



UNITED REPUBLIC OF TANZANIA

PRESIDENT OFFICE

**REGIONAL ADMINISTRATION AND LOCAL
GOVERNMENT AUTHORITY**

MOMBA DISTRICT COUNCIL



CONTRACT DOCUMENT

FOR

**CONSTRUCTION OF THREE IN ONE SEMI
DETACHED STAFF HOUSES**

TENDER No. LGA/142/2021/2022/W/01

2022



UNITED REPUBLIC OF TANZANIA
PRESIDENT OFFICE
REGIONAL ADMINISTRATION AND LOCAL
GOVERNMENT AUTHORITY
MOMBA DISTRICT COUNCIL



REF.NO. MODC/M10/36/50

20th January 2022

M/S Director
Zagreb Enterprises Co. Ltd,
P.O. Box 2824,
DAR ES SALAAM

Ref: Letter of Acceptance

This to notify you that your tender number **LGA/142/2021/2022/W/01** Submitted on the 27th December 2021 for proposed Construction of three in one semidetached Staff Houses to be built at kapele Ward in Momba District Council as stipulated in bills of quantity and the Negotiation held on 11th January 2022 for the contract price of equivalent of Tshs.87,000,000/= (Eighty Seven Million shillings only VAT inclusive as corrected and modified in accordance with the instruction to tenderers and the negotiation which was done for the period of three (03) Months is hereby accepted by us.

Upon receipt of this letter of Acceptance, you are required to contact the District Procurement Officer for the Contract accomplishment.

Authorized Signature
Name and Title of Signatory: Regina L.Bieda
District Executive Director
Momba District Council
Name of Agency:



FORM OF CONTRACT AGREEMENT

This Agreement made the ...²⁴... day of.....⁹¹..... 2022 Between Momba District council P.O.Box 273 , Momba –Songwe (hereinafter called "the Employer") And

ZAGREB ENTERPRISES (T) LTD P.O.Box 2824 Dar es Salaam (hereafter called" the contractor") of the other part.

Where the Employer is desirous that the contractor execute is proposed construction of 3 in 1 semidetached staff House to be built at Kapele in Momba District Council (hereinafter called the works") and the Employer has accepted the Tender by the contractor for the execution and completion of such works and the remedying of any defects there in the sum of **Eighty seven million shillings only VAT inclusive (Tshs. 87,000,000)**

(here in after called "contract price").

Now this Agreement witnessed as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively to them in the conditions of **contract hereinafter referred to and;**
2. The contract duration period shall be three Months (03) from the date of site possession.
3. The following documents shall be deemed to form and read and construed as part of this Agreement, viz;-
 - a) Form of Agreement;
 - b) Letter of Acceptance
 - c) Special Power of Attorney
 - d) General Condition of Contract (GCC)
 - e) Bills OF Quantity
 - f) Specification
 - g) Drawing
 - h) Other forms
 - i) Negotiation minutes
4. All the aforesaid documents are hereinafter referred to as "the contract " and shall be taken as complementary and mutually explanatory of one another but in case of ambiguities or discrepancies shall take precedence in the order set out above.
5. 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 in

Conformity, in all respect, with the provisions of the Contract

In **WITNESS WHEREOF**, the parties hereto have caused this Form of Agreement to be executed in accordance with the respective laws in the day and year first above written.

SIGNED AND DELIVERED FOR AND ON BEHALF OF THE MOMBA DISTRICT COUNCIL THIS 24 DAY OF 01 2022.

In presence of:

Signature
**CHAIRMAN
MOMBA DISTRICT COUNCIL
MOMBA**

Name: Mathew M. Chikoti
Title: **Council Chairman**

Signature

Name: Regina Bieda
Title: **District Executive Director**



In the witness

Signature: [Signature]
Name : **Gloria Mlimba**
Title : **Council Solicitor**

SIGNED by the said _____

For and on behalf of the Contractor

Name: ELIAS GIDEON SICHALWE

Signature: [Signature]

Occupation: DIRECTOR

ZAGREB ENTERPRISES (T) LTD
P.O. BOX 2884
DAR-ES-SALAAM

Date: 24 JANUARY 2022

In the presence of

Name: GRAY JORDAN SIMWELU,

Signature: [Signature]

Designation: TECHNICIAN

SECTION I: INVITATION FOR TENDERS



UNITED REPUBLIC OF TANZANIA

PRESIDENT OFFICE

REGIONAL ADMINISTRATION AND LOCAL
GOVERNMENT AUTHORITY

MOMBA DISTRICT COUNCIL

Tender No LGA/142/2021-2022/W/01

For

CONSTRUCTION OF THREE IN ONE SEMIDETACHED STAFF HOUSES



Invitation for Tenders

Date 15th December 2021

1. The Government of Tanzania has set aside funds for the operation of the Momba District Council during the financial year 2021-2022. It is intended that part of the proceeds of the fund will be used to cover eligible payment under the contract for the **Construction of Three in One Semidetached Staff houses, bidnumber LGA/142/2021/2022/W/LOT01**
2. The Momba District Council now invites sealed tenders from eligible National contractors registered as civil and building contractors in class VI and above by contractor's registration board (CRB) For construction of **three in one Semidetached Staff houses, bid number LGA/142/2021/2022/W/LOT01**

SN	Bid Number	Description	Approximately Works to be executed	Eligible Bidder
1	LGA /142/2021/2022/W/ 01	Construction of Three in one Semidetached Staff Houses	<ul style="list-style-type: none">• Substructure• Frame structure• Walling• Roofing and gutter• Doors and windows• Finishing's (Floor, Ceiling and Plastering)• Painting and decorations• Sanitary ware• Electrical installation• Plumbing works and drainage system• Electrical and water connection	Building Works Contractors Registered in Class VI and above.

2. Tendering will be conducted through the **National Competitive bidding** procedures specified in the Public Procurement Regulations, 2012 Government Notice No. 446 and is open to

national Tenderers only as defined in the Regulations unless otherwise stated in the **Tender Data Sheet**.

3. Interested eligible Tenderers may obtain further information from and inspect the Tendering Documents at the office of the **Momba District Councilat Procurement Management Unit Office P.O.Box273Momba** from **7.30 am to 3.30 pmon** Mondays to Fridays inclusive except on public holidays.
4. A complete set of Tendering Document(s) in **English** and additional sets may be purchased by interested Tenderers on the submission of a written application to the address given under paragraph 4above.
5. All Tenders must be accompanied by a **Tender Security declaration** in the format provided in the Tendering Documents.
6. All Tenders in one original plus **two copies** properly filled in, and enclosed in plain envelopes must be addressed to **District Executive Director P.O.BOX 273 Momba. Delivered at Procurement Management Unit Office** at or before **Tuesday 28thDecember2021 at10.00 am**Tenders will be opened promptly thereafter in public and in the presence of Tenderers' representatives who choose to attend in the opening at the **Momba District Council Conference Hall**
7. Late tenders, portion of tenders, electronic tenders, and tenders not received, tenders not opened and not read out in public at the tender opening ceremony shall not be accepted for evaluation irrespective of the circumstance.

Regina L.Bieda
District Executive Director
Momba

SECTION II: INSTRUCTIONS TO TENDERERS

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A. Introduction

1. **Scope of Tender**
 - 1.1 The Procuring Entity indicated in the **Tender Data Sheet** invites Tenders for the construction of works as specified in the **Tender Data Sheet** and Section VII, Specification.
 - 1.2 The successful Tenderer will be expected to complete the works by the required completion date specified in the **Tender Data Sheet**.
2. **Source of Funds**
 - 2.1 The Government of the United Republic of Tanzania has set aside sufficient funds for the operations of the Procuring Entity named in the **Tender Data Sheet** during the Financial Year indicated in the **Tender Data Sheet**. It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the works as described in the **Tender Data Sheet**.

Or

The Government of the United Republic of Tanzania through Procuring Entity named in the **Tender Data Sheet** has applied for/received/ intends to apply for a [loan/credit/grant] from the financing institution named in the **Tender Data Sheet** towards the cost of the Project named in the **Data Sheet**. The United Republic of Tanzania intends to apply a part of the proceeds of this [loan/credit/grant] to payments under the Contract described in the **Tender Data Sheet**.
 - 2.2 Payments will be made directly by the Procuring Entity (or by financing institution specified in the **Tender Data Sheet** upon request of the Procuring Entity to so pay) and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring Entity.
3. **Eligible Tenderers**
 - 3.1 A Tenderer may be natural persons, companies or firms or public or semi-public agencies of Tanzania and foreign countries, subject to sub-Clause 3.4 or any combination of them with a formal intent or letter of 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 members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The joint venture, consortium, or

association shall nominate a Lead Member who shall have the authority to conduct all business for and on behalf of any and all the members of the joint venture, consortium, or association during the tendering process and, in the event the joint venture, consortium, or association is awarded the Contract, during contract execution. Unless specified in the **Tender Data Sheet**, there is no limit on the number of members in a joint venture, consortium, or association.

- 3.2 The Lead Member shall at the time of contract award confirm the appointment by submission of a Power of Attorney to the Procuring Entity.
- 3.3 Any Tender from a joint venture, consortium or association shall indicate the part of proposed contract to be performed by each party and each party shall be evaluated or post qualified with respect to its contribution only and the responsibilities of each party and shall not be substantially altered without prior written approval of the Procuring Entity.
- 3.4 The invitation for Tenders is open to all Tenderers as defined in the Public Procurement Regulations, 2013 – Government Notice No. 446, except as provided hereinafter.
- 3.5 National Tenderers shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Tanzania.
- 3.6 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 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.
 - b) have controlling shareholders in common; or
 - c) receive or have received any direct or indirect subsidy from any of them; or

- d) have the same legal representative for purposes of this Tender; or
- e) 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
- f) 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 Tenderers and subcontractors simultaneously; or
- g) Participated as a consultant in the preparation of the design or technical specifications of the works and related services that are the subject of the Tender.

3.7

A Tenderer may be ineligible if –

- (a) the Tenderer is declared bankrupt or, in the case of company or firm, insolvent;
- (b) payments in favour of the Tenderer is suspended in accordance with the judgment of a court of law other than a judgment declaring bankruptcy and resulting, in accordance with the national laws, in the total or partial loss of the right to administer and dispose of its property;
- (c) legal proceedings are instituted against such Tenderer involving an order suspending payments and which may result, in accordance with the national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of the property;
- (d) the Tenderer is convicted, by a final judgment, of any offence involving professional conduct;
- (e) the Tenderer is debarred and blacklisted in accordance with Section 62 of the Act or ineligible in accordance with Section 84(7) of the Act, from participating in public procurement for corrupt, coercive, collusive, fraudulent or obstructive practices, failure to abide with a Bid Securing Declaration, breach of a procurement contract, making false representation about his qualifications during tender proceeding or other grounds as may be deemed necessary by the Authority company or firm is found guilty of serious misrepresentation

with regard to information required for participation in an invitation to tender or to submit proposals.

- 3.8 Public or Semi-public owned enterprises in the United Republic of Tanzania may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration board or authorities and if they are not a dependent agency of the Government.
- 3.9 Tenderers shall provide to the Procuring Entity evidence of their eligibility, proof of compliance with the necessary legal, technical and financial requirements and their capability and, adequacy of resources to carry out the contract effectively.
- 3.10 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
- 3.11 Tenderers shall, if so indicated in the **Tender Data Sheet**, submit proposals relating to the nature, conditions and modalities of sub-contracting wherever the sub-contracting of any elements of the contract amounting to more than ten percent of the tender price is envisaged.
4. **One Tender per Tenderer**
- 4.1 A firm shall submit only one Tender, in the same tendering process, either individually as a Tenderer or as a partner in a joint venture.
- 4.2 No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same tendering process.
- 4.3 A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity.
- 4.4 A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.
5. **Cost of Tendering**
- 5.1 The Tenderer shall bear all costs associated with the preparation and submission of his Tender, and the Procuring Entity will in no case be responsible or liable for those costs except in the circumstances described in Section 97(5) (f) of the Public Procurement Act No. 9 of

2011.

6. Site Visit and Pre-Tender Meeting

- 6.1 The Tenderer, at the Tenderer's own responsibility and risk, is advised to visit and examine the Site of 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.
- 6.2 The Procuring Entity may conduct a site visit and a pre-tender meeting. The purpose of the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 6.3 The Tenderer's designated representative is invited to attend a site visit and pre-tender meeting which, if convened, will take place at the venue and time stipulated in the **TenderData Sheet**.
- 6.4 The Tenderer is requested as far as possible, to submit any questions in writing or electronic forms that provide record of the content of communication to reach the Procuring Entity before the pre-tender meeting. It may not be practicable at the meeting to answer all questions, but questions and responses will be transmitted in accordance with ITT sub-Clause 6.5.
- 6.5 Minutes of the pre-tender meeting, including the text of the questions raised and the responses given together with any responses prepared after the pre-tender meeting will be transmitted within three (3) days to all purchasers of the Tendering Documents. Any modification of the Tendering Documents listed in ITT sub-Clause 7.1 that may become necessary as a result of the pre-tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT sub Clause 9.2 and not through the minutes of the pre-tender meeting.

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	Special Conditions of Contract;
Section VI	Specifications;
Section VII	Drawings;
Section VIII	Bill of Quantities;
Section IX	Tender Forms; <ul style="list-style-type: none"> • Form of Tender and Appendix to Tender; • Forms of Qualification Information; • Letter of Acceptance; • Form of Contract Agreement
Section X	Tender Security; <ul style="list-style-type: none"> • Bid Securing Declaration or Tender Security Form • Performance Security Form • Bank Guarantee for Advance Payment Form
Section XI	Forms of Integrity

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. In case of discrepancies between the Invitation for Tender and the Tendering Documents listed in ITT sub-Clause 7.1, 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 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 Tendering Documents

8.1 A prospective Tenderer requiring any clarification of the Tendering Documents may notify the Procuring Entity in writing or electronic forms that provide record of the content of communication at the Procuring Entity's address indicated in the **Tender Data Sheet**.

8.2 The Procuring Entity will within three (3) working days

after receiving the request for clarification respond in writing or electronic forms that provide record of the content of communication to any request for clarification provided that such request is received no later than the fourteen (14) days prior to the deadline for the submission of competitive Tenders prescribed in ITT sub-Clause 22.1 and in the case of non-competitive methods, three (3) days prior to the deadline.

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 for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, the procuring Entity may modify the Tendering Documents by issuing addenda.

9.2 Any addendum issued including the notice of any extension of the deadline shall be part of the Tendering Document pursuant to ITT sub-Clause 7.1 and shall be communicated in writing or electronic forms that provide record of the content of communication to Tenderers to which the Procuring Entity provided the Tendering Documents.

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-ITT Clause 22.2.

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 comprise the following:

- a) The Form of Tender (in the format indicated in Section IX) 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 19;
- g) Written confirmation authorizing the signatory of the Tender to commit the Tenderer in accordance with Instructions to Tenderers ITT sub Clause 20.2; 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 **Section IX – Tender Forms: Form of Qualification Information**.

12.4 Tenders submitted by a joint venture, consortium or association 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 ITT 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 into by all partners 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 or Bid 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. Slice and Package

13.1

When tendering for more than one contract under the slice and package arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the

individual requirements for the slices or lots being tendered in regard to:-

- a) average annual turnover;
- b) particular experience including key production rates;
- c) financial means;
- d) personnel capabilities; and
- e) Equipment capabilities.

13.2 In case the Tenderer fails to fully meet any of these criteria, it may be qualified only for those slices 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 ITT 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 **Special Conditions of Contract**.

16. Tender Currencies

16.1 The unit rates and prices shall be quoted by the Tenderer entirely in Tanzania shillings or 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 Tenderer 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. If the Tenderer uses other rates of exchange, the provisions of ITT sub-Clause 30.1 shall apply. 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 Special Conditions of Contract are reasonable and responsive to ITT sub-Clause 16.1.

17. Tender Validity Period

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 22. 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 to extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing or by electronic forms that provide record of the content of communication. 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 or Bid Securing Declaration

18.1 Pursuant to ITT Clause 11, unless otherwise specified 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** or Bid Securing Declaration as specified in the **Tender Data Sheet** in the format provided in Section IV.

- 18.2 The Tender Security or Bid 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 or in another freely convertible currency, and it shall be in the form specified in the Tender Data Sheet which shall be in any of the following:
- a) a bank guarantee, an irrevocable letter of credit issued by a reputable bank, or an insurance bond issued by a reputable insurance firm of their choice located in any eligible country, in the form provided in the Tendering Documents or another form acceptable to the Procuring Entity and **valid for twenty eight (28) days beyond the end of the validity of the Tender**. This shall also apply if the period for Tender validity is extended. In either case, the form must include the complete name of the Tenderer; or,
 - b) a cashier's or certified check.
 - c) another security if indicated in the **Tender Data Sheet**
 - (i) sign the contract, or
 - (ii) furnish the required performance security
- 18.4 The Tender Security or Bid Securing Declaration shall be in accordance with the Forms included in Section VIII 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 ITT sub-Clause 18.9 are invoked.
- 18.6 Any Tender not accompanied by a Tender security in accordance with ITT sub-Clauses 18.1 or 18.3 shall be rejected by the Procuring Entity as non-responsive, pursuant to ITT Clause 28.
- 18.7 Unsuccessful Tenderers' Tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of Tender validity prescribed by the Procuring Entity

pursuant to ITT Clause 17. The procuring entity shall make no claim to the amount of the tender security, and shall promptly return the tender security document, after whichever of the following that occurs earliest:

- (a) the expiry of the tender security;
- (b) the entry into force of a procurement contract and the provision of a security for the performance of the contract if such a security is required by the solicitation documents;
- (c) the rejection by the procuring entity of all tenders;
- (d) the withdrawal of the tender prior to the deadline for the submission of tenders, unless the solicitation documents stipulate that no such withdrawal is permitted.

18.8 The successful Tenderer's Tender security will be discharged upon the Tenderer signing the contract, pursuant to ITT Clause 40, and furnishing the performance security, pursuant to ITT Clause 41.

18.9 The Tender security may be forfeited or the Tender securing declaration executed:

a) if a Tenderer

i) withdraws its Tender during the period of Tender validity specified by the Tenderer on the Tender Form except as provided for in ITT sub-Clause 17.2; or

ii) does not accept the correction of errors pursuant to ITT Clause 29; or

b) in the case of a successful Tenderer, if the Tenderer fails:

i) to sign the contract in accordance with ITT Clause 40; **or**

ii) to furnish performance security in accordance with ITT Clause 41.

18.10 The Tender Security or Bid Securing Declaration of a joint venture must be in the name of the joint venture submitting the Tender.

18.11 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 Clause 29; 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. Alternative Tenders by Tenderers

19.1 Tenderers shall submit offers that comply with the requirements of the Tendering Documents, including the basic Tenderer's technical design as indicated in the specifications and Drawings and Bill of Quantities. Alternatives will not be considered, unless specifically allowed for in the **Tender Data Sheet**. If so allowed, ITT sub-Clause 19.2 and 19.3 shall govern.

19.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **Tender Data Sheet** as will the method of evaluating different times for completion.

19.3 If so allowed in the **Tender Data Sheet**, Tenderers wishing to offer technical alternatives to the requirements of the Tendering Documents must also submit a Tender that complies with the requirements of the Tendering Documents, including the basic technical design as indicated in the specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity.

20. Format and Signing of Tender

20.1 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.

20.2 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 initialed by the person or persons signing the Tender.

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

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

21. Sealing and Marking of Tenders

- 21.1 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.
- 21.2 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 22.1.
- 21.3 In addition to the identification required in ITT sub-Clause 21.2, 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 ITT sub-Clause 22.1 and for matching purpose under ITT Clause 24.
- 21.4 If the outer envelope is not sealed and marked as required by ITT sub clause 21.2, the Procuring Entity shall assume

no responsibility for misplacement or premature opening of the Tender.

22. Deadline for Submission of Tenders

22.1 Tenders shall be received by the Procuring Entity at the address specified under ITT sub-Clause 21.2 no later than the date and time specified in the **Tender Data Sheet**.

22.2 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 9, 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.

22.3 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.

23. Late Tenders

23.1 The Procuring Entity shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 22.

23.2 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

24. Modification, Substitution and Withdrawal of Tenders

24.1 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 22.1.

24.2 The Tenderer's modification or substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 20 and 21 with the outer and inner envelopes additionally marked "**MODIFICATION**" or "**SUBSTITUTION**" or "**WITHDRAWAL**" as appropriate. The notice may also be sent by electronic mail, facsimile, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders.

24.3 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.

24.4 Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity or as extended pursuant to ITT sub-Clause 17.2 shall result in the forfeiture of the Tender security or execution of Tender securing declaration pursuant to ITT sub-Clause 18.9.

24.5 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

25. Opening of Tenders

25.1 The Procuring Entity will open all Tenders including modifications, substitution or withdraw notices made pursuant to ITT Clause 24, in public, in the presence of Tenderers' or 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.

25.2 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 24 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.

25.3 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 Procuring Entity may consider appropriate, will be announced by the Secretary of the Tender Board or his delegate at the opening.

- 25.4 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 the Tender opening shall not be considered further.
- 25.5 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 Tenderers Tender.
- 25.6 No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 23.
- 25.7 The Secretary of the appropriate Tender Board shall prepare minutes of the Tender opening. The record of the Tender opening shall include, as a minimum: the name of the Tenderer 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.
- 25.8 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. A copy of the record shall be distributed to all the Tenderers.
- 25.9 A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request.

26. Confidentiality

- 26.1 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 until the award to the successful Tenderer has been announced.
- 26.2 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.
- 26.3 Notwithstanding ITT sub-Clause 26.2, 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 or electronic forms that provides record of the content of communication.

27. Clarification of Tenders

27.1 To assist in the examination, evaluation, comparison of Tenders and post-qualification of the Tenderers, the Procuring Entity may, at its discretion, ask the Tenderer for a 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.

27.2 The request for clarification and the response shall be in writing or electronic forms that provide record of the content of communication. 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 29.

27.3 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 or electronic forms that provide record of the content of communication.

28. Preliminary Examination of Tenders

28.1 Prior to the detailed evaluation of Tenders, the Procuring Entity will determine whether each Tender

- (a) meets the eligibility criteria defined in ITT Clause 3;
- (b) has been properly signed;
- (c) is accompanied by the required securities; and
- (d) is substantially responsive to the requirements of the Tendering Documents.

The Procuring Entity's determination of a Tender's responsiveness will be based on the contents of the Tender itself.

28.2 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.

28.3 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.

28.4 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.

28.5 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.

29. Correction of Errors

29.1 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected 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.

29.2 The amount stated in the Tender will, be adjusted by the Procuring Entity in accordance with the above procedure for the correction of errors and, with, the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and the Tender Security may be forfeited or the Tender Securing Declaration may be executed in accordance with ITT sub-Clause 18.9.

30. **Conversion to Single Currency**

30.1 To facilitate evaluation and comparison, the Procuring Entity will convert all Tender prices expressed in the amounts in various currencies in which the Tender prices are payable to either:

a) in Tanzania Shillings at the selling exchange rate established for similar transactions by the Bank of Tanzania or a commercial bank in the United Republic of Tanzania;

or

b) a currency widely used in international trade, such as U.S. Dollars, at the selling rate of exchange published in the international press for the amount payable in foreign currency; and at the selling exchange rate established for similar transactions by the Bank of Tanzania in the United Republic of Tanzania for the amount payable in Tanzania Shillings.

30.2 The currency selected for converting Tender Prices to a common base for the purpose of evaluation, along with the source and date of the exchange rate, are specified in the **Tender Data Sheet**.

31. **Comparison of Tenders**

31.1 The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive in accordance with ITT Clause 28.

31.2 In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender Price by adjusting the Tender Price as follows:

a) making any correction for errors pursuant to ITT Clause 29;

b) excluding provisional sums and the provision, if any for contingencies in the Bill of Quantities, but including Day work , where priced competitively ; and

c) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITT sub-Clause 24.5.

31.3 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.

32. **National Preference**
- 32.1 Works utilizing this Standard Tendering Document shall be exclusively reserved for national contractors unless otherwise is stated in the **Tender Data Sheet**.
- 32.2 The Procuring Entity shall, in applying exclusive preference, use the Authority's register of Tenderers to determine whether or not Tenderers are qualified for exclusive preference.
- 32.3 A joint venture, consortium or an association between a foreign and local firm in which the contribution of the local firm in that joint venture or association is greater than sixty per cent, shall also be eligible to participate in the exclusive preference scheme.
33. **Determination of the Lowest Evaluated Tender**
- 33.1 The Tender with the lowest evaluated price from among those that are eligible, compliant and substantially responsive shall be the lowest evaluated Tender.
34. **Post-qualification of Tenderer**
- 34.1 If pre-qualification was not undertaken, post-qualification shall be performed.
- 34.2 Where the tender price of the lowest evaluated Tenderer is considered to be abnormally low, the Procuring Entity shall perform price analysis as part of the post-qualification. The following process shall apply:
- (a) The Procuring Entity may reject a tender if the Procuring Entity has determined that the price in combination with other constituent elements of the tender is abnormally low in relation to the subject matter of the procurement (scope of works or services) and raises concerns as to the ability of the Tenderer that presented that tender to perform the contract.
 - (b) Before rejecting an abnormally low tender, the Procuring Entity shall: request the Tenderer for an explanation of the tender or of those parts which it considers contribute to the tender being abnormally low; take account of the evidence provided in response to a request in writing; and subsequently verify the tender or parts of the tender being abnormally low.
 - (c) The decision of the Procuring Entity to reject a tender and reasons for the decision shall be recorded in the procurement proceedings and promptly communicated to the Tenderer concerned;

(d) The Accounting Officer (Procuring Entity) shall seek the approval of the Authority prior to rejecting a tender;

(e) Neither the Authority nor the Procuring Entity shall incur liability solely by rejecting abnormally tender; and

An abnormally low tender means, in the light of the Procuring Entity's estimate and of all the tenders submitted, the tender appears to be abnormally low by not providing a margin for normal levels of profit.

34.2 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 ITT sub-Clause 12.3.

34.3 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 ITT 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 Tenderers' qualifications.

34.4 A Procuring Entity may seek independent references of a Tenderer and the results of reference checks may be used in determining award of contract.

34.5 In case of a foreign company, a Procuring Entity shall seek independent reference of legal existence of a Tenderer from Tanzania diplomatic missions abroad or from any other reliable source.

34.6 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

35. Criteria of Award

35.1 Subject to ITT Clause 34 and 36, 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 3, and (b) is determined to be qualified to perform the Contract satisfactorily (c) successful negotiations have been concluded.

35.2 If, pursuant to ITT sub-Clause 13.1, this Contract is being let on a slice 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 Tenderers for award of more than one Contract.

36. Negotiations

36.1 Negotiations may be undertaken with the lowest evaluated Tender 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 solicitation documents;
- (c) a minor amendment to the special conditions of contract;
- (d) finalising payment arrangements;
- (e) mobilisation 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 finalised at the time of Tendering.

36.2 Where single source method was used or a competitive procurement method was used but only a single tender was received, negotiations may relate to other areas of the tender including the price tendered provided that the negotiation shall not increase price or affect the quality of the works.

36.3 Where negotiation fails to result into an agreement, the Procuring Entity may invite the next ranked Tenderer for negotiations. Where negotiations are commenced with the next ranked Tenderer, the Procuring Entity shall not reopen earlier negotiations.

37. Procuring Entity's Right to Accept any Tender and to Reject any or all Tenders

37.1 Notwithstanding ITT Clause 35, 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

or any obligation to inform the affected Tenderer or Tenderers.

37.2 Notice of the rejection of all Tenders shall be given promptly to all Contractors that have submitted Tenders.

37.3 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.

**38. Procuring Entities
Right to Vary
Quantities at the
Time of Award**

38.1 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.

**39. Notification of
Award**

39.1 Prior to awarding of the contract, the Procuring Entity shall issue a notice of intention to award the contract to all tenderers who participated in the tender in question giving them fourteen (14) days within which to submit complaints to the Procuring Entity thereof, if any.

39.2 Where no complaints have been lodged, 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 in writing or electronic forms that provide record of the content of communication. The Letter of Acceptance will state the sum that the Procuring Entity will pay the successful Tenderer in consideration for the execution of the scope of works as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price).

39.3 The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing evidence of registration with relevant statutory bodies within the country and furnishing the Performance Security in accordance with ITT Clause 41 and signing the Contract in accordance with sub-Clause 40.2

39.4 Upon the successful Tenderer's furnishing of the performance security pursuant to ITT Clause 41, the Procuring Entity will promptly notify unsuccessful Tenderers, the name of the winning Tenderer and the Contract amount and will discharge the Tender security or Tender securing declaration of the unsuccessful Tenderers pursuant to ITT sub Clause 18.7.

39.5 If, after notification of award, a Tenderer wishes to ascertain the grounds on which its Tender was not selected, it should address its request to the Secretary of the appropriate Tender Board that authorized the award of Contract. The Secretary will promptly respond in writing or electronic forms that provide record of the content of communication to the unsuccessful Tenderer citing grounds for rejection of its Tender without disclosing information about other Tenderers.

40. Signing of Contract

40.1 Promptly after notification, Procuring Entity shall send the successful Tenderer the Agreement and Special Conditions of Contract, incorporating all agreements between the parties obtained as a result of Contract negotiations.

40.2 Within twenty eight (28) days of receipt of the Contract Agreement Form, the successful Tenderer shall sign and date the Contract and return it to the Procuring Entity.

40.3 Upon the receipt of the signed Agreement from the Tenderer, the Procuring Entity will, within one week, notify the other Tenderers that their Tenders have been unsuccessful.

41. Performance Security

41.1 Within twenty eight (28) days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount stipulated in the **Tender Data Sheet and the Special Conditions of Contract**, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.

41.2 If the Performance Security is provided by the successful Tenderer, it shall be in the form specified in the Tender Data Sheet which shall be in any of the following:

- (a) cash, certified cheque, cashier's or manager's cheque, or bank draft;
- (b) irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank, the letter shall be confirmed or authenticated by a reputable local bank;
- (c) bank guarantee confirmed by a reputable local bank or, in the case of a successful foreign Tenderer, bonded by a foreign bank; or
- (d) surety bond callable upon demand issued by any reputable surety or insurance company.

Any Performance Security submitted shall be enforceable in

the United Republic of Tanzania.

- 41.3 Failure of the successful Tenderer to comply with the requirements of ITT sub-Clause 41.1 shall constitute sufficient grounds for cancellation of the award and any other remedy the Procuring entity may take under the Contract and the Procuring entity may resort to awarding the Contract to the next ranked Tenderer.
- 42. Advance Payment**
- 42.1 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**.
- 42.2 The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section IX. 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 Special Conditions of Contract.
- 43. Adjudicator**
- 43.1 The Procuring Entity proposes the person named in the Tender Data Sheet to be appointed as Adjudicator under the Contract, at an hourly fee specified in the **Tender Data Sheet**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.
- 44. Fraudulent, Corrupt, Coercive, Collusive or Obstructive Practices**
- 44.1 The Government of the United Republic of Tanzania requires that Procuring entities (including beneficiaries of Government funded projects and procurement) as well as Tenderers/Suppliers/Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Government.
- a) defines, for the purpose of this provision, the terms set forth below as follows:-
- i. "corrupt practice" means the offering, giving receiving or soliciting of anything of value to influence the action of a public officer in the procurement process or contract execution;

- ii. “coercive practice” means impairing or harming, or threatening to impair or harm directly or indirectly, any party or the property of the party for the purpose of influencing improperly the action or that party in connection with public procurement or in furtherance of corrupt practice or fraudulent practice;
- iii. collusive practices” means impairing or harming, or threatening to impair or harm directly or indirectly, any part or the property of the Party for the purpose of influencing improperly the action or a part or in connection with public procurement or government contracting or in furtherance of a corrupt practice or a Fraudulent Practice
- iii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government or a public body and includes collusive practices among Tenderers, prior to or after submission designed to establish tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition;
- iv) “obstructive practice” means acts intended to materially impede access to required information in exercising a duty under this Act;
- b) Will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt, coercive, collusive, fraudulent or obstructive practices in competing for the contract;
- c) In pursuit of the policy defined in ITT sub-Clause 44.1 the Government will cancel the portion of the funds allocated to a contract for goods, works, or services if it at any time determines that corrupt, coercive, collusive, fraudulent obstructive or fraudulent practices were engaged in by representatives of the procuring entity or approving authority or of a beneficiary of the funds furring the procurement or the execution of that contract, without the procuring entity or approving authority having taken timely and appropriate action satisfactory to the Government of the united Republic of Tanzania to remedy the situation;
- d) Declare a firm ineligible for a period of ten years, to

be awarded a public-financed contract if it at any time it determines that the firm has engaged in corrupt, coercive, collusive, fraudulent or obstructive practices in competing for, or in executing, a public – financed contract.

- 44.2 The Government of the United Republic of Tanzania reserves the right, where a firm has been found by a foreign country, international organization or other foreign organization to have engaged in corrupt, coercive, collusive, fraudulent or obstructive practices, to declare that such a firm is ineligible, for a period of ten years to be awarded a public financed Contract in the United Republic of Tanzania.
- 44.3 The Government of the United Republic of Tanzania will have the right to require that, in contract financed by the Government of the United Republic of Tanzania a provision be included requiring suppliers and contractors to permit the Government of the United Republic of Tanzania to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Government of the United Republic of Tanzania.
- 44.4 Any communications between the Tenderer and the Procuring Entity related to matters of alleged corruption, coercion, collusion, fraudulent or obstruction practices must be made in writing or electronic forms that provide record of the content of communication.

G. Review of Procurement Decisions

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| 45. Right to Review | 45.1 | A Tenderer who claims to have suffered or that may suffer any loss or injury as a result of breach of a duty imposed on a Procuring Entity or an approving authority in the course of these procurement proceedings may seek a review in accordance with the procedure set out under this Section. |
| 46. Time Limit on Review | 46.1 | The Tenderer shall submit an application for review within twenty eight (28) days of the Tenderer becoming or should have become aware of the circumstances giving rise to the complaint or dispute. |
| 47. Submission of Applications for Review | 47.1 | Any application for administrative review shall be submitted in writing or electronic forms that provide record of the content of communication to the Accounting Officer of a Procuring Entity and a copy shall be served to the Public Procurement Regulatory Authority (PPRA) at the address shown in the Tender Data Sheet . |

- 47.2 The application for administrative review shall include:
- a) details of the procurement requirements to which the complaint relates;
 - b) details of the provisions of the Act, Regulation or provision that has been breached or omitted;
 - c) an explanation of how the provisions of the Act, Regulation or provision has been breached or omitted, including the dates and name of the responsible public officer, where known;
 - d) documentary or other evidence supporting the complaint where available;
 - e) remedies sought; and
 - f) any other information relevant to the complaint.

47.3 The head of a procuring entity shall not entertain a complaint or dispute or continue to do so after the procurement contract has entered into force.

48. Decision by the Head of Procuring Entity

- 48.1 The head of a Procuring Entity shall, within fourteen (14) days after receipt of the complaint or dispute, deliver a written decision which shall indicate:
- a) whether the application is upheld in whole, in part or rejected;
 - b) the reasons for the decision; and
 - c) any corrective measures to be taken.

48.2 Where the head of a Procuring Entity does not issue a decision within the time specified in ITT sub-Clause 48.1, the Tenderer submitting the complaint or dispute or the procuring entity shall be entitled to institute proceedings under ITT sub-Clause 49.1 within fourteen (14) days after such specified time and upon instituting such proceedings, the competence of the head of a Procuring Entity to entertain the complaint or dispute shall cease.

49. Review by the Public Procurement Appeals Authority (PPAA)

- 49.1 Complaints or disputes which,
- (a) are not settled within the specified period under ITT sub-Clause 47.1;
 - (b) are not amicably settled by the accounting officer; or

(c) arise after the procurement contract has entered into force pursuant to ITT Clause 39,

shall be referred to the Appeals Authority within fourteen days from the date when the Tenderer received the decision of the accounting officer or, in case no decision is issued after the expiry of the time stipulated under ITT sub-Clause 47.1 or when the Tenderer become aware or ought to have become aware of the circumstances giving rise to the complaint or dispute pursuant to ITT sub-Clause 46.1.

49.2 PPAA may be contacted at the address shown in the **Tender Data Sheet**.

Tender Data Sheet (TDS)

The following specific data for the works to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

TDS Clause Number	ITT Clause Number	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
A. Introduction		
1.	1.1	The Procuring Entity is: Momba District Council P.O.BOX 273 Momba-Tunduma.
2.	1.1	Name of Project is: Construction of 3 IN I Semidetached Staff House routine) Bid Number LGA/142/2021-2022/W/01
3.	1.2	The expected completion date of the works is: 180Days
4.	2.1	Name of financing institution is: Central Government Name of the Procuring Entity is: Momba District Council P.O.BOX 273 Momba. Financial Year 2021/2022 and Description of the works <ul style="list-style-type: none"> • Substructure • Frame structure • Walling • Roofing and gutter • Doors and windows • Finishing's (Floor, Ceiling and Plastering) • Painting and decorations • Sanitary ware • Electrical installation • Plumbing works and drainage system • Electrical and water connection
5.	2.2	The loan/ credit number is: Not applicable.
6.	3.1	Maximum number of members in the joint venture, consortium or association shall be Not applicable Eligible tenderers are only Tenderers registered as Civil works Contractors in Class VI and above with the Contractors Registration Board are eligible.
7.	6.3	Pre-tender meeting shall not applicable.

B. Tendering Documents

9.	7.2	The number of copies to be completed and returned with the tender is One Original and Two copies.
10.	8.1	Address for clarification of Tendering Document is District Executive Director P.O. Box 273 Momba.

C. Preparation of Tenders

12.	10.1	Language of Tender and all correspondence shall be inEnglish
13	11.1h	Other information or materials required to be completed and submitted by Bidders : <ul style="list-style-type: none"> • Current business license relating to bid applied • A valid TIN and certificate. • Attach evidence of recent performed contracts of similar nature of recent two years including the names and addresses of the Employers for verification. For Example Certificates of Completion, Receipts, copy of payment voucher, invoices from any Procurement Entity. This will be added advantage to experienced contractor • Contractors Registration board certificate • Up dated CRB Annual subscription fees • Signed Curriculum vitae (CV) of Technical Personnel to be engaged in this contract • List of Equipments/Plants to be engaged in this project, whether owning or hiring. • Program of work • Certificate of Incorporation • Information regarding any litigation
14.	12.4	In the case of joint venture, consortium or association each partner shall submit information required under Clause ITT Clause 12.4. In addition the Tenderer shall furnish the following, Not Applicable
14.	15.4	The price shall be Fixed
15.	16.1	The currency in which the prices shall be quoted shall be Tanzanian Shillings
16.	16.2	The authority for establishing the rates of exchange shall be Bank of Tanzania.
17.	17.1	The Tender validity period shall be 90 days
18.	18.1	The Tendered Should attach Bid Security Declaration in its tender Document as the Format provided
19.	18.3	The Tender Security shall be in the form of tender Security Declaration provided

19.	19.1	Alternative Tenders are not allowed in this Tender.
20.	19.2	Alternative time for completion not applicable
21.	20.1	In addition to the original of the Tender, the Tendered should submit Two copies of the Tender.
22.	20.2	Written confirmation of authorization are registered special power of attorney

D. Submission of Bids

23.	21.2 a)	Tenders shall be submitted to: District: Momba District Council Street Address: Momba District Council, Box 273, Momba Building: Head quarter-Momba District Council Room: Procurement Management Unit Office
24.	21.2 b)	Project name Construction of 3 in 1 Semidetached Staff House Bid Number LGA/142/2021-2022/W/01 Time and date for submission 10.00am Tuesday 27th December 2021
25.	22.1	The deadline for Tender submission is The deadline for Tender submission is a) Day Tuesday b) Date 27th December 2021. c) Time 10.00am
26.	22.3	The extension of the deadline for submission of Tenders shall be made not later than 7 Days before the expiry of the original deadline.

E. Opening and Evaluation of Tenders

27.	25.1	The Tender opening shall take place at: Country: Tanzania District: Momba. Street address: Momba District Council P.O.BOX 273 Momba Tunduma
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		Building: Head quarter Momba District Council Buildings Room: Momba District Council Hall.
28	30.2	The currency that shall be used for tender evaluation and comparison purposes to convert all Tender Prices expressed in various currencies into a single currency is: Tanzanian Shillings
29.	32.1	a) Domestic preference not applicable
30.	38.1	Percentage for quantities increase or decrease is 15%

F. Award of Contract

31.	41.1	The amount of Performance Security shall of the contract sum not applicable
32.	41.2	The Performance Security shall be in the form not applicable
33.	42.1	The Advance Payment shall be not applicable
34.	43.1	The proposed Adjudicator for the project is: National contraction council rate shall be as per rule and regulation of National contractor's council

G. Right to Review

34.	47.1	The address to submit copies of complaints: Chief Executive Officer, Public Procurement Regulatory Authority (PPRA) PPF Tower 8th Floor, P.O. Box 49, DAR ES SALAAM. Tel: 2133466, 2121236/7 Fax: 2121238 email: ceo@ppra.go.tz Website: www.ppra.go.tz
35.	49.2	The address for Appeal to PPAA: The Secretary, Public Procurement Appeals Authority, Sukari House 1 st Floor, P.O. Box 9310, DAR ES SALAAM. Tel: 2120451

SECTION IV: GENERAL CONDITIONS OF CONTRACT

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A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses 24 and 25 hereunder.

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Tender.

Compensation Events are those defined in Clause 47 hereunder.

The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 55.1.

The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3 below.

The **Contractor** is a person or corporate body whose Tender to carry out the Works has been accepted by the Employer.

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

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

Days are calendar days; months are calendar months.

Dayworks are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

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

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

The **Defects Liability Period** is the period named in the **Special Conditions of Contract** and calculated from the Completion Date.

Drawings include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

The **Employer** 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 to construct the Works.

Force Majeure means an event beyond the control of the Contractor and not involving the Contractor's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Employer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes

The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the **Special Conditions of Contract**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

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

Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

The **Project Manager** is the person named in the **Special Conditions of Contract** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

The **Site** is the area defined as such in the **Special Conditions of Contract**.

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

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

The **Start Date** is given in the **Special Conditions of Contract**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

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 that are needed for construction or installation of the Works.

A **Variation** is an instruction given by the Project Manager that varies the Works.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the **Special Conditions of Contract**.

- 2. Interpretation**
- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the **Special Conditions of Contract**, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
- (1) Agreement,
 - (2) Letter of Acceptance,
 - (3) Contractor's Tender,
 - (4) Special Conditions of Contract,
 - (5) Conditions of Contract,
 - (6) Specifications,
 - (7) Drawings,
 - (8) Bill of Quantities, and
 - (9) Any other document listed in the **Special Conditions of Contract** as forming part of the Contract.
- 3. Language and Law**
- 3.1 The language of the Contract and the law governing the Contract are stated in the **Special Conditions of Contract**.
- 4. Confidentiality**
- 4.1 The Service Providers, their Subcontractors, and the Personnel of either of them shall not disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.
- 5. Project Manager's Decisions**
- 5.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 6. Delegation**
- 6.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after

notifying the Contractor.

- 7. Communications** 7.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 8. Subcontracting** 8.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 9. Other Contractors** 9.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the **Special Conditions of Contract**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification
- 10. Personnel** 10.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the **Special Conditions of Contract**, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.
- 10.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 11. Employer's and Contractor's Risks** 11.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- 12. Employer's Risks** 12.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
 - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.

(a) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

12.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to

- (a) a Defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
- (c) the activities of the Contractor on the Site after the Completion Date.

13. Contractor's Risks

13.1 From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.

14. Insurance

14.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the **Special Conditions of Contract** for the following events which are due to the Contractor's risks:

- (a) loss of or damage to the Works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) personal injury or death.

14.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start 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.

14.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect 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.

14.4 Alterations to the terms of insurance shall not be made without the

- approval of the Project Manager.
- 14.5 Both parties shall comply with any conditions of the insurance policies.
- 15. Site Investigation Reports**
- 15.1 The Contractor, in preparing the Tender, shall rely on any Site Investigation Reports referred to in the **Special Conditions of Contract**, supplemented by any information available to the Tenderer.
- 16. Queries about the Special Conditions of Contract**
- 16.1 The Project Manager will clarify queries on the **Special Conditions of Contract**.
- 17. Contractor to Construct the Works**
- 17.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 18. Commencement and Completion**
- 18.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 19. Approval by the Project Manager**
- 19.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 19.2 The Contractor shall be responsible for design of Temporary Works.
- 19.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 19.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 19.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
- 20. Protection of the Environment**
- 20.1 The Contractors shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.
- 20.2 The Contractors shall ensure that emissions, surface discharges and effluent from his activities shall not exceed prescribed values in the environmental laws.
- 21. Labour Laws**
- 21.2 The Contractor shall comply with all the relevant labour laws

applicable in the Country, including laws relating to workers employment, working hours, health, safety, welfare, and immigration and shall allow them all their legal rights.

- 21.2 The Contractor shall require his employees to obey all applicable laws, including those concerning safety at work.
- 22. Health and Safety**
- 22.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of his personnel.
- 22.2 The Contractor shall ensure that first aid facilities are available at all times at the site and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- 22.3 The Contractor shall notify the Employer details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to the property, as the Employer may reasonably require.
- 22.4 The Contractor shall conduct an HIV-Aids awareness programme, and shall take other such measures as specified in the **Special Conditions of Contractor** to reduce the risk of transfer of HIV virus between and among Contractor personnel, the Employers Staff and the surrounding community.
- 23. Discoveries**
- 23.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
- 24. Possession of the Site**
- 24.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the **Special Conditions of Contract**, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.
- 25. Access to the Site**
- 25.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
- 26. Instructions, Inspections and Audits**
- 26.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 26.2 The Contractor shall permit the Government of the United Republic of Tanzania to inspect the Contractor's accounts and

records relating to the performance of the Contractor and to have them audited by auditors appointed by the Government of the United Republic of Tanzania, if so required by the Government of the United Republic of Tanzania

27. Disputes

27.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.

28. Procedure for Disputes

28.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

28.2 The Adjudicator shall be paid by the hour at the rate specified in the **Tender Data Sheet** and **Special Conditions of Contract**, together with reimbursable expenses of the types specified in the **Special Conditions of Contract**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

28.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the **Special Conditions of Contract**.¹

29. Replacement of Adjudicator

29.1 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the **Special Conditions of Contract** at the request of either party, within 14 days of receipt of such request.

B. Time Control

- 30. Programme**
- 30.1 Within the time stated in the **Special Conditions of Contract**, the Contractor shall submit to the Project Manager for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 30.2 An update of the Programme shall be a programme 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.
- 30.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the **Special Conditions of Contract**. If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the **Special Conditions of Contract** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.
- 30.4 The Project Manager's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events
- 31. Extension of the Intended Completion Date**
- 31.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 31.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

- 32. Acceleration**
- 32.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 32.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they shall be incorporated in the Contract Price and treated as a Variation.
- 33. Delays Ordered by the Project Manager**
- 33.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 34. Management Meetings**
- 34.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 34.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 35. Early Warning**
- 35.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 35.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

- 36. Identifying Defects**
- 36.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover

and test any work that the Project Manager considers may have a Defect.

37. Tests

37.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

38. Correction of Defects

38.1 The Project Manager 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 **Special Conditions of Contract**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

38.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

38.3 If the Contractor has not corrected a defect within the time specified in the Employer's notice, a penalty for lack of performance will be paid by the Contractor. The amount to be paid will be calculated as a percentage of the cost of having the defect correct, assessed as described in Clause 49.

39. Uncorrected Defects

39.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

D. Cost Control

40. Bill of Quantities

40.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

40.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

41. Changes in the Quantities

41.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.

41.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.

41.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the

Bill of Quantities.

42. Variations

42.1 All Variations shall be included in updated Programmes produced by the Contractor.

43. Payments for Variations

43.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

43.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work is above the limit stated in Sub-Clause 41.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

43.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

43.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

43.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

44. Cash Flow Forecasts

44.1 When the Programme is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

45. Payment Certificates

45.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

45.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor within twenty eight 28 days of receipt of the certificate from the contractor.

45.3 The value of work executed shall be determined by the Project Manager.

45.4 The value of work executed shall comprise the value of the

quantities of the items in the Bill of Quantities completed.

45.5 The value of work executed shall include the valuation of Variations and Compensation Events.

45.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

45.7 The Project Manager shall not bound to certify any payment, if the net amount, after all retentions and deductions would be less than minimum amount of Interim Payment Certificate stated in the **Special Condition of Contract.**

46. Payments

46.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made as indicated in the **Special Conditions of Contract.**

46.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

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

46.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

47. Compensation Events

47.1 The following shall be Compensation Events:

(a) The Employer does not give access to a part of the Site by the Site Possession Date as per Clause 24.1.

(b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.

(c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.

(d) The Project Manager instructs the Contractor to uncover or to

carry out additional tests upon work, which is then found to have no Defects.

- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.
- (l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.

47.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

47.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.

47.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

48. Taxes

48.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of tenders for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 50.

49. Currencies

49.1 Where payments are made in currencies other than the Tanzania Shillings, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Tender.

50. Price Adjustment

50.1 The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 45.1, shall be adjusted in respect of the rise or fall in the cost of labor, Contractor's Equipment, Plant, materials, and other inputs to the Works, by applying to such amounts the formulae prescribed in this clause.

50.2 To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

50.3 The adjustment to be applied to amount payable to the Contractor as certified in Payment Certificates shall be determined formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be as follows;

$$P_n = a + b \frac{L_n - L_o}{L_o} + c \frac{M_n - M_o}{M_o} + d \frac{E_n - E_o}{E_o} + etc.$$

where;

P_n is a price adjustment factor to be applied to the amount in each specific currency for the payment of the work carried out in the subject month, where such variations and daywork are not otherwise subject to adjustment;

a is a constant, specified in the **Appendix to Tender**, representing the nonadjustable portion in contractual payments;

b, c, d, etc., are weightings or coefficients representing the estimated proportion of each cost element (labor, materials, equipment usage, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the **Appendix to Tender**; the sum of a, b, c, d, etc., shall be one;

L_n, M_n, E_n, etc., are the current cost indices or reference prices of the cost elements in the specific currency of origin for month "**n**," determined

pursuant to Sub-Clause 50.5, applicable to each cost element; and

Lo, Mo, Eo, etc., are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 50.5

The value of net work done, certified by the Project Manager, in any monthly Interim or Final Certificate as payable by the Employer to the Contractor before deduction of any retention money shall be increased or decreased by an amount of 'F'.

where;

The effective value **Pc** of work done which is to be subjected to increase or decrease shall be the difference between:

- (i) the amount which, in the opinion of the Project Manager, is due to the Contractor under Clause 45 (before deduction of retention money and before deducting sums previously paid on account) less:
 - any amount for payment or repayment of any advance payment;
 - any amount for materials on site (if any);
 - any amounts for nominated sub-contractors (if any)
 - any amounts for any other items based on actual cost or current prices; or
 - any sums for increase or decreases in the Contract Price paid under this Sub-Clause

and

- (ii) the amount calculated in accordance with (i) above of this Sub-clause and included in the last preceding statement.

50.4 The sources of indices shall be those listed in the **Appendix to Tender**, as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor's proposed source of supply of inputs on the basis of which his Contract Price and expected foreign currency requirements shall have been computed. As the proposed basis for price adjustment, the Contractor shall have submitted with his tender the tabulation of Weightings and Source of Indices in the **Appendix to Tender**, which shall be subject to approval by the Engineer.

50.5 The base cost indices or prices shall be those prevailing on the day 28 days prior to the latest date for submission of tenders. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.

50.6 If the Contractor fails to complete the Works within the time for completion prescribed under Clause 58 adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favorable to the Employer, provided that if an extension of time is granted pursuant to Clause 28, the above provision shall apply only to adjustments made after the expiry of such extension of time.

50.7 The weightings for each of the factors of cost given in the **Appendix to Tender** shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced, or inapplicable as a result of varied or additional work already executed or instructed under Clause 43 or for any other reason.

51. Retention

51.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the **Special Conditions of Contract** until Completion of the whole of the Works.

51.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the other half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

51.3 On completion of the whole Works, the Contractor may substitute retention money with an "on demand" Bank guarantee.

52. Liquidated Damages

52.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the **Special Conditions of Contract** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the **Special Conditions of Contract**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

52.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 46.1.

52.3 If the Contractor has not corrected a defects within the time specified in the Employer's notice, the Employer will assess the cost of having the defect corrected, the Contractor will pay this amount, and a penalty for lack of performance calculated as described in Clause 38.

53. Bonus

53.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the **Special Conditions of Contract** for each

day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

54. Advance Payment

54.1 The Employer shall make advance payment to the Contractor of the amounts stated in the **Special Conditions of Contract** by the date stated in the **Special Conditions of Contract**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

54.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

54.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

55. Performance Securities

55.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

55.2 Where circumstances necessitate the amendment of the contract after signature, and such amendment is effected, the Employer shall require the Contractor to provide additional Performance Security to cover for any cumulative increase of more than ten percent of the Initial Contract Price.

56. Dayworks

56.1 If applicable, the Dayworks rates in the Contractor's Tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

56.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

56.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

57. Cost of Repairs

57.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

58. Completion Certificate

58.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.

59. Taking Over

59.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

60. Final Account

60.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

61. Operating and Maintenance Manuals

60.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **Special Conditions of Contract**.

60.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **Special Conditions of Contract**, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the **Special Conditions of Contract** from payments due to the Contractor.

62. Termination

62.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

62.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has

not been authorized by the Project Manager;

- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
- (e) the Project Manager 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 determined by the Project Manager;
- (f) the Contractor does not maintain a Security, which is required; and
- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the **Special Conditions of Contract**.
- (h) if the Contractor, in the judgment of the Employer has engaged in corrupt, coercive, collusive, obstructive or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph:

“corrupt practice means the offering, giving receiving or soliciting of anything of value to influence the action of a public officer in the procurement process or contract execution;

“coercive practice” means impairing or harming, or threatening to impair or harm directly or indirectly, any party or the property of the party for the purpose of influencing improperly the action or that party in connection with public procurement or in furtherance of corrupt practice or fraudulent practice;

collusive practices” means impairing or harming, or threatening to impair or harm directly or indirectly, any part or the property of the Party for the purpose of influencing improperly the action or a part or in connection with public procurement or government contracting or in furtherance of a corrupt practice or a Fraudulent Practice

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government or a public body and includes collusive practices among tenderers, prior to or

after submission designed to establish tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition;

“obstructive practice” means acts intended to materially impede access to required information in exercising a duty under this Act;

62.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 62.2 above, the Project Manager shall decide whether the breach is fundamental or not.

62.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

62.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

63. Payment upon Termination

63.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the **Special Conditions of Contract**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

63.2 If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

64. Property

64.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor’s default.

65. Release from Performance

65.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

66. Suspension of Financing

66.1 In the event that the source of financing is suspended to the Employer, from which part of the payments to the Contractor are

being made:

- (a) The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the financing agency's suspension notice.
- (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 46.1, the Contractor may immediately issue a 14-day termination notice.

67. Force Majeure 67.1 Notwithstanding the provisions of GCC Clauses 31 and 52, the Contractor shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

SECTION V: SPECIAL CONDITIONS OF CONTRACT

Special Conditions of Contract (SCC)

The following Special Conditions of Contract shall supplement the General editions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. Except where otherwise indicated, all Special Conditions of Contract should be filled in by the Employer prior to issuance of the Tendering Documents. Schedules and reports to be provided by Employer should be annexed.

SCC Clause	GCC Clause	Description
1	1.1	<p style="text-align: center;">General</p> <p>The Employer is Momba District Council P.O.BOX 273MombaTunduma The Adjudicator is National Contractors council The Defects Liability Period is 180 days. The Project Manager is Eng.EldarusSalumu,District Engineer, Momba District Council P.O.Box273Momba-Tunduma</p> <p>The name and identification number of the Contract is Construction of 3 in1 Semidetached Staff Houses Bid Number LGA/142/2020-2021/W/01</p> <ul style="list-style-type: none"> • Substructure • Frame structure • Walling • Roofing and gutter • Doors and windows • Finishing's (Floor, Ceiling and Plastering) • Painting and decorations • Sanitary ware • Electrical installation • Plumbing works and drainage system • Electrical and water connection <p>The Start Date shall be</p> <p>The Intended Completion Date for the whole of the Works shall be</p> <p>The following documents also form part of the Contract Documents forming part of the Contract Minutes of Clarifications, Ant-bribery memorandum, Working</p>

		Program, bidsecurity, Minutes of Negotiation The Site is located at Momba District Council and is defined in Bills of Quantities and Working drawings
2.	2.2	Indicate whether sectional completion is specified Not applicable
3.	2.3(9)	List other documents that form part of the contract if any Minutes of Clarifications, Ant-bribery memorandum, Working Program, Bidsecurity, Minutes of Negotiation
4.	3.1	The language of the Contract documents is English . The law that applies to the Contract is the Law of Tanzania .
5.	9.1	Include the Schedule of Other Contractors, if any. Not applicable
6.	10.1	Include the Schedule of Key Personnel. 1. Site Engineer- Registered Graduate/Professional Engineer with not less than 2 years experience. 2. Site Manager - 1, should be Professional Civil engineer with not less than 3 years' experience 3. Civil Technician -1, Should be with not less than 5 years site experience Site Agent
7.	14.1	The minimum insurance covers shall be: (a) loss of or damage to the Works, Plant, and Materials 3,000,000/ (b) loss of or damage to Equipment 3,000,000/ (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract 2,000,000/ (d) Personal injury or death 3,000,000/
8.	15.1	Site Investigation Reports available to the Tenderer are Not applicable
9.	22.4	The other measures include: a. Minimizing the number of migrant workers employed on the project and household in the site camp b. Providing access to voluntary counseling and testing (VCT) c. Providing psychological support and health care including prevention and treatment of opportunistic infections for workers infected and affected, as well as their families d. Providing condoms (male and female) to workers
10.	24.1 & 47.1	The Site Possession Date shall be three days after signing the Contract

11.	28.2	
12.	28.3	Arbitration will take place at Momba District Council P.O.BOX 273, Mombain accordance with rules and regulations published by NCC (National Construction Council)using NCC rules and regulations
13.	29.1	Appointing Authority for the Adjudicator National Construction Council
Time Control		
14.	30.1	The Contractor shall Submit a Programme for the Works within 7 days of delivery of the Letter of Acceptance.
15.	30.3	The period between Programme updates is 14 days .
16.	30.3	The amount to be withheld by the Project Manager in the case the contractor does not submit an updated programme is: 0.1% of Contract value per week
Quality Control		
17.	38.1	The Defects Liability Period is 180 days .
Cost Control		
18	45.1	The interest rate shall be above prevailing interest rate for commercial borrowing from the contractors bank Not applicable
19.	47.1	Minimum Amount of Interim Payment Certificate will be 5% of Contract value
21.	50	The contract is not subject to price adjustment in accordance with Clause 50 of the General Conditions of Contract.
22.	51.1	The amount of retention is 5% of value of works of Interim Payment Certificate.
		Limit of retention will be 10% of contract price.
23.	52.1	The amount of liquidated damages is 0.1% of contract price per day
	52.1	The maximum amount of liquidated damages 10%
24.	53.1	The bonus for early completion is Not applicable .
25.	54.1	The amount of advance payment shall be Not applicable
		Monthly Recovery of Advance Payment will be percent of amount

		of Interim Payment Certificate Not applicable
26.	55.1	The Performance Security shall be Not applicable Note: a minimum amount equivalent to 10 to 15 percent of the contract price.
		Finishing the Contract
27.	61.1	As built drawings shall be supplied by the contractor by Not applicable Operating manual shall be supplied by the contractor by Not applicable
28.	61.2	The amount to be withheld by the Project Manager in the case the contractor does not submit as built drawings is Not applicable The amount to be withheld by the Project Manager in the case the contractor does not submit operating manual is Not applicable
29.	62.2 (g)	Number of days for which the maximum amount of liquidated damages can be paid is 30 Days
30.	63.1	The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Works, is 10%

SECTION VI: SPECIFICATIONS

Insert here sets of precise and clear specifications to respond realistically and competitively to the requirements of the Employer.

SECTION VII: DRAWINGS

SECTION VIII: BILL OF QUANTITIES

SECTION IX: FORMS OF TENDER

1. FORM OF TENDER

.....[date]

To:[name and address of Employer]

We offer to execute the..... [name and identification number of contract] in accordance with the Conditions of Contract accompanying this tender for the Contract Price of..... [amount in numbers], [amount in words] [name of currency].

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one foreign equals [insert local]	Inputs for which foreign currency is required
(a)			
(b)			

The advance payment required is:-

Amount	Currency
(a)	
(b)	

We accept the appointment of..... [name proposed in Tender Data Sheet] as the adjudicator.

or

We do not accept the appointment of..... [name proposed in Tender Data Sheet] as the Adjudicator, and propose instead that..... [name] be appointed as Adjudicator, whose daily fees and biographical data are attached.

We are not participating, as tenders, in more than one tender in this tendering process other than alternative tenders in accordance with the tendering documents.

With reference to ITT Sub-Clause 3.11, it is our intention to subcontract approximately..... [insert the percent] percentage of the Tender /Contract Price, details of which are provided herein.

Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the contract has not been declared ineligible by the Government of the United Republic of Tanzania under Tanzania's laws or any other official regulations.

This tender and your written acceptance of it shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any tender you receive.

We hereby confirm that this tender complies with the tender validity and tender security required by the tendering documents and specified in the Tender Data Sheet.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Tendered: _____

Address: _____

4. Qualification Information

Form of Qualification Information

To establish qualifications to perform the contract the Tenderer shall provide information requested in form

1. Individual Tenderers or Individual Member of Joint Ventures

1.1 Eligibility

Constitution or legal status of Tenderer: *[attach copy]*

Place of registration:..... *[insert]*

Principal place of business:..... *[insert]*

Registration/ Certificate of Incorporation *[attach]*

Current Business License *[attach]*

Conflict of Interest – No conflict of interest in accordance with ITT 3.6 [should be declared in the Form of Tender]

Government-owned entity – meet conditions of ITT 3.8 [Attach legal status]

Experience

1.2 Work performed as prime Contractor on works of a similar nature and volume over the last Two years.

S/No.	Project Name and Country	Name of Employer and full address	Contractor Participation	Type of Work Performed	Year	Value of Contract
1.						
2.						
3.						

To comply with this requirement, works cited should be at least 70 per cent complete

Experience as prime contractor, sub-contractor in at least a number of Contracts *[PE to insert number of contracts]* for the past **Five years**, each with a minimum value..... *[PE to insert minimum value in TZS]* that have been successfully and substantially completed and that are similar to the proposed works.

Also list details of work under way or committed, including expected completion dates.

S/No.	Name of Contract	Employer's Contact Address, Tel, Fax	Value of Outstanding Work [Current US\$ Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [US\$/month]
1.					
2.					
n-1					
N					

1.3 Equipment and Plants

Major items of Contractor's Equipment proposed for carrying out the works.
List all information requested below

List all information requested below

S/No.	Item of equipment [PE to list required equipment]	Total number of equipment needed	Description, make, and age (years)	Condition (new, good, Poor) and number available	Owned, leased (from whom?) or to be purchased (from whom?)
1.	Motor grader				
2.	Steel roller				
3.	Concrete mix				
4	Porker vibrator				
5	Tipper trucks				
6	Supervision vehicle				
7	Excavate				

1.4**Personnel**

Qualifications and experience of key personnel proposed for administration and execution of the Contract. (CVs of all key proposed key personnel shall be attached)

S/No.	Position [PE to list required key personnel]	Name	Years of Experience (General Experience) [PE to list required Years of Experience]	Years of experience in proposed position [PE to list Years of Experience]
1.	Site agent			
2.	Site manager			
3.	Site technician			

1.5**Subcontracting**

Proposed sub-contractor and firms involved. Refer to ITT Sub-Clause 3.11 and Clause 8 of General Conditions of Contract

S/No.	Sections of the Works	Value of subcontract	Subcontractor (name and address)	Experience in similar work
1.				
2.				
n-1				
n				

1.6

Average Annual Construction Turnover

Minimum average annual construction turnover of TZS [*PE toinsert amount*], calculated as total certified payments received for contracts in progress and/or completed within the last [*PE toinsert number*] years, divided by [*PE toinsert number*] years.

Annual turnover data (construction only)			
Year	Amount Currency	Exchange Rate	TZS Equivalent
Year 1			
Year 2			
Year 3			
Year 4			
Year 5			
		Average Annual Construction Turnover★	

★ Total TZS equipment for all years divided by the number of years.

1.7

Financial Situation and Performance

Financial reports for the number of years [PE to specify number of years]. Balance sheets, profit and loss statements, auditors' reports, etc.

[List below and attach copies.]

The submitted financial reports must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.

1. Average Coefficient of Current Ratio ≥ 1.1
2. Average Coefficient of Debt Ratio ≤ 0.75
3. Average Coefficient of Interest Coverage Ratio ≥ 5.0
4. Debt Equity Ratio ≤ 3.0

Information in this table should be extracted from the financial reports submitted.

Type of Financial information in	Historic information for previous (TZS equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

1.8

Financial Capability

The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as TZS [PE to insert the amount] for the subject contract(s) net of the Tenderers other commitments

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts.

Source of financing	Amount (TZS Equivalent)
1.	
2.	
3.	
4.	

- 1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contracted by the Employer.

1.10 Litigation History

Information on current litigation in which the Tenderer is involved.

S/No.	Other party(ies)	Cause of dispute	Amount involved
1.			
2.			

1.11 Occupation Health and Safety Policy

Information regarding Occupation Health and Safety Policy and Safety Record of the Tenderer

1.12 Proposed Work Programme

Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the tendering documents.

2. Joint Ventures

- 2.1 The information listed in 1.1 – 1.11 above shall be provided for each partner of the joint venture.

- 2.2 The information in 1.11 & 1.12 above shall be provided for the joint venture.

3. Letter of Acceptance

[letter head paper of the Employer]

[date]

To: *[name and address of the Contractor]*

This is to notify you that your tender dated [date] for execution of the [name of the Contract and identification number, as given in the Special Conditions of Contract] for the Contract Price of the equivalent of [amount in numbers and works] [name of currency], as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us.

We confirm that [insert name proposed by the procuring entity] to be the Adjudicator.

We accept that [name proposed by Tenderer] be appointed as Adjudicator.

Or

We do not accept that [name proposed by Tenderer] be appointed as adjudicator, and by sending a copy of this letter of acceptance to [insert the name of the Appointing Authority], we are hereby requesting [name], the Appointing Authority, to appoint the adjudicator in accordance with Clause 44.1 of the Instructions to Tenderers.

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

Please return the contract dully signed.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Form of Contract

4. Form of Contract Agreement

This Agreement, made the [day] day of [month], [year] between [name and address of Employer] (hereinafter called "the Employer") and [name and address of Contractor] (hereinafter called "the Contractor") of the other part.

Whereas the Employer is desirous that the Contractor execute [name and identification number of contract] (hereinafter called "the Works") and the Employer has accepted the Tender by the Contractor for the execution and completion of such works and the remedying of any defects therein in the sum of [contract price in words and figures] (hereinafter called "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 hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. 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.
3. the Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein 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 _____

In the presence of: _____

Binding Signature of Employer _____

Binding Signature of Contractor _____

SECTION X: FORMS OF SECURITIES

SECTION XI: INTEGRITY

Each Tenderer must Submit a statement, as part of the tender documents, with either of the following format

MEMORANDUM (Format 1)

(Regulation 78(2) of the Public Procurement Regulations, 2013 - Government Notice No. 446 of 2013.)

This company _____ *[name of company]* places importance on competitive tendering taking place on a basis that is free, fair, competitive and not open to abuse. It is pleased to confirm that it will not offer or facilitate, directly or indirectly, any improper inducement or reward to any public officer their relations or business associates, in connection with its tender, or in the subsequent performance of the contract if it is successful.

This company has an Anti-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects, or contract including agents, consultants, consortium partners, sub- contractors and suppliers. Copies of our Anti-Bribery Policy/Code of Conduct and Compliance Program are attached.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Tenderer: _____

Address: _____

MEMORANDUM (Format 2)

(Regulation 78(2) of the Public Procurement Regulations, 2013 - Government Notice No. 446 of 2013.)

This company _____ *[name of company]* has issued, for the purposes of this tender, a Compliance Program copy attached -which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Tenderer: _____

Address: _____

