



# **KenGen**

**Kenya Electricity Generating Company Limited**

**KGN-KIP-03-2017**

**TENDER FOR REHABILITATION OF  
ROAD AT KIPEVU I POWER STATION.  
Reserved for registered firms belonging to  
Persons with disabilities (PWDs)**

Kenya Electricity Generating Company Limited,  
Stima Plaza Phase III, Kolobot Road, Parklands,  
P.O. Box 47936,  
Nairobi, Kenya.  
[www.kengen.co.ke](http://www.kengen.co.ke)

**APRIL, 2017**

# SECTION I

## INVITATION TO TENDER

The Company invites sealed tenders from eligible candidates for the “*Tender for Rehabilitation of Road at Kipevu I Power Station*” whose specifications are detailed in the Tender Document. You may obtain further information from and inspect the Tender Documents during official working hours starting at the date of advert at the office of:

Supply Chain Director  
Tel: (254) (020) 3666230  
Email: [tenders@kengen.co.ke](mailto:tenders@kengen.co.ke); [erico@kengen.co.ke](mailto:erico@kengen.co.ke)

Where the tender document may be collected upon payment of a non-refundable fee of **KShs.1, 000.00** paid in cash or through a bankers cheque at any KenGen finance office. The document can also be viewed and downloaded from the website [www.kengen.co.ke](http://www.kengen.co.ke) and [www.suppliers.treasury.go.ke](http://www.suppliers.treasury.go.ke). Bidders who download the tender document from the website **are advised to forward their particulars to facilitate any subsequent tender clarifications and addenda**. Downloaded documents are free of charge. Bidders are advised from time to time to be checking the website for any uploaded further information on this tender. *Bidders are also advised to be keen on the information provided under the appendix to instructions to tenderers (A.I.T.T and the special conditions of contract (SCC).*

Tenders MUST be submitted in a plain sealed envelope clearly labelled and marked “*Tender for Rehabilitation of Road at Kipevu I Power station*” **KGN-KIP-03-2017** and addressed to:

**Company Secretary & Legal Affairs Director  
Kenya Electricity Generating Company Limited  
10<sup>th</sup> Floor, Stima Plaza Phase III  
Kolobot Road, Parklands  
P O Box 47936 - 00100  
NAIROBI, KENYA**

On or before: **10<sup>th</sup> May 2017 at 10.00AM**

*There shall be a mandatory pre-bid conference on **4<sup>th</sup> May 2017 at 2.00pm**, Kipevu Social Hall*  
*Bidders are advised make their own arrangements during official working days (between 1000hrs-1200hrs) before tender closure.* Tenders will be opened on **10<sup>th</sup> May 2017 at 10.30AM** in the presence of the candidates’ representatives who choose to attend at Stima Plaza III, Executive Committee Room, 7<sup>th</sup> Floor. The company reserves the right to vary the quantities. **N/B: KenGen adheres to high standards of integrity in its business operations. Report any unethical behavior immediately to 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)

### SUPPLY CHAIN DIRECTOR

## SECTION II

### INSTRUCTIONS TO TENDERERS

1. General
  - 1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender Documents. The successful Tenderer will be expected to complete the Works by the Intended Completion Date specified in the said Appendix.
  - 1.2 Tenderers shall include the following information and documents with their tenders, unless otherwise stated:
    - (a) Copies of certificates of registration, and principal place of business;
    - (b) Total monetary value of construction work performed for each of the last five years;
    - (c) Experience in works of a similar nature and size for each of the last five years, and clients who may be contacted for further information on these contracts;
    - (d) Major items of construction equipment owned;
    - (e) Qualifications and experience of key site management and technical personnel proposed for the Contract;
    - (f) Reports on the financial standing of the Tenderer, such as profit and loss statements and auditor's reports for the last five years;
    - (g) Authority to seek references from the Tenderer's bankers.
  - 1.3 The Tenderer shall bear all costs associated with the preparation and submission of his tender, and the Employer will in no case be responsible or liable for those costs.
  - 1.4 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Tenderer's own expense.
  - 1.5 The procurement entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
  - 1.6 The price to be charged for the tender document shall not exceed

Kshs.1,000/= Downloaded documents will be free of charge. Bidders who download documents shall promptly notify the Procuring Entity.

- 1.7 The procuring entity shall allow the tenderer to **review** the tender document free of charge before purchase.

## **2. Tender Documents**

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

- (a) These instructions to Tenderers
- (b) Form of Tender
- (c) Conditions of Contract and Appendix to Conditions of Contract
- (d) Specifications
- (e) Drawings
- (f) Bills of Quantities/Schedule of Rates (whichever is applicable)
- (g) Other materials required to be filled and submitted in accordance with these Instructions and Conditions

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

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

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

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

## **3. Preparation of Tenders**

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

3.2 The tender submitted by the Tenderer shall comprise the following:-

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

3.3 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities/Schedule of Rates. Items for which no rate or price is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities/Schedule of Rates. All duties, taxes and other levies payable by the Contractor under the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the Tenderer.

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

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

### **Tender security**

3.6. The tenderer shall furnish, as part of its tender, **tender securing declaration form**

The tender security is required to protect Kenya Electricity Generating Company Limited against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 14.7

The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, in the form provided in the tender documents or another form acceptable to Kenya Electricity Generating Company Limited and valid for **at least 30days beyond tender validity**

Any tender not secured in accordance with paragraph 14.1 and 14.3 will be rejected by Kenya Electricity Generating Company Limited as non-responsive, pursuant to paragraph 22.

Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by Kenya Electricity Generating Company Limited.

The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 30, and furnishing the performance security, pursuant to paragraph 31.

The tender security may be forfeited:

- (a) If a tenderer withdraws its tender during the period of tender validity specified by Kenya Electricity Generating Company Limited on the Tender Form; or
- (b) In the case of a successful tenderer, if the tenderer fails:
  - (i) To sign the contract in accordance with paragraph 30  
or
  - (ii) To furnish performance security in accordance with paragraph 31

3.6 Tenders shall remain valid for a period of **Ninety (90) days** from the date of submission. However in exceptional circumstances, the Employer may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing.

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

3.8 The original 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. All pages of the tender where alterations or additions have been made shall be initialed by the person or persons signing the tender.

3.9 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.

3.10 The procuring entity shall reply to any written clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

#### 4. Submission of Tenders

4.1 The tender duly filled and sealed in an envelope shall;-

- (a) Be addressed to the Employer at the address provided in the invitation to tender;
- [b] Bear the name and identification number of the Contract as defined in the invitation to tender; and
- [c] Provide a warning not to open before the specified time and date for tender opening.

4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to

tender.

- 4.3 The tenderer shall not submit any alternative offers unless they are specifically required in the tender documents.
- 4.4 Only one tender may be submitted by each tenderer. Any tenderer who fails to comply with this requirement will be disqualified.
- 4.5 Any tender received after the deadline for opening tenders will be returned to the tenderer un-opened.
- 4.6 The Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with sub-clause 2.5 in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will then be subject to the new deadline.

## 5. Tender Opening and Evaluation

- 5.1 The tenders will be opened in the presence of the Tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender.
- 5.2 The Tenderers' names, the total amount of each tender and such other details as may be considered appropriate, will be announced at the opening by the Procuring Entity. Minutes of the tender opening, including the information disclosed to those present will also be prepared by the Procuring Entity.
- 5.3 Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of the Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Employer's officials, processing of tenders or award decisions may result in the rejection of his tender.
- 5.4 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:
  - (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
  - (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer's representative, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.

- (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities/Quotation, the amount as stated in the Form of Tender shall prevail.
  - (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the Corrected Builder's Work (i.e. corrected tender sum less P.C. and Provisional Sums).
  - (e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.
  - (f) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and with concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security forfeited.
- 5.5 The tender evaluation committee shall evaluate the tender within fifteen (15) days of the validity period from the date of opening the tender.
- 5.6 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 5.7 Where contract price variation is allowed, the valuation shall not exceed 25% of the original contract price.
- 5.8 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request
- 5.9 Preference where allowed in the evaluation of tenders shall not exceed 15%
- 5.10 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may request [in writing] any Tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the tender price or substance of the tender shall be sought, offered or permitted.
- 5.11 The Tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.



## 6. Award of Contract

- 6.1 The award of the Contract will be made to the Tenderer who has offered the lowest evaluated tender price.
- 6.2 Notwithstanding the provisions of clause 6.1 above, the Employer reserves the right to accept or reject any tender and to cancel the tendering process and reject all tenders at any time prior to the award of Contract without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the action.
- 6.3 The Tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum [hereinafter and in all Contract documents called the "Contract Price" which the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. The contract shall be formed on the parties signing the contract. At the same time the other tenderers shall be informed that their tenders have not been successful.
- 6.4 The Contract Agreement will incorporate all agreements between the Employer and the successful Tenderer. It will be signed by the Employer and sent to the successful Tenderer, within 30 days following the notification of award. Within 21 days of receipt, the successful Tenderer will sign the Agreement and return it to the Employer.
- 6.5 Within fifteen (15) days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Employer a Performance Security amount stipulated in the Appendix to Conditions of Contract.
- 6.6 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 6.7 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

## 7. Corrupt and fraudulent practices

- 7.1 The procuring entity requires that the tenderer observes the highest standard of ethics during the procurement process and execution of the contract. A tenderer shall sign a declaration that he has not and will

not be involved in corrupt and fraudulent practices.

- 7.2 The procuring entity will reject a tender if it determines that the tenderer recommended for award has engaged in corrupt and fraudulent practices in competing for the contract in question.
- 7.3 Further a tenderer who is found to have indulged in corrupt and fraudulent practices risks being debarred from participating in public procurement in Kenya.

## Appendix to Instructions to Tenderers

The following information for procurement of small works shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

<i>Instructions to tenderers (Reference e.g...)</i>	<i>Particulars of appendix to instructions to tenderers</i>
ELIGIBILITY	<i>Eligible tenderers : AGPO FIRMS (persons with disability PWD)</i>
Tender security	TENDER DECLARATION FORM DULLY SIGNED AND STAMPED. <i>Bidders shall submit a tender security declaration as provided, valid for 120 days from the tender opening date.</i>
Tender validity	Tenders shall remain valid for a period of <b>Ninety (90) days</b> from the date of submission
Performance security	<i>Performance security shall be 1% of the contract value</i>
Deadline for submission of tenders	Tenders to be submitted on or before <b>10<sup>th</sup> May 2017 at 10.00AM</b>
Site visit	<i>There shall be a mandatory pre-bid conference on 4<sup>th</sup> May 2017 at 2.00pm, Kipevu Social Hall Bidders are advised make their own arrangements during official working days (between 1000hrs-1200hrs) before tender closure.</i>

To be substantially responsive, a bidder MUST meet the following

## **A. PRELIMINARY EXAMINATION OF TENDERS:**

1. Duly completed Price Schedule.
2. Duly completed Tender Form.
3. Addendum (if applicable, communicated addendum must be signed and be submitted with the Tender)
4. Duly completed and signed Mandatory site visit certificate.
5. Duly filled Tender securing declaration form.
6. Duly Completed Confidential Business Questionnaire (CBQ) as provided below\*.
7. Copy Certificate of Incorporation / Registration
8. Copy of Certificate of Registration in a target group (YOUTH)
9. Copy of Registration with National Construction Authority, Class; - NCA 7 and above (Buildings and Specialist Contractors)
10. Copy of Valid Tax Compliance or exemption Certificate.
11. Duly Completed POWER OF ATTORNEY among partners, ONLY in cases of joint venture.
12. Pagination/serialization of all pages of the bid document.
13. Submission of the required copies of the bid document. One(1) original and One (1) copy

(NB: the tenderer is required, where so applicable, to furnish details of these requirement in the forms annexed in the tender forms and in (CBQ); All requested copies must be submitted with this tender.

NOTE: All the above documents are mandatory. Failure to provide any of them or providing invalid document(s) will result to disqualification at this stage.

## **B. TECHNICAL EXAMINATION OF TENDERS:**

*Provide.....*

1. LIST OF MAJOR ITEMS OF CONSTRUCTION PLANT, TOOLS AND EQUIPMENT.  
Essential equipment to be made available for the Contract by the successful Tenderer. Provide evidence of ownership or leasehold for ATLEAST FIVE of such RELEVANT plant, tools and equipment. YES/NO
2. FIELD TECHNICAL TEAM:  
➤ Current IEK license of supervising civil engineer must be attached. YES/NO
3. DETAILED PROGRAM OF WORKS AND WORKS METHODOLOGY  
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 - YES/NO*
4. Bidders to provide a detailed Job safety analysis - YES/NO

(NB: the tenderer is required, where so applicable, to furnish details of these requirement in the forms annexed in the tender forms and in CBQ); All requested copies must be submitted with this tender.

**( C) FINANCIAL EVALUATION:**

- Checking for completeness in the quotation for all items in the BQ. YES/NO
- Tender sum as submitted and read out during tender opening shall be absolute and final and shall not be subject of correction, adjustment or amendment in any way. Any arithmetic error deemed as a major deviation shall result to disqualification of the bidder at this stage.
- The lowest evaluated bidder will be considered for award.

**SECTION III**  
**CONDITIONS OF CONTRACT**

1. Definitions

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

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

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

“The Completion Date” means the date of completion of the Works as certified by the Employer’s Representative.

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

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

“The Contractor’s Tender” is the completed tendering document submitted by the Contractor to the Employer.

“The Contract Price” is the price stated in the Notification of award.

“Days” are calendar days; “Months” are calendar months.

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

“The Defects Liability Certificate” is the certificate issued by Employer’s Representative upon correction of defects by the Contractor.

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

“Drawings” include calculations and other information provided or approved by the Employer’s Representative for the execution of the Contract.

“Employer” means Kenya Electricity Generating Company Limited and is the party who employs the Contractor to carry out the Works.

“Equipment” is the Contractor’s machinery and vehicles brought temporarily to the Site for the execution of the Works.

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

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

“Employer’s Representative” is the person appointed by the Employer and notified to the Contractor for the purpose of supervision of the Works.

“Specification” means the Specification of the Works included in the Contract.

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

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

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

“ A Variation” is an instruction given by the Employer’s Representative which varies the Works.

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

## 2. Contract Documents

2.1 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;

- (1) Contract Agreement,
- (2) Notification of award
- (3) Letter of Acceptance,
- (4) Conditions of Contract
- (5) Technical Specifications
- (6) Drawings,
- (7) Bills of Quantities or Schedule of Rates [whichever is applicable]
- (8) Contractor’s Tender,
- (9) 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 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 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.

### 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 authorized 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, and is defined in the Appendix to Conditions of Contract.
- 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.

- (i) Advance payment \_\_\_\_\_ (percent of Contract Price, [after Contract execution] \_\_\_\_\_ to be inserted by the Employer).
- (ii) First stage (define stage) \_\_\_\_\_
- (iii) Second stage (define stage) \_\_\_\_\_
- (iv) Third stage (define stage) \_\_\_\_\_
- (v) After defects liability period .

14.2 Upon deciding that Works included in a particular stage are complete, the Contractor shall submit to the Employer's Representative his application for payment. The Employer's Representative shall check, adjust if necessary and certify the amount to be paid to the Contractor within 21 days of receipt of the Contractor's application .The Employer shall pay the Contractor the amounts so certified within 30 days of the date of issue of each Interim Certificate.

14.3 The Contractor shall supply the Employer's Representative with a detailed final account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Employer's Representative shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Employer's Representative shall issue within 21 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Employer's Representative shall decide on the amount payable to the Contractor and issue a Final Payment Certificate. The Employer shall pay the Contractor the amount so certified within 60 days of the issue of the Final Payment Certificate.

14.4 If the period laid down for payment to the Contractor upon each of the Employer's Representative's Certificate by the Employer has been exceeded, the Contractor shall be entitled to claim simple interest calculated pro-rata on the basis of the number of days delayed at the

Central Bank of Kenya's average base lending rate prevailing on the first day the payment becomes overdue. The Contractor will be required to notify the Employer within 15 days of receipt of delayed payments of his intentions to claim interest.

15. Insurance

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

16. Liquidated Damages

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

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, upon deciding that the Work is completed.

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

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 days continuously without reasonable cause or authority from the Employer's Representative;
- (b) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (c) a payment certified by the Employer's Representative is not paid by the Employer to the Contractor within 30 days after the expiry of the payment periods stated in sub clauses 14.2 and 14.3 hereinabove.

- (d) the Employer's Representative gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time.

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

## 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.

### 22.1.2 Local Taxation

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 3.21.2 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 fourteen (14) 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 3.21.8 above remains unpaid after the end of the fourteen (14) days moratorium, the Employer shall be entitled to compensation for financing charges.



## **APPENDIX TO CONDITIONS OF CONTRACT**

THE EMPLOYER IS

Name: KENGEN KIPEVU POWER STATION

---

Address: 80801- 80100 P.O.BOX MOMBASA

---

Name of Employer's Representative: JULIE MWALUMA

---

Title; CHIEF HUMAN RESOURCES AND ADMINISTRATION OFFICER

Telephone: 0070301 5068

The name (and identification number) of the Contract is TENDER FOR REHABILITATION OF ROAD AT KIPEVU POWER STATION

---

The Works consist of ROAD REHABILITATION

---

The commencement Date shall be the date of contract signature

---

The contract duration shall be **two months.**

---

The Site is located at KIPEVU POWER STATION and is defined in drawings nos.

---

The Defects Liability Period is 120 days.

### **Amount of Performance Security is 1% of the contract sum**

Within fifteen (15) days of receipt of the notification of Contract award, the successful tenderer shall furnish to Kenya Electricity Generating Company Limited 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 Limited 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 Limited 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 Limited, in the form provided in the tender documents. The performance security will be discharged by Kenya Electricity Generating Company Limited 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. Chief Human Resources and Administration officer.

**10.1** - Specify how often Management meetings will be held – Management meetings shall be held weekly

**14.1** – Define the terms of payment and advance payment if applicable. Terms of payment 30 days on completion and presentation of invoice. There shall be no advance payment or partial payment

## SECTION IV

### SPECIAL CONDITIONS OF CONTRACT

- 4.1 Special conditions of contract (SCC) shall supplement the general conditions of contract, wherever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.
- 4.2 Special conditions of contract with reference to the general conditions of contract.

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.5	<i>Performance warranty shall not exceed 1% of the value of the contract amount.</i>
3.7.6	<i>Defects liability period shall be 6months upon completion of works.</i>
3.11.2	<i>Contract duration shall be two (2)months</i>
3.12.3	<i>Payment terms: Credit period 30 days There shall be <b>NO</b> partial payment.</i>
3.13.4	<i>All materials supplied <b>MUST</b> be inspected and approved before installation by the Engineer responsible</i>
3.18.3	<i>Arbitration where necessary shall be by the Chartered Institute of Arbitrators Kenya Chapter or other International body.</i>

**SECTION V**

**SPECIFICATIONS, DRAWINGS AND BILLS OF  
QUANTITIES/SCHEDULE OF RATES**

I.SPECIFICATIONS

II. DRAWINGS. Attached separately on the website.

### III.BILL OF QUANTITIES/SCHEDULE OF RATES

#### PEDESTRIAN SIDE WALK

ROAD REHABILITATION AT KIPEVU 1 POWER STATION				
DESCRIPTION	UNIT	QTY	RATE	AMOUNT
<b>A. EXCAVATION</b> Excavate sub-grade to line level and remove unwanted material to spoil as directed by the engineer	CM	168		
<b>B.SUB-GRADE</b> Scarify water and compact to line and level 95% MDD (AASHTO T99)150 mm thick	CM	35		
<b>C.SUB BASE</b> Provide, lay and compact coral rag to line and level 95% MDD(AASHTO T 180)	CM	70		
<b>D.BASE</b> Provide, lay and compact hand packed stone including blinding with quarry dust to line and level	CM	70		
<b>E. SURFACING</b> 01.Supply,lay and compact 60mm thick precast medium duty concrete paving blocks including 50mm sand bedding	SM	168		
02.Supply and lay flush kerb to side walk on concrete foundation	LM	140		
<b>SUB TOTAL</b>				
<b>16% VAT</b>				
<b>GRAND TOTAL</b>				

**DRIVE-WAY**

<b>ROAD REHABILITATION AT KIPEVU 1 POWER STATION</b>				
<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QTY</b>	<b>RATE</b>	<b>AMOUNT</b>
<b>A. EXCAVATION</b> Strip off all asphalt concrete surfacing and cart away to spoil	SM	<b>840</b>		
<b>B.ROAD BASE</b> Provide,lay,water and compact cement stabilized coral rag to line and level for traffic class TI at 6% by weight cement content Include provision of cement.	CM	<b>126</b>		
<b>C.SUB BASE</b> Provide, lay and compact coral rag to line and level 95% MDD(AASHTO T 180)	CM	<b>126</b>		
<b>D.BASE</b> Provide, lay and compact hand packed stone including blinding with quarry dust to line and level	CM	<b>252</b>		
<b>E. SURFACING</b> 01.Supply,lay and compact 80mm medium duty concrete paving blocks including 50mm sand bedding  02.Supply and lay raised kerb on concrete Foundation(MOW Type A)	SM  LM	<b>840</b>  <b>280</b>		
<b>SUB TOTAL</b>				
<b>16% VAT</b>				
<b>GRAND TOTAL</b>				

**3. DRAINAGE**

<b>ROAD REHABILITATION AT KIPEVU 1 POWER STATION</b>				
	<b>UNIT</b>	<b>QTY</b>	<b>RATE</b>	<b>AMOUNT</b>
A. 450×600mm rectangular manhole, cover and frame lockable heavy duty cast iron	NO	3		
B. Cast in place open drain clear opening 450mm complete with galvanized MS Grating contained in 50×50×12 MS angle lugs at 250 centres cast in concrete grating formed in 50×50×12MS flats all welded and galvanized	LM	15		
C. Supply and lay 300 Dia PCC IBD on compacted murrum complete with side slabs 600×225×75 pointed joint mortar 3:1	LM	140		
<b>SUB TOTAL</b>				
<b>16% VAT</b>				
<b>GRAND TOTAL</b>				

TENDERER'S NAME: \_\_\_\_\_

TENDERER'S SIGNATURE \_\_\_\_\_

COMPANY'S RUBBER STAMP \_\_\_\_\_

DELIVERY PERIOD \_\_\_\_\_



## **SECTION V STANDARD FORMS**

- a. Form of Tender
- b. Contract Form
- c. Tender Securing Declaration form
- d. Performance Bank Guarantee
- e. Bank Guarantee for Advance Payment
- f. Confidential Business Questionnaire

## **FORM OF TENDER**

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

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

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities/Schedule of Rates for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs. \_\_\_\_\_ [Amount in figures] Kenya Shillings \_\_\_\_\_ [Amount in words], **inclusive of all applicable taxes.**
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Employer's Representative's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until \_\_\_\_\_ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

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

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

duly authorized to sign on behalf of

Name of bidder: \_\_\_\_\_

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

Witness; Name \_\_\_\_\_

Signature \_\_\_\_\_

## **CONTRACT FORM**

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_  
between \_\_\_\_\_ of [or whose registered  
office is situated at] \_\_\_\_\_  
(Hereinafter called “the Employer”) of the one part AND  
\_\_\_\_\_ of [or whose registered  
office is situated at] \_\_\_\_\_  
(Hereinafter called “the Contractor”) of the other part.

WHEREAS THE Employer is desirous that the Contractor executes

\_\_\_\_\_ (name and identification number of Contract ) (Hereinafter called “the Works”) located at \_\_\_\_\_ [Place/location of the Works] and the Employer has accepted the tender submitted by the Contractor for the execution and completion of such Works and the remedying of any defects therein for the Contract Price of Kshs \_\_\_\_\_ [Amount in figures], Kenya Shillings \_\_\_\_\_ [Amount in words].

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 hereinafter referred to.
2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.
  - (i) Letter of Acceptance
  - (ii) Form of Tender
  - (iii) Conditions of Contract
  - (iv) Appendix to Conditions of Contract
  - (v) Specifications
  - (vi) Drawings
  - (vii) Priced Bills of Quantities/Priced Schedule of Rates [whichever is applicable]
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby

covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works 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 thereto have caused this Agreement to be executed the day and year first before written.

The common Seal of \_\_\_\_\_

Was hereunto affixed in the presence of \_\_\_\_\_

Signed Sealed, and Delivered by the said \_\_\_\_\_

Binding Signature of Employer \_\_\_\_\_

Binding Signature of Contractor \_\_\_\_\_

In the presence of (i) Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

[ii] Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

## TENDER SECURING DECLARATION

*[The Bidder shall fill in this Form in accordance with the instructions indicated.]*

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

Tender No.....

To: KenGen

We, the undersigned, declare that:

1. We understand that, according to your conditions, bids must be supported by a Tender Securing Declaration.
2. We accept that we will automatically be suspended from being eligible for bidding in any contract with the Purchaser for **THREE YEARS, UPON APPROVAL BY PPADB** if we are in breach of our obligation(s) under the bid conditions, because we:
  - (a) Have withdrawn our Bid during the **90 days** of bid validity specified by us in the Bidding Data Sheet; or
  - (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid 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 Instructions to Tenderers.
3. We understand this Tender Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.
4. We understand that if we are a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid. If the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

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

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

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

**PERFORMANCE BANK GUARANTEE**

(On bank letterhead)

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

Dear Sir,

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

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

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

THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Kshs. \_\_\_\_\_ (Amount of Guarantee in figures) Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words), and we undertake to pay you, upon your first written demand and without civil or argument, any sum or sums within the limits of Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words) as

aforsaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein. We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

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

**This guarantee shall be valid until the date of issue of the Certificate of Completion.**

SIGNATURE AND SEAL OF THE GUARANTOR \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

(Amend accordingly if provided by Insurance Company)

# **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 .....  
Value Added Tax 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 ..... 2015.  
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 ..... 2015.  
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 ..... 2015.

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 ..... 2015

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) – Bank account details:**

AGPO firms must provide evidence from their bank that the account to which KenGen shall make payment has a youth or a woman or a PWD listed in the **CR12 form/partnership deed/sole proprietor certificate** as a MANDATORY signatory of that account,- **Sec.157 (11) of PPADA:**

**Account No:**.....**Name of the person(s) in the CR12 form OR in the partnership deed OR in the sole proprietor certificate**...../.....

**ID No(s):**...../.....**Signature and stamp of the authorized Banker Representative**.....**Date**.....

**Part 2(j or k) – 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 .....2015.

Suppliers' / Company's Official Rubber Stamp

.....