



TENDER DOCUMENT

INSTRUCTION TO BIDDERS & CONDITION OF CONTRACT

PROJECT TITLE: CONSTRUCTION OF MOSQUES

TENDER NO.: RFP/003 Constr./Mosq. /Mkd&Kwz/QC-KE/2024

IMPLEMENTING: QATAR CHARITY

LOCATION: MAKINDU & KIBWEZI

YEAR: 2024

QATAR CHARITY KENYA

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SECTION I

INSTRUCTIONS TO TENDERERS

General/Eligibility/Qualifications/Joint venture/Cost of Tendering

1. Scope of Tender

- 1.1 The Procuring Entity as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The name, identification, and number of lots (contracts) of this Tender Document are specified in the TDS.

2. Fraud and Corruption

- 2.1. The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.
- 2.2. The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.
- 2.3. Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, pre-qualification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.
- 2.4. Unfair Competitive Advantage -Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

3. Eligible Tenderers

- 3.1. A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution, or an individual or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the

execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall

- a. Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods or works that are the subject of the tender; or
- b. any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as a consultant for Contract implementation; or
- c. Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document; or
- d. Has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and:
- e. are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or ii) may be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.

3.2. A tenderer shall not be involved in corrupt, coercive, obstructive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified.

4. **Eligible Goods, Equipment, and Services**

- 4.1. Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not ineligible under. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.
- 4.2. Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

5. **Tenderer's Responsibilities**

- 5.1. The tenderer shall bear all costs associated with the preparation and submission of his/her tender, and the Procuring Entity will in no case be responsible or liable for those costs.
- 5.2. The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Works and its surroundings and obtain all information that may be necessary for preparing the tender and entering a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.
- 5.3. The Tenderer and any of its personnel or agents will be granted permission by the Procuring Entity to enter up on its premises and lands for the purpose of such visit. The Tenderer shall indemnify the Procuring Entity against all liability arising from death or personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the examination and inspection.
- 5.4. The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.

I: Instructions to Tenderers Section

Eligible bidders should attach valid documentation and be able to meet the following minimum requirements: -

1. Attach details of similar or relevant works completed within the last five years giving details of clients who may be contacted for more information (Completion certificates will form basis of analysis).
2. Technical capability to include evidence of relevant equipment's owned (Attach logbooks, purchase receipts) / hired (attach lease agreements)
3. Attach CVs and Copies of academic certificates for skilled staff (Site agents, Engineers, Machine operators, masons, plumbers etc.), give details and provide proof of the same. Experience as prime contractor in the construction of at least 2 works of a similar nature and complexity equivalent to the Works over the last 5 years (to comply with this requirement, works cited should be at least 70 percent complete – Attach completion certificates / for ongoing works, copy of contract)
4. Sound Financial standing (Attach audited financial documents for the last 3 years & bank statements for the last 12 months). Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of not less than KSh. 10,000,000.
5. Program of works showing contractors proposed schedule of undertaking the construction.
6. Joint Ventures are not permitted for this project. However, subcontracting will be allowed, at the discretion of the Employer
- 10 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings and obtain all information that may be necessary for preparing the tender and entering a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.
- 11 Must be registered company; attach certificate of incorporation, CR12 Certificate and shareholders National Id. Card (**Certified copy**)
- 12 Must be registered with the National Construction Authority **Certified Copy** (Category NCA 6 or Higher for Water works)
- 13 KRA V.A.T certificate, and valid Tax compliance certificate (**attach certified copy**)

- 14 Attach details of similar or relevant works computed within the last 5 years giving details of clients who may be contacted for more information (Complete certificates will form basis of analysis).
- 15 Attach CVs and copies of academic certificates for skilled staff, give details and provide proof of the same. Experience as prime contractor in the construction of at least 2 works of a similar nature and complexity equivalent to the works over the last 5 years (to comply with this requirement, works cited should be at least 70% complete –attach completion certificates / for ongoing works, copy of contract).
- 16 Programme of works showing contractors proposed schedule of undertaking the construction.
- 17 Confirm ability to raised 10% of contract sum as performance bond valid for the period of the contract if awarded the contract (letter from credible bank/ insurance company).
- 18 A consistent history of litigation or arbitration awards for the applicant or any partner of a joint venture may result in disqualification. However, subcontracting will be allowed, at the discretion of the Qatar Charity Kenya.
- 19 All tenderers shall provide the Qualification Information, a statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or has not been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for the project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Qatar Charity Kenya to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to tender.
- 20 All tenderers shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 21 All tenderers shall include the following information and documents with their tenders unless otherwise stated:
 - a) Copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer.
 - b) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts.
 - c) Qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.
- 22 To qualify for award of the Contract, tenderers shall meet the following minimum qualifying criteria.
 - a) Experience as main contractor in the construction of at least two works of a nature and complexity equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);

- b) a Contract manager with at least five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and
 - c) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than 4 months of the estimated payment flow under this Contract.
- 23 Each tenderer shall submit only one tender, individually. A tenderer who submits or participates in more than one tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the tenderer's participation to be disqualified.
- 24 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.
- 25 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 26 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

B. CONTENTS OF TENDER DOCUMENTS

Sections of Tender Document

The tender document consists of Parts 1, and 2, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued.

PART 1: Tendering Procedures Section

I: Instructions to Tenderers Section

5 Section

II: Evaluation and Qualification Criteria Section

III: Bills of Quantities Section

IV: Specifications Section

VI: Drawings

PART 2: Conditions of Contract and Contract Forms Section

6. Amendment of Tender Documents

- 6.1. At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tender Documents by issuing addenda.
- 6.2. Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents from the Procuring Entity.
- 6.3. To give Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity should extend the deadline for the submission of Tenders.

C. PREPARATION OF TENDERS

7. Cost of Tendering

7.1. The Tenderer shall meet all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

8. Language of Tender

8.1. The Tender, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring Entity, shall be written in the English Language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate and notarized translation of the relevant passages into the English Language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

9. Documents Comprising the Tender

The Tender shall comprise the following:

- a) Form of Tender prepared,
- b) Schedules including priced Bill of Quantities, completed.
- d) Alternative Tender, if permissible,
- e) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer,
- f) Qualifications: documentary
- g) Conformity: a technical proposal
- h) Any other document required in the TDS.

10. Form of Tender and Schedules

10.1. The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Tendering Forms.

10.2. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provide.

10.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize all pages of the tender documents submitted.

11. Currencies of Tender and Payment

11.1. The currency (ies) of the Tender and the currency (ies) of payments shall be the same.

11.2. Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer in the Bill of Quantities, entirely in Kenya shillings.

12. Documents Comprising the Technical Proposal

12.1. The Tenderer shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information, Tender Forms, insufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.

13. **Sealing and Marking of Tenders**

- 13.1. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- a. in an envelope or package or container marked "Financial & technical", all documents comprising the Tender, as described ALTERNATIVE TENDER", all required copies of the alternative Tender.
 - b. The inner envelopes or packages or containers shall: a Bear the name and address of the Procuring Entity. Bear the name and address of the Tenderer; and
 - c. Bear the name and Reference number of the Tender.
- 13.2. If an envelope or package or container is not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Tender.
- 13.3. Tenders that were misplaced or opened prematurely will not be accepted.

14. **Deadline for Submission of Tenders**

- 14.1. Tenders must be received by the Procuring Entity at the address specified in the TDS and no later than the date and time also specified in the TDS.
- 14.2. When so specified in the TDS, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.
- 14.3. The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 14.4. Late Tenders the Procuring Entity shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT
- 14.5. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

15. **Withdrawal, Substitution, and Modification of Tenders**

- 15.1. Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization, (except that withdrawal notices do not require copies).
- 15.2. The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:
- a. prepared and submitted (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and
 - b. received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, Tenders requested to be withdrawn, shall be returned unopened to the Tenderers.

15.3. No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

16. Tender Opening

16.1. Except in the cases specified. The Procuring Entity shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified, in the presence of Tenderers' designated representatives and anyone who chooses to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted.

16.2. First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the corresponding Tender shall not be opened but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at tender opening.

16.3. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

16.4. Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

16.5. Next, all remaining envelopes shall be opened on time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

16.6. Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bill of Quantities (to be decided on by the tender opening committee) are to be initialed by the members of the tender opening committee attending the opening.

16.7. At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders,)

16.8. The Procuring Entity shall prepare minutes of the Tender Opening that shall include, as a minimum: a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification; b) The Tender Price, per lot (contract) if applicable, including any discounts; c) any alternative Tenders; d) the presence or absence of a Tender Security, if one was required. e) number of pages of each tender document submitted

E. Evaluation and Comparison of Tenders

17. Confidentiality

17.1. Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers,

- 17.2. Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.
- 17.3. Notwithstanding ITT (above), from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.

18. Clarification of Tenders

- 18.1. To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by the Procuring Entity shall not be considered.
- 18.2. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the tenders.

If a tenderer does not provide clarifications of its tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

19. Award of Contract

- 1.1 Subject to Clause 6.2, the award of the Contract will be made to the tenderer whose tender has been determined to be substantially responsive to the tendering documents and who has offered the lowest evaluated tender price, provided that such tenderer has been determined to be (a) eligible in accordance with the provision of Clauses 1.2, and (b) qualified in accordance with the provisions of clause 1.7 and 1.8.
- 1.2 Notwithstanding clause 6.1 above, the Qatar Charity Kenya reserves the right to accept or reject any tender, and to cancel the tendering process and reject all tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the action.
- 1.3 The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum (hereinafter and in all Contract documents called the "Contract Price") that the Qatar Charity Kenya will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time the other tenderers shall be informed that their tenders have not been successful. The contract shall be formed on the parties signing the contract.
- 1.4 The Agreement will incorporate all agreements between the Qatar Charity Kenya and the successful tenderer.
- 1.5 The successful tenderer shall deliver to the Qatar Charity Kenya a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and specified form

- 1.6 Upon the furnishing by the successful tenderer of the Performance Security, the Qatar Charity Kenya will promptly notify the other tenderers that their tenders have been unsuccessful.
- 1.7 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

SECTION II

CONDITIONS OF CONTRACT

1. Definitions

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

“Bill of Quantities” means the priced and completed Bill of Quantities forming part of the tender.

“Compensation Events” are those defined in Clause 24 hereunder.

“The Completion Date” means the date of completion of the Works as certified by the Project Manager, in accordance with Clause 31.

“The Contract” means the agreement entered into between the Qatar Charity Kenya and the Contractor as recorded in the Agreement Form and signed by the parties including all attachments and appendices thereto and all documents incorporated by reference therein to execute, complete, and maintain the Works,

“The Contractor” refers to the person or corporate body who’s tender to carry out the Works has been accepted by the Qatar Charity.

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

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

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

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

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

“The Defects Liability Period” is the period named in the Contract Data and calculated from the Completion Date.

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

“Day works” are Work inputs subject to payment on a time basis for labour and the associated materials and plant.

“Qatar Charity”, or the **“Procuring entity”** i.e Qatar Charity Kenya.

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

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

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

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

“Project Manager” is the person named in the Appendix to Conditions of Contract (or any other competent person appointed by the Qatar Charity Kenya and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract and shall be an “Architect” or a “Quantity Surveyor” registered under the Architects and Quantity Surveyors Act Cap 525 or an “Engineer” registered under Engineers Registration Act Cap 530.

“Site” is the area defined as such in the Appendix to Condition of Contract.

“**Site Investigation Reports**” are those reports that may be included in the tendering documents which are factual and interpretative about the surface and subsurface conditions at the Site.

“**Specifications**” means the Specifications of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

“**Start Date**” is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with the Site possession date(s).

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

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

“**A Variation**” is an instruction given by the Project Manager which varies the Works.

“**The Works**” are what the Contract requires the Contractor to construct, install, and turnover to the Qatar Charity, as defined in the Appendix to Conditions of Contract.

2. Interpretation

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract
- 2.2 If sectional completion is specified in the Appendix to Conditions of Contract, reference in the Conditions of Contract to the Works, the Completion Date and the Intended Completion Date apply to any section of the Works (other than references to the Intended Completion Date for the whole of the Works).

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

- (1) Agreement,
- (2) Contractor's Tender,
- (3) Specifications,
- (4) Drawings,
- (5) Bill of Quantities,
- (6) Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.

3. Language and Law

Language of the Contract and the law governing the Contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

4. Project Manager's Decisions

Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Qatar Charity Kenya and the Contractor in the role representing the Qatar Charity.

5. Delegation

The Project Manager may delegate any of his duties and responsibilities to others after notifying the Contractor.

6. Communications

Communication between parties shall be effective only when in writing. A notice shall be effective only when it is delivered.

7. Personnel

The Contractor shall employ the key personnel named in the Qualification Information, to carry out the functions stated in the said Information or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Qualification Information. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the Work in the Contract.

8. Works

The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

9. Safety and Temporary Works

- a. The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.
- b. The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent Works, shall be subject to prior approval by the Project Manager before they can be used.
- c. The Contractor shall be responsible for the safety of all activities on the Site.

10. Work Program

Within the time stated in the Appendix to Conditions of Contract, the Contractor shall submit to the Project Manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works. An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining Work, including any changes to the sequence of the activities.

11. Possession of Site

The Qatar Charity Kenya shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Appendix to Conditions of Contract, the Qatar Charity Kenya will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.

12. Access to Site

The Contractor shall allow the Project Manager and any other person authorized by the Project Manager, access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

13. Instructions

The Contractor shall carry out all instructions of the Project Manager which are in accordance with the Contract.

14. Extension or Acceleration of Completion Date

The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining Work, which would cause the Contractor to incur additional cost. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager in writing for a decision upon the effect of a Compensation Event or variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay caused by such failure shall not be considered in assessing the new (extended) Completion Date. No bonus for early completion of the Works shall be paid to the Contractor by the Qatar Charity.

15. Early Warning

The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the Work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

16. Defects

- a. The Project Manager shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a defect and to uncover and test any Work that the Project Manager considers may have a defect.

Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor.

- b. The Project Manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.

17. Bills of Quantities

The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rate in the Bills of Quantities for each item.

18. Variations

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

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

19. Payment Certificates

The Contractor shall submit to the Project Manager application for payment for the phase completed required. The Project Manager shall inspect and certify by issuing the contractor with interim certificate so that he/she raised invoice.

The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein.

20. Price Adjustment

The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.

No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date signing contract agreement.

21. Retention

The Qatar Charity Kenya shall retain from each payment due to the Contractor the proportion stated in the Appendix to Conditions of Contract (10%) until Completion of the whole of the Works. On Completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the remaining half when the Defects Liability Period has passed and the Project Manager has certified that all defects notified to the Contractor before the end of this period have been corrected.

22. Liquidated Damages

- a. The Contractor shall pay liquidated damages to the Qatar Charity Kenya at the rate stated in the Appendix to Conditions of Contract for each day that the actual Completion Date is later than the Intended Completion Date. The Qatar Charity Kenya may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not alter the Contractor's liabilities.
- b. If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate

23. Securities

The Performance Security shall be provided to the Qatar Charity Kenya no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a reputable bank acceptable to the Qatar Charity, and denominated in Kenya Shillings.

The Performance Security shall be valid until a date 30 days beyond the date of issue of the Certificate of Completion.

24. Liability and Insurance

24.1 From the Start Date until the Defects Correction Certificate has been issued, the following are the Qatar Charity's risks:

- (a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to;
 - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or
 - (ii) Negligence, breach of statutory duty or interference with any legal right by the Qatar Charity Kenya or by any person employed by or contracted to him except the Contractor.
- (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Qatar Charity Kenya or in Qatar Charity's design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.

24.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is the Qatar Charity's risk except loss or damage due to;

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

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

The Contractor shall provide, in the joint names of the Qatar Charity Kenya and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Appendix to Conditions of Contract for the following events;

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

24.4 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.

24.5 If the Contractor does not provide any of the policies and certificates required, the Qatar Charity Kenya may affect the insurance which the Contractor should have provided and recover the premiums from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

24.6 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager. Both parties shall comply with any conditions of insurance policies.

25. Completion and taking over

Upon deciding that the Works are complete, the Contractor shall issue a written request to the Project Manager to issue a Certificate of Completion of the Works. The Qatar Charity Kenya shall take over the Site and the Works within seven [7] days of the Project Manager's issuing a Certificate of Completion.

26. Final Account

The Contractor shall issue the Project Manager with a detailed account of the total amount that the Contractor considers payable to him by the Qatar Charity Kenya under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is

not, the Project Manager shall issue within 30 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate. The Qatar Charity Kenya shall pay the Contractor the amount due in the Final Certificate within 60 days.

27. Termination

In witness whereof, the parties thereto have caused this agreement to be executed the day and year first before written.

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

- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorized by the Project Manager;
- (b) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (c) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;

Termination in the event of default.

A. The term of this Agreement shall commence on the Effective Date and shall continue until the Second party satisfactorily completes performance of the Services at notified by the first party (or within six (6) months from the Effective Date, whichever occurs first hereinafter the "Term").

B. Termination by the first party

The first party shall be entitled to terminate this Agreement immediately without prejudice to any other remedy at its disposal by giving written notice to the Second party, such termination immediately effective upon the giving of such notice of termination, if:

- The Second party fails to comply with its obligations under this Agreement, and, if the failure can be cured, the Second party fails to cure such a failure within fourteen (14) days written notice from the first party or declares that it will not be able to remedy the default within such time.
- The Second party abandons or (except where required or agreed upon with the first party) suspends the provision of the Services.
- The Second party fails to proceed regularly and diligently with the execution of the Services and fails to meet the agreed completion timelines.
- The Second party has subcontracted the Services without having obtained the prior written consent of the first party.
- The Second party fails to take steps to employ competent and/or additional staff and labour upon receiving a request to do so from the first party citing reasons for such a request;
- Any pre-contractual statements made by the Second party and on which the first party has relied upon are found to have been false or misleading.

The first party may terminate this Agreement at any time by giving to the Second party not less than thirty days provided that such termination is occasioned by any one or several of the foregoing causes.

Termination by Either Party

Each Party shall be entitled to terminate this Agreement by giving written notice to the other Party such termination immediately effective upon the giving of such notice of termination: -

- if one Party ceases or threatens to cease to carry on its business.
- if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other Party.
- if one Party makes any arrangement for the benefit of its creditors.
- if one Party goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;

- in the event of either party being prohibited by any law or official requirement from complying with the terms of this Agreement.

Force Majeure

Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting, directly or indirectly, from acts of God, civil or military authority, acts of the public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation or any causes beyond the control of such party.

Consequences of Termination

Upon termination by either party, the Second Party shall provide to the First Party any and all copies, in whole or in part, of any documentation belonging to the first party and any and all tangible materials the first party provided to the Second party in connection with this Agreement.

The first party shall not incur any liability to the Second party or any other person by reason of any failure on the part of the Second party to honor any contract entered into with any third party including but not limited to its sub-contractor(s), employees or other third party nor a failure to ensure compliance with any law including but not limited to any health and safety regulations

Indemnity

The Second party hereby indemnifies and holds harmless the first party, its subsidiaries, and affiliates, and their officers and employees, from any damages, claims, liabilities, and costs, including reasonable attorney's fees, or losses of any kind or nature whatsoever ("Loss") which may in any way arise from the Services performed by the Second party hereunder, the work of employees of the Second party while performing the Services of the Second party hereunder, or any breach or alleged breach by the Second Party and any entity retained by itself while discharging the its obligations under this Agreement, including the warranties set forth herein. The first party shall retain control over the defense of, and any resolution or settlement relating to, such Loss. The Second party will cooperate with the first party and provide reasonable assistance in defending any such claim.

The Second party shall proceed regularly and diligently in order to achieve completion of the works within the prescribed timelines. Time shall be of the essence. In the event that the Second party fails to meet the prescribed timelines and such delay is not otherwise excusable by the first party, then without prejudice to any other rights it may have, the first party shall have the right without liability and without prejudice to any other rights it may have to take one or more of the following actions:

- if the first party determines that the remaining services or portion of the services can be completed by the Second party in a reasonable and acceptable time, then the first party by notice to the Second party may allow the Second party an extension or further extension of time (as the case may be), for the completion subject to making a claim for liquidated damages and/or other charges as stipulated below;
- if the first party determines that the Second party has breached any provision of this Agreement or failed to observe any of the conditions of this Agreement such that any portion of the services cannot be completed as per agreed timelines or within such additional time as may be extended by the first party then the first party may proceed to either:
 1. Terminate this Agreement at any time;
 2. Employ and pay other persons to carry out the remaining services and all expenses consequent thereon or incidental thereto shall be recoverable from the Second party by the first party, as a debt or may be deducted from any money due or to become due to the Second party under this Agreement.

Waiver/Non-Waiver

Except as otherwise expressly provided herein, no waiver of any covenant, condition, or provision of this Agreement shall be deemed to have been made unless expressly in writing and signed by the party against whom such waiver is charged; and:

- the failure of any party to insist in any one or more cases upon the performance of any of the provisions, covenants, or conditions of this Agreement or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of any such provisions, covenants, or conditions,

- the acceptance of performance of anything required by this Agreement to be performed with knowledge of the breach or failure of a covenant, condition, or provision hereof shall not be deemed a waiver of such breach or failure, and further:
- no waiver by any party of one breach by another party shall be construed as a waiver with respect to any other or subsequent breach.

28. Payment upon Termination

31.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the Work done and materials ordered and delivered to Site up to the date of the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the Qatar Charity Kenya exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor.

31.2 If the Contract is terminated for the Qatar Charity's convenience or because of a fundamental breach of Contract by the Qatar Charity, the Project Manager shall issue a certificate for the value of the Work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works.

29. Release from Performance

If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Qatar Charity Kenya or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop Work as quickly as possible after receiving this certificate and shall be paid for all Work carried out before receiving it.

30. Corrupt gifts and payments of commission

The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the Qatar Charity Kenya any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for the Qatar Charity Kenya or for showing or forbearing to show favor or disfavor to any person in relation to this or any other contract for the Qatar Charity.

- (b) Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement Regulations issued under The Exchequer and Audit Act Cap 412 of the Laws of Kenya.

31. Money Laundering, Terrorist Financing,

- (a) The Second party shall not indulge in any kind of act direct nor indirect connection to money laundering act nor terrorist financing.
- (b) The Second party committed to adhere with regulations set by the Non-governmental organization board and Financial reporting Center and any breach of this Condition by the Second party or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Second party) shall be an offence under the provisions of the Crime and anti-Money laundering regulation (2009).

32. Settlement of Disputes

In case any dispute or difference shall arise between the Qatar Charity Kenya or the Project Manager on his behalf and the Contractor, either during the progress or after the completion or termination of the Works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of any of the following professional institutions;

1. Architectural Association of Kenya
2. Institute of Quantity Surveyors of Kenya
3. Association of Consulting Engineers of Kenya
4. Chartered Institute of Arbitrators (Kenya Branch)
5. Institution of Engineers of Kenya

SCOPE OF WORK

Construction of two Mosques of the 124sqm. Each consisting of the following

- A prayer room for men, with an area of 80 m²
- Balcony with an area of 22 m²
- Ablution with an area of 8 m²
- 4 bathrooms, 14 m²

furnishing:

- 80 m² wall to wall carpet with distinctive lounge lines.
- Audio system - speaker, amplifier and microphone.
- 100 copies of the Holy Quran.
- A wooden cabinet for the Qur'an.
- Mimbar (pulpit) - standard size.

Note that the activity shall be conducted using an appropriate participatory process incorporating various stakeholders, including the beneficiaries.



FORM OF TENDER

TO: _____ [Name of Employer) _____ [Date]
_____ [Name of Contract]

Dear Sir,

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

Kenya Shillings _____
(amount in word)

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until _____ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20_____

Signature _____ in the capacity of _____ Duly authorized to sign tenders for and on behalf of _____ [Name of employer] of _____ [Address of employer]

