
- 25 **Confidentiality**
- 25.1 Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.
- 25.2 Any effort by a Tenderer to influence the Procuring Entity's processing of Tenders or award decisions may result in the rejection of his Tender.
- 25.3 Notwithstanding sub-Clause 25.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.
- 26 **Clarification of Tenders**
- 26.1 To assist in the examination, evaluation, comparison of Tenders and post-qualification of the Tenderer, the Procuring Entity may, at its discretion, ask a Tenderer for clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered.
- 26.2 The request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of Tenders in

- accordance with ITT Clause 27.
- 26.3 From the time of Tender opening to the time of Contract award if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tender it should do so in writing.
- 27 **Preliminary Examination of Tenders**
- 27.1 Prior to the detailed evaluation of Tenders, the Procuring Entity will determine whether:
- a) The Tender has been submitted in the required format;
  - b) Any Tender Security submitted is in the required form, amount and validity period;
  - c) The Tender has been signed by the person lawfully authorized to do so;
  - d) The required number of copies of the Tender have been submitted;
  - e) The Tender is valid for the period required;
  - f) All required documents and information have been submitted; and
  - g) Any required samples have been submitted.
- 27.2 The Procuring Entity will confirm that the documents and information specified under ITT Clause 11 and ITT Clause 12 have been provided in the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, **the Tender shall be rejected**. The evaluation shall be carried out in three phases comprising compliance to preliminary or general requirements, compliance to technical specifications and financial evaluation. Tenderers deemed to be non-compliant to preliminary or general requirements shall be disqualified henceforth and their bid not subjected to the second phase of evaluation of compliance to Technical Specifications. Similarly, tenderers whose bids shall be deemed to be non-compliant to Technical Specifications shall be disqualified at that stage and their bids not subjected to the final phase of financial evaluation. Bids established to be compliant to both Preliminary or General Requirements shall be subjected to financial evaluation and tender awarded to the lowest evaluated bidder. Apart from the requirements captured in Section 27.0, some of the Preliminary or General Requirements are captured in Sections IX (A-I) and Section X.
- 27.3 The Procuring Entity may waive any minor informality, nonconformity, or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer.



- 27.4 A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tendering documents, without material deviation or reservation. A material deviation or reservation is one that:
- a) Affects in any substantial way the scope, quality, or execution of the Works;
  - b) Limits in any substantial way, inconsistent with the Tendering documents, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
  - c) If rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.
- 27.5 If a Tender is not substantially responsive, it will be rejected by the Procuring Entity, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.
- 28 **Correction of Errors** of 28.1 Tenders determined to be substantially responsive will be checked by the Procuring Entity for any arithmetic errors. Errors will be corrected by the Procuring Entity as follows:
- a) If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;
  - b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - c) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.
- 30 **Comparison of Tenders** of 30.1 The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive in accordance with ITT Clause 27.
- 30.2 In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender price by adjusting the Tender price as follows:
- Making any correction for errors pursuant to ITT Clause 28;

- Excluding provisional sums and the provision, if any for contingencies in the Bill of Quantities, but including Day work , where priced competitively ; and  
 Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with sub-Clause 23.5.
- 30.3 The Procuring Entity may waive any minor informality or non-conformity, which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative standing of any Tenderer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the Tendering documents or otherwise result in unsolicited benefits for the Procuring Entity will not be taken into account in Tender evaluation.
- 31 **National Preference**
- 31.1 In the evaluation of Tenders the Procuring Entity shall apply exclusive preference to citizens of Kenya where:
- a) The funding is 100% from the Government of Kenya or a Kenyan body;
  - b) The amounts are below the prescribed threshold in **the Tender Data Sheet**
- 31.2 To qualify for the preference the candidate shall provide evidence of eligibility by:
- a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or
  - b) Providing proof of being a “citizen contractor” in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya.
  - c) Foreign successful bidder must incorporate a mix of local expertise either through subcontracting, or technical expertise.
- 31.3 The Minister of Finance may prescribe additional preference and/or reservation schemes, for example for procurements above these thresholds. If such additional preference schemes apply, details will be given in the **Tender Data Sheet**.
- 32 **Determination of the Lowest Evaluated Tender**
- 32.1 The Tender with the lowest evaluated price from among those which are eligible, compliant and substantially responsive shall be the lowest evaluated Tender.
- 33 **Post-Qualification of Tenderer**
- 33.1 If specified in the **Tender Data Sheet**, post-qualification shall be undertaken.
- 33.2 The Procuring Entity will determine to its satisfaction

whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in sub-Clause 12.3.

33.3 The determination will take into account the Tenderer's financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to sub-Clause 12.3, as well as such other information as the Procuring Entity deems necessary and appropriate. Factors not included in these Tendering documents shall not be used in the evaluation of the Tenderer's qualifications.

33.4 An affirmative determination will be a prerequisite for award of the contract to the Tenderer. A negative determination will result in rejection of the Tenderer's Tender, in which event the Procuring Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

**F. AWARD OF CONTRACT**

**34 Criteria of Award 34.1**

Subject to ITT Clause 34 and 35, the Procuring Entity will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tendering documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:

- a) Eligible in accordance with the provisions of ITT Clause 2;
- b) Is determined to be qualified to perform the Contract satisfactorily;
- c) Successful negotiations have been concluded.

34.2 If, pursuant to sub-Clause 13.1, this Contract is being awarded on a "lot and package" basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderer for award of more than one Contract.

**35 Clarifications 35.1**

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

- a) A minor alteration to the technical details of the statement of requirements;
- b) Reduction of quantities for budgetary reasons, where

- the reduction is in excess of any provided for in the Tendering documents;
- c) A minor amendment to the Contract Data Sheet;
  - d) Finalizing payment arrangements;
  - e) Mobilization arrangements;
  - f) Agreeing final delivery or work schedule to accommodate any changes required by the Procuring Entity;
  - g) The methodology or staffing; or
  - h) Clarifying details that were not apparent or could not be finalized at the time of Tendering
- 35.2 Clarifications shall not change the substance of the tender.
- 36 **Procuring Entity's Right to Accept any Tender and to Reject any or all Tenders**
- 36.1 Notwithstanding ITT Clause 34, the Procuring Entity reserves the right to accept or reject any Tender, and to cancel the Tendering process and reject all Tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers.
- 36.2 Notice of the rejection of all Tenders shall be given promptly within 14 days to all Contractors that have submitted Tenders.
- 36.3 The Procuring Entity shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds.
- 37 **Procuring Entity's Right to Vary Quantities at the Time of Award**
- 37.1 The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of goods or related services originally specified in these Tendering documents (schedule of requirements) provided this does not exceed by the percentage indicated in the **Tender Data Sheet**, without any change in unit price or other terms and conditions of the Tender and Tendering documents.
- 38 **Notification of Award**
- 38.1 The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to expiration of the Tender validity period by e-mail or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Contractor in consideration of the provision and maintenance of the Work(s) as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").
- 38.2 The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the

Performance Security in accordance with ITT Clause 39 and signing the Contract in accordance with sub-Clause 38.2

38.3 At the same time as the person submitting the successful Tender is notified, the Procuring Entity will notify each unsuccessful Tenderer, the name of the successful Tenderer and the Contract amount and will discharge the Tender Security and Tender Securing Declaration of the Tenderer pursuant to ITT sub Clause 18.7.

38.4 If, after notification of award, a Tenderer wishes to ascertain the grounds on which it's Tender or application for pre-qualification was unsuccessful, it should address its request to the secretary of the Tender Committee that authorized the award of contract. The secretary of the Tender Committee shall, within fourteen days after a request, provide written reasons as to why the Tender, proposal or application to be pre-qualified was unsuccessful. However, failure to take this opportunity to clarify the grounds for rejection does not affect the Tenderer's right to seek immediate review by the Public Procurement Administrative Review Board under Clause 45.

39 **Signing Contract**

of 39.1 Promptly, and in no case later than 14 days, after notification, Procuring Entity shall send the successful Tenderer the Agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.

39.2 Within the period specified in the notification or Tender Data Sheet but not earlier than fourteen (14) days since notification of award of contract, the successful Tenderer shall sign and date the contract and return it to the Procuring Entity.

40 **Performance Security**

40.1 Within fifteen (15) days but after 7days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the **Tender Data Sheet** and the Contract Data Sheet, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.

40.2 If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee or Insurance Bond, it shall be issued either:

- a) At the Tenderer's option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm

through a correspondent bank or insurance firm located in Kenya;

b) With the consent of the Procuring entity, directly by a foreign bank acceptable to the Procuring entity.

40.3 Failure of the successful Tenderer to comply with the requirement of sub-Clause 40.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security, in which event the Procuring Entity may make the award to the next lowest evaluated Tenderer or call for new Tenders.

41 **Advance Payment**

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

41.2 The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section X. For the purpose of receiving the Advance Payment, the Tenderer shall make an estimate of, and include in its Tender, the expenses that will be incurred in order to commence work. These expenses will relate to the purchase of equipment, machinery, materials, and on the engagement of labour during the first month beginning with the date of the Procuring Entity's "Notice to Commence" as specified in the Contract Data Sheet.

## SECTION III: TENDER DATA SHEET (TDS)

### Instructions to Tenderers Clause Reference

TDS Ref. No	ITT Clause No	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
<b>A. INTRODUCTION</b>		
<b>1</b>	<b>1.1</b>	The “Procuring Entity” also called Employer is:- <b>KENYA ELECTRICITY GENERATING COMPANY PLC</b> Stima Plaza Phase III, Kolobot Road, P.O. Box 47936 - 00100 NAIROBI, KENYA. Tel: +254 2 3666000 Email: <a href="mailto:tenders@kengen.co.ke">tenders@kengen.co.ke</a> ; Cc <a href="mailto:jtheuri@kengen.co.ke">jtheuri@kengen.co.ke</a> ; <a href="mailto:skireri@kengen.co.ke">skireri@kengen.co.ke</a>
	<b>1.1</b>	The Tender is: <b>Tender for rehabilitation of Gitaru power house floor at Gitaru Power Station</b>
	<b>1.2</b>	The duration of implementation from commencement date of the works to the date of issue of the Taking Over Certificate shall be up to a <b>maximum of 120 calendar days</b> , excluding Sundays and Public Holidays, calculated from receipt of the Engineer’s Order to Commence.
<b>2</b>	<b>2.6</b>	Corruption and ethical standards  The Government requires that Procuring Entities (including beneficiaries of Government funded projects) as well as Tenderers/Suppliers/Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. It is the responsibility of the Procuring Entity to ensure that Tenderers, suppliers, and contractors and their subcontractors observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy:  For the purpose of this provision, the following definitions are provided:  (i). “ <b>Corruption</b> ” has the meaning assigned to it in the Anti-Corruption and Economic Crime Act 2003 and includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;  (ii). “ <b>Fraudulent Practice</b> ” includes a misrepresentation of fact in order to influence a procurement or disposal process or the execution of a contract to the detriment of the Procuring Entity and includes collusive practices amongst Tenderers prior to or after Tender submission designed to establish Tender prices at artificial non-competitive levels and deprive the Procuring Entity of the benefits of free and open

TDS Ref. No	ITT Clause No	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
		<p>competition;</p> <p>(iii). <b>“Collusive Practice”</b> means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of the Procuring Entity prior to or after Tender submission , designed to establish Tender prices at artificial non-competitive levels and to deprive the Procuring Entity of the benefit of free and open competition;</p> <p>(iv). <b>“Coercive Practice”</b> means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of any of them to influence improperly the actions of a Procuring Entity;</p> <p>(v). <b>“Obstructive Practice”</b> means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and /or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.</p> <p>A Procuring Entity has the right to require that Tenderers, suppliers, and contractors and their subcontractors permit persons duly appointed by KACC/PPOA/KNAO to inspect their accounts and records and other documents relating to the Tender submission and contract performance; The Procuring Entity will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt, fraudulent practices or others stated under Clause 44.1.a in competing for the contract;</p> <p>In pursuit of the policy defined in sub-Clause 44.1,the Procuring Entity will cancel the portion of the funds allocated to a contract for goods, works, or services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Procuring Entity or Approving Authority or of a beneficiary of the funds during the procurement or the execution of that contract;</p> <p>In the event that the Procuring Entity or Approving Authority does not take timely and appropriate action satisfactory to the Government of Kenya to remedy the situation, then the Director-General may order an investigation of procurement proceedings for the purpose of determining whether there has been a breach of the Public Procurement and Disposal Act, 2015.</p>
3	4.1	Alternative offers are <b>not</b> allowed.
4	4.2	Alternative times for completion are not allowed.
5	6.3	The Tenderer’s designated representative is invited to a site visit which is <b>MANDATORY</b> and shall take place as follows:-



TDS Ref. No	ITT Clause No	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
		There shall be <b>Mandatory Site Visit</b> on <b>18<sup>th</sup> September 2018</b> starting from <b>10.00 a.m.</b> At <b>Gitaru Power Station 170 km from Nairobi</b>
6	6.5	The clarifications of the site visit meeting will be made available within <b>5 (five)</b> working days from the date of the site visit.
7	6.6	Non-attendance at the site visit will result in <b>disqualification</b> . Bidders are strongly advised to visit site and obtain for themselves information adequate for them to prepare a responsive bid. Site visits will be conducted only on specified dates. There will be no pre-bid meetings.
<b>B. TENDERING DOCUMENTS</b>		
8	7.2	The number of copies to be completed and returned with the tender is <b>2 (two)</b> -N/B-This is not applicable as these is an online process.
9	8.1	<b>CLARIFICATIONS</b>  Further information and/or clarification may also be obtained from the Employer's representative at the following address: -  <b>Supply Chain Director</b> Kenya Electricity Generating Company PLC Ground Floor, Stima Plaza, Phase III; Kolobot Road, Parklands P O Box 47936 - 00100 NAIROBI, KENYA Email; <a href="mailto:tenders@kengen.co.ke">tenders@kengen.co.ke</a> ; cc: <a href="mailto:jtheuri@kengen.co.ke">jtheuri@kengen.co.ke</a> ; <a href="mailto:skireri@kengen.co.ke">skireri@kengen.co.ke</a> ;
10	8.2	Bidders may seek any clarifications <b>Seven (7) calendar days before the tender closing date.</b>
11	8.3	Potential bidders are advised to <b>regularly</b> check KenGen website and E-Procurement Portal for any uploaded information on this tender. Any issued Addenda/Clarification shall be uploaded by Procuring entity on the website and E- Procurement Portal. ( <a href="https://eprocurement.kengen.co.ke:50001/irj/portal">https://eprocurement.kengen.co.ke:50001/irj/portal.</a> )
<b>C. PREPARATION OF TENDERS</b>		
12	10.1	Language of Tender and all correspondence shall be <b>English</b> .
14	12.3	See ITT Clause 11.1 above
15	12.4	<ul style="list-style-type: none"> <li>a. All requirements in Clause 11.1 shall be submitted by ALL partners in the Joint Venture.</li> <li>b. Copy of Joint Venture Agreement, or copy of Letter of Intent to execute a Joint Venture Agreement</li> <li>c. Tender Form must be signed to be legally binding</li> </ul>
16	16.1	The currency in which the prices shall be quoted shall be: <b>Kenyan Shillings</b> .
18	17.1	The tender shall remain valid and open for acceptance for a period of <b>120 (one hundred and twenty) calendar days</b> from the specified date of tender

<b>TDS Ref. No</b>	<b>ITT Clause No</b>	<b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b>
		opening or from the extended date of tender opening (in accordance with clause 21) whichever is the later.
<b>19</b>	<b>18.1</b>	The Tenderer shall furnish as part of this tender, a dully filled and signed Tender Securing declaration form.
<b>20</b>	<b>19.1</b>	In addition to the original of the Tender, the Tenderer shall submit <b>2 (two)</b> copies of the Tender. Sequential pagination / serialization of all pages in the tender document is required, including those already paginated by KenGen.- <b>This is Not Applicable ,submission is online</b>
<b>D. SUBMISSION OF TENDERS</b>		
<b>22</b>	<b>20</b>	Tenders must be submitted <b>online</b> on or before <b>3<sup>rd</sup> October 2018 at 10.00 a.m.</b>
<b>23</b>	<b>20.2</b>	The name and identification of the project is: <b>Tender For rehabilitation of Gitaru power house floor at Gitaru Power Station</b> The tender number is: <b>KGN-HYD-29-2018</b> Date and Time for <b>Online</b> submission is:  <b>3<sup>rd</sup> October 2018 at 10.00 a.m.</b>
<b>24</b>	<b>21.1</b>	The deadline for <b>Online</b> Tender Opening is: <b>3<sup>rd</sup> October 2018 at 10.30 a.m.</b>
<b>25</b>	<b>21.3</b>	The extension of the deadline for submission of Tenders shall be made not later than <b>5 (five) working days</b> before the expiry of the tender deadline.
<b>26</b>	<b>23.4</b>	The tender shall remain <b>valid</b> and open for acceptance for a period of <b>120 (one hundred and twenty)</b> calendar days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 21 here above) whichever is the later.
<b>E. OPENING AND EVALUATION OF TENDERS</b>		

TDS Ref. No	ITT Clause No	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
27	24.1	<p><b>The Tender opening shall take place at:</b> KenGen Pension Plaza 2, Tender Opening Room, Ground Floor.</p> <p><b>The amount read out on the Tender form shall be assumed to be inclusive of all offered discounts and all duties, fees and applicable taxes.</b></p> <p><b>1.PRELIMINARY EVALUATION:</b></p> <ul style="list-style-type: none"> <li>(i) Certificate of registration or registration.</li> <li>(ii) AGPO certificate.</li> <li>(iii) Duly filled and signed Tender Form.</li> <li>(iv) Tender Securing Declaration Form.</li> <li>(v) Mandatory Site visit - attach duly filled signed/stamped copy of site visit certificate.</li> <li>(i) A valid NCA registration certificate for civil works, level 8 and above.</li> <li>(ii) A valid NCA licence, 2018.</li> <li>(vi) Price Schedules duly completed and signed.</li> <li>(vii) Copy of Valid Tax Compliance or exemption Certificate.</li> <li>(viii) Addendums and Clarifications (if applicable, communicated addendum and clarification must be signed and be submitted with the Tender).</li> <li>(ix) Work program in MS-Project Program or equivalent.</li> <li>(x) Mandatory confidential business questionnaire as provided.</li> </ul> <p><b>2.TECHNICAL EVALUATION:</b></p> <p><b>A. LIST OF MAJOR ITEMS OF CONSTRUCTION PLANT, TOOLS AND EQUIPMENT.</b> Essential equipment to be made available for the Contract by the successful Tenderer. Provide documentary and official evidence of ownership or leasehold or hire or JV arrangement for such RELEVANT plant, tools and equipment for evaluation and confirmation, e.g. logbooks and copies of insurance stickers for auto motives, purchase receipts for others items. These includes the following AT THE LEAST:</p> <ul style="list-style-type: none"> <li>1. Scrubbing machine, 1 No.</li> <li>2. Necessary tools of work</li> </ul> <p><b>B. QUALIFICATIONS &amp; COMPETENCIES OF KEY STAFF:</b></p> <ul style="list-style-type: none"> <li>1. Technician Diploma in Civil engineering with minimum 3 years' experience</li> <li>2. Foreman with Craftsman Grade with 3 years' experience in</li> </ul>

TDS Ref. No	ITT Clause No	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
		<p style="text-align: center;"><b>civil works</b></p> <p><b>C. DETAILED PROGRAM OF WORKS</b> The Contractor to prepared detailed program of works (in MS Projects or applicable equivalent) showing clearly the Contractor proposed duration to carry out the works. For the successful bidder, this shall be revised within 14 days from commencement of project.</p> <p><b>D. DETAILED AND ADEQUATE METHODOLOGY, FOR EXECUTION OF WORKS:</b> The method statement should take into account the Specific conditions at the site. The step by step process of how execute the task.</p> <p><b>E. CONTRACTORS HEALTH, SAFETY, ENVIRONMENT AND QUALITY PLAN:</b> Include a Job safety Analysis (JSA).</p> <p><b>F. PRODUCT QULAITY</b> Technical Data Sheet for Epoxy and Manufacturer</p> <p><b>3.FINANCIAL EVALUATION</b></p> <p>The lowest evaluated bidder will be considered for award after post-qualification exercise below.</p>
29	31.1	Shall <b>not</b> be applicable
30	31.3	Shall <b>not</b> be applicable
31	33	The tender evaluation committee shall conduct due diligence by way of post-qualification on the recommended bidder before award, to confirm the qualifications capabilities and competencies stated in their bid document.
<b>F. AWARD OF CONTRACT</b>		
32	37.1	Percentage for quantities increase or decrease is 20% (twenty percent), only for contracts lasting more than 12 months.
33	40.1	The Tenderer, upon being issued with a Notification of Award, shall provide the Employer with a Performance Security of <b>1% (One percent)</b> of the Contract. The security shall be issued by reputable bank acceptable to the Employer.
34	41	There shall be no advance or interim payments under this contract.

## SECTION IV: GENERAL CONDITIONS OF CONTRACT

### 1. Definitions

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

- a. “**Bills of Quantities**” means the priced and completed Bill of Quantities forming part of the tender [where applicable].
- b. “**Schedule of Rates**” means the priced Schedule of Rates forming part of the tender [where applicable].
- c. “**Completion Date**” means the date of completion of the Works as certified by the Employer’s Representative.
- d. “**Contract**” means the agreement entered into by the Employer and the Contractor as recorded in the Agreement Form and signed by the parties.
- e. “**Contractor**” refers to the person or corporate body whose tender to carry out the Works has been accepted by the Employer.
- f. “**Contractor’s Tender**” is the completed tendering document submitted by the Contractor to the Employer.
- g. “**Contract Price**” is the price stated in the Notification of Award.
- h. “**Days**” are calendar days; “**Months**” are calendar months.
- i. “**Defect**” is any part of the Works not completed in accordance with the Contract.
- j. “**Defects Liability Certificate**” is the certificate issued by Employer’s Representative upon correction of defects by the Contractor.
- k. “**Defects Liability Period**” is the period named in the Appendix to Conditions of Contract and calculated from the Completion Date.
- l. “**Project delivery period**” is estimated to be 12 months from the date of Engineer’s Order to Commence.
- m. “**Drawings**” include calculations and other information provided or approved by the Employer’s Representative for the execution of the Contract.
- n. “**Employer/ Procuring Entity**” is Kenya Electricity Generating Company PLC of Stima Plaza, Kolobot Road, Parklands, P. O. Box 47936 Nairobi (00100), Kenya.
- o. “**Employer’s Representative**” is the person appointed by the Employer and notified to the Contractor for the purpose of supervision of the Works.

- p. “**Materials**” are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- q. “**Specification**” means the Specification of the Works included in the Contract.
- r. “**Start Date**” is the date when the Contractor shall commence execution of the Works.
- s. “**Temporary works**” are works designed, constructed, installed, and removed by the Contractor which are needed for construction or installation of the Works.
- t. “**A Variation**” is an instruction given by the Employer’s Representative which varies the Works.
- u. “**The Works**” are what the Contract requires the Contractor to construct, install, and turnover to the Employer.

## 2. **Contract Documents**

- 2.1 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;
  - a. Contract Agreement,
  - b. Notification of Award
  - c. Letter of Acceptance
  - d. Conditions of Contract
  - e. Technical Specifications
  - f. Drawings,
  - g. Bills of Quantities or Schedule of Rates (whichever is applicable)
  - h. Contractor’s Tender
  - i. Applicable Addenda and Clarifications

## 3. **Employer’s Representative’s Decisions**

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

## 4. **Works, Language and Law of Contract**

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

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

## 5. **Safety, Temporary works and Discoveries**

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

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

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

## 6. **Work Program and Sub-contracting**

6.1 Within 7 (seven) days after Site possession date, the Contractor shall submit to the Employer's Representative for approval a program showing the general methods, arrangements, order and timing for all the activities in the Works.

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

6.3 The main contractor Shall be responsible for all the activities of their Sub- contractors.

## 7. **The site**

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

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

## 8 **Instructions**

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

## 9 **Extension of Completion Date**

9.1 The Employer's Representative shall extend the Completion Date if an occurrence arises which makes it impossible for completion to be achieved by the Intended Completion Date. The Employer's Representative shall decide whether and by how much to extend the Completion Date.

9.2 For the purposes of this clause, the following occurrences shall be valid for consideration;

Delay by:-

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

## 10 **Management Meetings**

10.1 A Contract management meeting shall be held regularly and attended by the Employer's Representative and the Contractor. Its business shall be to review the plans for the remaining Work. The Employer's Representative shall record the business of management meetings and provide copies of the record to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Employer's



Representative either at the management meeting or after the management meeting and stated in writing to all who attend the meeting.

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

## 11 Defects

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

11.2 The Employer's Representative shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion. Warranty period for new equipment and Control systems shall be minimum of twelve (12).

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

## 12 Bills of Quantities/Schedule of Rates

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

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

## 13 Variations

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

- 13.2 If the Work in the variation corresponds with an item description in the Bill of Quantities/Schedule of Rates, the rate in the Bill of Quantities/Schedule of Rates shall be used to calculate the value of the variation. If the nature of the Work in the variation does not correspond with items in the Bill of Quantities/Schedule of Rates, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 13.3 If the Contractor's quotation is unreasonable, the Employer's Representative may order the variation and make a change to the Contract Price, which shall be based on the Employer's Representative's own forecast of the effects of the variation on the Contractor's costs.

#### **14 Payment Certificates and Final Account**

- 14.1 The Contractor shall be paid after each of the following stages of work listed here below (subject to re-measurement by the Employer's Representative of the work done in each stage before payment is made). In case of lump-sum Contracts, the valuation for each stage shall be based on the quantities so obtained in the re-measurement and the rates in the Schedule of Rates.
- 14.2 Upon deciding that Works included in a particular stage are complete, the Contractor shall submit To the Employer's Representative his application for payment. The Employer's Representative shall check, adjust if necessary and certify the amount to be paid to the Contractor within 21 (twenty-one) days of receipt of the Contractor's application .The Employer shall pay the Contractor the amounts so certified within 30 ( t h i r t y ) days of the date of issue of each Interim Certificate.
- 14.3 The Contractor shall supply the Employer's Representative with a detailed final account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Employer's Representative shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 30 (thirty) days of receiving the Contractor's account if it is correct and complete. If it is not, the Employer's Representative shall issue within 21 (twenty-one) days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Employer's Representative shall decide on the amount payable to the Contractor and issue a Final Payment Certificate. The Employer shall pay the Contractor the amount so certified within 60 (sixty) days of the issue of the Final Payment Certificate.
- 14.4 If the period laid down for payment to the Contractor upon each of the Employer's Representative's Certificate by the Employer has been exceeded, the Contractor shall be entitled to claim simple interest calculated pro-rata on the basis of the number of days delayed at the Central Bank of Kenya's average base lending rate prevailing on the first day the payment becomes overdue. The Contractor will be required to notify the Employer within 15 (fifteen) days of receipt of delayed payments of his intentions to claim interest.

#### **14.5 Payment Terms and Documents**

- a) The payments shall be made thirty (30) days after receipt of certified invoice, payment certificates, Engineers completion certificate where applicable, Service Entry sheet and authorization letters confirming that the invoice material, engineering works has been delivered and/or service has been rendered in accordance with the contract.
- b) The payments shall be made through telegraphic transfers (TT's) to the bank accounts indicated on the certified invoices forwarded for payment.

## **15. Insurance**

- 15.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Commencement Date to the end of the Defects Liability Period. The minimum insurance covers shall be Contractor's All Risks and the minimum amount of third party insurance shall be Kenya Shillings Ten Million (KShs.1,000,000/-) per occurrence with the number of occurrence unlimited.

The cover shall include the following events which are due to the Contractor's risks:

- (a) Loss of or damage to the Works, Plant, and Materials;
- (b) Personal injury or death.

- 15.3 Policies and certificates for insurance shall be delivered by the Contractor to the Employer's Representative for the Employer's Representative approval before the Commencement Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 15.4 If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 15.5 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.
- 15.6 The Contractor shall ensure that they are at all times in compliance with statutory requirements and provisions pertaining to the requisite applicable insurance policies.

## **16. Liquidated Damages**

If the Contractor fails to deliver the goods and/or services within the period(s) specified in the Contract, the Employer shall, without prejudice to its other remedies, deduct from the Contract Price liquidated damages sum equivalent to 1% of the price of the undelivered part of the contract per day up to a maximum deduction of 10%. After this, the parties may consider termination of the Contract. In addition any delay in commencement of reliability run will attract a penalty of 1% of the contract price per day.

## **17. Completion and Taking Over**

- 17.1 Upon deciding that the Work is complete the Contractor shall request the Employer's Representative to issue a Certificate of Completion of the Works.

The Employer shall take over the Site and the Works within seven (7) days of the Employer's Representative issuing a Certificate of Completion.

## **18. Termination**

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

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

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

## **19. Payment upon Termination**

- 19.1 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on Site, plant, equipment and temporary works.

- 19.2 The Contractor shall, during the execution or after the completion of the Works under this clause, remove from the Site as and when required within such reasonable time as the Employer's Representative may in writing specify any temporary buildings, plant, machinery, appliances, goods or materials belonging to him, and in default thereof, the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

19.3 Until after completion of the Works under this clause, the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Employer's Representative shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

## 20. **Corrupt Gifts and Payments of Commission**

20.1 The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the Employer any gifts or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract with the Employer.
- (b) Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the Laws of Kenya.

## 21. **Settlement of Disputes**

21.1 The Employer and the Contractor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

21.2 Any dispute between the Parties as to matters arising pursuant to this Contract or its interpretation that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement shall be referred for settlement by a single arbitrator. The Arbitrator shall be agreed upon by the Parties within thirty days (30) days of the notification of a dispute by either party to the other and in default of agreement as to the single arbitrator the same shall be appointed by the Chairman for the time being of the Chartered Institute of the Arbitrators of Kenya (Kenya Chapter). Every award made under this Clause shall be expressed to be made under the Arbitration Act 1995 or other Act or Acts for the time being in force in Kenya in relation to arbitration.

21.3 The seat of the arbitration shall be in Nairobi and language thereof English

## 22 **Taxes**

22.1.1 "Taxes" means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected, or withheld pursuant to any regulation having the force of law and "Taxation" shall be construed accordingly.

## **Local Taxation**

- 22.1.2 Nothing in the Contract shall relieve the Contractor and/or his Sub-Contractors from their responsibility to pay any taxes, statutory contributions and levies that may be levied on them in Kenya in respect of the Contract. The Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes.
- 22.1.3 The Contractor shall be deemed to be familiar with the tax laws in the Employer's Country and satisfied themselves with the requirements for all taxes, statutory contributions and duties to which they may be subjected during the term of the Contract.
- 22.1.4 In instances where discussions are held between the Employer and the Contractor regarding tax matters, this shall not be deemed to constitute competent advice and hence does not absolve the Contractor of their responsibility in relation to due diligence on the tax issue as per 22.1.3 above.

## **Tax Deduction**

- 22.1.5 If the Employer is required to make a tax deduction by Law, then the deduction shall be made from payments due to the Contractor and paid directly to the Kenya Revenue Authority. The Employer shall upon remitting the tax to Kenya Revenue Authority furnish the Contractor with the relevant tax deduction certificates.
- 22.1.6 Where the Contractor is paid directly by the Financiers and the Employer is not able to deduct tax, then the Contractor will be required to pay the tax deduction to Kenya Revenue Authority in the name of the Employer and furnish the Employer with an original receipt thereof as evidence of such payment. In absence of the said evidence, the Employer will not process any subsequent payments to the Contractor.

## **Tax Indemnity**

- 22.1.7 The Contractor shall indemnify and hold the Employer harmless from and against any and all liabilities, which the Employer may incur for any reason of failure by the Contractor to comply with any tax laws arising from the execution of the Contract whether during the term of the Contract or after its expiry.
- 22.1.8 The Contractor warrants to pay the Employer (within 14 (fourteen) days of demand by the Employer), an amount equal to the loss, liability or cost which the Employer determines has been (directly or indirectly) suffered by the Employer for or on account of the Contractor's Tax liability arising from the Contract.
- 22.1.9 Where the amount in 22.1.8 above remains unpaid after the end of the 14 (fourteen) days moratorium, the Employer shall be entitled to compensation for financing charges.

## **Change in the Applicable Law**

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes, statutory deductions or minimum labour conditions which increase the cost incurred by the Consultant in performing the Services, then the Service fee payable to the Consultant under this Contract shall be adjusted accordingly.

### **23. Governing Law**

The contract shall be governed by Laws of Kenya.

### **24. Force Majeure**

24.1 Neither party shall be held liable for failing to perform its obligations under the contract if the failure has been caused exclusively by a force majeure. For the purposes of this Contract “Force Majeure” means an unforeseeable event beyond the control of either party and not involving either party’s fault or negligence.

24.2 If a Force Majeure situation arises, the affected party shall promptly notify the other party in writing of such condition and the cause thereof. The affected party shall continue to perform its obligations under the Contract as far as is reasonably practical.

24.3 An occurrence of a Force Majeure shall not relieve a party of liability arising out of a breach or non-performance of an obligation which occurred prior to the Force Majeure.

### **25 Miscellaneous Provisions**

25.1 The rights and remedies provided hereunder are not exclusive of any other remedy which is otherwise available at law.

25.2 Nothing in this agreement shall be construed to imply a partnership, agency or any other relationship between the parties save to the extent provided herein.

25.3 Termination of this Agreement for any cause shall not release either party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such termination.

25.4 Each party acknowledges that in agreeing to enter into this agreement it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those set out in this agreement and the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement.

25.5 Where the approval, agreement or consent of any Party is required under any provision of this Agreement to any particular matter, such approval, Agreement or consent may be given subject to such terms and conditions as that Party may require and any breach of such terms and conditions shall ipso facto be deemed to be a breach of this Agreement.

- 25.6 Notwithstanding anything to the contrary contained herein, this Agreement shall endure for the benefit of and be binding on the successors-in-title and permitted assigns of the parties. Accordingly, the rights and obligations of each Party arising out of or pursuant to this Agreement or its termination or cancellation shall devolve upon and bind its legal representatives, successors-in-title and permitted assigns.
- 25.7 To the extent that any court of competent jurisdiction should determine that any term or provision of this Agreement is void, the said term or provision is to be interpreted and amended so as to be valid and the parties undertake to negotiate in good faith to cure any such void. The remainder of the agreement shall remain valid notwithstanding
- 25.8 No waiver of any right under this agreement shall be effective unless contained in writing signed by the waiving Party. No waiver of any right arising from any breach or non-performance shall be deemed to waive any future such right or any other right arising under this agreement. The failure of either Party at any time or for any period of time to enforce any term of this agreement shall not be construed to waive such term or the right of either Party to enforce each and every such term.

## **26 Authorized Representatives**

- 26.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Contractor shall be taken or executed by the officials specified below unless otherwise agreed between the Parties in writing;
- 26.2 In case the Contractor consists of a joint venture of more than one entity, the Members shall specify in writing and before execution of this Agreement, the entity authorized to act on their behalf in exercising the entire Contractor's rights and obligations towards the Employer under this Contract, including without limitation the receiving of instructions and payments from the Employer.

## **27 Notices**

- 27.1 Any notice required to be given by a party under this agreement shall be considered effectively made when delivered to a party's address stated herein or by way of registered mail or through the party's email address of correspondence ordinarily used to exchange information by the Parties.
- 27.2 This agreement, the schedule and the documents referred to in it contain the entire agreement of the parties relating to the transactions contemplated herein and supersede any previous agreement between the parties, oral or otherwise. No addition to, variation, modification or amendment to this Agreement shall be effective unless in writing and duly signed by or on behalf of the parties.



## **28 Warranties and Covenants**

The Contractor warrants and covenants with the Employer that:

- 28.1 The Contractor has all necessary power and authority to carry on its business as presently conducted and to enter into and perform its obligations under this Agreement.
- 28.2 The execution, delivery and performance of this Agreement by Contractor has been duly authorized by all requisite company action and the performance of its obligation hereunder will not offend or conflict with any law or contractual commitments
- 28.3 There is no action, suit or proceeding, at law or in equity, or official investigation by or before any governmental authority, arbitral tribunal or any other body pending or, to the knowledge of Contractor threatened, against or affecting Contractor or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on Contractor's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.
- 28.4 The Contractor and the Contractor's agents and representatives have visited, inspected and are familiar with the Site, its physical condition, roads, access rights, utilities, topographical conditions and air quality conditions, and have performed all reasonable investigations necessary to determine that the Site is suitable for the construction and installation of the plant, and are familiar with the local and other conditions which may be material to the Contractor's performance of its obligations under this Agreement (including, but not limited to transportation, seasons and climates, access, the handling and storage of materials and availability and quality of labor and materials).
- 28.5 The Contractor owns or will obtain the legal right to use all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by the Contractor of this Agreement and the transactions contemplated hereby, without any material conflict with the rights of others.
- 28.6 Contractor has obtained or will procure statutory and other governmental permits and licenses necessary for the successful performance of its obligations hereunder, and will abide by the conditions of such licenses or permits.
- 28.7 The Contractor (including where applicable, through its relationships with Subcontractors and its Affiliates) possesses the know-how and wherewithal to perform its obligations under the Contract.

## **SECTION V: SPECIAL CONDITIONS OF CONTRACT**

THE EMPLOYER IS

Name: **Kenya Electricity Generating Company PLC.**

Address: **Stima Plaza, Kolobot Road, Parklands, P.O. Box 47936, Nairobi**

Name of Employer's Representative: **OPERATIONS MANAGER (EASTERN HYDROS**

The identification number of the Contract is \_\_\_\_\_

The Works consist of **Rehabilitation of Floor- at Gitaru Power Station**

The Start Date shall be:- **Commencement Date as defined in Notification of Award**

The Intended Completion Date for the whole of the Works shall be

**Three (3) Months from Commencement Date**

The following documents also form part of the Contract: **See Conditions of Contract, Clause 2**

The Site Possession Date shall be: - **The Commencement Date/Engineers Order to Commence**

The Sites are located at : **GITARU POWER STATION**

The Defects Liability Period is 180 days.

The name and Address of the Employer for the purposes of submission of tenders is

**The Company Secretary, Kenya Electricity Generating Company PLC, Stima Plaza Phase III, Kolobot Road, Parklands, P.O. Box 47936, Nairobi**

The tender opening date and time is **3<sup>rd</sup> October 2018 at 10.30 a.m.**

The amount of performance security is 1% of Contract Price from a reputable Bank approved by the Employer.

Within fifteen (15) days of receipt of the notification of Contract award, the successful tenderer shall furnish to Kenya Electricity Generating Company PLC the performance security in the amount specified in Special Conditions of Contract. The proceeds of the performance security shall be payable to Kenya Electricity Generating Company PLC as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to Kenya Electricity Generating Company PLC and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in

Kenya or abroad, acceptable to Kenya Electricity Generating Company PLC, in the form provided in the tender documents. The performance security will be discharged by Kenya Electricity Generating Company PLC and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract.

**3.1 – Specify the Employers Representative: OPERATIONS MANAGER-EASTERN HYDRO**

10.1 - Specify how often Management meetings will be held: Planned meetings shall be on Monthly basis or any other time deemed necessary.

13.1 – Price variations shall not be allowed in this contract – considering that the contract period is below 13 months.

14.1 – Define the terms of payment and advance payment if applicable: The payment terms will be as follows: **There shall be no advance or interim payments under this contract. Payment shall be made upon completion of the work, less 10 % of the contract sum, which shall be withheld for the 180 days defect liability period.**

**21.1 – Dispute resolutions:**

Any dispute between the Parties as to matters arising pursuant to this Contract or its interpretation that cannot be settled amicably after receipt by one Party of the other Party's request for such amicable settlement shall first be referred to the Nairobi International Centre for Arbitration rules at the first instance for resolution before adoption of any other ADR mechanism.

The second ADR mechanism shall be utilization of an arbitrator. The arbitrator shall be agreed upon by the Parties within 30 days of the notification of a dispute by either party to the other and in default of agreement as to the single arbitrator the same shall be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch).

Every award made under this Clause shall be expressed to be made under the Arbitration Act 1995, Nairobi centre for international arbitration Act No. 26 of 2013 or other Act or Acts for the time being in force in Kenya. The language of arbitration is the English Language. The place of arbitration shall be Nairobi, Kenya.

# **SECTION VI: SPECIFICATIONS AND TECHNICAL REQUIREMENTS**

## **A:-SCHEDULE OF REQUIREMENTS**

### **I.1 Obligation of Contractor**

The contractor shall in accordance with the contract provide all necessary materials and labour, superintendence to carry out the works diligently during the duration of the contract.

### **I.2 Setting out**

The contractor shall get measurements on site, set out the areas where the epoxy floor is to be laid as directed by the Engineer. Provision of all necessary instruments, appliances and labour for such purpose shall be the Contractors responsibility. The checking of any setting out by the Engineer shall not relieve the contractor of his responsibility for the accuracy of the work.

### **I.3 Site Data**

The tender shall be deemed to have been based on such data on climatic, hydrological, security and general conditions on the site and for the operation of the works.

### **I.4 Program of Works**

The contractor shall submit to the Engineer for his approval the program for the execution of the works. No alteration to the program shall be made without the approval of the Engineer. An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

### **I.5 Safety Precautions**

The contractor shall be responsible for the safety of all activities on the site.

### **I.6 Clearance of Site**

The contractor shall from time to time during the progress of the works clear away and remove all surplus materials and rubbish. On completion of the works the contractor shall remove all contractor's equipment and leave the whole of the site and the works clean and in a workmanlike condition, to the satisfaction of the Engineer.

## **2.1 Examination of Work before Covering Up**

No part of the work shall be covered up or put out of view without the approval of the Engineer. The contractor shall give notice to the Engineer whenever any such part of the works or foundations is or are ready or about to be ready for examination. The contractor shall permit the Employer to carry out relevant inspections of work in progress or completed to determine conformity to the terms and requirements indicated in the contract and thus ensure satisfactory quality of work to be provided to the Employer.

## **2.2 Removal of Improper Work, Materials or Plant**

The Engineer shall have authority to issue instructions from time to time for:-

- a) The removal from site, within such time or times as may be specified in the instruction, of any materials or plant which, in the opinion of the Engineer, are not in accordance with the contract.
- b) The substitution with proper and suitable materials as per the contract if material found in use is found to be non-conforming.

**2.3** The Contractor will plan the works to avoid interference with operations of the power pla

## B:- TECHNICAL SPECIFICATION

- 1.0 The epoxy product shall be sourced from reputable manufacturers like **Sika products, BASF products** or approved equivalent suppliers. Tenderer to provide latest product publications from the Manufacturers. Details of Manufacturer's product, Clients within Kenya where the product has been applied.
- 2.0 The Tenderer shall examine existing substrate floor and walls to determine the best preparation required before application of epoxy products. The Client shall not be responsible for any oversights on existing surfaces. The Contractor will provide a works guarantee of not less than five years from the Manufacturer of the product.
- 2.1 Surface preparation and application of Epoxy products shall be strictly to the Manufacture's specification which the Tenderer must submit at the time of Tendering to assist in product evaluation.
- 2.1 The epoxy screed shall have very negligible shrinkage, high compressive strength good chemical, water, oil Fat, greases, diesel and acids resistant, abrasion and impact resistant, excellent abrasion and **NON-SLIP**. The screed shall have high mechanical strengths to resist impact loads .Preferred colour/ appearance to be **sandstone**.

## C:- BILL OF QUANTITIES

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY
1.0	<b>Prepare cracked structural walls, supply and apply epoxy resin to fully seal the cracks to manufacturer specification.</b> Cracks width less than 2mm		
1.10	Cracks width less than 2mm – 5 mm	LM	30
1.11	<b>Prepare concrete joints supply appropriate joint sealant material/ Materials and seal the joints to withstand back water pressure. This to be applied as specified by the manufacturer.</b>	LM	15
2.0	Joint below 10 mm in width. Joints between 10mm – 30mm widths.		
2.10	Prepare substrate surfaces as per technical requirement and specification to receive epoxy	LM	30
2.11	screed.	LM	100

3.00	<b>Supply material and lay 6mm-9mm thick heavy-duty non –slip epoxy resin screed as specified and to the manufacturer’s specification.(Sikafloor-91DS &amp;Sika floor -156 ZA primer; Colour :sandstone)</b>	M <sup>2</sup>	1800
3.10			
	Draft tube floor Turbine Floor Generator Floor Maintenance bay Floor lobby& offices		
3.11	Supply appropriate joint sealant material and apply at expansion and contraction joints of epoxy screed.	M <sup>2</sup>	280
3.12		M <sup>2</sup>	450
3.12		M <sup>2</sup>	570
3.13		M <sup>2</sup>	500
3.14		Sum	

### D:- PRICE SHEDULE

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	RATE KSH.	AMOUNT KSH.
<b>1.0</b>	<b>Prepare cracked structural walls, supply and apply epoxy resin to fully seal the cracks to manufacturer specification.</b>				
1.10	Cracks width less than 2mm	LM	30		
1.11	Cracks width less than 2mm – 5 mm	LM	15		
<b>2.0</b>	<b>Prepare concrete joints supply appropriate joint sealant material/ Materials and seal the joints to withstand back water pressure. This to be applied as specified by the manufacturer.</b>				
2.10	Joint below 10 mm in width.	LM	30		
2.11	Joints between 10mm – 30mm widths.	LM	100		
3.00	Prepare substrate surfaces as per technical requirement and specification to receive epoxy screed.	M <sup>2</sup>	1800		
<b>3.10</b>	<b>Supply material and lay 6mm-9mm thick heavy-duty non –slip epoxy resin screed as specified and to the manufacturer’s specification.(Sikafloor-91DS &amp;Sika floor -156 ZA primer; Colour :sandstone)</b>				
3.11	Draft tube floor	M <sup>2</sup>	280		
3.12	Turbine Floor	M <sup>2</sup>	450		
3.12	Generator Floor	M <sup>2</sup>	570		
3.13	Maintenance bay Floor lobby& offices	M <sup>2</sup>	500		
3.14	Supply appropriate joint sealant material and apply at expansion and contraction joints of epoxy screed.	Sum			
	<b>Sub-total</b>				
	<b>16% VAT</b>				
	<b>TOTAL INCLUSIVE OF VAT</b>				



## STANDARD FORMS

### SECTION VII: TENDER FORM

Date: \_\_\_\_\_

To: Kenya Electricity Generating PLC  
Stima Plaza Phase III, Kolobot Road, Parklands  
P.O. Box 47946-00100,  
NAIROBI, Kenya.

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos.....  
the receipt of which is hereby duly acknowledged, we, the undersigned, offer **rehabilitation of Gitaru powerhouse floor at Gitaru Power Station** in conformity with the said tender documents for the sum Of.....  
*[Total tender amount in words and figures]*  
or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to deliver the goods in accordance with the delivery schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum equivalent to 10% percent of the Contract Price for the due performance of the Contract, in the form prescribed by Kenya Electricity Generating Company PLC.
4. We agree to abide by this Tender for a period of **120 days** from the date fixed for tender opening of the Instructions to Contractors, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award shall constitute a binding Contract between us.
6. We understand that you are not bound to accept the lowest or any tender you may receive.
7. We hereby declare that we have not been debarred from any procurement process and Shall not engage in any fraudulent or corrupt act with regard to this purchase.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

\_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
*[In the capacity of]*

Duly authorized to sign tender for and on behalf of \_\_\_\_\_

**SECTION VIII**  
**TENDER SECURING DECLARATION FORM**

Tender No: -----

To:-----

We, the undersigned, declare that:

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

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

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

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

- 1) Our receipt of your notification to us of the name of the successful Tenderer; or
- 2) Thirty (30) days after the expiration of our Tender.

Signed: [insert signature of person whose name and capacity are shown]

-----  
In the capacity of [insert legal capacity of person signing the Tender Securing Declaration]

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

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

*[insert complete name of Tenderer]*-----

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

*[Insert date of signing]*-----

Corporate Seal (where appropriate)

**SECTION IX**  
**CONTRACT FORM**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 2018 between **Kenya Electricity Generating Company PLC of Kenya** (hereinafter called “the Procuring entity”) of the one part and..... of..... [*City and country of contractors*] (Hereinafter called “the contractors”) of the other part:

WHEREAS the Procuring entity invited tenders for certain goods, viz **rehabilitation of Gitaru powerhouse floor at Gitaru Power Station** And has accepted a tender by the contractors for the supply of those goods in the sum of..... [*Contract price in words and figures*] (Hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

- (A) **THE TENDER FORM AND THE PRICE SCHEDULE SUBMITTED BY THE CONTRACTORS;**
- (B) **THE SCHEDULE OF REQUIREMENTS;**
- (C) **THE TECHNICAL SPECIFICATIONS;**
- (D) **THE GENERAL CONDITIONS OF CONTRACT;**
- (E) **THE SPECIAL CONDITIONS OF CONTRACT; AND**
- (F) **THE PROCURING ENTITY’S NOTIFICATION OF AWARD.**

3. In consideration of the payments to be made by the Procuring entity to the contractors as hereinafter mentioned, the contractors hereby covenants with the Procuring entity to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract

4. The Procuring entity hereby covenants to pay the contractors in consideration of the provision of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Procuring entity)

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the contractors)

In the presence of \_\_\_\_\_

**SECTION X**

**PERFORMANCE SECURITY FORM**

To: Kenya Electricity Generating Company PLC  
Stima Plaza Phase III, Kolobot Road, Parklands  
P.O. Box 47936-00100  
NAIROBI, KENYA

WHEREAS ..... [*Name of contractors*]  
(Hereinafter called “the contractors”) has undertaken, in pursuance of Contract  
No. \_\_\_\_\_ [*reference number of the contract*] dated \_\_\_\_\_ 2018 to supply  
**rehabilitation of Gitaru powerhouse floor at Gitaru Power Station**  
(Hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the contractors shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Contractor’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the contractors a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the contractors, up to a total of.....  
[*amount of the guarantee in words and figures*], and we undertake to pay you, upon your first written demand declaring the contractors to be in default under the Contract and without cavil or argument, any sum or sums within the limits of.....  
[*Amount of guarantee*] as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 2018.  
Signature and seal of the Guarantors

\_\_\_\_\_  
[*Name of bank or financial institution*]

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

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

N/B This performance security should be in the letterhead of the guaranteeing Bank

**SECTION XI**  
**MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE**

*(Must be filled by all applicants or Tenderers' who choose to participate in this tender)*

*Name of Applicant(s).....*

You are requested to give the particulars in Part 1 and either Part 2 (a), 2 (b) or 2 (c), whichever applies to your type of business. Part 2 (d) to part 2 (i / j) must be filled. You are advised that giving wrong or false information on this Form will lead to automatic disqualification/termination of your business proposal at your cost.

**Part 1 – General**

Business Name:.....Certificate of Incorporation / Registration No.  
.....Location of business premises:

Country .....Physical address .....

Town .....Building.....

Floor.....Plot No. ....

Street / Road .....Postal Address .....

Postal / Country Code.....Telephone No's.....

Fax No's. ....E-mail address .....

Website .....

Contact Person (*Full Names*) ..... Direct / Mobile No's.....

Title ..... Power of Attorney (**Yes / No**)

If **yes**, attach written document.

Nature of Business (*Indicate whether manufacturer, distributor, etc*) .....

**(Applicable to Local suppliers only)**

Local Authority Trading License No. .... Expiry Date .....

PIN No.....

Value of the largest single assignment you have undertaken to date (*USD/KShs*)

.....

Was this successfully undertaken? **Yes / No** .....(If **Yes**, attach reference)

Name (s) of your banker (s)

.....

Branches ..... Tel. No's. ....

***Part 2 (a) – Sole Proprietor (if applicable)***

Full names .....

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

Company Profile ..... (*Attach brochures or annual reports in case of public company*)

***Part 2 (b) – Partnerships (if applicable)***

Give details of partners as follows:

**Full Names Nationality Citizenship Details Shares**

1. ....

2. ....

Company Profile ..... (*Attach brochures*)

***Part 2 (c) – Registered Company (if applicable - as per the CR12 form)***

Private or public .....

Company Profile ..... (*Attach brochures or annual reports in case of public companies*)

State the nominal and issued capital of the Company

Nominal KShs .....

Issued KShs .....

List of top ten (10) shareholders and distribution of shareholding in the company. Give details of all directors as follows:-

**Full Names Nationality Citizenship Details Shares**

1.....

2.....

**Part 2 (d) – Debarment**

I/We declare that I/We have not been debarred from any procurement process and shall not engage in any fraudulent, corrupt, coercive and obstructive acts with regard to this or any other tender by the KENGEN and any other public or private institutions.

Full Names .....

Signature .....

Dated this .....day of .....2018.

In the capacity of .....

Duly authorized to sign Tender for and on behalf of .....

**Part 2 (e) – Bankruptcy / Insolvency / receivership.**

I/We declare that I/We have not been declared bankrupt or insolvent by the competent Authorities in Kenya and neither are we under receivership:

Full Names .....

Signature .....

Dated this .....day of .....2018.

In the capacity of .....

Duly authorized to sign Tender for and on behalf of .....

**Part 2 (f) – Criminal Offence**

I/We, (Name (s) of Director (s)):-

a) .....

b) .....

Have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three (3) years preceding the commencement of procurement proceedings.

Signed .....

For and on behalf of M/s

.....

In the capacity of

.....

Dated this .....day of .....2018.

Suppliers' / Company's Official Rubber Stamp

.....

**Part 2 (g) – Conflict of Interest**

I/We, the undersigned state that I / We have no conflict of interest in relation to this procurement:

a) .....

b) .....

For and on behalf of M/s .....

In the capacity of .....

Dated this .....day of .....2018

Suppliers' / Company's Official Rubber Stamp .....

**Part 2 (h) – Interest in the Firm:**

Is there any person/persons in KENGEN or any other public institution who has interest in the Firm? Yes/No  
..... (Delete as necessary) Institution .....

**(Title) (Signature) (Date)**

**Part 2 (i) – Declaration**

I / We, the undersigned state and declare that the above information is correct and that I / We give KENGEN authority to seek any other references concerning my / our company from whatever sources deemed relevant, e.g. Office of the Registrar of Companies, Bankers, etc.

Full names .....

Signature.....

For and on behalf of M/s .....



In the capacity of .....

Dated this .....day of .....2018.

Suppliers' / Company's Official Rubber Stamp

.....