

MINISTRY OF TRANSPORT
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REPUBLIC OF KENYA



MINISTRY OF TRANSPORT

**CONSTRUCTION OF THE
CIVIL WORKS OF MOMBASA—NAIROBI
STANDARD GAUGE
RAILWAY PROJECT
EPC TURNKEY COMMERCIAL CONTRACT
BETWEEN
KENYA RAILWAYS CORPORATION
AND
CHINA ROAD AND BRIDGE CORPORATION
CONTRACT DOCUMENT**

July 2012

MANAGING DIRECTOR
KENYA RAILWAYS CORPORATION
PO BOX 30121 - 00100
NAIROBI

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SECTION 1

THE CONTRACT AGREEMENT

AND CONTRACTOR'S POWER OF ATTORNEY





中国路桥工程有限责任公司

CHINA ROAD AND BRIDGE CORPORATION (CRBC)

Add: C88 Andingmenwai Dajie, Beijing, China
Tel: 86-10-64280055

Post code: 100011
Fax: 86-10-64285686

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT I, the undersigned

Zhang Jianchu

Chairman

Of China Road and Bridge Corporation

Lawfully authorized to represent and act on behalf of the said
Corporation, whose registered address is

Zhonglu Plaza,

C88, Andingmenwai Dajie,

Beijing 100011, People's Republic of China

Do hereby appoint

Mr. Li Qiang

P. 00461020

Kenya Office


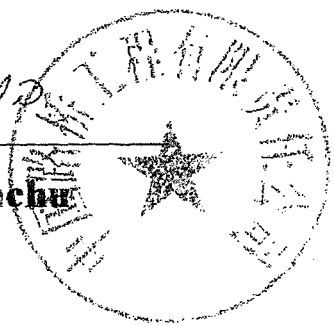
of **China Road and Bridge Corporation**

杨

Whose signature appears below, to be true and lawful attorney; and I authorize the said attorney sign Prequalification Document and bids, conduct negotiation, sign the Contract and execute all the necessary matters related thereof, in the name and on behalf of the said company in connection with **CONSTRUCTION OF THE CIVIL WORKS OF MOMBASA- NAIROBI STANDARD GAUGE RAILWAY PROJECT.**

IN WITNESS WHEREOF.

I have hereto set my hand on July 09, 2012.



Zhang Jianchu
Chairman
China Road and Bridge Corporation

Specimen Signature of Attorney



Mr. Li Qiang
Kenya Office

China Road and Bridge Corporation

SECTION 2

LETTER OF AWARD AND ACCEPTANCE

杨

Box 30121 - 00100, Nairobi, Kenya
+254-020-2215211, 2215796
+254-020-340049/ 224156
info@krc.co.ke
www.krc.co.ke



Ref: KRC/PLM/31/2012

Date: 10th July, 2012

M/s China Road and Bridge Corporation (CRBC)
C88, Zhonglu Plaza, Andingmenwai Dajie, Beijing, China
Tel: 0086 10 64280055 Fax: 0086 10 64285667

Dear Sirs,

**RE: CONSTRUCTION OF THE CIVIL WORKS OF MOMBASA-NAIROBI
STANDARD GAUGE RAILWAY PROJECT**

LETTER OF AWARD

This is to notify you that the Kenya Railways Corporation has accepted your proposal dated 29th May, 2012 for the **Construction of the Civil Works of the Mombasa-Nairobi Standard Gauge Railway Project** on EPC/Turnkey Projects, FIDIC 1999 basis for the amount **Ksh. 220,921,502,221.08 (Kenya Shillings Two Hundred Twenty Billion, Nine Hundred Twenty One Million, Five Hundred and Two Thousand, Two Hundred Twenty One, Cents Eight)** exclusive of all the taxes, duties and other levies which include cess, value added taxes and so on.

The aforementioned amount is the Contract Price payable in consideration of the execution and completion of Services as prescribed in the Contract Document. This is based on Conditions of Contract for EPC/Turnkey Projects, FIDIC 1999.

In accordance with the provisions of the contract, the Managing Director of Kenya Railways Corporation will be the Employer's Representative for the Contract as provided for under Clause 1.1.2.4 of the Conditions of Contract Part II (Particular Conditions). The Managing Director shall appoint a Representative to perform the duties set under Clause 3.1 of the said Conditions of Contract.



中国路桥工程有限责任公司 (肯尼亚办事处)
CHINA ROAD AND BRIDGE CORPORATION (KENYA)

Our Ref: CRBC/074/2012

Date: 10th July, 2012

Nduva Muli
Managing Director
Kenya Railways Corporation
NAIROBI, KENYA

Dear Sir,

RE: CONSTRUCTION OF THE CIVIL WORKS OF MOMBASA – NAIROBI
STANDARD GAUGE RAILWAY PROJECT
ACCEPTANCE OF AWARD

This refers to your Letter of Award, Ref: KRC/PLM/31/2012, dated 10th July, 2012, awarding the above-captioned project to our company, we hereby give a formal unconditional acceptance of the award of the above-captioned project in the amount of Ksh.220,921,502,221.08, say Kenya Shillings Two Hundred Twenty Billion Nine Hundred Twenty One Million Five Hundred and Two Thousand Two Hundred Twenty One and Cents Eight Only (exclusive of all taxes, duties and other levies, such as value added tax, customs duties, withholding tax, etc).

We take this opportunity to convey our appreciation for the award of the contract, and look forward to signing the Commercial Contract with you at the earliest time.

Thank you and best regards.

Yours Sincerely,

Li Qiang
General Manager

China Road & Bridge Corporation (Kenya)

TENDER CLARIFICATIONS

This section records clarifications to the Employers Requirement and the Contractor's Tender agreed upon between the Employer and the Contractor prior to signature of the Contract Agreement.

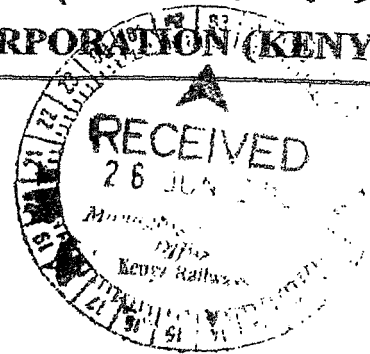
1. The currency of the Bid submitted by the Contractor is in Kenya Shillings. The portion of foreign currency (United States Dollar) of the Contract Price is 85%, or such percentage as shall be stipulated in the Loan Agreement between Government of Kenya and the Financial Institutions of China. In the event of any discrepancy relating to percentages of local and foreign currencies, the provisions of the Loan Agreement shall prevail. The Exchange Rate of United States dollar to Kenya Shillings is 83.1344 which is the mutually agreed rate of exchange prevailing on April 30th, 2012.
2. The Employer shall pay those amounts due to the Contractor which are financed by the financial institutions of China to the Contractor through the Financial Institutions of China. For the amounts due to the Contractor which are financed by the GOK, the Employer shall pay directly to the Contractor.
3. The Contractor shall be allowed to present Performance Securities, First installment and Retention Money Guarantees from reputed Banks with their principal offices in the Peoples Republic of China or in the Republic of Kenya. Guarantees shall be denominated in the currency of the tender. Banks proposed to issue guarantees shall be subject to prior review and approval by the Employer.
4. Insurances required under the Contract shall be provided by reputable firms with their principal offices in Kenya and the approval of the Employer shall be obtained prior to such insurances being procured.
5. The limit of Liquidated/Delayed Damages is subject to a maximum of 1% of the Contract Price.
6. The contractor shall be exempted from all taxes, duties and other levies, such as cess, value added tax, withholding tax, custom duties and so on.
7. The Employer shall be responsible for land acquisition within the right of way of 70 meters wide in open area, 100 meters wide in the station area and relocation of all residents or occupants inside the right of way while the contractor executes the works. In the event that new occupants are found within the stipulated road reserve during execution of the works, the Employer shall be responsible for relocation of the same. The Contractor will provide assistance in machinery and workers available at site unless the works must be done by a third party public entity.
8. The Time for Completion of this project is 60 months subject to the consideration that there is a grace period of 6 months after 60 months. The Liquidated/Delay Damages shall be applicable after the expiry of the grace period.

9. The Employer shall be responsible for extra land acquisition used to construct overpass and underpass existing facilities including railway, road etc.

SECTION 4
FORM OF BID
AND APPENDIX TO FORM OF BID



中国路桥工程有限责任公司 (肯尼亚办事处)
CHINA ROAD AND BRIDGE CORPORATION (KENYA)



FORM OF BID

Name of Contract: Construction of the Civil Works of the Mombasa-Nairobi Standard Gauge Railway Project

To: The Managing Director
Kenya Railways Corporation
P O Box 49712-00100
NAIROBI

Sir,

1. We have examined the Conditions of Contract, Employer's Requirements and Addenda for the above-named Works. We have examined, understood and checked these documents and have ascertained that they contain no errors or other defects. We accordingly offer to design, execute and complete the Works and remedy any defects therein, in conformity with such documents and our enclosed Tender (including this letter) for the Contract Price set out in our Bid namely: Ksh. 220,921,502,221.08, say Kenya Shillings Two Hundred Twenty Billion Nine Hundred Twenty One Million Five Hundred and Two Thousand Two Hundred Twenty One and Cents Eight Only (exclusive of all taxes, duties and other levies, such as value added tax, customs duties, withholding tax, etc). The proportion of foreign currency (United States Dollar) of the Contract Price is 85%, or such percentage as shall be stipulated in the Loan Agreement between Government of Kenya and the financial institutions of China. The Exchange Rate of United States dollar to Kenya Shillings is 83.1344 which is the mutually agreed on the exchange rate on April 30th, 2012.

2. We understand that if this offer is accepted, the effectiveness of the resulting contract to be signed between yourselves and the undersigned corporation shall be subject to the signature of a Loan Agreement between the Government of Kenya and the financial institution of China in respect of the works.

3. If this offer is accepted and the Loan Agreement as above is signed, we will provide the specified Performance Security, commence the Works after receiving the commencement order from the Employer, and complete the Works in accordance with the above-named documents within the Time for Completion. We guarantee that the Works will then conform with the Performance Guarantees included in this Tender.

4. We unconditionally certify and warrant that we are a state corporation created and

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Handwritten signature/initials.

organized under the laws of the Peoples Republic of China and fully owned by the Peoples Republic of China.

5. We certify that we are eligible, qualified and experienced to construct works financed on bilateral basis by the Peoples Republic of China.

6. We certify/confirm that we comply with the eligibility requirements with the Ministry of Roads in category "A", and with the Ministry of Public Works in category "A".

7. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf has engaged or will engage in improper practices such as bribery, coercion, deceit or deception.

Dated this 26th day of June, 2012

Signature [Signature] in the capacity of General Manager of Kenya Branch
(Designation)

Duly authorized to sign bids for and on behalf of

China Road and Bridge Corporation (Name of Bidder)

Address and official stamp of Bidder:

C 88, Andingmenwai Dajie, Zhonglu Plaza, BEIJING, CHINA

Name of Witness: Xiong Shiling

Signature of Witness: [Signature]

Address of Witness: Plot 330/265 Hatheru Rd., Lavington, Nairobi, Kenya

Occupation of Witness: Deputy General Manager of Kenya Branch

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[Agent Banking Guidelines](#)
[Risk Management Guidelines](#)
[Agency Guideline for DTMs](#)
[The National Payment System Act, 2011](#)

Indicative Exchange Rates

Search Forex Daily Rates

Apr / 30 / 2012

1%

Search Forex Rates From

Jan / 1 / 2012

To

Jan / 1 / 2012

Currency

US Dollar

1%

Forex Market Indicative Rates for Major Currencies (Opening of Markets)

	Currency	Mean	Buy	Sell	Date
1	US DOLLAR	83.2164	83.1344	83.2983	30.Apr.2012
2	STG POUND	135.5117	135.3634	135.6601	30.Apr.2012
3	EURO	110.3024	110.1787	110.4261	30.Apr.2012
4	SA RAND	10.7447	10.7025	10.7869	30.Apr.2012
5	KES/US\$	30.1384	29.9886	30.2883	30.Apr.2012
6	KES/T\$	19.0768	19.0280	19.1257	30.Apr.2012
7	AE DIRHAM	22.6563	22.6333	22.6792	30.Apr.2012
8	CAN \$	84.9082	84.7533	85.0631	30.Apr.2012
9	S FRANC	91.8159	91.6959	91.9359	30.Apr.2012
10	JPY(100)	103.8406	103.6957	103.9856	30.Apr.2012
11	SW KRONER	12.3983	12.3792	12.4175	30.Apr.2012
12	NOR KRONER	14.5353	14.5191	14.5515	30.Apr.2012
13	DAN KRONER	14.8296	14.8145	14.8448	30.Apr.2012
14	IND RUPEE	01.5845	01.5823	01.5868	30.Apr.2012
15	HONGKONG \$	10.7258	10.7147	10.7370	30.Apr.2012
16	SINGAPORE \$	67.3163	67.2228	67.4098	30.Apr.2012
17	SAUDI RYAL	22.1896	22.1662	22.2129	30.Apr.2012
18	CHINESE YUAN	13.1882	13.1742	13.2023	30.Apr.2012
19	AUSTRALIAN \$	87.0111	86.8838	87.1384	30.Apr.2012
20	KES/RWF	07.2643	07.1670	07.3616	30.Apr.2012
21	KES/BIF	16.5713	16.4949	16.6477	30.Apr.2012

Address:
 Haile Selassie Avenue,
 P.O Box 60000-00200,
 Nairobi, Kenya
 tel/fax: +254-20-2860000

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SECTION 4-2 APPENDIX TO FORM OF BID

S/N	Description	Clauses	Remark
1	Amount of Performance Security	Clause 4.2	10% of the Contract Price in the form of an Unconditional Bank Guarantee, acceptable to the Employer.
2	Minimum Amount of Third Party Insurance	18	KSHS. 10,000,000/- per occurrence, number of occurrences unlimited.
3	Date of Commencement	1.1.3.2	The Date of Commencement shall be 28 days from date of Letter of Commencement issued by the Employer's Representative subject to payment to Contractor of the first instalment.
4	Time for Completion	1.1.3.3 & 8.2	60 months from Date of Commencement
5	Law and Languages	1.4	Laws of the Republic of Kenya; English Language.
6	Amount of Delay Damages	8.7	0.0025% of the Contract Price for each day of delay, subject to a maximum of 1% of the Contract Price.
7	Defects Notification Period	11.1 & 11.3	12 calendar months (from the date of Taking over Certificate).
8	Limit of Retention Money	14.3(c)	Limit of retention is 5% of the Contract Price
9	Employer's Name and Address		Managing Director Kenya Railways Corporation P.O. Box 30121-00100 NAIROBI, KENYA
10	Employer's Representative		Project Manager (SCR & CS), Kenya Railways Corporation
12	Contractor's Name and Address		China Road and Bridge Corporation C88, Zhonglu Plaza Anding Men Wai Dajie Post Code 100011, Beijing, China Tel: 0086 10 64280055, Fax: 0086 10 64285667 Email: kenya@crbc.com General Manager (Kenya) Attention: Mr. Li Qiang
13	Dispute Adjudication Board		Refer to Clause 20 in Conditions of Contract Part II Particular Conditions

SECTION 5

CONDITIONS OF CONTRACT

Part-II Particular Conditions

1. GENERAL PROVISIONS

Definitions	Clause	
The Contract	1.1.1.4	"Tender" means the Final Proposal submitted by China Road and Bridge Corporation (CRBC) via their letter dated 29 th May 2012 and any subsequent amendments.
Parties and Persons	1.1.2.2	"Employer" means the Managing Director, Kenya Railways Corporation.
	1.1.2.3	"Contractor" means the China Road and Bridge Corporation whose registered office is at C88, Zhonglu Plaza, Andingmenwai Dajie, Beijing, China.
	1.1.2.4	"Employer's Representative" means the Project Manager (SCR & CS) of the Kenya Railways Corporation, duly appointed by the Employer to act on his behalf.
Dates, Tests, Periods and Completion	1.1.3.1	"Base Date" means the date 28 days prior to the submission of Final Proposal by the Contractor.
	1.1.3.2	The Date of Commencement shall be 28 days from date of Letter of Commencement issued by the Employer's Representative subject to payment of the first installment to Contractor..
	1.1.3.3	The Time for Completion is 60 months from the date of Commencement.
	1.1.3.7	"Defects Notification Period" has the same meaning as "Defects Liability Period". The Defects Notification Period shall be 12 calendar months from the date of issue of the Taking-Over Certificate.
Foreign Currency	1.1.4.4	Foreign Currency means United States Dollar.
Works and Goods	1.1.5.4	Permanent Works are the works awarded to and executed by the Contractor within the specified Right of Way of 70 meters width in open area and 100 meters width in station area in connection with the Civil Works of the Mombasa--Nairobi Standard Railway Project under the Contract Agreement.

Other Definitions	1.1.6.9	"Individual Loan Facility Agreement" means the Loan agreement to be signed between the Ministry of Finance of Kenya, and the Financial Institutions of China to finance the Project.
	1.1.6.10	"Public Utilities" means pipes for water supply, gas/oil and sewage: the overhead and underground transmission facilities of electricity and telecommunication etc.
	1.1.6.11	"Tender Clarifications" is a record of technical matters clarified and agreed upon by the Employer and Contractor prior to signature of the Contract.
Communication	1.3	The communication including for giving or issuing of approvals, certificates, consents, determination, notices and requests shall be in writing. The Approvals, certificates, consents and determinations shall not be unreasonably delayed or withheld.
Law and Language	1.4	The Contract shall be governed by the Laws of the Republic of Kenya. The ruling language is English.
Priority of Contract Documents	1.5	<i>Delete and insert the following.</i> The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of documents shall be in accordance with the following sequence: <ul style="list-style-type: none">(a) The Contract Agreement;(b) The Letters of Award and Acceptance;(c) The Tender Clarifications;(d) The FIDIC 1999 Conditions of Contract for EPC/Turnkey Projects (Part-II Particular Conditions) ;(e) FIDIC 1999 Conditions of Contract for EPC/Turnkey Projects Part-I, General Conditions;(f) The Employer's Requirements;(g) The Schedule of Payments;(h) The Contractor's Final Proposal(i) Non-Binding Bill of Quantities (for reference only);(j) Specifications and Preliminary Design Drawings;(k) Table of Adjustment data for change in cost
Confidential	1.12	<i>Add new second paragraph to Sub-Clause 1.12</i>

facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. He agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to GOK under any law, contract or other instrument, be voidable at the option of GOK.

Notwithstanding any rights and remedies exercised by GOK in this regard, Contractor agrees to indemnify GOK for any loss or damage incurred by he on account of its corrupt business practices and further pay compensation to GOK in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by Contractor as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GOK.

(d) GOK has made it mandatory that on each project some allocation of funds must be made for AIDS awareness.

(e) No member or officer of the Employer or anyone of their respective staff or their employees shall be in any way personally bound or liable for the acts or obligations of the Employer under the contract or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.

2. THE EMPLOYER

Right of 2.1
Access to the
Site

At the end of the first paragraph insert:

"Before handing over the site or portions of the site to the Contractor, the Employer shall be responsible for dismantling, transferring and relocating of houses and facilities which are within the Right of Way and affect the construction. The unknown utilities during construction shall be relocated and paid by the Employer.

The contractor shall give advance notice to the Employer of not less than 56 days with all necessary details on the section or area of the works where the contract requires relocation of underground public utilities. The Employer shall provide reasonable assistance to the contractor in

Identifying, relocating or protecting underground public utilities in order to avoid damage during construction.

Permits, 2.2 (b)
License or (iii)
Approvals

Modify as follows:

"For the import and export of Contractor's equipment when it is entering into or removed from the site.

- 2.2 (c) The Employer shall provide details of the width of right of way available along the alignment and shall also provide reasonable assistance to the Contractor in the Contractor's acquisition of land/borrow pits and other matters when requested.

3. THE EMPLOYER'S ADMINISTRATION

- Employer's 3.1 *With reference to Clause 3.1, the following provision shall also apply:*
Duties and An Employer's Representative shall be appointed by the Employer. The
Authority Employer's Representative and, where applicable, his assistants, shall exercise the authority delegated by the Employer.

4. THE CONTRACTOR

- Performance 4.2 *Add new paragraph at end of Sub-Clause 4.2*
Security The Contractor shall provide performance security for his proper performance of the Contract to the Employer within 28 days after both the following conditions are fulfilled namely;
(i) signing of the Contract Agreement;
(ii) signing of the Individual Loan Facility Agreement between the Government of Kenya and the Financial Institutions of China.

The Performance Security shall be in the form of an unconditional bank guarantee acceptable to the Employer, of an amount equivalent to 10% of the Contract Price stated in the Contract and in the format stipulated by the Employer in the Appendix to Tender. The Performance Security shall be denominated in the types and proportions of currencies in which the Contract Price is payable.

The Performance Security shall be issued either by a bank located in the country of the Employer or a foreign bank which is acceptable to the Employer.

Without limitation to the provisions of the preceding paragraph, whenever the Employer's Representative determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the portion of the Contract Price, the Contractor, at the Employer's Representative's written request, shall promptly increase the value of the Performance Security by an equal percentage.

- Safety Procedures 4.8 *After the word "shall" appearing in the opening line insert:*
"To the extent to which the Contractor is in exclusive possession of the Site handed over as per provisions of approved program under Clause 8.3.

Protection of the Environment 4.18 *Delete the Sub-clause 4.18 and replaced by the paragraph:*
The Contractor, to ensure protections of the environment in Kenya, shall take all necessary measures and precautions in conformity with statutory and regulatory environmental requirements enforced.

Security of the Site 4.22 *Add following at the end:*
"The Employer shall, upon request and at the Contractor's cost, provide reasonable additional assistance to the Contractor in matters of security."

5. DESIGN

General Design Obligations

5.1 *Add at the end of sub-clause 5.1 (General Design Obligation) the following paragraph*

The Contractor shall fully comply with the Employer's Requirements during the preparation of detailed design and deliverables. The Contractor shall bear the full responsibility for the adequacy of his design.

The detailed design is to be prepared and submitted to the Employer in accordance with the Employer's requirements (Section 8).

Contractor's Documents

5.2 *Add following paragraph to sub clause 5.2*

The Contractor shall be required to submit the following reports/documents to the Employer's Representative during the construction and at the completion of the Works for approval or otherwise as a routine submission.

Ten copies each of reports/documents to be submitted to various agencies as per provision of Section-8.

1. Program of Work within 56 days
2. Final Engineering Design Report
3. Final Drawings
4. Monthly & Quarterly Progress Report
5. EIA Report
6. Preliminary Materials Investigation Report
7. As-built Drawings, including cross-sections and cross drainage structures
8. Final Construction & Maintenance Report, including Maintenance Manuals

No extra cost will be paid to the Contractor for detailed design drawings and needed site investigation. These costs are deemed to be included in the accepted Contract Price.

- | | | |
|-------------------------------------|-----|--|
| Technical Standards and Regulations | 5.4 | <i>Substitute new Sub-Clause 5.4</i>
The design, construction and tests shall comply with relevant technical standards currently in effect in China, including but not limited to the Railway Design Manual and the Standard Specifications for Railways. |
|-------------------------------------|-----|--|

6. STAFF AND LABOUR

- | | | |
|---|------|---|
| Engagement of Staff and Labour | 6.1 | <i>Add new paragraph at end of Sub-Clause 6.1</i>
Employment of Local Personnel
The Contractor shall comply with Laws of Kenya relating to employment of local staff and labour including Subcontractors with appropriate qualification and experience. |
| Measures against Insect and Pest Nuisance | 6.12 | <i>Add new Sub-Clause 6.12</i>
The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from insect nuisance, rats, and other pests and reduce the dangers to health and the general nuisance caused by the same. The Contractor shall provide his staff and labour with suitable prophylactics for the prevention of malaria and shall take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site.

Such treatment shall be carried out at least once a year or as instructed by the Employer's Representative. The Contractor shall warn his staff and labour of the dangers of bilharzia and wild animals. |
| Epidemics | 6.13 | <i>Add new Sub-Clause 6.13</i>
In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders, and requirements as may be made by the government or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same. |
| Burial of the Dead | 6.14 | <i>Add new Sub-Clause 6.14</i>
Any employee, who has met a fatal accident while engaged upon the works, shall be provided all necessary facilities for burial etc. as per the Laws of Kenya. |

Drugs	6.15	<i>Add new Sub-Clause 6.15</i> The Contractor shall not, otherwise than in accordance with the Statutes, Ordinances, and Government Regulations or Orders for the time being in force, import, sell, give, barter, or otherwise dispose of any drugs, or permit or suffer any such importation, sale, gift, barter, or disposal by his subcontractors, agents, staff, or labour.
Arms and Ammunition	6.16	<i>Add new Sub-Clause 6.16</i> The Contractor shall not give, barter, or otherwise dispose of, to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.
Festivals and Religious Customs	6.17	<i>Add new Sub-Clause 6.17</i> The Contractor shall, in all dealings with his staff and labour, have due regard to all recognized festivals, days of rest, and religious and other customs.
8. COMMENCEMENT, DELAYS AND SUSPENSION		
Commencement of Works	8.1	The Employer's Representative may consult with the Contractor prior to issuance of the Letter of Commencement.
Time for Completion	8.2	<i>Add new Sub-Clause 8.2</i> "The work shall be planned and executed as per provision of Clause 8.3 with particular attention to the quarterly targets to be achieved as per this program in a period of 60 months from the Date of Commencement".
Programme Submitted	8.3	<i>Add new paragraph at the end of Sub-Clause 8.3</i> Cash Flow Estimate A suitable estimate of funds requirements shall be provided by the Contractor to manage cash flow operation.
Extension of Time for Completion	8.4	<i>Add (d), (e), (f) after (c)</i> (d) exceptionally adverse climatic conditions as following: (1) Rainfall is above average figure of past 5 years. (2) Time of rainy season is above average figure of past 5 years. (3) Flood occurs on the project site. (4) The drought occurs on the project site. (5) The landslide occurs on the project site. (6) The dense fogs occurs on the project site. (7) Other exceptional adverse climate (e) unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or (f) causes which, in the opinion of the Employer as proven by the Contractor, are beyond the control of the Contractor and are not due

to any fault of the Contractor.

Delay Damages 8.7 The delay damages shall be 0.0025% of the Contract Price per day and shall not exceed the maximum of one per cent (1%) of the Contract Price.

10. EMPLOYER'S TAKING OVER

Taking Over of 10.1 *Add the following sentence after the end of Sub-Clause:*
the Works and The minimum length of section for Taking Over is 50km
Sections continuously.

11. DEFECTS LIABILITY

Performance 11.9 *Add the following paragraph after the first paragraph and delete*
Certificate *subsequent paragraphs.*

The Defects Notification Period shall be 12 calendar months.

13. VARIATIONS AND ADJUSTMENTS

Variation 13.3 *Add the following*
Procedure Valuation for variations shall be based on the rates available in the Contract. In case rates cannot be derived in this manner, the Employer's Representative shall have the option to set rates based on market value and shall include Contractor's overheads and profit.

Adjustment for 13.7 *Delete the Sub-Clause 13.7 and replace with the following*
changes in If, after the Base Date, there occur in Kenya changes to any National
Legislation or State Statute, Ordinance, Decree or other law or any regulation or
by-law of any local or other duly constituted authority, or the
introduction of any such State Statute, Ordinance, Decree, Law,
regulation or by-law which causes additional or reduced cost, to the
Contractor, other than under sub clause 13.8 hereof in the execution
of the Contract, such additional or reduced cost shall, after due
consultation with both sides, be assessed and be paid by or credited
to the Employer and the Contract Price adjusted accordingly.

Variation of Price 13.8

Substitute new Sub-Clause 13.8

The Contract Price is to be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition or deduction of amounts determined by the formulae prescribed in this PC Clause.

The adjustment to be applied to each installment payable to the Contractor. The formulae shall be of the following general type

$$P_n = a + bL_n/L_o + cE_n/E_o + dM_n/M_o + \dots$$

Where:

“P_n” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in installment “n”.

“a” is a fixed coefficient, stated in the Appendix G.

“b”, “c”, “d”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works, are stated in Appendix G, such tabulated cost elements may be indicative of resources such as labour, equipment and materials.

“L_n”, “E_n”, “M_n” ... are the current cost indices or reference prices for installment “n”, each of which is applicable to cost element in Appendix G on the date 30 days prior to the submission day of installment.

“L_o”, “E_o”, “M_o”, ... are the base cost indices or reference prices, each of which is applicable to cost element in Appendix G on the Base date.

The weightings (coefficients) for each of the factors of cost stated in Appendix G shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

The proportion of the foreign currency and local currency of the Variation of Price to be paid are subject to SP Clause 14.1.

If a provisional sum of 5% of Subtotal 1 for price adjustment in the B.O.Q is not sufficient to pay the contractor for the actual value of price adjustment calculated in the above formula, the employer shall pay to the contractor the difference between 5% and actual price adjustment from its own budget.

14. CONTRACT PRICE AND PAYMENT

- The Contract Price
- 14.1 *Substitute new Sub-Clause 14.1(a).*
- (a) The Employer's Representative shall agree or determine the percentage of physical works of the Project which have been completed as per activity schedule in accordance with sub-clause 3.5 of Conditions of Contract for EPC/Turnkey Projects, FIDIC-1999.

The Contract Price is quoted in Kenya Shillings. The proportion of the Contract Price to be paid in foreign currency is 85%, subject to the provisions contained in the Individual Loan Facility Agreement between the Government of Kenya and the Financial Institutions of China. The proportion of the Contract Price to be paid in local currency is 15% of the Contract Price, subject to the provisions contained in the Individual Loan Facility Agreement between the Government of Kenya and the Financial institutions of China. The exchange rate of Kenya Shillings to United States Dollars is fixed on the buy rate of the Base Date published by the Central Bank of Kenya.

The payments of the foreign currency portion shall be transferred into the Contractor's account in United States Dollars directly through the Financial Institutions of China.

The payments of local currency portion shall be transferred into the Contractor's account in Kenya Shillings by the Employer.

- 14.1 *Delete the Sub-Clause 14.1(b)*
- (b)

- Application for Interim Payments
- 14.3 *Add the following*
- The percentage of retention is 5%, as stated in the Appendix to Form of Bid. The limit of retention is 5% of the Contract Price, as stated in the Appendix to Form of Bid. The retention money shall be substituted with a Retention Money Guarantee from a bank acceptable to the Employer.

The Contractor shall submit to the Employer a Retention Money Guarantee of 5% of the amount for each installment of payment, with

SECTION 6

SCHEDULE OF PAYMENTS

REF	CERTIFICATE DESCRIPTION	PERCENT OF CONTRACT PRICE	CONDITIONS FOR SUBMISSION
1	First installment	30%	Within one month from the date of effectiveness of the contract and confirmation by both the financial institutions of China and the Ministry of Finance of Kenya regarding such effectiveness and acceptance by the Employer of an first installment payment guarantee.
2	Second installment	10%	Within one month from the date of letter of commencement issued by the Employer's Representative.
3	Third installment	20%	Within one month from the date completion of 30% of the total quantity of Roadbed (in line km), including all related structures and underlying layers.
4	Fourth installment	10%	Within one month from the date completion of 60% of the total quantity of Roadbed (in line km), including all related structures and underlying layers.
5	Fifth installment	10%	Within one month from the date completion of 60% of the total quantity of Railway track laying (in line km), including all related structures and underlying layers.
6	Sixth installment	10%	Within one month from the date completion of 80% of the total quantity of Railway track laying (in line km), including all related structures and underlying layers.
7	Seventh installment	10%	Within one month from the date completion of 100% of the total quantity of Railway track laying (in line km), including all related structures and underlying layers.
	Total	100%	

NOTES

¹ Before the first instalment of payment, the Contractor shall submit to the Employer an first instalment Guarantee of the same amount as the first instalment to be paid, with a validity period that expires upon attainment of 80% of the quantity of Railway track laying (in line km) as certified by the Employers Representative. The First installment Guarantee shall be in the format of Appendix I.

Signature.....

Date July 11, 2012

Appendix I: Format of First Installment Guarantee

Brief description of Contract Construction of the Civil Works of the Mombasa--Nairobi Standard Gauge Railway Project

Name and address of Beneficiary The Managing Director, Kenya Railways Corporation, P. O. Box 30121 – 00100, Workshop Road of Haile Selassie Avenue, Nairobi, Kenya (whom the Contract defines as the Employer)

We have been informed that _____ (hereinafter called the "Principal") is your contractor under such Contract and wishes to receive an first installment, for which the Contract requires him to obtain a guarantee.

At the request of the Principal, we (name of bank) _____ hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of _____ (the "guaranteed amount", say: _____) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal has failed to repay the first installment in accordance with the conditions of the Contract, and
- (b) the amount which the Principal has failed to repay.

This guarantee shall become effective upon receipt of the first installment by the Principal. Such guaranteed amount shall be reduced by the amounts of the first installment payment repaid to you, as evidenced by your notices issued under sub-clause 14.6 of the conditions of the Contract. Following receipt (from the Principal) of a copy of each purported notice, we shall promptly notify you of the revised guaranteed amount accordingly.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before *(the date 70 days after the expected expiry of the Time for Completion)* _____ (the "expiry date"), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the first installment has not been repaid by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the first installment has not been repaid and that this guarantee has not been extended.

This guarantee shall be governed by the laws of Kenya and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date _____

Signature(s) _____

Appendix I: Format of Performance Guarantee

Brief description of Contract: Construction of the Civil Works of the Mombasa--Nairobi Standard Gauge Railway Project Project

Name and address of Beneficiary: The Managing Director, Kenya Railways Corporation, P. O. Box 30121 – 00100, Workshop Road of Haile Selassie Avenue, Nairobi, Kenya (whom the Contract defines as the Employer)

We have been informed that China Road and Bridge Corporation, Zhonglu Plaza, C88, Andingmenwai Dajie, Beijing, China (hereinafter called the "Principal") is your contractor under such Contract, which requires him to obtain a performance security.

At the request of the Principal, we (name of bank) _____ hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of Kenya Shillings _____ (the "guarantee amount", say: Kshs _____) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal is in breach of his obligation(s) under the Contract, and
- (b) the respect in which the Principal is in breach.

Following the receipt by us of an authenticated copy of the taking-over certificate for the whole of the works under clause 10 of the conditions of the Contract, such guaranteed amount shall be reduced by % and we shall promptly notify you that we have received such certificate and have reduced the guaranteed amount accordingly.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before _____ (the "expiry date"), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the Contract has not been issued by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this guarantee has not been extended.

This guarantee shall be governed by the laws of the Government of Kenya and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date: _____

Signature: _____

Appendix II: Format of Retention Money Guarantee

Brief description of Contract: Construction of the Civil Works of the Mombasa--Nairobi Standard Gauge Railway Project Project

Name and address of Beneficiary: The Managing Director, Kenya Railways Corporation, P. O. Box 30121 – 00100, Workshop Road of Haile Selassie Avenue, Nairobi, Kenya (whom the Contract defines as the Employer)

We have been informed that China Road and Bridge Corporation, Zhonglu Plaza, C88, Andingmenwai Dajie, Beijing, China (hereinafter called the "Principal") is your contractor under such Contract and wishes to receive early payment of retention money, for which the Contract requires him to obtain a guarantee.

At the request of the Principal, we (name of bank) _____ hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of Kenya Shillings _____ (the "guarantee amount", say: Kshs _____) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal is in breach of his obligation(s) under the Contract, and
- (b) the respect in which the Principal is in breach.

Following the receipt by us of an authenticated copy of the taking-over certificate for the whole of the works under clause 10 of the conditions of the Contract, such guaranteed amount shall be reduced by % and we shall promptly notify you that we have received such certificate and have reduced the guaranteed amount accordingly.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before _____ (the "expiry date"), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the Contract has not been issued by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this guarantee has not been extended.

This guarantee shall be governed by the laws of the Government of Kenya and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date: _____

Signature: _____

MOMBASA - NAIROBI STANDARD GAUGE RAILWAY PROJECT

SUMMARY PAGE OF CIVIL WORKS

I No.	DESCRIPTION	AMOUNT KSHS
1	PRELIMINARY AND SUPERVISORY/SUPPORT SERVICES	1,618,009,219
2	SITE CLEARANCE AND TOPSOIL STRIPPING	1,700,741,500
	EARTHWORKS	75,551,029,256
	PROTECTION WORK FOR RAILWAY AND STRUCTURE	18,552,650,500
	CULVERTS AND DRAINAGE WORKS	25,747,744,097
	PASSAGE OF TRAFFIC, TEMPORARY WORK AND STRUCTURE	2,621,525,762
	BRIDGE WORKS	30,992,105,455
8	TRACK LAYING WORK	32,469,799,191
9	BUILDING OF RAILWAY STATION, MANAGEMENT OFFICE AND SUBSIDIARY HOUSE	12,501,191,569
	Sub Total of Bills	201,754,796,549

III No.	DESCRIPTION	AMOUNT KSHS
	Total of Bills	Sub Total (1)
		201,754,796,548.93
2	Add A Sum of 1% of (Sub Total 1) for the Safety and Security Facilities of the Contractor	Sub Total (2)
		2,017,547,965.49
3	Add A Sum of 3.5% of (Sub Total 1) for Design work and Consultancy Supervision Services	Sub Total (3)
		7,061,417,879.21
	Add A Provisional Sum of 5% of (Sub Total 1) for Price Adjustment	Sub Total (4)
		10,087,739,827.45
5	Bid Price = [Sub Total (1) + Sub Total(2) + Sub Total(3)+Sub Total(4)]	Grand Total
		220,921,502,221.08

BILL OF QUANTITIES

L NO. 1 : PRELIMINARY AND GENERAL SUPERVISORY/SUPPORT SERVICES

ITEM	DESCRIPTION	UNIT	Quantity	RATE KSHS	AMOUNT KSHS
	Note: The following items for housing, offices and laboratory for the Engineer shall include all costs involved in providing and maintaining such buildings, including the Contractor's overheads and profits				
01	(a) Provide and furnish accommodation for Employer's representative and Engineer's senior staff				
	(i) Type I	No.	10	3,074,211.76	30,742,117.61
	(ii) Type II	No.	20	2,818,027.45	56,360,548.94
	(b) Ditto for accommodation for Employer's representative and Engineer's Junior staff				
	(i) Type III	No.	20	2,305,658.82	46,113,176.41
	(i) Type IV	No.	40	1,537,105.88	61,484,235.21
	(ii) Type V	No.	5	896,645.10	4,483,225.48
02	Maintain accommodation for Employer's representative and Engineer's staff				
	(i) Type I	No. x mth	600	12,274.69	7,364,811.77
	(ii) Type II	No. x mth	1,200	11,251.80	13,502,154.92
	(iii) Type III	No. x mth	1,200	9,206.01	11,047,217.66
	(iii) Type IV	No. x mth	2,400	6,137.34	14,729,623.55
	(iv) Type V	No. x mth	300	3,580.12	1,074,035.05
1.03	Provide and maintain office for Employer representative and Engineer	No.	5	4,211,005.29	21,055,026.45
1.04	Provide and maintain Employer representative and Engineer's Laboratory	No.	5	2,485,410.93	12,427,054.67
05	Provide office furniture and survey equipment	No.	5	11,427,882.00	57,139,410.00
06	Furniture and equipment for Laboratory	No.	4	33,551,220.00	134,204,880.00
1.07	Allow a lump Sum for payments to attendant staff	L.Sum	1	72,000,000.00	72,000,000.00
08	Provide with driver and maintain four (6) new 4WD Station Wagon Type I vehicles of 3,000cc engine capacity, inclusive of the first 5,000 km travelled in any month	V.mth	396	218,921.64	86,692,968.00
1.09	Extra Over item 1.08 for kilometre travelled in excess of 5,000 km in any month and all running costs per Vehicle	km	720,000	54.73	39,405,894.54
10	Provide with driver six (12) new 4WD double cabin pickups Type II Vehicles of capacity 2,800cc engine capacity, inclusive of the first 5,000 km travelled in any month	V.mth	792	146,607.84	116,113,407.21
Sub-total carried forward to next page					785,939,787.46

NO. 1 : PRELIMINARY AND GENERAL SUPERVISORY/SUPPORT SERVICES

	DESCRIPTION	UNIT	QUANTITY	RATE KSHS	AMOUNT KSHS
	Sub-total brought forward from previous page				785,939,787.46
	Extra Over item 1.10 for kilometre travelled in excess of 5,000 km in any month and all running costs per Vehicle	km	3,600,000	36.65	131,947,053.65
	Provide with driver three (15) new 4WD single cabin pickups Type III Vehicles of minimum capacity 2,500cc engine capacity, inclusive of the first 5,000 km travelled in any month	V.mth.	990	130,194.95	128,893,001.15
13	Extra Over item 1.12 for kilometre travelled in excess of 5,000 km in any month and all running costs per Vehicle	km	4,950,000	32.55	161,116,251.44
14	Allow a Lump sum for Employer representative and Engineer's miscellaneous account to be spent in whole or part	L.Sum	1	30,000,000.00	30,000,000.00
	Allow a Lump sum for providing assistant to the employer in removal of existing services by means of equipment and manpower	L.Sum	1	200,000,000.00	200,000,000.00
	Provide communication services to Employer representative and Engineer's office				
	(a) Fixed Telephone system	No.	4	120,000.00	480,000.00
	(b) Mobile phone	No.	20	50,000.00	1,000,000.00
	Allow for a Lump sum for Mobile phone and telephone charges	L.Sum	1	3,600,000.00	3,600,000.00
18	Allow a Lump sum for consultancy,EIA study,license certificate from NEMA ,monthly measures and on line environmental mitigation measures	L.Sum	1	50,000,000.00	50,000,000.00
	Allow a Lump sum for Engineer's temporary accommodation	L.Sum	1	7,633,125.00	7,633,125.00
	Allow a Lump sum for the payment of allowances of trainee counterpart staff from Employer or relevant Government officer	L.Sum	1	12,000,000.00	12,000,000.00
	Allow a lump sum for payment of overtime for the Engineer's Junior Staff	L.Sum	1	42,900,000.00	42,900,000.00
	Allow a Lump sum for provision of HIV/AIDS awareness campaign	L. Sum	1	7,500,000.00	7,500,000.00
	Allow a Lump Sum for Video Coverage and processing of Digital pictures of the progress of works	L. Sum	1	3,000,000.00	3,000,000.00
	Allow for Employer's Representative superintendence costs	L. Sum	1	30,000,000.00	30,000,000.00
	Allow for Commencement launching and Completion Ceremony	L. Sum	1	20,000,000.00	20,000,000.00
	Project Signboards	No.	20	100,000.00	2,000,000.00
	Total of Bill carried forward to summary				1,618,009,218.69

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BILL NO. 3 : EARTHWORKS

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE KSHS	AMOUNT KSHS
	Note: All haulage is to be included in the Contractor's rates and prices. There is no separate payment for overhaul				
2.01	Fill in soft material and compact (a) Main line	m ³	19,184,962.31	650.00	12,470,225,501.50
	(b) Station Area	m ³	3,940,633.65	650.00	2,561,411,872.50
2.02	Fill in hard material and compact	m ³	8,452,600.20	1,575.00	13,312,845,315.00
3.03	Cut to spoil or reuse for easing fill slope/filling borrow pit, in soft material (a) Main line	m ³	16,854,057.40	450.00	7,584,325,830.00
	(b) Station Area	m ³	5,219,266.69	450.00	2,348,670,010.50
3.04	Cut to spoil in hard material or reuse for filling borrow pits	m ³	17,621,174.71	1,500.00	26,431,762,065.00
3.05	Allow a lump sum for miscellaneous landscaping along the railway	L. Sum	1.00	100,000,000.00	100,000,000.00
3.06	Special treatment for weak groundsoil (a) Cement mixing sand pile	m	1,230,360.12	2,100.00	2,583,756,252.00
	(b) Impact and compaction	m ²	3,786,444.00	120.00	454,373,280.00
	(c) Provide and install geotextile filter fabric	m ²	82,326.00	500.00	41,163,000.00
	(d) Provide and install geogrid	m ²	4,519,926.80	580.00	2,621,557,544.00
	(e) Provide and install composite geomembrance	m ²	1,653,511.00	600.00	992,106,600.00
	(f) Provide, place and compact permeable soil	m ³	984,638.00	1,357.00	1,336,153,766.00
	(g) Provide, place and compact improved soil by chemical or physical method	m ³	223,428.00	2,319.11	518,154,779.36
	(h) Provide and place sand layer	m ³	283,903.40	3,200.00	908,490,880.00
	(i) Provide and place porous fill material	m ³	61,040.10	3,200.00	195,328,320.00
2.07	Top soiling and grassing	m ²	3,029,734.00	360.00	1,090,704,240.00
Total of Bill carried forward to summary					75,551,029,255.86

L NO. 4: PROTECTION WORK FOR RAILWAY AND STRUCTURE

DESCRIPTION	UNIT	QUANTITY	RATE KSHS	AMOUNT KSHS
Provide and place grouted stone pitching, 200 mm thick including removal of spoil, to drains, slopes, inlets and outlets	m ³	2,510,250.00	6,650.00	16,693,162,500.00
Provide and place Class 25/20 Concrete to slope	m ³	25,848.00	16,000.00	413,568,000.00
Chain link rail fence at Both railway side and stations	km	848.00	1,696,250.00	1,438,420,000.00
Provide special protection of railway track on roadbed	m	1,000.00	7,500.00	7,500,000.00
Total of Bill carried forward to summary				18,552,650,500.00

Bill NO. 6 : PASSAGE OF TRAFFIC, TEMPORARY WORK AND STRUCTURE

	DESCRIPTION	UNIT	QUANTITY	RATE Kshs	AMOUNT Kshs
	Construct and maintain temporary Bridge	km	8.00	30,000,000.00	240,000,000.00
02	Construct and maintain 7m wide deviations for construction traffic	km	322.00	2,544,375.00	819,288,750.00
03	Provide, place and compact selected material	m ³	450,800.00	880.00	396,704,000.00
	Provide and maintain the signs and barriers	km	200.00	74,281.00	14,856,200.00
07	Maintain passage of traffic	L.Sum	1.00	10,000,000.00	10,000,000.00
06	Track section assembly factory	no.	4.00	21,203,126.73	84,812,506.92
	Material storage and machining factory	no.	4.00	8,481,250.00	33,925,000.00
08	Precasting factory and storage for Bridge girder and slab	no.	4.00	40,000,000.00	160,000,000.00
09	Cement concrete mixing plant	no.	26.00	8,481,250.00	220,512,500.00
	Ballast and grading crushed stone material storage yard	no.	4.00	8,481,250.00	33,925,000.00
10	Temporary loading and unloading facilities	no.	4.00	17,000,000.00	68,000,000.00
11	Temporary communication facilities	km	479.31	255,000.00	122,224,305.00
	Temporary electrical cable facilities	km	128.00	2,544,375.00	325,680,000.00
14	Temporay Water Supply and Drainage system	km	30.00	3,053,250.00	91,597,500.00
Total of Bill carried forward to summary					2,621,525,761.92

BILL NO. 8 : TRACK LAYING WORK

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE KSHS	AMOUNT KSHS
	Track laying work for Main Line				
11	Provide and lay standard railway track (60kg/m, 25m length) on the roadbed, including concrete sleeper (1667 set/km)	km	453.81	39,196,409.07	17,787,722,399.97
12	Provide and lay standard railway track (60kg/m, 25m length) on the bridge, including concrete sleeper (1667 set/km)	km	29.55	46,797,573.79	1,382,868,305.61
13	Granular Crushed Stone upper layer	m ³	1,054,829.00	4,100.00	4,324,798,900.00
14	Granular Crushed Stone bottom layer	m ³	363,227.00	4,050.00	1,471,069,350.00
	Track laying work for Railway Station				
15	Provide and lay standard railway track (60kg/m, 25m length) on the roadbed, including concrete sleeper (1520 set/km)	km	122.96	32,690,497.41	4,019,623,561.26
16	Item 9.05 but Without sleeper area	km	1.04	18,791,029.05	19,542,670.21
8.07	provide and install Turnout track with crushed stone layer	Set	319.00	5,300,936.37	1,690,998,702.69
8.08	provide and install Special Turnout track with crushed stone layer	Set	17.00	11,340,674.26	192,791,462.45
10.09	Granular Crushed Stone upper layer	m ³	253,707.00	4,100.00	1,040,198,700.00
10	Granular Crushed Stone bottom layer	m ³	8,899.80	4,050.00	36,044,190.00
8.11	Miscellaneous Work concerned (Connector, Bolts Etc.)	km	479.31	819,562.52	392,825,333.30
	Track laying work for upgrade of existing Line				
12	Remove existing railway line	km	8.00	373,029.93	2,984,239.43
8.13	Relay railway track	km	6.00	9,847,029.35	59,082,176.09
14	Granular Crushed Stone	m ³	12,012.00	4,100.00	49,249,200.00
Total of Bill carried forward to summary					32,469,799,191.00

L NO. 9: BUILDING OF RAILWAY STATION, MANAGEMENT OFFICE AND SUBSIDIARY HOUSE

	DESCRIPTION	UNIT	QUANTITY	RATE KSHS	AMOUNT KSHS
	<u>RAILWAY STATION & OFFICE</u>				
01	Building of passenger station and freight station including Decoration work	m ²	11,632.00	55,951.52	650,828,065.23
02	Building for communication system	m ²	2,687.00	55,668.38	149,580,938.74
	Building for Signal system	m ²	8,596.00	55,891.98	480,447,462.66
04	Building for Information system	m ²	680.00	56,511.18	38,427,601.99
05	Building for Power Supply System	m ²	8,256.00	53,540.88	442,033,472.46
	Building for Water Supply and Drainage	m ²	8,720.00	56,173.80	489,835,494.80
07	Building for Machinery Service	m ²	32,453.00	55,894.63	1,813,948,312.18
	Building for locomotive repairing factory	m ²	44,085.00	56,225.40	2,478,696,547.39
09	Building for Railway Maintainace Service	m ²	6,535.00	54,363.83	355,267,620.39
10	Building for management office	m ²	5,787.00	53,835.92	311,548,479.17
	Platform for passenger and freight	m ²	81,500.00	2,799.66	228,172,340.94
	<u>SUBSIDIARY HOUSE</u>				
	Accommodation for Driver and Staff	m ²	31,127.00	54,410.14	1,693,624,312.61
13	Entertainment facilities	m ²	4,391.00	54,553.03	239,542,347.70
14	Landscaping for station and office	m ²	127,500.00	254.44	32,440,781.25
	<u>OTHER FACILITIES</u>				
15	Pavement Road	m ²	294,500.00	4,160.00	1,225,120,000.00
	Stabilize the ground	m ²	128,570.00	4,162.60	535,185,160.58
17	Bounding wall (Brick)	m	32,820.00	13,938.93	457,475,826.19
	Lighting facilities for Building	m ²	246,449.00	2,445.00	602,567,805.00
	Air-condition and Ventilation	m ²	246,449.00	1,000.00	246,449,000.00
20	Provide misellouse facilities	Lump Sum	1	30,000,000.00	30,000,000.00
Total of Bill carried forward to summary					12,501,191,569.27

GENERAL REQUIREMENTS

Design and construction of Civil Works of the Mombasa—Nairobi Railway Standard Gauge Railway with a length of 479.31 km. The proposed railway starts from the city of Mombasa, which is the largest port in East Africa, is located in Mombasa Island in the southeast coast of Kenya, adjacent to the West Indian Ocean. It ends at Nairobi, the political, economic and cultural center in Kenya and a key traffic hub in East Africa.

A. Major Technical Parameters:

Design Standard	:	Chinese Railway Design Standard
Design Speed	:	120 km/hr for passenger Train 80 km/hr for Freight Train
Class of Railway	:	Class 1
Number of Track	:	Single (Double line only for Mombasa Port to Mombasa Railway Station)
Maximum Gradient	:	1.20% (1.5% for difficult sections)
Minimum curvature	:	1,200 metres(800 metres difficult sections)
Axle loading	:	25 tonnes
Loading gauge	:	Suitable for double stacking of containers
Motive power	:	Diesel
Trailing load	:	4,000 tonnes
Crossing/passing loops	:	880 metres
Intermediate Railway Station:	:	5
District Railway Station:	:	1 (New Mombasa Railway Station in Chamgamwe)
Terminal Railway Station:	:	1 (New Nairobi Railway Station in Embakasi)

B. Major Work Scope

Construction of Earthwork of Railway, including cleaning and grubbing, remove existing facilities, cutting , filling, subgrade etc.

Construction of Bridge and Culvert

A

THE MOMBASA – MALABA/KISUMU STANDARD GAUGE RAILWAY PROJECT

PHASE 1: MOMBASA – NAIROBI SECTION EPC TURNKEY COMMERCIAL CONTRACT NEGOTIATIONS BETWEEN KENYA RAILWAYS (KR) AND CHINA ROAD AND BRIDGE CORPORATION (CRBC) ON 04 – 25/06/12

MINUTES OF THE NEGOTIATIONS

A) NEGOTIATING TEAMS

KR			
1.	Eng. Solomon Ouna	–	Chairing
2.	Mr. Alfred Matheka	–	Member
3.	Eng. David Mwadali	–	Member
4.	Ms. Marianne Kitany	–	Member
5.	Mr. Stanley Gitari	–	Member

CRBC			
1.	Mr. Yang Jie	–	Team Leader
2.	Mr. Xiong Shi Ling	–	Member
3.	Mo Yong Nian	–	Member
4.	Mr. Zhou Yi Hua	–	Member

B) BACKGROUND

The Chairman thanked CRBC for responding immediately to KR request to come for the negotiations and expressed the hope that these would be concluded successfully. He then briefed the team of the Government decision to develop a Standard Gauge Railway from Mombasa to Malaba/Kisumu and that after several unsuccessful attempts were made in 2009 and 2010 to procure a consultant to undertake the Preliminary Design, the Government decided on a Government to Government arrangement for the development of the Railway. This position was confirmed by the Ministers responsible for Transport in Kenya and the Republic of Uganda at a meeting held in Kampala – Uganda on 2nd April 2012.

Meanwhile, the Government of Kenya and China Road and Bridge Corporation (CRBC) signed a Memorandum of Understanding on 12th August, 2009 for CRBC to undertake the Feasibility Study and Preliminary design of the Mombasa – Nairobi section (Phase 1 of the project), which has been completed to the satisfaction of Kenya Railways Technical Team. CRBC and Kenya Railways now need to enter into a COMMERCIAL CONTRACT.

CRBC Team Leader thanked KR for the invitation stating that his team was delighted to be part of this important project. He confirmed that CRBC undertook the Feasibility Study and Preliminary Design of the Mombasa – Nairobi Section and that CRBC will be delighted to participate in the next stage of the project development.

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C) THE NEGOTIATIONS

The draft COMMERCIAL CONTRACT prepared by KR and CRBC was tabled and discussed. The following Sections were then considered in more details:

- Section 4: Draft EPC Turnkey Commercial Contract
- Section 5: Schedule of Payment
- Section 7: Non-Binding Bill of Quantities (BOQ)
- Section 9.1: Preliminary Engineering Scheme

D) SECTION 4: DRAFT EPC TURNKEY COMMERCIAL CONTRACT

It was noted that that:

1. The General Conditions of Contract (Section 5) comprise the "General Conditions", which form part of the "Conditions of Contract for EPC/Turnkey Projects FIDIC 1999 published by Federation Internationale des Ingenieurs-Conseils (FIDIC)
2. The Clauses in the **Particular Conditions** are additional to or amendment to the General Conditions of Contract
3. In preparation of these conditions of Particular Applications the document followed Conditions of Contract for EPC/Turnkey Projects FIDIC 1999.
4. Any changes, deviations, deletions or additions to Condition of Contract for EPC/Turnkey Projects by FIDIC 1999 have been recorded in the Particular Applications with same clause or sub-clause reference.
5. The format for the "EPC/Turnkey Commercial Contract" has been used for the development of the Eastern, Northern and Southern by-passes in contracts between KenHA and CRBC

D) AMENDMENTS TO "PARTICULAR CONDITIONS" OF CONTRACT

Clause 4.18

Insert the word "in Kenya" at the end of the paragraph to ensure that the statutory and regulatory environmental requirements are those for Kenya.

Clause 5.4

Indicate that this Clause replaces the Clause in FIDIC

Clause 8.4 (d) .

The expression "exceptionally adverse climatic conditions" to be replaced with actual weather conditions applicable

Clause 8.7

0.01% to read 0.0025%

Clause 13.8

Insert after last paragraph "If the provisional sum of 5% of Sub-total 1 for price adjustment in the Bill of Quantities, is not sufficient to pay the Contractor for the actual price adjustment (calculated according to the formula stated in Clause 13.8) KR shall pay to the Contractor the difference between the 5% and the actual price adjustment from KR own budget.

Clause 14.3

Validity period for retention money is to be adjusted to 21 days from 7 days.

Clause 14.5

Replace the Clause with "All custom duties and charges on importation of equipment, spare parts and materials, etc, will be exempted by Kenya Railways".

Clause 14.8

Interest rate pegged at +2% above LIBOR for foreign currency and +2% above Central Bank of Kenya Base Lending Rate for local currency

Clause 14.9

Validity period for the Retention Money Guarantee adjusted to 21 days from 7 days previously proposed.

E) SECTION 6 – SCHEDULE OF PAYMENTS

This was agreed as follows:

REF	CERTIFICATE DESCRIPTION	PERCENT OF CONTRACT PRICE	CONDITIONS FOR SUBMISSION
1.	First installment	30%	Within one month from the date of effectiveness of the contract and confirmation by both the financial institutions of China and the Ministry of Finance of Kenya regarding such effectiveness and acceptance by the Employer of an advance payment guarantee ⁽¹⁾
2.	Second installment	10%	Within one month from the date of letter of commencement issued by the Employer's Representative.

APPENDIX: DETAILS OF CHANGES IN BILL OF QUANTITIES

ITEM	DESCRIPTION	UNIT	QUANTITY	ORIGINAL RATE	ADJUSTED RATE	ORIGINAL AMOUNT	ADJUSTED AMOUNT
				KSHS	KSHS	KSHS	KSHS
4.01	Provide and place grouted stone pitching, 200 mm thick including removal of spoil, to drains, slopes, inlets and outlets	m ³	2,510,250.00	6,900.00	6,650.00	17,320,725,000.00	16,693,162,500.00
5.03	Situ-casting concrete slab box culverts including bed, box body, headwalls, wingwalls, apron slabs, haunches, surrounds, toe walls, inlets and outlets to culverts, minor drainage structures including all formwork, reinforcement and finishing	m	27,746.00	918,950.00	898,950.00	25,497,186,700.00	24,942,266,700.00
7.01	Pile Work including cost of excavating, temporary platform and pile drilling, all of reinforcement concrete work which including material, casting, transportation, reinforcement	m	71,761.61	91,357.30	81,987.32	6,555,946,937.50	5,883,542,123.40
7.04	Provide all materials, manufacture, cure and store prestressed concrete bridge beams and install	No.	877.00	9,556,874.01	9,158,670.93	8,381,378,510.72	8,032,154,406.10
7.08	Provide and place grouted stone pitching with 200mm thickness	m ³	19,711.11	6,900.00	6,650.00	136,006,659.00	131,078,881.50
7.16	Provide all materials, manufacture, cure and store situ-casting concrete frame bridge and miscellaneous works	l.m	630.00	2,901,307.30	2,578,939.83	1,827,823,601.32	1,624,732,090.07

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Section 8-2-2 Technical Specifications

REFER TO CHINA TECHNICAL SPECIFICATION

SECTION 9

THE CONTRACTOR'S FINAL PROPOSAL

- Section 9-1 Preliminary Engineering Scheme
- Section 9-2 Non-Binding Bill of Quantities (for reference only)
- Section 9-3 Table of Adjustment data for changes in cost

Section 9-2 Non-Binding Bill of Quantities (for reference only)

REFER TO PAGE 40 THROUGH 51

CIVIL ENGINEERING COST INDEX - 2012

Material Specification	Dec '72	Dec 2011	Jan	Feb	Mar
SAND	100	9872.75	9885.96	9899.19	9913.88
AGGREGATE	100	10413.29	10427.23	10441.19	10456.68
CEMENT	100	5975.74	5983.74	5991.75	6000.64
HYDRATED LIME	100	6245.61	6253.97	6262.34	6271.63
TIMBER	100	8548.52	8559.96	8571.42	8584.14
Concrete Pipes	100	6794.88	6803.97	6813.08	6823.19
Concrete Precast	100	6393.34	6401.90	6410.47	6419.98
CONCRETE PRODUCTS	100	6734.69	6743.71	6752.73	6762.75
EXPLOSIVES	100	5195.57	5202.53	5209.49	5217.22
Fuels	100	14610.04	14629.60	14649.18	14670.92
Bitumen	100	17098.65	17343.51	17669.23	17695.44
Lubricants	100	10940.57	10955.21	10969.88	10986.15
FUEL, BITUMEN & LUBRICANTS	100	14340.23	14401.58	14478.31	14499.79
RMS Rods	100	7186.13	7195.75	7205.39	7216.08
Structural Steel	100	2715.07	2718.70	2722.34	2726.38
Corrugated Steel Pipes	100	340.19	340.65	341.11	341.61
Guard Rails 12 GAUGE thick	100	543.95	544.67	545.40	546.21
Gabion Mesh 2m	100	863.46	864.62	865.78	867.06
STEEL PRODUCTS	100	1636.50	1638.69	1640.88	1643.32
HARDWARE	100	4522.54	4528.59	4534.65	4541.38
ALL MATERIALS	100	5492.25	5501.48	5511.41	5519.59
Unskilled Labour	100	6743.64	7243.64	7243.64	7243.64
Semi-skilled Labour	100	6987.67	7538.84	7538.84	7538.84
Skilled Labour	100	4876.67	5280.33	5280.33	5280.33
LABOUR	100	6022.56	6497.65	6497.65	6497.65
TOTAL (LABOUR & ALL MATERIALS)	100	5741.43	5969.56	5974.83	5979.16

Source: Kenya National Bureau of Statistics:

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