



Kenya Power

**TENDER NO. KP1/6-B/PT/01/13-14
FOR PRE-QUALIFICATION OF LABOUR &
TRANSPORT CONTRACTORS
(LOCAL LIABILITIES COMPANY'S ONLY)**

MARCH 2014

**ALL TENDERERS ARE ADVISED TO READ CAREFULLY THIS TENDER
DOCUMENT IN ITS ENTIRETY BEFORE MAKING ANY BID**

(ONE ENVELOPE TENDER OPENING SYSTEM)

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TABLE OF CONTENTS

SECTION II - TENDER SUBMISSION CHECKLIST.....5

SECTION III - INSTRUCTIONS TO TENDERERS.....6

 3.2 Eligibility for Pre-Qualification

 8
 8

 3.4 Corrupt or Fraudulent Practices

 9

 3.5 Cost of Tendering

 10

 3.6 Contents of the Prequalification Document

 10

 3.10 Documents Comprising the Tender

 11

 3.11 Tender Form

 11

 3.12 Tenderer’s Eligibility and Qualifications

 12

 3.13 Validity of Tenders

 13

 3.16 Sealing and Outer Marking of Tenders

 14

 3.21.4 Any effort by a Tenderer to influence KPLC in
 its decisions on tender evaluation,

 16
 tender comparison, tender recommendation(s) or
 contract award may result in the

 16
 rejection of the Tenderer’s Tender

 16

 3.22 Inspection

 16

 3.23 Preliminary Tender Evaluation

 16

 3.26 Tender Evaluation Period

 17

 3.27 Debarment of a Tenderer

.....	17
3.28.3 An affirmative confirmation will be a prerequisite for award of the contract to the	17
.....	17
Tenderer. A negative confirmation will result in rejection of the Tenderer's Tender.	17
.....	17
3.29 Approval of Pre-qualification	17
.....	17
3.30 Termination of Procurement Proceedings	17
.....	17
3.31 Notification of Appointment	17
.....	17
3.32 Acceptance of Pre-qualification	18
.....	18
3.33 Post - Qualification	18
.....	18
3.34 Fresh Pre-Qualification	18
.....	18
SECTION IV EVALUATION CRITERIA.....	20
SECTION VII- DECLARATION FORM.....	30

SECTION I - INVITATION FOR PRE-QUALIFICATION OF L&T CONTRACTORS (LOCAL LIABILITIES COMPANY'S ONLY)

MARCH 2014

TENDER NO. KP1/6-B/PT/01/13-14-PRE-QUALIFICATION OF LABOUR & TRANSPORT CONTRACTORS (LOCAL LIABILITIES COMPANY ONLY)

1.1 Introduction.
 The Kenya Power & Lighting Company Ltd (KPLC) invites bids from eligible tenderers including **ALL existing L & T contractors*** for **Pre-qualification of Labour & Transport Contractors**. Interested eligible tenderers may obtain further information from the Chief Manager, Supply Chain & Logistics, The Kenya Power &

***PLEASE NOTE: All existing pre-qualified L & T contractors are required to apply for fresh pre-qualification.**

1.2.2 Prospective bidders may also download the tender document from KPLC's website (www.kenyapower.co.ke) free of charge.

1.2.3 Upon downloading bidders are required to immediately send/e-mail their Names and contact details to:

1.Chief Manager, Supply Chain & Logistics-jombui@kplc.co.ke

2 Supply Chain Manager (Procurement) – agatukui@kplc.co.ke

1.3 Completed **Tender Documents in plain sealed envelopes clearly marked should be addressed and delivered to**

**The Company Secretary
The Kenya Power & Lighting Co . Ltd,
7th Floor, Stima Plaza, Kolobot Road, Parklands,
P O Box 30099 00100,
Nairobi, Kenya.**

Completed Tenders are to be enclosed in plain sealed envelopes marked **Tender No. KP1/6-B/PT/01/13-14-Pre-Qualification Of Labour & Transport Contractors (Local Liabilities Company Only**, addressed and deposited in the Company Secretary's Office located at Stima Plaza,KPLC premises, Stima Plaza, 7th Floor, Kolobot Road, Nairobi, Kenya so as to be received on or before **07.04.2014 at 10.00 am**

1.4 Prequalification Tenders will be opened promptly thereafter in the presence of the Candidates or their representatives who choose to attend in **Auditorium - Stima Plaza.**

1.5 All Candidates whose applications will have been received before the closing date and time will be advised in due course, of the results of their applications. Only Candidates pre-qualified under this prequalification process will be invited to tender.

SECTION II - TENDER SUBMISSION CHECKLIST

This order and arrangement shall be considered as the Tender Format. Tenderers shall tick against each item indicating that they have provided it.

No.	Item	Tick Where Provided
1	Copy of Company or Firm's Registration Certificate	
2	Copy of PIN Certificate.	
3	Copy of Valid Tax Compliance Certificate	
4	Copy of relevant business permit/ council business licence	
5	Statement of the Tenderer Form duly filled complete with copies of rent lease agreements and receipts for payment of rent for the last 3 months	
6	Confidential Business Questionnaire	
7	Copy of the Certificate of Confirmation of Directors and Shareholding (CR12)	
8	Declaration Form(s) duly completed and signed.	
9	Tender Form duly completed, signed and that the Tender is valid for the period required.	
10	Copy of a valid registration certificate issued by National Construction Authority (NCA) for category relevant for electrical work	

11	Copy of a valid Electrician license class C2 for at least one director issued by Energy Regulatory Commission (ERC).	
12	Experience Record Form dully filled complete with copies of commendation letters from respective KPLC/REA Project Engineers indicating successful construction and completion of projects within the last five (5) years and indicating the length of the power line in each of the projects	
13	Copy of Audited accounts of the company for the last three financial years (For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original).	
14	Tools and Equipment Form duly filled showing type(s) of relevant construction tools, equipment and personal protective equipment owned by the company evidenced by ownership documents.	
15	Copy of Safety program, policies and work practices that also includes disclosure of past safety performance on similar jobs, training of workers on safe work and tools for monitoring safety performance.	
16	Copy of NSSF Returns which NSSF acknowledged receipt for the last 6 months from the date of Tender document	
17	Copy of PAYE Returns which KRA acknowledged receipt for the last 6 months from the date of Tender document	
18	Copy of full payroll print-out/summary/ reconciliations for the last 6 months from the date of Tender document	
19	A list of Names and ranks of employees together with the assigned responsibilities	
20	Experience of the Tenderers Personnel Form duly filled and complete with Copies of Curriculum Vitae with certified copies of certificates for all the Management/ Technical personnel (certified by an Advocate or Magistrate)	
21	Copies of Insurance policies covering Group personal accident cover & Public liability cover	
22	Any other document or item required by the Tender Document. (The Tenderer shall specify such other documents or items it has submitted)	

SECTION III - INSTRUCTIONS TO TENDERERS

TABLE OF PARAGRAPHS ON INSTRUCTIONS TO TENDERERS

Paragraph No.	Headings	Page No.
3.1	Definitions.....	7
3.2	Eligibility for prequalification	8
3.3	Monopolies & Restrictive Trade Practices	9
3.4	Corrupt or Fraudulent Practices.....	9
3.5	Cost of Tendering	9
3.6	Contents of the Prequalification Document.....	9
3.7	Clarification of Documents.....	10
3.8	Amendment of Documents.....	10
3.9	Language of Tender.....	10

3.10	Documents Comprising the Tender.....	11
3.11	Tender Form.....	11
3.12	Tenderer’s Eligibility and Qualifications.....	11
3.13	Validity of Tenders	12
3.14	Number of Sets of and Tender Format.....	13
3.15	Preparation and Signing of the Tender.....	13
3.16	Sealing and Outer Marking of Tenders.....	13
3.17	Deadline for Submission of Tender.....	14
3.18	Modification and Withdrawal of Tenders.....	14
3.19	Opening of Tenders.....	14
3.20	Process To Be Confidential.....	14
3.21	Clarification of Tenders and Contacting KPLC.....	15
3.22	Inspection.....	15
3.23	Preliminary Tender Evaluation.....	15
3.24	Minor Deviations, Errors or Oversights.....	16
3.25	Technical Evaluation of Tenders.....	16
3.26	Tender Evaluation Period.....	16
3.27	Debarment of a Tenderer.....	16
3.28	Confirmation of Qualification for Award.....	16
3.29	Approval of pre-qualification.....	17
3.30	Termination of Procurement Proceedings.....	17
3.31	Notification of Appointment.....	17
3.32	Acceptance of Pre-qualification	17
3.33	Post –Qualification	17
3.34	Fresh Pre-qualification.....	17
3.35	Performance Security.....	18

3.1 Definitions

In this tender, unless the context or express provision otherwise requires: -

- a) *Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under.*
- b) *“Date of Tender Document” shall begin with the first day and end on the last day of the month appearing on the cover page of the Tender Document.*
- c) *“Day” means calendar day and “month” means calendar month.*
- d) *“KEBS” wherever appearing means the Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits.*
- e) *“KENAS” wherever appearing means the Kenya National Accreditation Service or its successor(s) and assign(s) where the context so admits*
- f) *“PPOA” wherever appearing means The Public Procurement Oversight Authority or its successor(s) and assign(s) where the context so admits.*

- g) *Reference to “the tender” or the “Tender Document” includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.*
- h) *“The Procuring Entity” means The Kenya Power and Lighting Company Limited or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KPLC).*
- i) *“The Tenderer” means the person(s) submitting its Tender for the supply, installation and commissioning (where applicable) of the goods in response to the Invitation to Tender.*
- j) *Where there are two or more persons included in the expression the “Tenderer”, any act or default or omission by the Tenderer shall be deemed to be an act, default or omission by any one or more of such persons.*
- k) *words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.*
- l) *words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “Tenderer” the covenants, agreements and obligations expressed to be made or performed by the Tenderer shall be deemed to be made or performed by such persons jointly and severally.*
- m) *Citizen contractors-a firm shall be qualified as a citizen contractor if its owners and shareholders are Kenyan citizens*
- n) *Local contractors- a firm shall be qualified as a local contractor if it is registered in Kenya.*

3.2 Eligibility for Pre-Qualification

- 3.2.1 This Invitation to Prequalify is open to all Tenderers eligible as described in the Appendix to Instructions to Tenderers
- 3.2.2 Agreements between undertaking to directly or indirectly fix purchase or selling prices or any other trading conditions are not allowed. Where this is discovered, the undertakings involved will not be eligible for award and all undertakings involved shall be disqualified.
- 3.2.3 Joint Venture and/or consortia or such associations are not permissible or eligible.
- 3.2.4 Notwithstanding any other provisions of this tender, the following are not eligible to participate in the tender:-
 - a) KPLC’s employees, its Board or any of its committee members.
 - b) Any Minister or Assistant Minister of the Government of the Republic of Kenya (GoK).
 - c) Any public servant of GoK.
 - d) Any member of a Board or Committee or any department of GoK.
 - e) Any person appointed to any position by the President of Kenya.
 - f) Any person appointed to any position by any Minister of GoK.
- 3.2.5 For the purposes of this paragraph, any relative i.e. spouse(s) and child (ren) of any person mentioned in sub-paragraph 3.2.4 is also ineligible to participate in the tender.

In addition, a Minister shall include the President, Vice-President or the Attorney General of GoK.

- 3.2.6 Tenderers shall provide the qualification information statement that the Tenderers is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by KPLC to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation to Tender.
- 3.2.7 Contractors/consultants offering Design, Wayleaves or Survey services to KPLC are not eligible to apply under this tender.
- 3.2.8 KPLC reserves the right to reject contractors personnel who are deemed unacceptable
- 3.2.9 Tenderers shall not be under declarations as prescribed at Section VII.
- 3.2.10 Tenderers who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section VII.
- 3.2.11 Those that are under the Declaration as prescribed at Section VII whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances

3.3 Monopolies and Restrictive Trade Practices

- 3.3.1 Agreements between undertakings, decisions by associations of undertakings, decisions by undertakings or concerted practices by undertakings which have as their object or effect the prevention, distortion or lessening of competition in trade in the services tendered for are prohibited.
- 3.3.2 An agreement or a concerted practice of the nature prohibited above shall be deemed to exist between two or more undertakings if-
- a. Any one of the undertakings owns a significant interest in the other or has at least one director or one substantial shareholder in common; or
 - b. Any combination of the undertakings engages in any of the below practices;
 - i. Directly or indirectly fixing purchase or selling prices or any other trading conditions, and/or
 - ii. Collusive tendering.
- 3.3.3 For purposes of this paragraph the Tenderer shall submit with its Tender, a valid copy of certificate of Confirmation of Directorships and Shareholding issued **and signed** by either the Registrar of Companies or Registrar of Business Names. This certificate must not be more than three (3) months old from the Date of the Tender Document. Kenya Power reserves the right to subject the certificate to authentication

3.4 Corrupt or Fraudulent Practices

- 3.4.1 KPLC requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. When used in the present regulations, the following terms are defined as follows: -
- a) *“Corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of public official in the procurement process or in contract execution;*

- b) *“Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KPLC, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive KPLC of the benefits of free and open competition.*
- 3.4.2 KPLC will reject a tender if it determines that the Tenderer recommended for approval has engaged in corrupt or fraudulent practices in competing for the pre-qualification.
- 3.4.3 Further, a Tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

3.5 Cost of Tendering

- 3.5.1 The Tenderers shall bear all costs associated with the preparation and submission of its Tender, and KPLC will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.5.2 The Tender Document shall be issued free of charge.

3.6 Contents of the Prequalification Document

- 3.6.1 The Prequalification Document includes the documents listed below and Addendum (where applicable):-
- a) *Invitation for prequalification (ifpq)*
 - b) *Tender submission checklist*
 - c) *Instructions to Tenderers*
 - d) *Appendix to Instructions to Tenderers*
 - e) *Evaluation criteria*
 - f) *Tender Form*
 - g) *Confidential business questionnaire Form*
 - h) *Declaration form*
 - i) *Statement of the Tenderer Form*
 - j) *Financial Status of Tenderer Form*
 - k) *Experience Record of Tenderer Form*
 - l) *Experience of Tender’s personnel Form*
 - m) *Tools and Equipment Form*
 - n) *Performance Security(Bank guarantee) Form*
- 3.6.2 The Tenderer is expected to examine all instructions, forms, provisions, terms and specifications in the Tender Document. Failure to furnish all information required by the Tender Document or to submit a tender not substantially responsive to the Tender Document in every respect will be at the Tenderer’s risk and may result in the rejection of its Tender.
- 3.6.3 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”.

3.7 Clarification of Documents

A prospective Tenderer requiring any clarification of the Tender Document may notify the Supply Chain Manager (Procurement) in writing or by post at KPLC's address indicated in the Invitation to Tender. KPLC will respond in writing to any request for clarification of the Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KPLC. Written copies of KPLC's response (*including an explanation of the query but without identifying the source of inquiry*) will be sent to all prospective Tenderers that have duly received the Tender Document.

3.8 Amendment of Documents

- 3.8.1 At any time prior to the deadline for submission of Tenders, KPLC, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the tender documents by amendment.
- 3.8.2 All prospective Tenderers that have received the Tender Documents will be notified of the amendment(s) (*hereinafter referred to or otherwise known as addendum*) in writing and will be binding on them.
- 3.8.3 In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, KPLC, at its discretion, may extend the deadline for the submission of Tenders.

3.9 Language of Tender

The Tender prepared by the Tenderers, as well as all correspondence and documents relating to the tender, exchanged between the KPLC and Tenderers, shall be written in English language, provided that any printed literature furnished by the Tenderers may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English translation shall be on the Tenderer's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the Tenderer's stamp.

3.10 Documents Comprising the Tender

The Tender prepared and submitted by the Tenderers shall include but not limited to all the following components: -

- a) *Tender Form completed in accordance with paragraphs 3.11 below.*
- b) *Documentary evidence established in accordance with paragraph 3.12 that the Tenderer is eligible and qualified to tender.*

3.11 Tender Form

The Tenderers shall complete the Tender Form and all other documents furnished in the Prequalification Document attaching all documents required noting to include originals where necessary.

3.12 Tenderer's Eligibility and Qualifications

3.12.1 Pursuant to paragraph 3.2, the Tenderer shall furnish, as part of its Tender, documents establishing the Tender's eligibility to tender and its qualifications to be pre-qualified.

3.12.2 The documentary evidence of the Tenderer's eligibility to tender shall establish to KPLC's satisfaction that the Tenderer, at the time of submission of its Tender, is eligible Tenderer as defined under paragraph 3.2. The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall be established to KPLC's satisfaction –

- a) *that the Tenderer will have the financial capability necessary to perform the contract. The Tenderer's work & Integrity test will equally be considered. The Tenderer shall be required to provide -*
- (i.) *Audited Financial Statements (Audited Accounts) that have been reported in the last three (3) financial years from the date of the tender document. The Statements must be stamped and signed. The Auditors must be currently registered as practicing by ICPAK.
(For companies or firms that are registered or incorporated within the last 12 months prior to the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original).*
 - (ii) *A valid and current Tax Compliance Certificate (TCC) issued by KRA. The Tenderer is strongly advised to confirm the authenticity of the TCC with KRA's Compliance Department to avoid rejection of its Tender.*
 - (iv.) *Copies of Paye as You Earn (PAYE) returns which the Kenya Revenue Authority (KRA) acknowledged receipt for the last 6 months from the date of the Tender document.*
 - (v) *Copies of National Social Security Fund (NSSF) returns which NSSF acknowledged receipt for the last 6 months from the date of the Tender document*
 - (vi) *Copies of monthly payroll reconciliations (summaries/Print-outs) for the last six (6) months from the date of the Tender document.*
 - (vii) *Insurance covers. Provide documentary evidence of having the following Valid insurance covers;-*
 - a. *Group personal accident cover*
 - b. *Public liability cover*
- b) *that the Tenderer has the technical and management capability necessary to perform the contract. These are as per the Tender and include:-*
- (i.) *documents showing qualifications and experience of key site management and technical personnel proposed for the Contract.*
 - (ii) *A list of Names and designations of employees together with the assigned responsibilities. Curriculum Vitae for all key personnel should be submitted for consideration.*
 - (iii) *List and evidence of ownership/lease of contractor's equipment proposed for carrying out the Works*

- (iv) *List of personal protective equipment which must bear the Contractor's name and be in colours that are distinct from those of KPLC.*
 - (v) *documents showing an established safety program, policies and work practices*
- c) *that:*
- (i) *The tenderer is duly classified and currently registered by National Construction Authority (NCA) for category relevant for electrical work and*
 - (ii) *At least one director is currently licensed as an Electrician class C2 by Energy Regulatory Commission (ERC)*
The Tenderer shall submit with its tender copies of the registration certificates and copies of (renewal) receipts. KPLC reserves the right to subject the certificate and receipt to authentication.
- d) *Information regarding the contractor's experience. The Tenderer shall be required to provide commendation letters indicating successful construction and completion of projects within the last five (5) years and indicating the length of the power line in each of the projects.*
- e) *information regarding any litigation or arbitration current or during the last five (5) years, in which the Tenderer is involved, the parties concerned and disputed amount.*

3.13 Validity of Tenders

3.13.1 Tenders shall remain valid for one hundred and twenty (120) days after the date of tender opening as specified in the Invitation for Pre-qualification or as otherwise may be prescribed by KPLC, pursuant to paragraph 3.14. A Tender that is valid for a shorter period shall be rejected by KPLC as non-responsive.

3.13.2 In exceptional circumstances, KPLC may extend the Tender validity period. The extension shall be made in writing. A Tenderer shall not be required nor permitted to modify its tender during the extended period.

3.14 Number of Sets of and Tender Format

3.14.1 The Tenderer shall prepare one copy of the Tender, identifying and clearly marking the **Tender reference** as appropriate. The tender shall be properly bound.

3.14.2 The Tender shall be bound and divided clearly in descending order as listed in the Tender Submission Checklist. The divisions are for clear identification and marking of the respective documents or information that are serially numbered in the Checklist.

3.14.3 The order and arrangement as indicated in the Tender Submission Checklist will be considered as the Tender Formats.

3.14.4 Any Tender not prepared and signed in accordance with this paragraph, in particular sub-paragraphs 3.15.1, 3.15.2 and 3.15.3 shall be rejected by KPLC as non-responsive, pursuant to paragraph 3.23.

3.15 Preparation and Signing of the Tender

- 3.15.1 The Original and all copies of the Tender shall be typed or written in indelible ink. They shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract.
- 3.15.2 The authorization shall be indicated by a written Power of Attorney granted by the Tenderer to the authorized person before a Commissioner of Oaths or a Notary Public or a Magistrate of the Kenyan Judiciary.
The Power of Attorney shall accompany the Tender.
- 3.15.3 All pages of the Tender, including un-amended printed literature, shall be initialled by the person or persons signing the Tender and serially numbered.
- 3.15.4 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialled by the person or persons signing the Tender.
- 3.15.5 KPLC will assume no responsibility whatsoever for the Tenderer's failure to comply with or observe the entire contents of this paragraph 3.15.
- 3.15.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPLC as non-responsive, pursuant to paragraph 3.23.

3.16 Sealing and Outer Marking of Tenders

- 3.16.1 The Tenderer shall seal the Tender in an envelope or package, duly marking the envelope or package as appropriate.
- 3.16.2 The inner and outer envelopes or packages shall -
a) *be addressed to KPLC at the address given in the Invitation to Tender,*
b) *bear the tender number and name as per the Invitation to Tender and the words, "DO NOT OPEN BEFORE as specified in the Invitation to Tender.*
- 3.16.3 All inner envelopes or packages shall also indicate the name and full physical, telephone, e-mail, facsimile and postal contacts of the Tenderer to enable the Tender to be returned unopened in circumstances necessitating such return including where Tenders are received late, procurement proceedings are terminated before tenders are opened.
- 3.16.4 If the envelopes or packages are not sealed and marked as required by this paragraph, KPLC will assume no responsibility whatsoever for the Tender's misplacement or premature opening. A tender opened prematurely for this cause will be rejected by KPLC and promptly returned to the Tenderer.

3.17 Deadline for Submission of Tenders

- 3.17.1 Tenders must be received by KPLC by the time and at the place specified in the Invitation to Tender.
- 3.17.2 KPLC may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents in accordance with paragraph 3.8, in which case all rights and obligations of KPLC and the Tenderer previously subject to the initial deadline, will therefore be subject to the deadline as extended.

3.18 Modification and Withdrawal of Tenders

- 3.18.1 The Tenderer may modify or withdraw its Tender after it has submitted it, provided that written notice of the modification, including substitution or withdrawal of the Tender is received by KPLC prior to the deadline prescribed for submission of tenders.
- 3.18.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraphs 3.14, 3.15, 3.16 and 3.21. A withdrawal notice may also be sent by facsimile, electronic mail, cable or telex but followed by an original signed confirmation copy, postmarked not later than the deadline for submission of Tenders.
- 3.18.3 No Tender may be modified after the deadline for submission of Tenders.
- 3.18.4 No Tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period during which the Tender must remain valid.

3.19 Opening of Tenders

- 3.19.1 KPLC shall open all Tenders promptly after the tender closing date and time, at the location specified in the Invitation to Tender or as may otherwise be indicated.
- 3.19.2 The Tenderer's names, tender modifications or withdrawals, the number of sets of tender documents duly received and such other details as KPLC, at its discretion, may consider appropriate, will be announced at the opening.
- 3.19.3 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

3.20 Process to be Confidential

- 3.20.1 After the opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations arising there-from shall not be disclosed to a Tenderer or other person(s) not officially concerned with such process until conclusion of that process.
- 3.20.2 Any effort by a Tenderer to influence KPLC or any of its staff members in the process of examination, evaluation and comparison of tenders and information or decisions concerning award of Contract may result in the rejection of the Tenderer's tender.

3.21 Clarification of Tenders and Contacting KPLC

- 3.21.1 To assist in the examination, evaluation and comparison of Tenders KPLC may, at its discretion, ask the Tenderer for a clarification of its Tender. The request for clarification and the response shall be in writing, and no change in the substance of the Tender shall be sought, offered, or permitted.
- 3.21.2 The Tenderer is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the Tenderer to provide in writing the clarification or substantiation which should reach KPLC within five (5) days from the date of KPLC's query. Such writing may include by electronic mail, facsimile or postal mail. Should there be no

conclusive response within this period, it shall result in the Tenderer's disqualification.

3.21.3 Save as is provided in this paragraph and paragraph 3.20 above, no Tenderer shall contact KPLC on any matter related to its Tender, from the time of the tender opening to the time the contract is awarded.

3.21.4 Any effort by a Tenderer to influence KPLC in its decisions on tender evaluation, tender comparison, tender recommendation(s) or contract award may result in the rejection of the Tenderer's Tender

3.22 Inspection

3.22.1 KPLC or its representative(s) shall have the right to inspect the Tenderer's capacity, tools & equipment, personal protective equipment, premises, and to confirm their conformity to the pre-qualification requirements. This shall include the quality management system. KPLC's representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection.

3.22.2 KPLC shall meet its own costs of the inspection. Where conducted on the premises of the Tenderer (s), all reasonable facilities and assistance shall be furnished to the inspectors at no charge to KPLC.

3.22.3 Inspection Report shall be completed upon conclusion of the inspection. This Report will be considered at time of evaluation and or approval as pre-qualified.

3.23 Preliminary Tender Evaluation

3.23.1 Prior to the detailed Technical, KPLC will determine the substantial responsiveness of each Tender. For purposes of this tender, a substantially responsive Tender is one that conforms to the requirements of Preliminary Evaluation. KPLC's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.

3.23.2 KPLC will examine the Tenders to determine whether they conform to the Preliminary Evaluation Criteria set out in the Section IV Evaluation Criteria.

3.23.3 Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KPLC and cannot subsequently be made responsive by the Tenderer by correction of any non-conformity.

3.24 Minor Deviations, Errors or Oversights

3.24.1 KPLC may waive any minor deviation in a Tender that does not materially depart from the requirements of the goods and or services set out in the Tender Document.

3.24.2 Such minor deviation -

3.29.2.1 shall be quantified to the extent possible,

3.29.2.2 shall be taken into account in the evaluation process, and,

3.29.2.3 shall be applied uniformly and consistently to all qualified Tenders duly received by KPLC.

3.24.3 KPLC may waive errors and oversights that can be corrected without affecting the substance of the Tender.

3.25 Technical Evaluation of Tenders

KPLC will evaluate and compare the Tenders that have been determined to be substantially responsive in compliance to the Technical requirements set out in the Tender Document.

3.26 Tender Evaluation Period

The tender evaluation committee shall evaluate the tender within the validity period of the tender.

3.27 Debarment of a Tenderer

A Tenderer who gives false information in the Tender about its eligibility or qualification shall be considered for debarment from participating in future public procurement.

3.28 Confirmation of Qualification for Award

3.28.1 KPLC shall confirm to its satisfaction whether the Tenderers that are selected as having submitted compliant tenders are qualified to perform the contract satisfactorily.

3.28.2 The confirmation 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 paragraph 3.13 as well as confirmation of such other information as KPLC deems necessary and appropriate. This shall include inspection and audits of the tenderer's premises and facilities.

3.28.3 An affirmative confirmation will be a prerequisite for award of the contract to the Tenderer. A negative confirmation will result in rejection of the Tenderer's Tender.

3.29 Approval of Pre-qualification

3.29.1 The approval of pre-qualification will be either pass or fail as per the evaluation criteria

3.29.2 Approval shall be for all Tenderers who meet the prequalification requirements as prescribed in the evaluation criteria.

3.30 Termination of Procurement Proceedings

3.30.1 KPLC may at any time terminate prequalification proceedings before approval and shall not be liable to any person for the termination.

3.30.2 KPLC shall give prompt notice of the termination to the Tenderers and, on request from any Tenderer, give its reasons for termination within fourteen (14) days of such request.

3.31 Notification of Appointment

3.31.1 Prior to the expiration of the period of tender validity, KPLC shall notify the successful Tenderer(s) in writing that its Tender has been approved.

3.31.2 The notification of appointment shall not constitute the formation of the contract.

3.31.3 Simultaneously, on issuance of Notification of Appointment to the successful Tenderer (s), KPLC shall notify each unsuccessful Tenderer.

3.32 Acceptance of Pre-qualification

- 3.32.1 At the same time as KPLC notifies the approved Tenderer that its Tender has been approved, KPLC will send the Tenderer a copy of the Notification of Appointment together with any other necessary documents incorporating all agreements between the Parties.
- 3.32.2 Within seven (7) days of the date of notification of appointment, the successful Tenderer (s) shall sign and stamp (where applicable) the copy of notification of appointment and all other documents, if any, and return them to KPLC.
- 3.32.3 Failure of the successful Tenderer (s) to sign and return the copy of the Notification of Appointment, the Appointment shall stand nullified.

3.33 Post – Qualification

- 3.33.1 KPLC shall invite tenderers who have been pre-qualified, to perform the works subject to applicable rates and thresholds.
- 3.33.2 The tenders for future contracts to be issued will be over a period as prescribed in the Appendix to Instructions to Tenderers from the date of appointment or as otherwise may be extended. After this period KPLC may conduct another pre-qualification for the services.

3.34 Fresh Pre-Qualification

- 3.34.1 At the end of the pre-qualification period, KPLC may conduct another pre-qualification process at which the existing Standing List will automatically expire.
- 3.34.2 At the fresh pre-qualification, all pre-qualified Tenderers in the Standing List shall be required to re-apply if they so wish to be in the new Standing List.

3.35 Performance Security

- 3.35.1 Within 14 days of the date of notification of prequalification from KPLC, the successful Tenderer shall furnish KPLC with a Performance Security which shall be an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
- 3.35.2 The Performance Security shall be denominated in Kenya Shillings. Performance Security in form of a Bank Guarantee shall be from a commercial bank licensed by the Central Bank of Kenya.
- 3.35.3 The successful Tenderer shall furnish a Performance Security in the sum specified in the notification for prequalification.
- 3.35.4 KPLC shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed three (3) days from the date of KPLC's query. Should there be no

conclusive response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.

APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement and or amend the provisions of the Instructions to Tenderers *hereinafter abbreviated as ITT*. Wherever there is a conflict between the provisions of the ITT and the Appendix, the provisions of the Appendix herein shall prevail over those of the ITT.

No.	ITC Reference Clause	Particulars of Appendix
1	3.2.1 Eligible Tenderers	1. <i>Only Local limited liability companies are eligible to apply.</i> 2. <i>ALL existing KPLC L&T contractors who wish to be considered for prequalification must apply under this tender,</i>

2	3.3.2 Prequalification period	<i>The prequalification period shall be 2 years</i>
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SECTION IV EVALUATION CRITERIA

The evaluation shall be in three (3) stages:

- (i) 4.1 – Preliminary Evaluation
- (ii) 4.2 – Technical Evaluation
- (iii) 4.3- Site and Facilities Inspection

4.1.1	Submission of Company or Firm's Registration Certificate	
4.1.2	Submission of PIN Certificate.	
4.1.3	Submission of a Valid Tax Compliance Certificate	
4.1.4	Submission of Copy of business permit/ council trade licence certified by a commissioner of oaths	
4.1.5	Evidence of having a Registered office – Copies of Lease agreements together with copies of receipts for payment of rent for the last 3 months	
4.1.6	Submission and considering the Confidential Business Questionnaire:-	
4.1.7	Submission and considering the Certificate of Confirmation of Directors and Shareholding if any one of the undertakings owns a significant interest in the other or has at least one director or one substantial shareholder in common as per paragraph 3.2 and 3.33 of the ITT	
4.1.8	Submission of Declaration Form(s) duly completed and signed.	
4.1.9	Submission and considering Tender Form duly completed, signed and that the Tender is valid for the period required	
4.1.10	Submission and considering that the required number of sets (original and copies) of Tender.	
4.1.11	Submission of a valid registration certificate issued by National Construction Authority (NCA) for category relevant construction work	
4.1.12	Submission of a valid license for at least one director as an Electrician class C2 issued by	

	ERC	
4.1.13	Submission of commendation letters indicating successful construction and completion of projects within the last five (5) years and indicating the length of the power line in each of the projects	
4.1.14	Submission of Copies of Audited accounts of the company for the last three financial years certified by a chartered public Accountant. (For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original).	
4.1.15	Evidence of ownership of equipment and tools. At least two open pickups/trucks evidence to be given vide log books bearing the company's name/Director whose name appears in the CR12 Form. (Give a list and type of relevant construction tools and equipment owned by the company evidenced by ownership documents. Provide documentary evidence of ability to lease or hire relevant tools and equipment not owned by the company)	
4.1.16	Submission of evidence of an established safety program, policies and work practices	
4.1.17	NSSF Returns which NSSF acknowledged receipt for the last 6 months from the date of Tender document	
4.1.16	PAYE Returns which KRA acknowledged receipt for the last 6 months from the date of Tender document	
4.1.17	Copy of full payroll print-out/summary/ reconciliations for the last 6 months from the date of Tender document	
4.1.18	A list of Names and ranks of employees together with the assigned responsibilities	
4.1.19	Submission of Copies of Curriculum Vitae with certified copies of certificates for all the Management/at least 2 Key Technical personnel (certified by an Advocate or Magistrate)	
4.1.20	Insurance covers. Provide documentary evidence of having the following valid insurance covers a) Group personal accident cover and b) Public liability cover	
4.1.21	Record of unsatisfactory or default in performance obligations in any previous contract shall be considered. This shall include any Tenderer with unresolved case(s) in its performance obligations for more than two (2) months in any contract. Any Tenderer with such a record or unresolved case will not be considered for further evaluation.	

4.1 Preliminary Evaluation Criteria under Paragraph 3.23 of the ITT. These are mandatory requirements

4.2 Technical Evaluation Criteria Under Paragraph 3.25 of the ITT.

Sr. No.	Criteria	KPLC Requirement & Scores	Bidder's Response Marks
4.2.1	Experience as a contractor in the construction of power lines:- Successful construction and completion of power lines measuring cumulative length at least 20 km Successful construction and completion of power lines measuring cumulative length at least 15 km Successful construction and completion of power lines measuring cumulative length at least 10 km Successful construction and completion of power lines measuring cumulative length at least 5 km	a) Maximum marks are 15. b) Maximum marks are 12 c) Maximum marks are 9 d) Maximum marks are 6	
4.2.2	Experience as a contractor in the electrical construction industry Successful construction and completion of at least 10 electrical projects Successful construction and completion of at least 7 electrical	a) Maximum marks are 15. b) Maximum marks are 12 c) Maximum marks are 9	

	projects Successful construction and completion of at least 4 electrical projects		
4.2.3	Qualification of Team Leader (Project Manager) in the company relevant to the construction industry who will actively be involved in the proposed project. Evidence of registration with relevant professional bodies. (Provide detailed CV accompanied by relevant academic and professional certificates. Telephone contacts must be provided). Any safety training shall earn 2 marks	a) Degree & above -10 Marks b) Diploma - 6 Marks c) Certificate & above- 4 Marks Safety training - 2 marks	
4.2.4	Experience of the Team Leader (Project Manager) who will actively be involved in the proposed project. (This has to be captured in the CV that is accompanying the relevant academic and professional certificates)	a) Over 10 years -12 Marks b) Over 6 years 8 Marks c) Over 3 years 5 Marks	
4.2.5	Qualification of the Safety Officer who will actively be involved in the proposed project. Evidence of registration with relevant professional bodies. (Provide detailed CV accompanied by relevant academic and professional certificates. Telephone contacts must be provided).	a) Degree and above -5 Marks b) Diploma 3 Marks c) Certificate 1 Marks	
4.2.6	Experience of the Safety Officer who will actively be involved in the proposed project. (This has to be captured in the CV that is accompanying the relevant academic and professional certificates)	a) Over 10 years -7 Marks b) Over 6 years 5 Marks c) Over 3 years 3 Marks	
4.2.7	Qualification of at least one of the other Key Technical team apart from the Projects Manager & the Safety Officer in the company relevant to the construction industry who will actively be involved in the proposed project. Evidence of registration with relevant professional bodies. (Provide detailed CV accompanied by relevant academic and professional certificates. Telephone contacts must be provided) Provide valid evidence of availability and appropriate qualification of key personnel.	a) Degree and above 14 marks. b) Diploma 10 marks c) Certificate 8 marks (To score, the total number of members of the team possessing the qualifications will be added up. That figure will be divided by the total number of members of the Team. That figure will then be multiplied by the maximum marks under each category)	
4.2.8	Tools and equipment. Give a list and type of relevant construction tools and equipment owned by the company evidenced by ownership documents. Provide documentary evidence of those that are leased or hired.	a) Owned marks are 20. b) Leased marks are 15 c) In the process of buying marks are 10	
	TOTAL	100	

Tenderers who score 80 marks and above in the Technical evaluation stage will proceed to 4.3

<i>Item No</i>	<i>Description</i>	<i>Remarks</i>
4.3.1	Existence of the Tenderer's Office/Premises	Yes/No
4.3.2	Availability and proof of ownership of tools & equipment	Yes/No
4.3.3	Demonstration of the Tenderer's safety process	Yes/No
4.3.4	Demonstration of project planning process	Yes/No
4.3.5	Availability of personal protective equipment bearing contractor's name and colours that are distinct from those of KPLC	Yes/No

**4.3 Site and Facilities Inspection – These are mandatory requirements
Criteria Under Paragraph 3.22 of the ITT.**

SECTION V TENDER FORM

Date: -----

Tender No. -----

The Managing Director
Kenya Power & Lighting Company Limited,
Stima Plaza,
Kolobot Road, Parklands,
P.O Box 30099 – 00100,

Ladies and Gentlemen,

1. Having read, examined and understood all of the pre-qualification information provided in the Prequalification Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned Tenderer, hereby apply to be prequalified by yourselves as a potential bidder for the services as indicated in the Tender document.
2. We agree to abide by this Tender for a **period of.....days (Tenderer please indicate validity of your tender)** from the date fixed for tender opening as per the Prequalification Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
3. This application, together with your written appointment thereof, shall not constitute a contract between us nor commit KPLC to any actual tender or amount of contract.
4. We understand that you are not bound to accept any application you may receive.
5. We declare that the statements made and the information provided in our prequalification tender document are complete, true, and correct in every detail.

Yours sincerely,

Name of Tenderer

Name and Capacity of authorised person signing the Application

Signature of authorised person signing the Tender

Stamp or Seal of Tenderer

NOTES:-

1. KPLC requires a validity period of at least one hundred and twenty (120) days.

2. This form must be duly signed, stamped and/or sealed.

SECTION VI – CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

All Tenderers are requested to give the particulars indicated in Part 1, 2 (d) and either Part 2 (a), 2 (b) or 2 (c) whichever applies to your type of business. Tenderers are advised that it is a serious offence to give false information on this form.

Part 1 – General

Business Name.....

Location of business premises.....

Plot No.Street/ Road

Postal Address Postal Code

Tel No.....

Facsimile.....

Mobile and CDMA No.....

E-mail:.....

Nature of your business

Registration Certificate No.....

Maximum value of business which you can handle at any time KSh.....

Name of your BankersBranch... ..

*Names of Tenderer's contact person(s)

Designation/ capacity of the Tenderer's contact person(s)

Address, Tel, Fax and E-mail of the Tenderer's contact person(s)

.....

Part 2 (a) Sole Proprietor

Your name in full
NationalityCountry of origin

Part 2 (b) Partnership

Give details of partners as follows: -

Names	Nationality	Shares (%)
1.....		
2.....		
3.....		
4.....		
5.....		

Part 2 (c) Registered Company

Private or Public
State the nominal and issued capital of company-
*Nominal in KSh.
*Total Issued KSh.

Give details of all directors as follows

Name	Nationality	Shares (%)
1.....		
2.....		
3.....		
4.....		
5.....		

Part 2 (d) List of Associated Companies Participating in this Tender

Give details as follows: -

Name of Company	Country of Registration	Directors	Shares (%)
1.....			
2.....			
3.....			
4.....			
5.....			

Name of duly authorized person to sign for and on behalf of the Tenderer

Capacity of the duly authorized person.....

Signature of the duly authorized person.....

***NOTES TO THE TENDERER ON THE QUESTIONNAIRE**

1. *The address and contact person of the Tenderer provided above shall at all times be used for purposes of this tender.*
2. *The details on this Form are essential and compulsory for all Tenderers. **Failure to provide all the information requested shall lead to the Tenderer's disqualification.***

SECTION VII- DECLARATION FORM

Date _____

To:

The Kenya Power & Lighting Company Limited,
P.O Box 30099 – 00100,
Stima Plaza, Kolobot Road, Parklands,
Nairobi,
KENYA.

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address) _____
_____ declare the following: -

- a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 and 3.33 of ITT (Eligible Tenderer s) of the Instruction to Tenderers.
- d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- e) That I/ We are **not** associated with any other Tenderers participating in this Tender.
- f) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp or Seal of Tenderer

**SECTION VIII - STATEMENT OF THE TENDERER
FORM**

- 1 Name of Tenderer _____
- 2 Address _____
- 3 Legal Status _____
- 4 Registered Office _____
- 5 Date of Registration _____
(attach a copy certificate of registration)
- 6 Detailed description of physical address of the office (Town, Road/street name, building & office) (attach copies of the office lease agreement and rent receipts)

- 7 DIRECTORS (attach the *Certificate of Confirmation of Directors and Shareholding*)

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp or Seal of Tenderer

SECTION IX

- FINANCIAL STATUS OF TENDERER

FORM

FINANCIAL STATUS OF TENDERER

1. Name of Tenderer _____

REMARKS:

Submit of Copies of Audited accounts of the company for the last three financial years (For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original)

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp or Seal of Tenderer

SECTION X (a) EXPERIENCE RECORD FORM

1. Name of company _____
2. Experience of the company in electrical engineering work and services.
_____ (Years)
3. Brief description of electrical engineering services offered in the past:

4. Experience of the company in power line construction in Kenya:

Project Name	Voltage Levels involved	Scope (KMs of line, No. of Transformers)	Contract Amount in Kshs.	Commencement Date	Completion Date

5. Attach commendation letters as evidence of past experience.
6. Number of personnel and their qualifications (Engineers, Technicians, Craftsmen etc) currently in the applicant's establishment.

(Attach Copies of Curriculum Vitae with certified copies of certificates for all the Management/Technical personnel (certified by an Advocate or Magistrate)

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp or Seal of Tenderer

SECTION X (b) EXPERIENCE OF THE TENDERER'S PERSONNEL

FORM

PERSONNEL

Give detailed information of the following 2 (two) key supervisory personnel, who would be employed as full-time staff on the project if awarded contract. Give similar details for (a) Project Manager (b) One Technical Director (c) Safety Officer. This will be in the format below.

(Copies of Curriculum Vitae with certified copies of certificates for all the Management/Technical Personnel certified by an Advocate or Magistrate should be attached)

(a) 1st Key Supervisory personnel

1. Name _____
2. Highest Level of Education _____
3. Speciality _____
4. Professional Registration (if any)_____
5. Length of service with company _____ Years:
6. Years of experience_____

(b) 2nd Key Supervisory personnel

1. Name _____
2. Highest Level of Education _____
3. Speciality _____
4. Professional Registration (if any)_____
5. Length of service with company _____ Years:
6. Years of experience_____

(c) Project Manager

1. Name _____
2. Highest Level of Education _____
3. Speciality _____
4. Professional Registration (if any) _____
5. Length of service with company _____ Years:
6. Years of experience _____

(d) Technical Director

1. Name _____
2. Highest Level of Education _____
3. Speciality _____
4. Professional Registration (if any) _____
5. Length of service with company _____ Years:
6. Years of experience _____

(e) Safety Officer

1. Name _____
2. Highest Level of Education _____
3. Speciality _____
4. Professional Registration (if any) _____
5. Length of service with company _____ Years:

6. Years of experience _____

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp or Seal of Tenderer

SECTION XI TOOLS AND EQUIPMENT

FORM

The table below shows detailed information of tools & equipment and personal protective equipment which will be required for the project if pre-qualified. These will be inspected at the contractor's premises during evaluation. (Title documents like receipts, Purchase Orders etc proving ownership should be attached)

TOOL NAME	MINIMUM REQUIRED	TENDERER TO INDICATE WHETHER IT HAS	TOOL NAME	MINIMUM REQUIRED	TENDERER TO INDICATE WHETHER IT HAS
Open pick-ups/Trucks	2		Pull lifts 1.5 ton	3	
Axes	1		Rollers - aluminum	18	
Auger bits 11/16	3		Spanners ring	various	
Auger bits 13/16	3		Spanners open ended	various	
Auger bits 26/16	3		Spanners adjustable	various	
Bow saw	1		Screw drivers 6'	4	
Coffee diggers	4		Screw drivers 8'	4	
Crow bars	4		Screw drivers 12'	4	
Come along clamps- 0.26	3		slings 2 ton	2	
Come along clamps- 0.1	3		shovels	2	
Come along clamps- 0.5	3		sisal ropes 3/8'	4	
Climbing irons- no.12	3		sisal ropes 3/4'	4	
Climbing irons- no. 10	3		safety belts	6	
Climbing irons- no. 8	3		safety gloves	2	
			safety helmets	12	
D shackles - 3/8	4		safety boots	12	

D shackles - 5/8	4		spirit level	2	
Tensioning ratchet for lv conductors	2		tape measure 100m	2	
Draw Vices-- Large	4		Test lamps	2	
Draw Vices-- small	4		tool boxes	2	
Earth scoops	4		Warning notice -Danger	2	
Earthing harness	1		Warning notice -Caution	2	
First aid kit	1		Wire cutters 24'	2	
Files	1		Wire twisters	1	
hammers	1		Power saws	1	
hammers- claw	1		3 ton chain blocks	1	
Jembes	2		Compression tool	1	
Pick axe	2		Digital Voltmeter	1	
knives	1		11 kv live line tester	1	
Extension ladder - wood	1		Earth Megger	1	
ladders -erection-7'	1		Pliers	various	
ladders -erection-10'	1				
ladders -erection-18'	1				
Link sticks	1				
Linesmen bags	4				
pangas	2				
padlocks	1				
pipe wrench spanner 18"	1				
Personal protective equipment (These will be inspected at the contractor's premises during evaluation)					
Overalls bearing contractor's name and whose colours are distinct from those of KPLC.					
Safety Boots					
Safety Helmet					

Protective Gloves					
-------------------	--	--	--	--	--

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp or Seal of Tenderer

SECTION XII - PERFORMANCE SECURITY FORM (BANK GUARANTEE)

(To Be Submitted On Bank’s Letterhead)

Date:

To:

The Kenya Power & Lighting Company Limited,
Stima Plaza,
Kolobot Road, Parklands,
P.O Box 30099 – 00100,
Nairobi, Kenya.

WHEREAS.....(hereinafter called “the Supplier”) has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*) and its Tender dated(*insert Supplier’s date of Tender taken from the Tender Form*) to supply(*description of the services*) (hereinafter called “the Contract);

AND WHEREAS it has been stipulated by you in the said Contract that the Supplier shall furnish you with a bank guarantee by an acceptable bank for the sum specified therein as security for compliance of the Supplier’s performance obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Supplier a guarantee;

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

This guarantee is valid until theday of.....20....

EITHER

SEALED with the)

COMMON SEAL)
of the said **BANK**)
)

thisday) _____
) **BANK SEAL**
of20....)
in the presence of :-)
)
_____)
)
and in the presence of:-)
)
_____)

OR

SIGNED by the **DULY AUTHORISED**
REPRESENTATIVE(S)/ ATTORNEY(S) of
the **BANK**

Name(s) and Capacity(ies) of duly authorised representative(s)/ attorney(s) of the Bank

Signature(s) of the duly authorised person(s)

NOTES TO SUPPLIERS AND BANKS

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Performance Security Bond (the Bond) to be furnished by the successful Tenderer/ Supplier. If any are made, the Bond may not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the Bond where such Bond is required in the tender and Contract.*

2. *KPLC shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed three (3) days from the date of KPLC's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security may be deemed as invalid and the Contract nullified.*

3. ***The issuing Bank should address its response or communication regarding the bond to KPLC at the following e-mail address – “guarantees@kplc.co.ke”***

SECTION XIII - SAMPLE CONTRACT AGREEMENT

THIS AGREEMENT made on this.....day of.....**20.....****BETWEEN THE KENYA POWER & LIGHTING COMPANY LIMITED**, a limited liability company duly incorporated under the Companies Act, Chapter 486 of the Laws of Kenya, with its registered office situated at Stima Plaza, Kolobot Road, Parklands, Nairobi in the Republic of Kenya and of Post Office Box Number 30099-00100, Nairobi in the Republic aforesaid (*hereinafter referred to as “KPLC”*) of the one part,

AND

..... **LIMITED** a duly registered entity according to the laws of **KENYA** and of Post Office Box Number in the Republic aforesaid, (*hereinafter referred to as the “Contractor”*) of the other part;

WHEREAS KPLC invited tenders for certain Services, that is to say forunder Tender Number

AND WHEREAS KPLC has accepted the Tender by the Contractor for the Services as set out in the Notification of Award as provided in Clause 5 herein;

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 and the Tender Document.
2. Unless the context or express provision otherwise requires: -
 - a) reference to “this Agreement” includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
 - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.
 - c) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
 - d) words importing the singular number only include the plural number and

vice-versa and where there are two or more persons included in the expression the “*Contractor*” the covenants, agreements obligations expressed to be made or performed by the Contractor shall be deemed to be made or performed by such persons jointly and severally.

- e) where there are two or more persons included in the expression the “*Contractor*” any act default or omission by the Contractor shall be deemed to be an act default or omission by any one or more of such persons.
3. In consideration of the payment to be made by KPLC to the Contractor as hereinbefore mentioned, the Contractor hereby covenants with KPLC to perform and provide the services and remedy any defects thereon in conformity in all respects with the provisions of the Contract.
 4. KPLC hereby covenants to pay the Contractor in consideration of the proper performance and provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
 5. The following documents shall constitute the Contract between KPLC and the Contractor and each shall be read and construed as an integral part of the Contract:
 -
 - a) this Contract Agreement
 - b) the Special Conditions of Contract as per the Tender Document
 - c) the General Conditions of Contract as per the Tender Document
 - d) KPLC’s Notification of Award dated.....
 - e) the Tender Form signed by the Contractor
 - f) the Declaration Form signed by the Contractor/ successful Tenderer
 - g) the current schedule of KPLC Rates for Labour and Transport contractors.
 6. In the event of any ambiguity or conflict between the contract documents listed above, the order of precedence shall be the order in which the contract documents are listed in 5 above except where otherwise mutually agreed in writing.
 7. The Commencement Date shall be the working day immediately following the fulfillment of all the following: -
 - a) Execution of this Contract Agreement by KPLC and the Contractor.

- b) Issuance of the Performance Bond by the Contractor and confirmation of its authenticity by KPLC.
 - c) Issuance of the Official Order by KPLC to the Contractor.
 - d) Where applicable, Opening of the Letter of Credit by KPLC. (Supplier must issue instructions for opening of the Letter of Credit within one (1) month of issuance of the Purchase Order.
8. The period of contract validity shall begin from the Commencement date and end on either -
- a) sixty (60) days after the last date of the agreed performance schedule, or,
 - b) where a Letter of Credit is adopted as a method of payment, sixty (60) days after the expiry date of the Letter of Credit or the expiry date of the last of any such opened Letter of Credit whichever is later.
- Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.
9. It shall be the responsibility of the Contractor to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.
10. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.
11. No failure or delay to exercise any power, right or remedy by KPLC shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
12. Notwithstanding proper completion of performance or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.
13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and*

proof of posting shall be proof of service), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service for Local Suppliers and five (5) days for Foreign Suppliers.

14. For the purposes of Notices, the address of KPLC shall be Company Secretary, The Kenya Power & Lighting Company Limited, 7th Floor, Stima Plaza, Kolobot Road, Post Office Box Number 30099–00100, Nairobi, Kenya, Facsimile + 254-20-3750240/ 3514485. The address for the Contractor shall be the Contractor’s address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

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

SIGNED for and on behalf
of **THE KENYA POWER & LIGHTING COMPANY**

COMPANY SECRETARY

SEALED with the **COMMON SEAL**
of the **CONTRACTOR**
in the presence of:-

DIRECTOR

Affix Contractor’s Seal here

DIRECTOR’S FULL NAMES

and in the presence of:-

DIRECTOR/ COMPANY SECRETARY

DIRECTOR/ COMPANY SECRETARY'S FULL NAMES

DRAWN BY: -

Beatrice Meso,

Advocate,

C/o The Kenya Power & Lighting Company Limited,

7th Floor, Stima Plaza,

Kolobot Road, Parklands,

Post Office Box Number 30099-00100,

NAIROBI, KENYA,

SECTION IVX - SAMPLE GENERAL CONDITIONS OF CONTRACT (GCC)

The General Conditions of Contract *hereinafter referred abbreviated as the GCC* shall form part of the Conditions of Contract in accordance with the law and KPLC’s guidelines, practices, procedures and working circumstances. The provisions in the GCC will apply unless an alternative solution or amendment is made under other parts of the Contract including the Special Conditions of Contract.

14.1 DEFINITIONS

In this contract, the following terms shall be interpreted as follows: -

- a) *“Day” means calendar day and “month” means calendar month.*
- b) *“The Contract” means the agreements entered into between KPLC and the Contractor, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.*
- c) *“The Contract Price” means the price payable to the Contractor under the contract for the full and proper performance of its contractual obligations.*
- d) *“The Services” means services or art thereof to be provided by the Contractor and includes all of the materials and incidentals, which the Contractor is required to perform and provide to KPLC under the contract.*
- e) *“The Procuring Entity” means The KPLC and Lighting Company Limited or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KPLC).*
- f) *“The Contractor” means the individual or firm providing the services under this contract or his/ her/ its permitted heir(s), personal representative(s), successor(s) or permitted assign(s) where the context so admits. For the avoidance of doubt this shall mean the successful Tenderer(s) pursuant to the tender.*
- g) *Wherever used in the contract, “performance” shall be complete or be deemed to be complete, unless the circumstances indicate otherwise, when the services have been performed in accordance with the Contract and where KPLC does not signify its approval to the Contractor, but without giving notice of dissatisfaction, on the expiration of thirty (30) days from date of documented completion of performance of the service.*

14.2 APPLICATION

These General Conditions shall apply to the extent that provisions of other parts of the contract do not supersede them.

14.3 STANDARDS

The Services provided under this Contract shall conform to the standards required by KPLC which include the following:

14.3.1 Damage to existing services

The Contractor will be responsible for damage of any existing services such as water mains, sewers, fuel pipes, telephone cables, KPLC cables, which may be brought to its attention by the relevant authorities and shall be solely responsible for the cost of repairs.

14.3.2 Workers standards and etiquette

All workers from the contracted firms must observe standards acceptable to KPLC. These standards include:-

14.3.2.1 Organisation of Workers

The contracted firm should have a reliable supervisor and the Contractor should have and shall be required to present to KPLC a clear and workable schedule or plan of work which should be in line with KPLC's target completion times.

14.3.2.2 Public Relation of Workers

Public relations and customer care are priority considerations to KPLC and the Contractor must ensure adequate briefing of its staff is done prior to their commencement of work.

14.3.2.3 Complaints by KPLC

- (i) The Contractor's staff should be impressed upon to:-
 - (a) Treat KPLC's complaints seriously.
 - (b) Respond quickly and efficiently.
 - (c) Put right the cause of these complaints.
- (ii) The Contractor shall ensure that its staff performing the Services shall be efficient, capable and qualified for the work with which they are entrusted and shall at all times conduct themselves in a professional manner. If any of the Contractor's staff conduct themselves in an unprofessional manner, KPLC shall have the right to demand for their removal from the premises, site, as the case may be, and any work related to the performance of the Services herein.

14.3.3 Contractor's staff

If any Contractor is discovered to be using any of KPLC's staff whether permanent or temporary, its Contract may be terminated and the Contractor removed from the pre-qualified list of Contractors.

14.3.4 Local regulations

The Contractor shall observe and comply with all laws, regulations, orders, by-laws and customs in Kenya in respect to the Contract's execution.

14.3.5 Obligations of the Contractor

14.3.5.1 Sufficiency of the Contract Price

Whenever the Contractor is called upon to perform the job at any given time, the contractor shall certify itself with the scope of works and shall take that information into consideration when invoicing KPLC.

14.3.5.2 Responsiveness of the Contractor

The Contractor should be ready to perform the Services allocated within seven (14) days from receipt of instruction from KPLC and failure to take up perform such Services within the time specified herein may lead to cancellation of the Contract.

14.3.5.3 Engagement of Labour

The Contractor shall provide on the site in connection with the execution and completion of the Services and remedying of any defects therein;

- a) Such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely fulfilling of the Contractors obligations under the contract.
- b) The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all labour and for their payment, housing, feeding and transport (All the general welfare needs of his employees).

14.3.6 Safety precautions

The Contractor shall, throughout the performance of the Services and the remedying of any defects therein:

- (a) Have full regard for safety of all persons entitled to be upon the site and keep the site (so far as the same is under his control) in an orderly state appropriate to the avoidance of danger to such persons.
- (b) All the personnel at site of work must at all times be wearing safety clothing/ personal protective equipment which shall bear the contractor's name and be in colours distinct from those of KPLC.
- (c) Provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by KPLC or by any duly constituted authority, for the protection of the works or for the safety and convenience of the public or others, and;
- (d) Take all reasonable steps to protect the environment on and off the site and to avoid damage or nuisance to persons or property of the public or others resulting from pollution , noise or other cause arising as a consequence of his methods of operation.
- (e) The Contractor's personnel will be expected to observe safety precautions in execution of their works.

14.3.7 Damage to property and injury to persons

14.3.7.1 Contractor's liability

Except as provided under this conditions, the Contractor shall be liable for and shall indemnify KPLC against all losses, expenses and claims in respect of any loss of or damage to physical property, death or personal injury occurring before completion of the Services to the extent caused by:-

- (a) poor workmanship of the Contractor, or
- (b) negligence or breach of statutory duty of the Contractor, his Sub-Contractors or their respective employees and/or agents.

14.3.8 Accidents

The Contractor shall be liable for and shall indemnify KPLC against all losses, expenses or claims arising in connection with the death or injury to any person employed by the Contractor for the purpose of the Services, unless caused by any acts or defaults of KPLC.

14.3.9 Completion

The provision of Services shall be completed and shall have passed for inspection within the targeted time for completion for each job as specified from time to time by the KPLC's Representative in the job cards. Time of completion shall be as specified by the KPLC.

14.3.10 Prolonged delay

If the Contractor fails to complete the provision of Services within the stipulated time, and this is not due to a cause for which KPLC's is responsible, KPLC's may by notice to the Contractor either:-

- (a) require the Contractor to complete, or
- (b) terminate the Contract

If the KPLC's terminates the Contract, it shall be entitled to recover from the Contractor any loss it has suffered. KPLC shall be entitled to recover that part of the Contract Price which is attributable to that part of the Services which the Contractor shall not have completed.

14.3.11 Duration of the contract

The Contract shall be for a term of two (2) years.

14.3.12 KPLC's Representative

KPLC's representative shall carry out such duties in issuing decisions, certificates and orders as are specified in the Contract and shall be responsible to watch and supervise the Services carried out to ensure standard and acceptable workmanship is employed in connection with the Services.

14.3.13 Opportunities for other contractors

The Contractor shall, in accordance with KPLC's instructions, afford to other Contractors engaged by KPLC's to work on the site(s) and persons lawfully upon the site, all reasonable opportunities for carrying out their work, provided that the same shall not obstruct or disturb the progress of the provision of Services. The Contractor shall also afford such opportunities to the employees of KPLC.

14.3.14 Taxation

The Contractor and its staff shall be liable to pay all income and other taxes as required by regulations which may be in force during the period of the Contract.

14.4 USE OF CONTRACT DOCUMENTS AND INFORMATION

- 14.4.1 The Contractor shall not, without KPLC's prior written consent, disclose the contract, or any provision thereof or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of KPLC in connection therewith, to any person other than a person employed by the Contractor in the performance of the contract.
- 14.4.2 The Contractor shall not, without KPLC's prior written consent, make use of any document or information enumerated in clause 14.4.1 above.
- 14.4.3 Any document, other than the contract itself, enumerated in clause 14.4.1 shall remain the property of KPLC and shall be returned (including all copies) to KPLC on completion of the Contractor's performance under the contract if so required by KPLC.

14.5 PATENT RIGHTS

The Contractor shall indemnify KPLC against all third party claims of infringement of patent, trademark, or industrial design rights arising from provision of the Services or any part thereof.

14.6 PERFORMANCE SECURITY

- 14.6.1 Within fourteen (14) days of the date of the notification of contract award, the Contractor shall furnish to KPLC the Performance Security which shall be either one or a combination of the following:-
- a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
 - b) Confirmed Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid by the successful Tenderer. Certain mandatory conditions of the LC shall be as prescribed in the Performance Security Form (LC) in the Tender Document.
- 14.6.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 14.6.3 The Performance Security shall be the sum specified in the Special Conditions of Contract.
- 14.6.4 Failure of the Contractor to furnish the Performance Security shall lead to nullification of the award.

- 14.6.5 The proceeds of the Performance Security shall be payable to KPLC as compensation for any loss resulting from the Contractor's failure to comply with its obligations in accordance with the contract without KPLC being required to demonstrate the loss it has suffered.
- 14.6.6 The Performance Security shall be valid for a minimum of sixty (60) days after satisfactory delivery for both Foreign and Local Contractors.
- 14.6.7 KPLC shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Contractor to sensitise its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed three (3) days from the date of KPLC's query. Should there be no conclusive response by the Bank within this period, such Contractor's Performance Security may be deemed as invalid and the Contract nullified.
- 14.6.8 Subject to the provisions of this contract, the Performance Security will be discharged by KPLC and returned to the Contractor not earlier than thirty (30) days following the date of completion of the Contractor's obligations under the contract, including any warranty obligations, under the contract.

14.7 INSPECTION AND TESTS

- 14.7.1 KPLC or its representative(s) shall have the right to inspect and/or to test the Services to confirm their conformity to the contract specifications. KPLC shall notify the Contractor in writing in a timely manner, of the identity of any representative(s) retained for these purposes. Such visit and or inspection/ test shall in no way prejudice KPLC's rights and privileges.
- 14.7.2 In appropriate circumstances, Inspection/ Test Report(s) shall be completed upon conclusion of the inspection/ tests.
- 14.7.3 Should any inspected or tested services fail to conform to the specifications, KPLC may reject the Services, and the Contractor shall either replace or remedy the rejected services or make alterations necessary to meet specification requirements free of cost to KPLC.
- 14.7.4 KPLC's right to inspect, test and where necessary, reject the services after provision shall in no way be limited or waived by reason of the services having previously been inspected, tested and passed by KPLC or its representative(s) prior to the services performance / delivery.
- 14.7.5 For the avoidance of doubt, any acknowledgement by KPLC on the Contractor's or sub-contractor's document shall not be conclusive proof or evidence of satisfactory performance without duly authorised approval by KPLC.
- 14.7.6 Nothing in this clause 14.14 shall in any way release the Contractor from any warranty or other obligations under this Contract.

a) If KPLC requires such Services to be re-done, the Services shall be repeated under the same terms and conditions.

14.7.7 The Contractor shall be responsible for making good any defect in or damage to any part of the Services which may appear or occur during the execution of provision of Services and which arises from either:- (i) poor workmanship or (ii) any act of omission or commission by the Contractor during the said period.

14.7.8 If the Contractor fails to remedy a defect within a reasonable time, KPLC may fix a final time for remedying the defect. If the Contractor fails to do so, the KPLC may:-

(a) Carry out the work itself or by others at the Contractor's risk and cost, provided that it does so in a reasonable manner.

(b) if the defect or damage is such that KPLC has been deprived of substantially the whole of the benefit of the Services or a part thereof, it may terminate the Contract in respect of such parts of the Services as cannot be put to the intended use.

14.8 PACKAGING AND LABELLING

14.8.1 Where applicable, the Contractor shall provide such packaging of the material and equipment as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract.

14.8.2 The method of packaging, labeling and marking shall comply strictly with such special requirements as shall be specified and attached to the Contract and particular Order.

14.8.3 The labelling, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract.

14.8.4 The materials and equipment shall be packed in good condition suitable for sea/air/road/rail dispatch. Hazard in transit to the final destination shall include rough handling and storage in tropical conditions.

14.9 DELIVERY AND DOCUMENTS FOR MATERIALS/ EQUIPMENT

Where applicable, delivery of the materials/ equipment shall be made by the Contractor to the place and in accordance with the terms specified by KPLC in its Schedule of Requirements or as may be otherwise indicated.

14.10 PROVISION OF SERVICES AND DOCUMENTS FOR SERVICES RENDERED

14.10.1 The Contractor shall provide the Services in accordance with the terms specified by KPLC in its Schedule of Requirements or as may be otherwise indicated.

14.10.2 The Contractor shall notify KPLC of the full details of Services provided by delivering a full original set of the following documents: -

- a) *Contractor's invoice showing the Service description, quantity, unit price and total price*
- b) *Inspection Certificate*
- c) *Notification of Award letter*

14.11 INSURANCE

14.11.1 The Contractor shall be responsible for and keep in force current appropriate insurance covers for its property and persons engaged in the performance and or provision of the Services under the contract.

14.11.2 The Contractor shall (*except in respect to losses, injuries or damage resulting from any act or neglect of KPLC*) indemnify and keep indemnified KPLC against all losses and claims for injuries or damage to any person or property whatsoever which may arise out of or in consequence of the contract and against all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

14.12 PAYMENT

14.12.1 Payments shall be made thirty (30) days after satisfactory performance completion of the Services, and submission of invoice together with other required and related documents or as otherwise prescribed in the Contract.

14.12.2 Payment shall primarily be through KPLC's cheque or Real Time Gross Settlement (RTGS) or telegraphic transfer. Where applicable, a copy of a valid Performance Security, stamped, certified as authentic by KPLC, shall form part of the documents to be presented to KPLC before any payment is made.

14.12.3 A Contractor who requests for a Letter of Credit (*hereinafter abbreviated as LC*)–

- a) *Shall meet the LC bank charges levied by its bank while KPLC shall meet the LC bank charges levied by its bank.*

- b) *Any extension and or amendment charges and any other costs that may result from the Contractor's delays, requests, mistakes or occasioned howsoever by the Contractor shall be to the Beneficiary's account.*
- c) *The maximum number of extensions and amendments shall be limited to two (2).*
- d) *Notwithstanding sub-clause 14.11.3 (a), should the Contractor require a confirmed LC, then all confirmation and any other related charges levied by both the Contractor's and KPLC's bank shall be to the Beneficiary's account.*
- e) *The LC shall be opened only for the specific Order within the validity period of the contract.*
- f) *LCs shall be partial for partial performance or full for whole performance as per the contract.*
- g) *The Contractor shall be required to submit a proforma invoice for each lot for use in the placement of order and opening of the LC. The proforma invoice shall be on total all-inclusive costs basis.*
- h) *A copy of the Performance Security, stamped and certified as authentic by KPLC, whose expiry date should not be less than sixty (60) days from the LC expiry date, shall form part of the documents to be presented to the Bank before any payment is effected.*

14.12.4 KPLC shall have the sole discretion to accept or decline any Contractor's payment request through Letters of Credit without giving any reason for any decline.

14.13 INTEREST

Interest payment by KPLC is inapplicable in the contract.

14.14 PRICES

14.14.1 Subject to clause 14.14 herein below, prices charged by the Contractor for services performed under the contract shall be fixed for the period of the contract with no variations.

14.14.2 A price that is derived by a pre-disclosed incorporation or usage of an internationally accepted standard formula shall not be deemed to be a price variation within the meaning of this clause.

14.15 VARIATION OF CONTRACT

KPLC and the Contractor may vary the contract only in accordance with the following: -

- a) *the quantity variation for goods and services shall not exceed ten percent (10%) of the original contract quantity.*
- b) *the quantity variation must be executed within the period of the contract.*

14.16 ASSIGNMENT

The Contractor shall not assign in whole or in part its obligations to perform under this contract, except with KPLC's prior written consent.

14.17 SUBCONTRACTS

14.17.1 The Contractor shall not subcontract this Contract except with the express written consent of KPLC.

14.17.2 Notwithstanding any subcontracting by the Contractor of the Services herein, the Contractor shall not be relieved from any liability or obligation under the Contract and the responsibility and onus over the Contract shall rest on the Contractor who was awarded.

14.18 TERMINATION OF CONTRACT

14.18.1 KPLC may, without prejudice to any other remedy for breach of contract, by written notice sent to the Contractor, terminate this contract in whole or in part due to any of the following: -

- a) *if the Contractor fails to perform any or all of the services to the required standards, or within the period(s) specified in the contract, or within any extension thereof granted by KPLC.*
- b) *if the Contractor fails to perform any other obligation(s) under the contract.*
- c) *if the Contractor, in the judgment of KPLC has engaged in corrupt or fraudulent practices in competing for or in executing the contract.*
- d) *by an act of force majeure.*
- e) *if the Contractor becomes insolvent or bankrupt*
- f) *if the Contractor has a receiving order issued against it, compounds with its creditors, or an order is made for its winding up (except for the purposes of its amalgamation or reconstruction), or a receiver is appointed over its or any part of its undertaking or assets, or if the Contractor suffers any other analogous action in consequence of debt.*
- g) *if the Contractor abandons or repudiates the Contract.*

14.18.2 In the event that KPLC terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to

those undelivered or not rendered, and the Contractor shall be liable to KPLC for any excess costs for such similar services and or any other loss PROVIDED that the Contractor shall not be so liable where the termination is for convenience of KPLC.

14.18.3 The Parties may terminate the Contract by reason of an act of *force majeure* as provided for in the contract.

14.18.4 The Contract may automatically terminate by reason of an act of *force majeure* as provided for in the Contract.

14.19 LIQUIDATED DAMAGES

Notwithstanding and without prejudice to any other provisions of the contract, if the Contractor fails to perform any or all of the Services within the period specified in the contract, KPLC shall, without prejudice to its other remedies under the Contract, deduct liquidated damages equivalent to 0.5% of the sum due to the Contractor, per day of delay in performance of the Services, up to a maximum of the value of the Performance Security.

14.20 WARRANTY

14.20.1 Where applicable, the Contractor warrants that the Services provided under the contract are of the highest quality or current specification and incorporate all recent improvements unless provided otherwise in the Contract.

14.20.2 If the Contractor having been notified fails to remedy the defect(s) within a reasonable period, KPLC may proceed to take such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which KPLC may have against the Contractor under the contract

14.21 RESOLUTION OF DISPUTES

14.21.1 KPLC and the Contractor may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.

14.21.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may resort to resolution before a recognized local forum for the resolution of disputes.

14.22 LANGUAGE AND LAW

The language of the contract and the law governing the contract shall be the English language and the laws of Kenya respectively unless otherwise stated.

14.23 WAIVER

Any omission or failure by KPLC to exercise any of its rights or enforce any of the penalties arising from the obligations imposed on the Contractor shall in no way, manner or otherwise howsoever, alter, amend, prejudice, vary, waive or be deemed to alter, amend, prejudice, vary, waive or otherwise whatsoever any of KPLC's powers and rights as expressly provided in and as regards this contract.

14.24 FORCE MAJEURE

14.24.1 Force majeure means any circumstances beyond the control of the parties, including but not limited to:

- a) *war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;*
- b) *ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;*
- c) *rebellion, revolution, insurrection, military or usurped power & civil war;*
- d) *riot, commotion or disorder except where solely restricted to employees servants or agents of the parties;*
- e) *un-navigable storm or tempest at sea.*

14.24.2 Notwithstanding the provisions of the contract, neither party shall be considered to be in default or in breach of its obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of *force majeure* which arise after the contract is entered into by the parties.

14.24.3 If either party considers that any circumstances of *force majeure* are occurring or have occurred which may affect performance of its obligations it shall promptly notify the other party and provide reasonable proof of such circumstances.

14.24.4 Upon the occurrence of any circumstances of *force majeure*, the Contractor shall endeavour to continue to perform its obligations under the contract so far as is reasonably practicable. The Contractor shall notify KPLC of the steps it proposes to take including any reasonable alternative means for performance, which is not prevented by *force majeure*. The Contractor shall not take any such steps unless directed so to do by KPLC.

- 14.24.5 If the Contractor incurs additional costs in complying with KPLC's directions under sub clause 14.23.4, then notwithstanding the provisions of the contract, the amount thereof shall be agreed upon with KPLC and added to the contract price.
- 14.24.6 If circumstances of *force majeure* have occurred and shall continue for a period of twenty one (21) days then, notwithstanding that the Contractor may by reason thereof have been granted an extension of time for performance of the contract, either party shall be entitled to serve upon the other seven (14) days' notice to terminate the contract. If at the expiry of the period of twenty-eight (28) days, *force majeure* shall still continue, the contract shall terminate.

SECTION XV – SAMPLE SPECIAL CONDITIONS OF CONTRACT (SCC)

The Special Conditions of Contract *hereinafter abbreviated as SCC* shall form part of the Conditions of Contract. They are made in accordance with the law and KPLC's guidelines, practices, procedures and working circumstances. They shall amend, add to and vary the GCC. The clauses in this section need not therefore, be completed but must be completed by KPLC if any changes to the GCC provisions are deemed necessary. Whenever there is a conflict between the GCC and SCC, the provisions of the SCC shall prevail over those in the GCC.

No.	GCC Reference Clause	Particulars of SCC
1.	14.6.3 Performance Security	<i>KPLC User department shall specify the Performance Security amount based on individual contract</i>
2.	14.11.1 Terms of Payment	<i>The credit period shall be thirty (30) days from satisfactory delivery and submission of invoice together with other required and related documents.</i>
3.	14.18 Liquidated Damages	<i>As specified in the GCC</i>