

# COUNTY GOVERNMENT OF MOMBASA



## **BIENNIAL CONTRACT FOR ROAD AND OTHER CIVIL WORKS IN CHANGAMWE& JOMVU SUBCOUNTY (MAINLAND WEST ZONE)**

**TENDER NO. CGM/PRO/T/7/2020-2021 Biennial Contract for Road  
and Other Civil Works**

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## ACRONYMS

<b>CGM</b>	County Government of Mombasa
<b>DSCM</b>	Director Supply Chain Management
<b>CDS</b>	Contract Data Sheet
<b>GCC</b>	General Conditions of Contract
<b>PE</b>	Procuring Entity
<b>PPAD ACT 2015</b>	Public Procurement and Asset Disposal Act, 2015
<b>PPDR 2006</b>	Public Procurement and Disposal Regulations, 2006
<b>PPRA</b>	Public Procurement Regulatory Authority
<b>STD</b>	Standard Tender Documents
<b>SOR</b>	Statement of Requirements
<b>TOR</b>	Terms of reference
<b>SP</b>	Service Provider
<b>VAT</b>	Value Added Tax

## **SECTION I - LETTER OF INVITATION**

**DATE:** 12<sup>th</sup> August, 2020

**TENDER NO.:** CGM/PRO/T/7/2020-2021

**TENDER NAME:** BIENNIAL CONTRACT FOR ROAD AND OTHER CIVIL WORKS IN CHANGAMWE & JOMVU SUBCOUNTY (MAINLAND WEST ZONE)

The County Government of Mombasa now invites sealed tenders from eligible contractors registered with National Construction Authority (NCA) under Roads and Civil works NCA 4 and below registration for the tender for the Biennial Contract for ROAD AND OTHER CIVIL WORKS for the financial years 2020/2021 and 2021/2022.

Tendering will be conducted through the National Competitive (NCB) Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulations, 2006 and is open to all Tenderers as defined in the Regulations.

Interested eligible Tenderers may obtain further information from and inspect the Tendering Documents at the offices of the Head of Procurement & Supplies located on the 2nd floor of County Assembly Building Block at Treasury Square, Mombasa, from **MONDAY TO FRIDAY (BETWEEN 0800 HOURS AND 1600 HOURS** inclusive) except on public holidays and Sundays.

A complete set of Tender Document(s) can be obtained/ purchased by interested Tenderers at the address given below and upon payment of a non-refundable fee of Kshs. 1,000.00 in cash or Bankers Cheque payable to County Government of Mombasa.

The document can also be viewed and downloaded from the County Government of Mombasa website [www.mombasa.go.ke](http://www.mombasa.go.ke) at no fee. Bidders who will have purchased documents will be required to attach a copy of an official receipt as proof of payment. For those who will download the document, they will be required to provide their details by registering at the procurement office immediately after the pre-tender (clarification) meeting.

### **Qualification for tendering (mandatory)**

The bidders are expected to include certified copy by a commissioner for oaths of each of the following;

- a) Certified copy of certificate of incorporation/registration
- b) Certified copy of VALID registration certificate with the National Construction Authority(NCA) in the categories specified above and valid practicing license
- c) A copy of VALID tax compliance certificate(will be verified on the KRA TCC checker)
- d) Certified copy of recent CR12 form generated through the system-(12 months before the opening date) from the registrar of companies; failure to which the bidder shall be disqualified.
- e) Bidders shall sequentially serialize all pages for each tender document submitted; failure to which the bidder shall be disqualified.

- f) For all cancellations in the tender document a signature must be appended with date.
- g) Certified copy of a VALID certificate of registration in the target group issued by the National Treasury; or the respective County treasury.

Note

- ❖ Submitted documents by the bidders shall be subjected to due diligence from the originating sources and shall be used for recommendation or disqualifications depending on the outcome.
- ❖ For those who will download the document; they will be required to provide their details by registering at the Supply Chain Management office. Failure to which bidders shall be disqualified.
- ❖ No bidder shall submit more than one bid

Mandatory pre-tender (clarification) conference shall be held on **19<sup>th</sup> August, 2020** at Shimanzi Public Works Building on along shimanzi road, at **1000 HOURS**. Bidders are required to be represented by a technical person with civil Engineering background who should come with a national identification card or passport and an introductory letter from the bidder.

Enquiries can be made via address: scm.mombasa@gmail.com

Bidders are advised to regularly visit the County Government of Mombasa website to obtain any additional information/addendum on the tender. All addenda/additional information on the tender shall be posted on the County Government of Mombasa website as they become available or communicated using the provided email address.

The amount of Tender Security shall be Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000.00) in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Oversight Authority (PPOA), cash, letter of credit or guarantee by a deposit taking micro-finance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 120 days from the date of tender opening in the format provided in the tender document.

All Tenders in one original plus [two-2 copies], properly filled in, and enclosed in plain envelopes must be delivered to the address below and addressed as follows:

**TENDER NO.: CGM/PRO/T/7/2020-2021**

**TENDER NAME: BIENNIAL CONTRACT FOR ROAD AND OTHER CIVIL WORKS IN CHANGAMWE & JOMVU SUBCOUNTY (MAINLAND WEST ZONE)**

**“DO NOT OPEN ON OR BEFORE 1100 HOURS ON THURSDAY 27<sup>TH</sup>, AUGUST, 2020”**

Addressed:

**THE COUNTY SECRETARY  
COUNTY GOVERNMENT OF MOMBASA  
P.O. BOX 80133-80100  
MOMBASA.**

Completed tenders shall be placed in Tender Box located at the County Government of Mombasa Assembly Buildings, Town Hall, Ground Floor next to the Banking Hall ON OR BEFORE **1100 HOURS ON THURSDAY 27<sup>TH</sup>, AUGUST, 2020**

Bulky tenders shall be submitted at the office of Head of Procurement & Supplies located on the 2nd floor of Mombasa County Assembly Buildings, Mombasa ON OR **BEFORE 1100 HOURS ON THURSDAY 27<sup>TH</sup>, AUGUST, 2020.**

Tenders will be opened promptly after **1100 HOURS ON THURSDAY 27<sup>TH</sup>, AUGUST, 2020** in the presence of Tenderers' representatives who choose to attend the opening at the County Government of Mombasa Boardroom or as specified by the County Director Supply Chain Management.

Late Tenders, incomplete Tenders, Tenders not opened at the Tender opening ceremony shall not be accepted for evaluation.

Canvassing or lobbying for the tender shall lead to automatic disqualification.

**DIRECTOR SUPPLY CHAIN MANAGEMENT  
FOR: COUNTY SECRETARY  
COUNTY GOVERNMENT OF MOMBASA**



## VISION & MISSION

### **Vision**

Mombasa County as a vibrant modern regional commercial hub with a high standard of living for its residents

### **Mission**

To provide high quality services through transformational leadership by ensuring prudent utilization of resources to foster socio-economic development to the residents of Mombasa

### **Core Values**

Patriotism

Professionalism

Integrity

Human dignity

## SECTION II - INSTRUCTIONS TO TENDERERS

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## **1. General**

### **1. Definitions**

“Tenderer” means any persons, partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications, Drawings and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative.

“Approved tenderer” means the tenderer who is approved by the Employer

Any noun or adjective derived from the word “tender” shall be read and construed to mean the corresponding form of the noun or adjective “bid”. Any conjugation of the verb “tender” shall be read and construed to mean the corresponding form of the verb “bid.”

“Employer” means ‘County Government of Mombasa’.

## **2. Eligibility and Qualification Requirements**

### **Eligibility requirements**

This invitation to tender is open to all tenderers who are qualified as stated in the appendix.

### **Qualification Requirements**

To be qualified for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility under Sub clause 2.1 above and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to submit the following information with their tenders unless otherwise stated:

Details of experience and past performance of the tenderer on the works of a similar nature and details of current work on hand and other contractual commitments.

The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site.

Major items of construction plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.

Details of sub contractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Condition of Contract.

Details of any current litigation or arbitration proceedings in which the tenderer is involved as one of the parties.

### **Joint Ventures**

Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements:-

The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners

One of the partners shall 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

The partner in charge shall be authorized to incur liabilities and receive instructions for an on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.

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 relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender)

A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

### **3. Cost of Tendering**

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

The price to be charged for the tender document shall not exceed Kshs.1,000/=

The procuring entity shall allow the tenderer to view the tender document free of charge before purchase.

### **3. Site Visit-**

There shall be a Mandatory pre-tender (clarification) conference to be held on **19<sup>th</sup> August, 2020** at Shimanzi Public Works Building boardroom 1<sup>st</sup> floor along shimanzi road, at **1000 HOURS**. Bidders are required to assemble at County Transport and Infrastructure Department boardroom at Shimanzi Former Public Works Building at 9.30 am .

### **5. Tender Documents**

The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 7 of these instructions to tenderers.

- a. Form of Invitation for Tenders
- b. Instructions to Tenderers
- c. Form of Tender
- d. Appendix to Form of Tender
- e. Form of Tender Surety
- f. Statement of Foreign Currency Requirements (Not applicable)
- g. Tender and Confidential Business Questionnaires

#### **Details of Sub contractors**

- i. Schedules of Supplementary Information
- j. General Conditions of Contract – Part I
- k. Conditions of Particular Application – Part II
- l. Specifications
- m. Bills of Quantities
- o. Declaration Form

The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 22 of Instructions to

Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.

All recipients of the documents for the proposed Contract for the purpose of submitting a tender (whether they submit a tender or not) shall treat the details of the documents as “private and confidential”.

## **6      Inquiries by tenderers**

A tenderer making an inquiry relating to the tender document may notify the Employer in writing or by telex, cable or facsimile at the Employer’s mailing address indicated in the Invitation to Tender. The Employer will respond in writing to any request for clarification which he receives earlier than 7 days prior to the deadline for the submission of tenders. Written copies of the Employer’s response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased the tender documents.

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

## **7.      Amendment of Tender Documents**

At any time prior to the deadline for submission of tenders the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.

7.2      Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them. In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Employer may, at his discretion, extend the deadline for the submission of tenders.

## **PREPARATION OF TENDERS**

### **8.      Language of Tender**

8.1      The tender and all correspondence and documents relating to the tender exchanged between the tenderer and the Employer shall be written in the English language. Supporting documents and printed literature furnished by the tenderer with the tender may be in another language provided they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the tender, the English language shall prevail.

## **9. Documents Comprising the Tender**

The tender to be prepared by the tenderer shall comprise:

- a. The Form of Tender and Appendix thereto,
- b. Tender Security
- c. The Priced Bills of Quantities and Schedules
- d. The information on eligibility and qualification
- e. Any other materials required to be completed and submitted in accordance with the Instructions to Tenderers.

The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 13.2 regarding the alternative forms of Tender Surety).

## **10 Tender Prices**

All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Bills of Quantities shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialed by the person or persons signing the tender.

A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not. Items against which no rate or price is entered by the tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.

The prices and unit rates in the Bills of Quantities are to be the full [all-inclusive] value of the Work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause prior to the deadline for submission of tenders, shall be included in the rates and prices and the total Tender Price submitted by the tenderer.

Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.

Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.

Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Bills of Quantities for Contingencies and Variation of Prices [V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.

The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of basic unit rates for the supply of items listed in the Conditions of Contract clause 70 where appropriate. The Employer may require the tenderer to justify such rates so obtained from the suppliers or manufacturers.

The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the Provisions of the Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other supporting information as required under clause 70 of the Conditions of Contract Part II.

Contract price variations shall not be allowed within the first 12 months of the contract.

Where quantity contract variation is allowed, the variation shall not exceed 15% of the original contract quantity.

Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## **11. Currencies of Tender and Payment**

Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.

Tenderers are required to indicate in the Statement of Foreign Currency Requirements, which forms part of the tender, the foreign currency required by them. Such currency should generally be the currency of the country of the tenderer's main office. However, if a substantial portion of the tenderer's expenditure under the Contract is expected to be in countries other than his country of origin, then he may state a corresponding portion of the contract price in the currency of those other countries. However, the foreign currency element is to be limited to two (2) different currencies and a maximum of 30% (thirty percent) of the Contract Price.

The rate or the rates of exchange used for pricing the tender shall be the selling rate or rates of the Central Bank ruling on the date thirty (30) days before the final date for the submission of tenders.

Tenderers must enclose with their tenders, a brief justification of the foreign currency requirements stated in their tenders.

## **12 Tender Validity**

12.1 The tender shall remain valid and open for acceptance for a period of ninety (90) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 7.3 ere above) whichever is the later.

In exceptional circumstances prior to expiry of the original tender validity period, the Employer may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing or by cable, telex or facsimile. A tenderer may refuse the request without forfeiting his Tender Surety. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Surety correspondingly.

## **13 Tender Security**

13.1 The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix to Instructions to Tenderers. The tender security shall not exceed 2 percent of the tender price. The Tender Security shall be valid at least thirty (30) days beyond the tender validity period.

Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive.

The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible as but not later than twenty eight (28) days after expiration of the tender validity period. The Tender Surety of the successful tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.

The Tender Surety may be forfeited:

- a) if a tenderer withdraws his tender during the period of tender validity: or
- b) in the case of a successful tenderer, if he fails, within the specified time limit to sign the Agreement, or
- c) to furnish the necessary Performance Security
- d) if a tenderer does not accept the correction of his tender price pursuant to clause 23.

#### **14 No Alternative Offers**

The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix.

Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture. A tenderer who submits or participates in more than one tender will be disqualified.

The tenderer shall not attach any conditions of his own to his tender. The tender price must be based on the tender documents. The tenderer is not required to present alternative construction options and he shall use without exception, the Bills of Quantities as provided, with the amendments as notified in tender notices, if any, for the calculation of his tender price. Any tenderer who fails to comply with this clause will be disqualified.

#### **15 Pre-tender Meeting**

15.1 There shall be a Mandatory pre-tender (clarification) conference to be held on **17<sup>th</sup> August, 2020** at Shimanzi Public Works Building boardroom 1<sup>st</sup> floor along shimanzi road, at **1000 HOURS**. The tenderer's designated representative ought to be a technical person with civil engineering background who should come with a national identification card or passport and an introductory letter of the bidder. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than seven (7) days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:

Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in – Clause 9 which may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting.

Non attendance at the pre-bid meeting will not be cause for disqualification of a bidder.

#### **16 Format and Signing of Tenders**

16.1 The tenderer shall prepare his tender as outlined in clause 9 above and mark appropriately one set “ORIGINAL” and the other “COPY”.

The copy of the tender and Bills of Quantities shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender.

The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## **SUBMISSION OF TENDERS**

### **17 Sealing and Marking of Tenders**

17.1 The tenderer shall seal the original and copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer separate envelope.

The inner and outer envelopes shall be addressed to the Employer at the address stated in the Appendix to Instructions to Tenderers and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of tenders stated in the said Appendix.

The inner envelopes shall each indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”, while the outer envelope shall bear no mark indicating the identity of the tenderer.

If the outer envelope is not sealed and marked as instructed above, the Employer will assume no responsibility for the misplacement or premature opening of the tender. A tender opened prematurely for this cause will be rejected by the Employer and returned to the tenderer.

### **18. Deadline for Submission of Tenders**

18.1 Tenders must be received by the Employer at the address specified in clause 17.2 and on the date and time specified in the Letter of Invitation, subject to the provisions of clause 7.3, 18.2 and 18.3. Tenders delivered by hand must be placed in the “tender box” provided in the office of the Employer.

Proof of posting will not be accepted as proof of delivery and any tender delivered after the above stipulated time, from whatever cause arising will not be considered.

The Employer may, at his discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline shall thereafter be subject to the new deadline as extended.

Any tender received by the Employer after the prescribed deadline for submission of tender will be returned unopened to the tenderer.

### **19 Modification and Withdrawal of Tenders**

19.1 The tenderer may modify or withdraw his tender after tender submission, provided that written notice of the modification or withdrawal is received by the Employer prior to prescribed deadline for submission of tenders.

The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of tenders, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate. No tender may be modified subsequent to the deadline for submission of tenders.

No tender may be withdrawn in the interval between the deadline for submission of tenders and the period of tender validity specified on the tender form. Withdrawal of a tender during this interval will result in the forfeiture of the Tender Surety.

Subsequent to the expiration of the period of tender validity prescribed by the Employer, and the tenderer having not been notified by the Employer of the award of the Contract or the tenderer does not intend to conform with the request of the Employer to extend the period of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Surety.



## **TENDER OPENING AND EVALUATION**

### **20 Tender Opening and Evaluation**

20.1 The Employer will open the tenders in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance. Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 19, will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the documents have been properly signed and whether the tenders are generally in order.

At the tender opening, the Employer will announce the tenderer's names, total tender price, tender price modifications and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.

The Employer shall prepare minutes of the tender opening including the information disclosed to those present.

Tenders not opened and read out at the tender opening shall not be considered further for evaluation, irrespective of the circumstances.

Evaluation of tenders shall be as per the criteria provided in the Appendix to instructions to tenderers.

### **21 Process to be Confidential**

21.1 After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenderers or other persons not officially concerned with such process until the award of Contract is announced.

Any effort by a tenderer to influence the Employer in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender.

### **22 Clarification of Tenders**

22.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 24.

22.2 No tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

### **23 Determination of Responsiveness**

23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.

For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.

Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.

A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.

## **24 Correction of Errors**

Tenders determined to be substantially responsive shall be checked by the Employer for any arithmetic errors in the computations and summations. Errors will be corrected by the Employer as follows:

Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.

Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error.

In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bills of Quantities, the amount as stated in the Form of Tender shall prevail.

The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected builder's work (i.e. corrected tender sum less Prime Cost and Provisional Sums.

The Error Correction Factor shall be applied to all builder's work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuations of variations.

The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 13.

## **25 Conversion to Single Currency**

25.1 For comparison of tenders, the tender price shall first be broken down into the respective amounts payable in various currencies by using the selling rate or rates of the Central Bank of Kenya ruling on the date twenty one (21) days before the final date for the submission of tenders.

The Employer will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Dayworks where priced competitively) to Kenya Shillings at the selling rates stated in clause 25.1.

## **26 Evaluation and Comparison of Tenders**

26.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 23.

In evaluating tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:

Making any correction for errors pursuant to clause 24.

Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.

The Employer reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Employer, shall not be taken into account in tender evaluation.

Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.

If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 29 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.

Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding provisional sums to a non-indigenous sub-contractor.

Preference where allowed in the evaluation of tenders shall not exceed 15%.

The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

Poor past performance shall not be used as an evaluation criteria unless specifically provided for in the appendix.

## **27 AWARD OF CONTRACT**

### **Award Criteria**

Subject to Sub-clause 27.2, the Employer will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works as required in Sub-clause 2.1 and 2.2 here above.

The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.

## **28 Notification of Award**

28.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, telefax or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.

At the same time that the Employer notifies the successful tenderer that his tender has been accepted, the Employer shall notify the other tenderers that the tenders have been unsuccessful.

Within fourteen [14] days of receipt of the Form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.

The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

## **29 Performance Guarantee**

29.1 Within twenty eight [28] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in the amount stated in the Appendix to Instructions to Tenderers and in the format stipulated in the Conditions of Contract.

The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by a reputable Bank approved by the Employer and located in the Republic of Kenya and shall be divided into two elements namely, a

performance security payable in foreign currencies (based upon the exchange rates determined in accordance with clause 60(5) of the Conditions of Contract) and a performance security payable in Kenya Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.

Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract. The Employer may award the Contract to the next ranked tenderer.

### **30 Advance Payment**

An advance payment, if approved by the Employer, shall be made under the Contract, if requested by the Contractor, in accordance with clause 60(1) of the Conditions of Contract. The Advance Payment Guarantee shall be denominated in the proportion and currencies named in the form of foreign currency requirements. For each currency, a separate guarantee shall be issued. The guarantee shall be issued by a Bank located in the Republic of Kenya, or a foreign Bank through a correspondent Bank located in the Republic of Kenya, in either case subject to the approval of the Employer.

### **31 Corrupt or fraudulent practices**

The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

### SECTION III APPENDIX TO INSTRUCTIONS TO TENDERERS

#### Notes on the Appendix to Instructions to Tenderers

The following appendix to instructions to tenderers shall complement or amend the provisions of the instructions to tenderers (Section II). Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
7	Addenda issued by the Authority shall form part of this tender document
13	The amount of Tender Security shall be <b>Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000.00)</b> in form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Oversight Authority (PPOA), cash, letter of credit or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 120 days from the date of tender opening in the format provided in the tender document
11. 16 & 17 & 20	<p>The tender prepared by the tenderers shall comprise of Technical submission Envelope "A" and Financial submission Envelope "B" which shall be put in two separate envelopes and the two envelopes shall be placed in one envelope/package.</p> <p>Only tenders that are responsive to the mandatory requirements and have attained the passmark of 75% in the technical evaluation shall have their financial submission opened.</p> <p>After the deadline for submission of tenders, only technical submission will be opened on the date of tender opening.</p> <p><b>Envelope A</b> shall contain the Technical submission and shall be clearly marked "Envelope A – Technical Submission". Envelope A shall contain;</p> <ul style="list-style-type: none"> <li>i) NO indication of the tender price or other financial information of the bid and: -</li> <li>ii) have contents pages clearly indicating Sections and Page Numbers</li> <li>iii) have pages in the whole document numbered in the correct sequence, serialized and bound.</li> </ul> <p><u>Note:</u> Complying to item numbers 1 &amp; 2 above is mandatory and its failure shall lead to automatic disqualification.</p> <p>Envelope A Shall also contain the following documents; clearly marked and arranged in the following order; -</p>

	<p>iv) Particulars of Tendering Company to include Company background, Taxpayer Registration Certificate, Certificate of Incorporation/ Registration, Current and Valid Tax Compliance Certificate from Kenya Revenue Authority and Current and Valid Single Business Permit <b>(MANDATORY)</b>.</p> <p>v) Certificate of Registration with the National Construction Authority (NCA) under Civil works Engineering NCA4 and below <b>(MANDATORY)</b>.</p> <p>vi) Tender Security of <b>Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000.00)</b> in form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Oversight Authority (PPOA), cash, letter of credit or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 120 days from the date of tender opening in the format provided in the tender document <b>(MANDATORY)</b>.</p> <p>vii) Submit Form CR12 from the Registrar of Companies <b>(MANDATORY)</b>.</p> <p>、</p> <p><b>Other Requirements</b></p> <p>i) Experience in previous and on-going works of a similar nature and size for at least three years covering from 2017 to 2020.</p> <p>ii) Contract Prices and copies of Completion or Final Certificates, names and addresses of clients who may be contacted for further information on these contracts for each of the works provided to be considered.</p> <p>iii) Major items of construction equipment proposed to carry out the Contract and detail of whether they are owned, leased or to be hired (<i>provide evidence of ownership/lease</i>). The equipment should include but not be limited to the following functions:</p> <ul style="list-style-type: none"> <li>• Asphalt Plant Complying with ASTM Designation D995</li> <li>• Asphalt Paver 120 HP or bigger</li> <li>• Air Compressor with 3 jacks</li> <li>• Bitumen Hand Sprayer</li> <li>• Water Tanker</li> <li>• Vibratory Roller</li> <li>• Pneumatic Tyre Roller</li> <li>• Tandem/ Steel Drum Roller 100 HP or bigger</li> </ul>
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	<ul style="list-style-type: none"> <li>• Back Actor 140HP or bigger</li> <li>• Shovel 160HP or bigger</li> <li>• Plate compactor</li> <li>• Any other two (2) additional relevant equipment</li> </ul> <p>iv) Qualifications and experience of at least two key site management / technical personnel and their CVs and copies of certificates:</p> <p><i>Qualification of Site Manager should be at a minimum of the following:</i></p> <p><i>At least 5 years experience</i>  <i>Minimum of Diploma in Civil/ Building and other relevant fields.</i></p> <p><i>Qualification of Site foremen should be at a minimum of the following:</i></p> <p><i>At least 7 years experience</i>  <i>Minimum Trade Test Class 1 Certificate</i></p> <p>v) Written undertaking in bidder's letter head that the staff and major equipment / plant proposed shall be available for the entire duration of the contract. <b>(MANDATORY)</b>.</p> <p>vi) Certified copies of Audited Financial reports for the last three (3) years 2014, 2015 and 2016 or 2015, 2016 and 2017 where available.</p> <p>vii) Written Undertaking that the tenderer shall abide by the negotiated rates to be arrived at after the time of contract award through averaging the rates of the lowest evaluated bidders, subject to prevailing market rates <b>(MANDATORY)</b>.</p> <p>viii) Evidence of works of similar nature and size for at least five years covering from 2015 to 2020 for each Sub Contractor where applicable;</p> <ul style="list-style-type: none"> <li>• CVs of the technical staff for each Subcontractor</li> <li>• Copies of Certificate of Registration for each Subcontractor with National Construction Authority.</li> <li>• Written undertaking that the Subcontractors proposed will be available for the whole duration of the contract</li> </ul>
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	<p><b>Envelope B</b> shall contain: -</p> <ul style="list-style-type: none"> <li>• Completed Form of Tender</li> <li>• Priced Bills of Quantities</li> </ul> <p><b>Evaluation Criteria:</b></p> <p><b>Technical proposals shall be subjected to the following evaluation criteria:</b></p> <p>i) Experience in previous and on-going works of a similar nature and size for at least three years covering from 2011 to 2015 <b>(30 marks)</b>.</p> <p>At least 3 years - 30 marks  2 years - 20 marks  1 year - 10 marks</p> <p><i>Bidders <b>MUST</b> provide the Contract Prices and copies of Completion or Final Certificates, names and addresses of clients who may be contacted for further information on these contracts for each of the works provided to be considered</i></p> <p>ii) Major items of construction equipment proposed to carry out the Contract and detail of whether they are owned, leased or to be hired (<i><b>provide evidence of ownership/lease</b></i>). The equipment should include but not be limited to the following functions <b>(35 marks)</b> :</p> <ul style="list-style-type: none"> <li>• Asphalt Plant Complying with ASTM Designation D995</li> <li>• Asphalt Paver 120 HP or bigger</li> <li>• Air Compressor with 3 jacks</li> <li>• Bitumen Hand Sprayer</li> <li>• Water Tanker</li> <li>• Vibratory Roller</li> <li>• Pneumatic Tyre Roller</li> <li>• Tandem/ Steel Drum Roller 100 HP or bigger</li> <li>• Back Actor 140HP or bigger</li> <li>• Shovel 160HP or bigger</li> <li>• Trucks</li> <li>• Plate compactor</li> </ul> <p>Any other two (2) additional relevant equipment  <i>Own/ Lease – each item above carries 3 marks</i>  <i>Undertaking to Hire – each item above carries 1 ½ marks</i>  <i>Any other two (2) additional relevant equipment (1 mark each for Own/ Lease and 0.5 marks for undertaking to hire )</i></p> <p>iii) Qualifications and experience of at least two key site management / technical personnel and their CVs and copies of certificates <b>(20 marks)</b> :</p>
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	<p><i>Qualification of Site Manager should be at a minimum of the following:</i>  <i>At least 5 years experience ( 5 marks)</i>  <i>Minimum of Diploma in Civil/ Building and other relevant field ( 5 marks)</i></p> <p><i>Qualification of Site foremen should be at a minimum of the following:</i>  <i>At least 7 years experience ( 5 marks)</i></p> <p><i>Minimum Trade Test Class 1 Certificate ( 5 marks)</i></p> <p>vi) Certified copies of Audited Financial reports for the last three (3) years 2014, 2015 and 2016 or 2015, 2016 and 2017 where available <b>(15 marks)</b>.</p> <p><i>Liquidity ratios CA/CL <math>\geq 2</math> = 5 marks</i>  <i>Gearing ratios not more than 20% = 5 marks</i>  <i>Profitability ratios 20% and above = 5 marks</i></p> <p><i>Marks will be awarded on the ratio indicated as an average for the three years as follows:</i>  <i>Full marks for meeting requirement</i>  <i>Zero (0) marks for not meeting requirement</i></p> <p><b>The bidders shall be required to score a minimum of 75 out of 100 marks to qualify for opening of the financial envelopes (envelope B)</b></p>
27	<p><b>The Procuring Entity shall award the contract to the first lowest quoted ten (10) contractors that that are comparable with the Joint Building Council rates at plus (+) or minus (-) ten (10%).</b></p> <p><b>The rates of the first lowest quoted ten (10) recommended firms shall be averaged and the firms shall be awarded at the average rates.</b></p>

Please provide the items listed below in technical submission **(mandatory)**

ITEM	Y E S
Commitment letter to observe Work Safety	<input type="checkbox"/>
Emergency Management Procedures (outline process for incident management, e.g. first aid)	<input type="checkbox"/>
List of Personal Protective Equipment/Clothing(PPE/C) to be provided during the job	<input type="checkbox"/>
Company Health & Safety Rep/contact person during the project <b>(provide name, address &amp; mobile numbers)</b>	<input type="checkbox"/>

## SECTION IV CONDITIONS OF CONTRACT

### SHORT FORM OF CONTRACT FIDIC

Published by FIDIC  
P.O. BOX 86  
Lausanne 12  
Switzerland

Phone: +41 21 654 44 11  
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E-mail: [fidic@pobox.com](mailto:fidic@pobox.com)  
[WWW.http://www.fidic.org](http://www.fidic.org)

1<sup>st</sup> EDITION 1999

## SECTION V - CONDITIONS OF PARTICULAR APPLICATION

### Particular conditions

Item	Sub- Clause	Data
Law of the Contract	1.4	Kenya
Language	1.5	English
Authorised Person	3.1	Chief Officer Infrastructure & Public works
Name and address of Employer's Representative	3.2	The Chief Officer –Depart. Of Infrastructure and Public Works P.O. Box 90350-80100 Mombasa
Performance Security Amount	4.4	5% of the contract price
Form	4.4	As per the form of Performance Security attached in the Tender Documents
Period for notifying defects	9.1& 11.5	365 days from the date stated in the notice under sub-clause 8.2 and 183 days for maintenance works
Variation Procedure	10.2	A maximum rate of 25% on all rates shall be permitted for fluctuations in price after the first year from the date of signing the Agreement subject to prevailing market rates.
The Unit rates will be deemed to include the following:- 1. Preliminaries including expenses to acquire Ferry passes for the contractor's equipments and materials during the contract period. 2. Materials and a margin of waste 3. Labour 4. Plant, machinery and tools 5. Overheads 6. Profit	11.1	Re-measurement with tender rates

Percentage value of Materials and plant	11.2	Materials: 75 % of tender rates Plant: Nil
Interim payments/Percentage of retention	11.3	Within 30 days from receipt of invoice / 10 %
Insurances  The works, materials and plant  Contractor's equipment  Third party injury to persons and damage to property	14.1	The total approximate value of works plus 15%  Full replacement cost  KShs _____

The following should be carried out before, during and after the contract;

Site specific induction to be provided by the Director of Roads, other Infrastructure & Public Works.

The contractor to induct his/her employees and subcontractors about the safety plan for this job

Have appropriate isolation barriers put in place and appropriate signage.

The contractor agree to provide adequate supervision for all their workers

The contractor to secure vehicles, equipment and materials during and after work

The contractor to dispose of rubbish, debris and waste appropriately and without risk

**To be issued after end of contract review meeting attended by the following:**

**Contractor; Parent Department Representative; Environment Officer; Project Engineer; Compliance Officer and any other interested party.**

		Name of Representative	Date	Signature
	Contractor ----- -----			
	Parent Department ----- -----			
	Environment Officer			
	Project Engineer			
	Compliance Officer			
	Other Parties			

## **SECTION VI – SPECIFICATIONS AND DRAWINGS**

Standard Specification for Roads and Bridges Issued by the Ministry of Transport and Communication, 1986 Edition

## **SECTION VII BILLS OF QUANTITIES**

See attached Bills of Quantities.

## SECTION VIII - STANDARD FORMS

### FORM OF TENDER

**TENDER NO. CGM/PRO/T/7/2020-2021– BIENNIAL CONTRACT FOR ROAD AND OTHER CIVIL WORKS IN CHANGAMWE & JOMVU SUBCOUNTY (MAINLAND WEST ZONE)**

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

Dear Sir,

In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs. \_\_\_\_\_ [Amount in figures] Kenya

Shillings \_\_\_\_\_  
\_\_\_\_\_ [Amount in words]

We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.

We agree to abide by this tender until \_\_\_\_\_ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.

Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.

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

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

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

duly authorized to sign tenders for and on behalf of

\_\_\_\_\_ [Name of Employer]

of \_\_\_\_\_ [Address of Employer]

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_



## FORM OF TENDER SECURITY

**TENDER NO. CGM/PRO/T/6/2020-2021 – BIENNIAL CONTRACT FOR ROAD AND OTHER CIVIL WORKS IN NYALI & KISAUNI SUBCOUNTY (MAILAND NORTH ZONE)**

BY THIS SECURITY WE (Hereinafter called “The Tenderer”) and

.....  
(Bank) whose registered office is at

.....(hereinafter called “the Surety”) are held and firmly bound unto County Government of Mombasa (hereinafter called “the Authority”) in the sum of Kenya Shillings Two Hundred and Fifty Thousand (KShs 250,000.00) for the payment of which sum the Tenderer and Surety bind themselves, their successors and assigns jointly and severally by these presents.

Sealed with our respective seals and dated this .....day of 2020.

### WHEREAS

The Authority has invited the Tenderer and other persons to complete Tenders in similar terms for the **BIENNIAL CONTRACT FOR ROAD AND OTHER CIVIL WORKS IN CHANGAMWE & JOMVU SUBCOUNTY (MAINLAND WEST)** (hereinafter called “the Works”) and submit the same for consideration by the Authority.

The Tenderer proposes to submit to the Authority a Tender (hereinafter called “the Tender”) in accordance with such invitation and by the above written Security, to provide security for the due performance by him of the undertakings and obligations in the Tender on his part contained.

NOW THE CONDITIONS of the above-written Security are such that:

If the Tenderer withdraws his Tender during the period of validity specified in the Form of Tender; or,

If the Tenderer refuses to accept the correction of errors in his Tender; or,

If the Tenderer having been notified of the acceptance of his Tender by the Authority during the period of Tender validity;

Fails to execute the Contract Agreement

Fails to furnish the Performance Security or Guarantee, in accordance with the Contract, within the time limits set in the Instructions to Tenderers,

we undertake to pay the Authority an amount not exceeding the sum stated above on receipt of its first written demand, without the Authority having to substantiate its demand.

This guarantee will remain in force up to and including thirty (30) calendar days after the period of Tender validity including any extensions thereof, and any demand in respect thereof should reach the Surety not later than the above stated date.

The common seal of .....(the Tenderer) was hereunto affixed in the presence of:

Signature.....

Name.....

In the capacity of.....

The common seal of .....(the Surety) was  
hereunto affixed in the presence of:

Signature.....

Name.....

In the capacity of.....

**FORM OF PERFORMANCE SECURITY**

(To be filled by successful Tenderer Only)

**BIENNIAL CONTRACT FOR ROAD AND OTHER CIVIL WORKS IN CHANGAMWE  
& JOMVUSUBCOUNTY (MAINLAND WEST ZONE)**

**TENDER NO. CGM/PRO/T/7/2020-2021**

TO: County Government of Mombasa  
P. O. BOX 90440-80100  
M O M BASA.

Dear Sir(s)

With reference to your Agreement with

---

For the BIENNIAL CONTRACT FOR ROADS

(TENDER NO. CGM/PRO/T/7/2020-2021) dated ..... and at their request  
we hereby undertake to hold at your disposal the sum of up to KShs

.....  
.....(in words) Only, which we shall pay to you without any  
reference to, and in spite of any contestation by the said  
Messrs.....

immediately on your demand being made to us in writing by ordinary or registered post or by  
hand at our offices, stating that Messrs  
.....have not fulfilled the terms and conditions  
of their above mentioned contract and you claim payment under this Security. Any claim under  
this Security should be received by us on or before the ..... after  
which date our aforesaid Security shall cease and be of no effect and must be returned to us

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

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

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

## FORM OF CONTRACT AGREEMENT

### BIENNIAL CONTRACT FOR ROAD AND OTHER CIVIL WORKS IN CHANGAMWE& JOMVU SUBCOUNTY (MAINLAND WEST ZONE)

TENDER NO. CGM/PRO/T/7/2020-2021

**THIS AGREEMENT**, made this.....day of.....2016 between the **COUNTY GOVERNMENT OF MOMBASA**, a body corporate established under the County Government of Mombasa Act (Cap. 391) Laws of Kenya, P. O. Box 95009-80104, Mombasa, hereinafter called the “Employer” of the one part and \_\_\_\_\_, a limited liability company incorporated under the Companies Act (Cap.486) Laws of Kenya, P. O. Box \_\_\_\_\_, hereinafter called the “Contractor” of the other part.

WHEREAS, Tenders have been received by the Employer for the **BIENNIAL CONTRACT FOR ROADS and other civil works**.

Tender No. CGM/PRO/T/7/2020-2021 at the County Government of Mombasa, including allied structures and remedying of any defects therein and the Tender of the Contractor for the said contract has been accepted by the Employer.

**THEREFORE**, for and in consideration of the promises, covenants, and agreements hereinafter contained and to be performed by the parties hereto, the said parties hereby covenant and agree as follows:-

In consideration of the covenants and agreements to be kept and performed by the Contractor and completion of the Works according to the Specifications and Conditions herein contained, the Employer shall pay and the Contractor shall receive and accept as full compensation for everything furnished and done by the Contractor under this Agreement, the Contract Price, (State Currency) \_\_\_\_\_, stipulated in the Letter of Acceptance, at the times and in the manner prescribed by the Conditions of Contract.

The said Works shall be started on the Commencement Date and the Contractor shall fully complete the Works within \_\_\_\_\_ weeks.

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

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

This Contract Agreement,  
The Letter of Acceptance,  
Form of Tender,  
Appendix to Tender,  
Performance Security,  
FIDIC Conditions of Contract For Construction First Edition 1999,  
Conditions of Particular Application  
Works Programme  
Bill of Quantities,  
Specifications,

County Government of Mombasa Health, Safety and Environment Policy,  
The Confidential Business Questionnaire,  
The Tender Questionnaire,  
The Declaration Form.

**IN WITNESS WHEREOF**, the Parties have hereto have executed this contract in four (4) counterparts, as of the day and year herein above set forth.

Signed By:

For and on behalf of ) .....  
COUNTY GOVERNMENT OF MOMBASA ) CHIEF OFFICER Infrastructure & Public Works

In the presence of: -

Name ..... )

Designation ..... )

Signature ..... )

Signed By: ..... )

For and on behalf of ) .....

\_\_\_\_\_ ) MANAGING DIRECTOR

Contractor

In the presence of: - )

Name ..... )

Designation ..... )

Signature ..... )

**CONFIDENTIAL BUSINESS QUESTIONNAIRE - MANDATORY**  
**TENDER NO. CGM/PRO/T7/2020-2021 -BIENNIAL CONTRACT FOR ROAD AND**  
**OTHER CIVIL WORKS IN CHANGAMWE& JOMVU SUBCOUNTY (MAINLAND**  
**WESTZONE)**

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c) and 2 (d) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form.

**Part 1 – General**

Business Name .....

Location of business premises; Country/Town.....

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

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

Nature of Business.....

Current Trade Licence No..... Expiring date.....

Maximum value of business which you can handle at any time: (State Currency)  
.....

Name of your bankers.....

Branch.....

**Part 2 (a) – Sole Proprietor**

Your name in full..... Age.....

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

\*Citizenship details .....

**Part 2 (b) – Partnership**

Give details of partners as follows:

	Name in full	Nationality	Citizenship Details	Shares
1.....				
2.....				
3.....				

Part 2(c) – Registered Company:

Private or public.....

State the nominal and issued capital of the Company-

Nominal (State Currency) .....

Issued (State Currency) .....

Give details of all directors as follows:

Name in full . Nationality. Citizenship Details\*. Shares.

1.  
.....

2.  
.....

3.  
.....

4.  
.....

Part 2(d) – Interest in the Firm:

Is there any person / persons in ..... (Name of Employer) who has interest in this firm? Yes/No..... (Delete as necessary)

I certify that the information given above is correct.

.....  
(Title) (Signature) (Date)

**DECLARATION FORM ON PARTICIPATION IN PUBLIC PROCUREMENT  
(MANDATORY)**

**TENDER NO. CGM/PRO/T/7/2020-2021**

Date \_\_\_\_\_

To County Government of Mombasa  
P. O. BOX 90440-80100  
M O M B A S A.

The tenderer i.e. (name and address) \_\_\_\_\_

Declare the following:

Has not been debarred from participating in public procurement.

Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

Title

Signature

Date

.....

.....

.....



## 12. ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE

(Sections 39, 40, 41, 42, 43 & of the PPD Act, 2005)

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

Declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/we.....

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender name.....

Tender No .....

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

### 13. DETAILS OF SUB-CONTRACTORS

If the Tenderer wishes to sublet any portions of the Works under any heading, he must give below details of the sub-contractors he intends to employ for each portion.

Failure to comply with this requirement may invalidate the tender.

(1) Portion of Works to be sublet: .....

[i] Full name of Sub-contractor  
and address of head office: .....

.....

Sub-contractor's experience  
of similar works carried out  
in the last 3 years with  
Contract value: .....

.....

.....

(2) Portion of Works to be sublet: .....

(i) Full name of sub-contractor  
and address of head office: .....

.....

.....

Sub-contractor's experience  
of similar works carried out  
in the last 3 years with  
contract value: .....

.....

\_\_\_\_\_  
[Signature of Tenderer)

\_\_\_\_\_  
Date

**LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

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

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

Please acknowledge receipt of this letter of notification signifying your acceptance.

The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.

You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) \_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

**FORM RB 1**  
REPUBLIC OF KENYA  
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*)

Of..... dated the...day of .....20.....in the matter of Tender No.....of .....20....

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical

address.....Fax No.....Tel. No.....Email ....., hereby request the Public

Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:-

- 1.
- 2.
- etc.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
- 2.
- etc

SIGNED ..... (Applicant)

Dated on.....day of ...../...20...

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on ..... day of .....20.....

SIGNED

Board Secretary