



MINISTRY OF WATER, SANITATION AND IRRIGATION



TANATHI WATER WORKS DEVELOPMENT AGENCY

BIDDING DOCUMENT

TENDER No. TAWWDA/003/2023~2024

**EXPANSION AND AUGMENTATION OF MASINGA KITUI INTAKE
WORKS PROJECT**

Closing Date:

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ABBREVIATIONSANDACRONYMS

| | |
|------------|--------------------------------|
| GCC | General Conditions of Contract |
| IFT | Invitation for Tender |
| ITT | Instruction to Tenderers |
| PE | Procuring Entity |
| PM | Project Manager |
| STD | Standard Tender Documents |
| SOR | Statement of Requirements |
| TDS | Tender Data Sheet |
| VAT | Value Added Tax |

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

A. General

1. Definitions & Introduction

- 1.1 The tenderer must comply with the following conditions and instructions and failure to do so is liable to result in rejection of the tender

- 1.2 Throughout these Bidding Documents:

"Tenderer" means any persons, partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, conditions of Contract Parts I and II, Specifications, Drawings and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative. The term "in writing " means communicated in written form and delivered against receipt;

"Approved tenderer" means the tenderer who is approved by the Employer

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

"Employer" means Tanathi Water Works Development Agency.

- 1.3 The Procuring Entity indicated in the Tender Data Sheet (TDS) invites Tenders for the construction of works as specified in the Tender Data Sheet and Sections VI (Technical Specifications) and VII (Drawings).
- 1.4 The successful Tenderer will be expected to complete the works by the required completion date specified in the Tender Data Sheet.
- 1.5 The objectives of the works are listed in the Tender Data Sheet. These are mandatory requirements. Any subsequent detail is offered to support these objectives and must not be used to dilute their importance
- 1.6 The Government of Kenya through Procuring Entity named in the Tender Data Sheet has received grant from the financing institution named in the Tender Data Sheet towards the cost of the Project named in the Tender Data Sheet. The Government of Kenya intends to apply a part of the proceeds of this grant to payments under the Contract described in the Tender Data Sheet.

2. Sources of Funds, Eligibility Qualification, and Requirements

- 2.1 **Eligibility Requirement:** This invitation to tender is open to all tenderers who are qualified as stated in the invitation for tenders
- 2.2 **Sources of Funds:** Payments will be made directly by the Procuring Entity (or by financing institution specified in the Tender Data Sheet upon request of the Procuring Entity to so pay) and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring Entity
- 2.3 **Qualification Requirement:** To be qualified for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility under Sub clause

2.1 Above and of their capability and adequacy of resources to effectively carryout the subject Contract. To this end, the tenderer shall be required to submit the following information during prequalification: -

- (a) Details of experience and past performance of the tenderer on the works of a similar nature and details of current work on and other contractual commitments.
- (b) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site.
- (c) Major items of construction plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.
- (d) Details of sub-contractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Condition of Contract.
- (e) A draft Program of Works in the form of a bar chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Engineer.
- (f) Details of any current litigation or arbitration proceedings in which the tenderer is involved as one of the parties.

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

- (a) The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners
- (b) One of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners
- (c) The partner in charge shall be authorized to incur liabilities and receive instructions for an on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be one exclusively with the partner in charge.
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender)
- (e) A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

3. Cost of Tendering

- 3.1 The Tenderer shall bear all costs associated with the preparation and submission of his tender and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.2 The tenderers can download the tender documents free of charge for www.tanathi.go.ke or www.suppliers.treasury.go.ke
- 3.3 The procuring entity shall allow the tenderer to view the tender document free of charge before purchase.

4. Site Visit

- 4.1. The tenderer is advised to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the Site shall be the tenderer's own responsibility.
- 4.2. The tenderer and any of his personnel or agents will be granted permission by the Employer to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, his personnel or agents, will release and indemnify the Employer from and against all liability in respect of, and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.
- 4.3. The Employer shall organize a site visit at a date to be notified. A representative of the Employer will be available to meet the intending tenderers at the Site.
Tenderers must provide their own transport. The representative will not be available at any other time for site inspection visits.
Each tenderer shall complete the Certificate of Tenderer's Visit to the Site, whether he in fact visits the Site at the time of the organized site visit or by himself at some other time.

B. Tender Documents

5. Tender Documents

- 5.1. The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 7 of these instructions to tenderers.
 - a) Form of Invitation for Tenders
 - b) Instructions to Tenderers
 - c) Form of Tender
 - d) Appendix to Form of Tender
 - e) Form of Tender Surety
 - f) Statement of Foreign Currency Requirements
 - g) Tender and Confidential Business Questionnaires
 - h) Details of Subcontractors
 - i) Schedules of Supplementary Information
 - j) General Conditions of Contract- Part I
 - k) Conditions of Particular Application –Part II
 - l) Specifications

- m) Bills of Quantities
- n) Drawings
- o) Declaration Form

5.2 The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 22 of Instructions to Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.

5.3 The number of copies to be completed and returned with the Tender is specified in the Tender Data Sheet.

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

6. Inquiries by tenderers

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

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

7. Amendment of Tender Documents

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

7.2. Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them.

7.3. In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Employer may, at his discretion, extend the deadline for the submission of tenders.

C. Preparation of Tender

8. Cost of Bidding

8.1. The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conductor outcome of the bidding process

9. Language of Bid

9.1. The tender and all correspondence and documents relating to the tender exchanged between the tenderer and the Employer shall be written in the

English language. Supporting documents and printed literature furnished by the tenderer with the tender may be in another language provided they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the tender, the English language shall prevail.

10. Documents Comprising the Bid

- 10.1. The tender to be prepared by the tenderer shall comprise: The Form of Tender and Appendix there to,
 - a) A Tender Security
 - b) The Priced Bills of Quantities and Schedules
 - c) The information on eligibility and qualification
 - d) Any other materials required to be completed and submitted in accordance with the Instructions to Tenderers.
- 10.2. The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 13.2 regarding the alternative forms of Tender Surety).
- 10.3. If the Procuring Entity has not undertaken pre-qualification of potential Tenderers, to qualify for award of the contract, Tenderers shall meet the minimum qualifying criteria specified in the Tender Data Sheet.

11. Tender Prices

- 11.1. All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Bills of Quantities shall be completed accordingly without interlineations so erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialed by the person or persons signing the tender.
- 11.2. A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not. Items against which no rate or price is entered by the tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.
- 11.3. The prices and unit rates in the Bills of Quantities are to be the full [all-inclusive] value of the Work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause prior to the deadline for submission of tenders, shall be included in the rates and prices and the total Tender Price submitted by the tenderer.
- 11.4. Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to his instruction.
- 11.5. Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.
- 11.6. Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Bills of Quantities for Contingencies payments in the summary sheet and add them to the sub-total

to arrive at the tender amount.

11.7. The tenderer shall furnish with his tender indices listed in the Conditions of Contract clause 13 where appropriate. The Employer may require the tenderer to justify such indices so obtained from the Kenya Bureau of Statistics and Proxy sources of Indices from South Africa.

11.8. The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the Provisions of the Conditions of Contract. The tenderer shall complete the schedule of indices and shall submit with his tender such other supporting information as required under clause 13 of the Conditions of Contract Part II.11.9. Where quantity contract variation is allowed, the variation shall not exceed 15% of the original contract quantity.

11.9. The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if provided for in the Tender Data Sheet and the provisions of the Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Contract Data Sheet

12. Currencies of Tender and Payment

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

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

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

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

13. Tender Validity

13.1. The tender shall remain valid and open for acceptance for a period of Ninety (90) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 19.1 here above) whichever is the later.

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

14. Tender Security

14.1. The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix to Instructions to Tenderers.

14.2. The tender security shall not exceed 2 percent (2%) of the tender price.

- 14.3. The Tender Security shall be valid at least thirty (30) days beyond the tender validity period.
- 14.4. Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive.
- 14.5. The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible as but not later than thirty (30) days after expiration of the tender validity period. The Tender Surety of the successful tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.
- 14.6. The Tender Surety may be forfeited:
 - a) If a tenderer withdraws his tender during the period of tender validity: or
 - b) In the case of a successful tenderer, if he fails, within the specified time limit
 - i. To sign the Agreement, or
 - ii. To furnish the necessary Performance Security
 - c) If a tenderer does not accept the correction of his Tender price pursuant to clause 23.

15. No Alternative Offer

- 15.1. The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix.
- 15.2. Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture. A tenderer who submits or participates in more than one tender will be disqualified.
- 15.3. The tenderers shall not attach any conditions of his own to his tender. The tender price must be based on the tender documents. The tenderer is not required to present alternative construction options and he shall use without exception, the Bills of Quantities as provided, with the amendments as notified in tender notices, if any, for the calculation of his tender price. Any tenderer who fails to comply with this clause will be disqualified.
- 15.4. When alternative times for completion are explicitly invited, a statement to that effect will be included in the Tender Data Sheet as will the method of evaluating different times for completion.

16. Pre-Tender Meeting

- 16.1 If a pre-tender meeting is convened, the tenderer's designated representative is invited to attend at the venue and time in the Invitation to Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 16.2 The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than seven (7) days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:
 - a) Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in - Clause 9 which may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting
 - b) Non-attendance at the pre-bid meeting will not be a cause for

disqualification of a bidder.

17. Format and Signing of Tender

- 17.1 The tenderer shall prepare his tender as outlined in clause 10 above and mark appropriately one set "ORIGINAL" and the other "THREE COPIES".
- 17.2. The copy of the tender and Bills of Quantities shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender.
- 17.3. The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or person assigning the tender.

D. Submission of Tender

18. Sealing and Marking of Tenders

- 18.1. The tenderer shall seal the original and copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall be sealed in an outer separate envelope.
- 18.2. The inner and outer envelopes shall be addressed to the Employer at the address stated in the Appendix to Instructions to Tenderers and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of tenders stated in the said Appendix.
- 18.3. The inner envelopes shall each indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late", while the outer envelope shall bear no mark indicating the identity of the tenderer.
- 18.4. If the outer envelope is not sealed and marked as instructed above, the Employer will assume no responsibility for the misplacement or premature opening of the tender. A tender opened prematurely for this cause will be rejected by the Employer and returned to the tenderer.

19. Deadline for Submission of Tenders

- 19.1. Tenders must be received by the Employer at the address below:

**The Chief Executive Officer
Tanathi Water Works Development Agency,
K.I.D.P., Kalawa Road
Private Bag - 90200
Kitui, Kenya Mobile
Phone No: 0712351104.**

and on the date and time specified in the Letter of Invitation, subject to the provisions of clause 10.2, 21.2 and 21.3. Tenders delivered by hand must be placed in the "tender box" provided in the office of the Employer. Proof of posting will not be accepted as proof of delivery and any tender delivered after the above stipulated time, from whatever cause arising will not be considered.

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

- 19.3. Any tender received by the Employer after the prescribed deadline for submission of tender will be returned unopened to the tenderer.
- 19.4. The Procuring Entity will within the period stated in the Tender Data Sheet respond in writing to any request for clarification provided that such request is received no later than the period indicated in the Tender Data Sheet prior to the deadline for the submission indicated in the Tenders Data Sheet.

20. Modification and Withdrawal of Tender

- 20.1 The tenderer may modify or withdraw his tender after tender submission, provided that written notice of the modification or withdrawal is received by the Employer prior to prescribe deadline for submission of tenders.
- 20.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of tenders, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.
- 20.3 No tender may be modified subsequent to the deadline for submission of tenders.
- 20.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the period of tender validity specified on the tender form Withdrawal of a tender during this interval will result in the forfeiture of the Tender Surety
- 20.5. Subsequent to the expiration of the period of tender validity prescribed by the Employer, and the tenderer having not been notified by the Employer of the award of the Contractor the tenderer does not intend to conform with the request of the Employer to extend the period of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Surety.

E. Tender Opening and Evaluation

21. Tender Opening

- 21.1 The Employer will open the tenders in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender. The tenderers' representatives who a represent shall sign a register evidencing their attendance.
- 21.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 20, will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the document shave been properly signed and whether the tenders are generally in order
- 21.3 At the tender opening, the Employer will announce the tenderer's names, total tender price, tender price modifications and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.
- 21.4 The Employer shall prepare minutes of the tender opening including the information disclosed to those present.
- 21.5 Tenders not opened and read out at the tender opening shall not be considered further for evaluation, irrespective of the circumstances

22. Process to be Confidential

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

Contract is announced.

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

23. Clarification of Bids

- 23.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 25.
- 23.2 No tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

24. Determination of Responsiveness

- 24.1 Prior to the detailed evaluation of tenders, the Employer will determine when the reach tender is substantially responsive to the requirements of the tender documents.
- 24.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.
- 24.3 Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.
- 24.4 A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.

25. Correction of Errors

- 25.1 Tenders determined to be substantially responsive shall be checked by the Employer for any arithmetic errors in the computations and summations. Errors will be corrected by the Employer as follows:
- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
 - (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error.
 - (c) In the event of a discrepancy between the tender amount as stated in

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

- (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected builder's work (i.e. corrected tender sum less Prime Cost and Provisional Sums.
- (e) The Error Correction Factor shall be applied to all bidder's work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuations of variations.
- (f) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 14.

26. Conversion to Currency

- 26.1. For compensation of tenders, the tender price shall first **Single** various currencies by using the selling rate or rates of the Central Bank of Kenya ruling on the date thirty (30) days before the final date for the submission of tenders.
- 26.2. The Employer will convert the amounts in various currencies in which the tender is pay able (excluding provisional sums but including Day works where priced competitively) to Kenya Shilling sat the selling rates stated in clause 26.1.

27. Evaluation Comparison Tenders

- 27.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause24.
- 27.2. In evaluating tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:
 - (a) Making any correction for errors pursuant to clause25.
 - (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.
- 27.3. The Employer reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Employer, shall not be taken into account in tender evaluation.
- 27.4. Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.
- 27.5. If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 30 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.

- 27.6. Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not subcontract work valued at more than 50% of the Contract Price excluding provisional sums to a non-indigenous sub-contractor.
- 27.7. Preference where allowed in the evaluation of tenders shall not exceed 15%.
- 27.8. The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 27.9. The procuring entity shall give prompt notice of the termination to the tenderer and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 27.10. 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.
- 27.11. Poor past performance shall not be used as evaluation criteria unless specifically provided for in the appendix.
- 27.12. If specified in the Tender Data Sheet, post-qualification shall be undertaken.

F. Award of Contract

28. Award Criteria

- 28.1. Subject to Sub-clause 28.2, the Employer will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works as required in Sub-clause 2.1 and 2.2 here above.
- 28.2. The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.

29. Notification of Award

- 29.1. Prior to the expiry of the period of tender validity successful tenderer by cable, telefax or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.
- 29.2. At the same time that the Employer notifies the successful tenderer that this tender has been accepted, the Employer shall notify the other tenderers that the tenders have been unsuccessful.
- 29.3. Within fourteen [14] days of receipt of the Form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.
- 29.4. The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

30. Performance Guarantee

- 30.1. Within twenty-eight [28] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in the amount stated in the Appendix to Instructions to

Tenderers and in the format stipulated in the Conditions of Contract.

- 30.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by a reputable Bank approved by the Employer and located in the Republic of Kenya.
- 30.3 Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract. The Employer may award the Contract to the next ranked tenderer.

31. Advance Payment

- 31.1 An advance payment, if approved by the Employer, shall be made under the Contract, If requested by the Contractor, in accordance with clause 14(2) of the Conditions of Contract. The Advance Payment Guarantee shall be denominated in the proportion and currencies named in the form of foreign currency requirements. For each currency, a separate guarantee shall be issued. The guarantee shall be issued by a Bank located in the Republic of Kenya, or a foreign Bank through a correspondent Bank located in the Republic of Kenya, in either case subject to the approval of the Employer.

32. Corrupt and Fraudulent Practices

- 32.1 The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.
- 32.2 The Procuring Entity proposes the person named in the Tender Data Sheet to be appointed as Adjudicator under the Contract, at an hourly fee specified in the Tender Data Sheet, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data Sheet at the request of either party.
- 32.3 Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 at the address shown in the Tender Data Sheet. The secretary to the review board shall immediately after filing of the request, serve a copy thereof on the Procuring Entity or Director-General as the case may be.

SECTION II: TENDER DATA SHEET

Tender Data

Sheet (TDS)

A. Instructions to Tenderers Clause Reference

| TDS Reference Number | ITT Clause Number | Amendments of, and Supplements to, Clauses in the Instruction to Tenderers |
|------------------------|-------------------|--|
| A. Introduction | | |
| 1. | 1.3 | The Procuring Entity is: TANATHI WATER WORKS DEVELOPMENT AGENCY. |
| 2. | 1.3 | Name of Project is: EXPANSION AND AUGMENTATION OF MASINGA KITUI INTAKE WORKS PROJECT |
| 3. | 1.4 | The expected completion date of the works is : 18 MONTHS FROM THE DATE OF COMMENCEMENT OF WORKS. |
| | 1.5 | The Objectives of the Project are: EXPANSION AND AUGMENTATION OF MASINGA KITUI INTAKE WORKS |
| 5. | 1..6 | <p>Name of financing institution is: THE KENYAN GOVERNMENT THROUGH TANATHI WATER WORKS DEVELOPMENT AGENCY.</p> <p>Name of the Procuring Entity is: TANATHI WATER WORKS DEVELOPMENT AGENCY.</p> <p>Financial Year:2023/2024</p> <p>Description of works under the contract include but not limited to Scope:</p> <ul style="list-style-type: none"> ▪ Design for floating intake, electromechanical equipment at intake, treatment works and Masinga Cluster Scheme ▪ Supply and installation of floating platoon structure for intake complete with buoyancy equipment, and accessories ▪ Supply and installation of 3No raw water pumps with capacity 150m³/hr, Head of 100m, 1No pump with capacity 300m³/hr with head of 300m, 1No pump with capacity of 150m³/hr with head of 100m ▪ Supply and installation of raw water rising main: steel pipe DN 400mm PN16 with flexible joints and floating PE pontoons ▪ Rehabilitation of Rising Main DN 400mm, PN 25 (Airvalves, Washouts, mechanical joints) ▪ Rehabilitation of existing 18,000m³/day treatment works (Penstocks, lab, chemical building,) ▪ Replacement of lab and chemical mixing equipment, 120m³ elevated steel backwash tank ▪ Excavation works of depths ranging 1m to 2m, laying distribution lines. ▪ Augmentation of Masinga Cluster Water Supply System (airvalves, washouts, mechanical joints) <p>Supply and installation of lab equipment and assorted water smart</p> |

| | | |
|----|------|--|
| | | meters ranging from DN 400mm to 83mm |
| 6. | 2.2 | The loan/credit number is: NOT APPLICABLE. |
| 7. | 15.3 | Alternative Tenders are NOT ALLOWED in this Tender. |
| 8. | 15.4 | Alternative time for completion IS NOT APPLICABLE |
| 9. | 2.3 | Only Tenderers registered as: WITH THE NATIONAL CONSTRUCTION AUTHORITY UNDER CATEGORY NCA1 SHALL BE ELIGIBLE FOR THIS TENDER This Tender is: OPEN TO ELIGIBLE TENDERERS IRRESPECTIVE OF NATIONALITY |

| | | |
|-----|----------|--|
| 10. | 16.1 | Mandatory Pre-Tender meeting: VENUE: TANATHI WATER WORKS DEVELOPMENT AGENCY OFFICE (KITUI) DATE: 10thAug 2023 TIME: 12:00 HRS |
| 11. | 16.2 (a) | The minutes of the pre-Tender meeting SENT TO TENDERER TO EMAIL ADDRESS PROVIDED DURING PRE-TENDER SITE VISIT WITHIN 7 DAYS AFTER DATE OF PRETENDER SITE VISIT |
| | 16.2 (b) | Non-attendance at the pre-tender meeting WILL NOT result in Disqualification but bidders can make their own arrangements to visit the site. |

| B. Tendering Documents | | |
|-------------------------------|------|---|
| 12. | 5.3 | The number of copies to be completed and returned with the Tender is: 1 ORIGINAL AND 2 COPIES |
| 13. | 19.1 | Address for clarification of Tendering Document is: THE CHIEF EXECUTIVE OFFICER, TANATHI WATER WORKS DEVELOPMENT AGENCY, P.O. BOX PRIVATE BAG KITUI, E:MAIL:info@tanathi.go.ke FAX: 254 712351104 |
| 14. | 19.4 | Period to Respond to request for clarification by the Procuring Entity: 7(SEVEN) DAYS Period Prior to deadline for submission of Tenders for Tenderers to request clarification 10(TEN) DAYS |

| B. Preparation of Tenders | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---------------------------|--|---|-----|-----------|----------------|---|--------------------------|---|---|---------|---|---|---|---|---|-----------------|---|---|--------------------------|---|---|---------------------|---|---|-------------------------|---|---|------------------|---|----|----------------|---|----|----------------------------|---|----|----------------------------|---|----|----------------------------|---|----|------------------------------------|----|----|--|---|----|-----------------------------------|---|----|---|---|----|----------------------|---|-----|-----------|----------------|---|--|---|---|---|---|
| 15. | 9.1 | Language of Tender and all correspondence shall be: ENGLISH | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 16. | 10.3 | <p>Other information or materials required to be completed and submitted by Tenderers:</p> <p>a) Experience as Lead Contractor in 2 previous projects that involved design and construction of floating intake with capacity of atleast 9000m3/day and Treatment Works with capacity of 18,000m3/day in the last 8 years.</p> <p>b) General Experience as a water works Contractor in the last 10 years with 5 No Contracts of at least Ksh 600,000,000</p> <p>c) Experience as lead contractor in the installation of electromechanical equipment with pumps of capacity of 300m3/hr, DN 400mm steel pipelines, 9km/month, 250mm HDPE pipelines 6km per month</p> <p>d) The lead Contractor should have an average annual turnover of not less than Ksh 500,000,000 for the last 5 years</p> <p>e) Submit Technical Proposals and Methodology for the design works, construction and operations during DLP</p> <p>f) Proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment</p> <p>g) Cash flow 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 KSh 400,000,000</p> <p>h) Only firms registered with the National Construction Authority under category NCA 1 as Water Works Contractors will be considered.</p> <p>i) Attach copies of valid Tax compliance certificate, Business Licence, articles of association/company ownership details</p> <p>j) 8. A consistent history of litigation or arbitration awards for the Applicant or any partner of a Joint Venture may result in disqualification.</p> <p>k) The essential equipment and key staff to be made available for the Contract by the successful Tenderer (proposals for timely acquisition or own, lease, hire, etc) shall be:</p> <table><tr><th>S/N</th><th>EQUIPMENT</th><th>Quantity (Min)</th></tr><tr><td>1</td><td>Crawler Excavators 8-15T</td><td>2</td></tr><tr><td>2</td><td>Pick up</td><td>2</td></tr><tr><td>3</td><td>HDPE Butt fusion machine Range (250mm – 83mm)</td><td>2</td></tr><tr><td>5</td><td>Welding Machine</td><td>2</td></tr><tr><td>6</td><td>Dewatering pumps 10m3/hr</td><td>2</td></tr><tr><td>7</td><td>Concrete mixer 15m3</td><td>1</td></tr><tr><td>8</td><td>Low Loader 30t Capacity</td><td>3</td></tr><tr><td>9</td><td>7-10 ton lorries</td><td>2</td></tr><tr><td>10</td><td>15 ton tippers</td><td>3</td></tr><tr><td>11</td><td>Motor Graders (3.6m blade)</td><td>2</td></tr><tr><td>12</td><td>Concrete Mixers (> 2m3/hr)</td><td>2</td></tr><tr><td>13</td><td>Concrete dumpers(> 0.75m3)</td><td>3</td></tr><tr><td>14</td><td>Concrete Poker vibrators (35-40mm)</td><td>10</td></tr><tr><td>15</td><td>Air compressor (with > 8 Jack hammers)</td><td>5</td></tr><tr><td>16</td><td>Mobile rubber tyred Crane (5 ton)</td><td>2</td></tr><tr><td>18</td><td>Storm water drainage pumps (> 3m3/min.)</td><td>2</td></tr><tr><td>19</td><td>Generators - >15kVA;</td><td>1</td></tr></table> <table><tr><th>S/N</th><th>KEY STAFF</th><th>Quantity (Min)</th></tr><tr><td>1</td><td>Site Agent with 15 years' experience, BSC Civil/Water Engineering. Be registered with relevant Professional Body. (Attach CV and Contacts)</td><td>1</td></tr><tr><td>2</td><td>Deputy Site Agent with 15 years' experience, BSC Civil/Water Engineering. Be registered</td><td>1</td></tr></table> | S/N | EQUIPMENT | Quantity (Min) | 1 | Crawler Excavators 8-15T | 2 | 2 | Pick up | 2 | 3 | HDPE Butt fusion machine Range (250mm – 83mm) | 2 | 5 | Welding Machine | 2 | 6 | Dewatering pumps 10m3/hr | 2 | 7 | Concrete mixer 15m3 | 1 | 8 | Low Loader 30t Capacity | 3 | 9 | 7-10 ton lorries | 2 | 10 | 15 ton tippers | 3 | 11 | Motor Graders (3.6m blade) | 2 | 12 | Concrete Mixers (> 2m3/hr) | 2 | 13 | Concrete dumpers(> 0.75m3) | 3 | 14 | Concrete Poker vibrators (35-40mm) | 10 | 15 | Air compressor (with > 8 Jack hammers) | 5 | 16 | Mobile rubber tyred Crane (5 ton) | 2 | 18 | Storm water drainage pumps (> 3m3/min.) | 2 | 19 | Generators - >15kVA; | 1 | S/N | KEY STAFF | Quantity (Min) | 1 | Site Agent with 15 years' experience, BSC Civil/Water Engineering. Be registered with relevant Professional Body. (Attach CV and Contacts) | 1 | 2 | Deputy Site Agent with 15 years' experience, BSC Civil/Water Engineering. Be registered | 1 |
| S/N | EQUIPMENT | Quantity (Min) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Crawler Excavators 8-15T | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | Pick up | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | HDPE Butt fusion machine Range (250mm – 83mm) | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 | Welding Machine | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6 | Dewatering pumps 10m3/hr | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7 | Concrete mixer 15m3 | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8 | Low Loader 30t Capacity | 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9 | 7-10 ton lorries | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10 | 15 ton tippers | 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11 | Motor Graders (3.6m blade) | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12 | Concrete Mixers (> 2m3/hr) | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 13 | Concrete dumpers(> 0.75m3) | 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 14 | Concrete Poker vibrators (35-40mm) | 10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 15 | Air compressor (with > 8 Jack hammers) | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 16 | Mobile rubber tyred Crane (5 ton) | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 18 | Storm water drainage pumps (> 3m3/min.) | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 19 | Generators - >15kVA; | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| S/N | KEY STAFF | Quantity (Min) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Site Agent with 15 years' experience, BSC Civil/Water Engineering. Be registered with relevant Professional Body. (Attach CV and Contacts) | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | Deputy Site Agent with 15 years' experience, BSC Civil/Water Engineering. Be registered | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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|-----|--------------|--|--|---|--|
| | | | with relevant Professional Body (Attach Cv and Contacts) | | |
| | | 3 | Structural Engineer with atleast 10 years' experience. Bsc Civil/Structural Engineering and registered with relevant professional body (Attach CV and Contacts) | 1 | |
| | | 4 | Electro-mechanical Engineer with atleast 10 years' experience. Bsc Electrical/Mechanical Engineering and registered with relevant professional body (Attach CV and Contacts) | 1 | |
| | | 5 | Water Treatment Engineer with atleast 8 years' experience. BSc Civil/Water Engineering and registered with relevant professional body (Attach CV and Contacts) | 1 | |
| | | 6 | Environmental, Health & Safety Officer with atleast 5 years' experience BSc Environmental Science or equivalent course and registered with relevant professional body. (Attach Cv and Contacts). | 1 | |
| | | | | | |
| 17. | 2.4 | In the case of joint venture each partner shall submit information required under Clause ITT Clause 2.4. In addition, the Tenderer shall furnish the following, a) ASSET OWNERSHIP OF EACH PARTNER b) STAFF CONTRIBUTION FROM EACH PARTNER | | | |
| 18. | 11.9 | The price shall be FIXED Information to be submitted with the Tender are: NONE | | | |
| 19. | 12.1 | The currency in which the prices shall be quoted shall be: KENYA SHILLING | | | |
| 20. | 12.3 27.2 | The authority for establishing the rates of exchange shall be CENTRAL BANK OF KENYA. The applicable date for exchange rates for tendering and evaluation purposes is 28 days earlier than the final deadline for the submission of tenders. | | | |
| 21. | 13.1 | The Tender validity period shall be NINETY DAYS (90) days. | | | |
| 22. | 14.2 | The amount of Tender Security shall be from a Bank KSHS 2,000,000 | | | |
| 23. | 17.1 | In addition to the original of the Tender, the Tenderer should submit 1 ORIGINAL AND 2 COPIES of the Tender. | | | |
| 24. | 17.2 | Written confirmation of authorization is: PROVIDE POWER OF ATTORNEY | | | |

| D. Submission of Tenders | | | | | |
|--------------------------|------|--|--|--|--|
| 25. | 19.1 | Tenders shall be submitted to: THE CHIEF EXECUTIVE OFFICER, TANATHI WATER WORKS DEVELOPMENT AGENCY K.I.D.P. BLDG KALAWA ROAD P.O. BOX PRIVATE BAG KITUI | | | |
| 26. | 18.3 | Project name: EXPANSION AND AUGMENTATION OF MASINGA KITUI INTAKE WORKS PROJECT Tender number: TAWWDA/003/2023-2024 Time and date for submission: 31stAugust 2023 AT 12.00Noon. | | | |
| 27. | 19.1 | The deadline for Tender submission is a) Thursday 31stAugust 2023 b) Time 12.00 Noon | | | |

| | | |
|-----|------|--|
| 28. | 19.2 | The extension of the deadline for submission of Tenders shall be made not later than SEVEN (7) DAYS before the expiry of the original deadline. |
| 29 | 20.2 | Expiry of Tender validity is : 90 days |

| E. Opening and Evaluation of Tenders | | |
|--------------------------------------|-------|---|
| 29. | 21.1 | The Tender opening shall take place at: TANATHI WATER WORKS DEVELOPMENT AGENCY-BOARD ROOM, KITUI ON:31stAugust 2023 AT 12.00Noon. |
| 30. | 27.6 | Additional Preference: 10% FOR FIRMS IN CORPORATED IN KENYAWHERE INDIGENOUS KENYANS OWN 51% OR MORE OF THE SHARE CAPITAL. |
| 31. | 27.12 | Post-qualification will :BE UNDERTAKEN |
| 32. | 27.3 | Percentage for quantities increase or decrease is FIFTEEN (15) PERCENT |
| F. Award of Contract | | |
| 33. | 30.1 | The amount of Performance Security shall be TEN (10) PERCENT OF THE CONTRACT PRICE |
| 34. | 31.1 | Advance Payment shall NOT EXCEED TWENTY(20) PERCENT OF THE CONTRACT PRICE |
| 35. | 32.2 | The proposed adjudicator for the project is: NOT APPLICABLE |
| G. Review of Procurement Decisions | | |
| 37. | 32.3 | The address for submitting appeals to Administrative Review Board: The Secretary, Public Procurement Administrative Review Board, The Public Procurement Oversight Authority, 10 th Floor, National Bank House, P.O. Box 58583-00200, NAIROBI, Kenya. Tel: +254(0)203244000 Email: info@ppoa.go.ke Website: www.ppoa.go.ke |

SECTION III: EVALUATION AND QUALIFICATION CRITERIA

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with Clause 24 and Clause 27 of ITT, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

A. Evaluation

In addition to the criteria listed in clause 27 of ITT the following criteria shall apply:

1.1. Assessment of adequacy of Technical Proposal with Requirements

To qualify for award, a bidder must have sufficient capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing and fully in accordance with the employer's requirements. The employer may institute measures to verify the information provided by the bidders.

1.2. Alternative Completion Times, is not permitted

- Technical alternatives not permitted

A. Qualification

| Factor | 2.1ELIGIBILITY | | | | | |
|---|---|------------------------|--|-----------------------|----------------------|---|
| Sub-Factor | Criteria | | | | | Documentation Required |
| | Requirement | Bidder | | | | |
| | | Single Entity | Joint Venture or Association(JVA) | | | |
| | | | All partners combined | Each partner | At least one partner | |
| 2.1.1 Corruption and fraudulent practices | No-corrupt and fraudulent practices as described inClause32 | Must meet requiremen t | Existing or intended JVA must meet requirement | Must meet requirement | N/A | A letter anti-corruption authority or equivalent from the country of origin |

| | | | | | | |
|--|---|---|------------------------------|---|----------------------|------------------------|
| Factor | 2.2HISTORICALCONTRACTNON~PERFORMANCE | | | | | |
| Sub-Factor | Criteria | | | | | Documentation Required |
| | Requirement | Bidder | | | | |
| | | Single Entity | Joint Venture or Association | | | |
| | | | All partners combined | Each partner | At least one partner | |
| 2.2.1History of non-performing contracts | Non-performance of a contract did not occur within the last Ten (10) years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have been exhausted. | Must meet requirement by itself or as partner to past or existing JVA | N/A | Must meet requirement by itself or as partner to past or existing JVA | N/A | FormCON-2 |
| 2.2.2Pending Litigation | All pending litigation shall in total not represent more than ten percent (10%) of the Bidder's net worth and shall be treated as resolved against the Bidder. | Must meet requirement by itself or as partner to past or existing JVA | N/A | Must meet requirement by itself or as partner to past or existing JVA | N/A | FormCON-2 |

| | | | | | | |
|---------------|------------------------------|--|--|--|--|--|
| Factor | 2.3FINANCIALSITUATION | | | | | |
|---------------|------------------------------|--|--|--|--|--|

| Sub-Factor | Criteria | | | | | Documentation Required |
|---------------------------------------|--|-----------------------|------------------------------|--|----------------------|--------------------------|
| | Requirement | Bidder | | | | |
| | | Single Entity | Joint Venture or Association | | | |
| | | | All partners combined | Each partner | At least one partner | |
| 2.3.1Historical Financial Performance | Submission of audited balance sheets or if not required by the law of the bidder's country, other financial statements acceptable to the Employer, for the last five [5] years to demonstrate the current soundness of the bidders financial position and its prospective long term profitability. | Must meet requirement | N/A | Must meet requirement | N/A | FormFIN-1withattachments |
| 2.3.2.Average Annual Turnover | Minimum average annual turnover of Kshs.500 million, calculated as total certified payments received for contracts in progress or completed, within the last five (5) Years | Must meet requirement | Must meet requirement | Must meet at least Twenty-percent (25%) of the requirement, with the lead partner must meet at least Forty percent (40%)of the requirement | N/A | FormFIN2withattachments |
| 2.3.3.FinancialResources | The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (i) The following cash flow requirement: For a period of 90 days of Kshs. 400Million and (ii) The overall cash flow requirements for this Contract and its current commitments. | | | | | |
| Factor | 2.4EXPERIENCE | | | | | |
| Sub-Factor | Criteria | | | | | Documentation Required |

| | Requirement | Bidder | | | | |
|---------------------------|--|-----------------------|--|-----------------------|----------------------|---|
| | | Single Entity | Joint Venture or Association | | | |
| | | | All partners combined | Each partner | At least one partner | |
| 2.4.1 General Experience | Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last five (5) years prior to the applications submission deadline, and with activity in at least nine (9) months in each year. | Must meet requirement | N/A | Must meet requirement | N/A | FormEXP- 1 |
| 2.4.2 Specific Experience | (a)Participation as contractor, General Experience as a water works Contractor in the last 10 years with 5 No Contracts of at least Ksh 600,000,000The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VI, Employer's Requirements. | Must meet requirement | Must meet requirements for all characteristics | N/A | N/A | Form EXP 2(a)Documentary proof in the form of letters of award and certificates of completion/substantia l completion of works. |

| | | | | | | |
|--|---|-----------------------|------------------------|-----|---|---|
| | <p>b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities:</p> <p>a) Experience as Lead Contractor in 2 previous projects that involved design and construction of floating intake with capacity of at least 9000m³/day and Treatment Works with capacity of 18,000m³/day in the last 8 years.</p> <p>b) General Experience as a water works Contractor in the last 10 years with 5 No Contracts of at least Ksh 600,000,000</p> <p>c) Experience as lead contractor in the installation of electromechanical equipment with pumps of capacity of 300m³/hr, DN 400mm steel pipelines, 9km/month, 250mm HDPE pipelines 6km per month</p> | Must meet requirement | Must meet requirements | N/A | Must meet at least sixty percent(60%) of the requirements | Form EXP-2(b) Documentary proof in the form of letters of award and certificates of completion/substantial completion |
|--|---|-----------------------|------------------------|-----|---|---|

A. Personnel

The Bidder must demonstrate (proof) that it has the personnel for the key positions that meet the following requirements:

| S/N | KEY STAFF | Quantity (Min) |
|-----|--|----------------|
| 1 | Site Agent with 15 years' experience, BSC Civil/Water Engineering. Be registered with relevant Professional Body. (Attach CV and Contacts) | 1 |
| 2 | Deputy Site Agent with 15 years' experience, BSC Civil/Water Engineering. Be registered with relevant Professional Body (Attach CV and Contacts) | 1 |
| 3 | Structural Engineer with at least 10 years' experience. BSc Civil/Structural Engineering and registered with relevant professional body (Attach CV and Contacts) | 1 |
| 4 | Electro-mechanical Engineer with at least 10 years' experience. BSc Electrical/Mechanical Engineering and registered with relevant professional body (Attach CV and Contacts) | 1 |
| 5 | Water Treatment Engineer with at least 8 years' experience. BSc Civil/Water Engineering and registered with relevant professional body (Attach CV and Contacts) | 1 |
| 6 | Environmentalist, Health & Safety Officer with at least 5 years' experience BSc Environmental Science or equivalent course and registered with relevant professional body. (Attach CV and Contacts). | 1 |

B. Equipment

The Bidder must demonstrate (proof) that it has the key equipment listed hereafter:

| S/N | EQUIPMENT | Quantity (Min) |
|-----|---|----------------|
| 1 | Crawler Excavators 8-15T | 2 |
| 2 | Pick up | 2 |
| 3 | HDPE Butt fusion machine Range (250mm – 83mm) | 2 |
| 5 | Welding Machine | 2 |
| 6 | Dewatering pumps 10m3/hr | 2 |
| 7 | Concrete mixer 15m3 | 1 |
| 8 | Low Loader 30t Capacity | 3 |
| 9 | 7-10 ton lorries | 2 |
| 10 | 15 ton tippers | 3 |
| 11 | Motor Graders (3.6m blade) | 2 |
| 12 | Concrete Mixers (> 2m3/hr) | 2 |
| 13 | Concrete dumpers(> 0.75m3) | 3 |
| 14 | Concrete Poker vibrators (35-40mm) | 10 |
| 15 | Air compressor (with > 8 Jack hammers) | 5 |
| 16 | Mobile rubber tyred Crane (5 ton) | 2 |
| 18 | Storm water drainage pumps (> 3m3/min.) | 2 |
| 19 | Generators - >15kVA; | 1 |

The Bidder shall provide ownership details of proposed items of equipment.

SECTION IV: BIDDING FORMS

(i) Schedule of Adjustment Data

In tables A, B, and C, below the Bidder shall(a) indicate its amount of local currency payment, (b)indicated its proposed source and base values of indices for the different foreign currency elements of cost, (c)derive its proposed weightings(coefficients)for local and foreign payment, and(d) list the exchange rates used in the currency conversion.

Table A. Local Currency (LC)

| Index Code | Index Description | Source of Index | Base Value and Date | Bidder's Related Currency Amount | Bidder's Proposed Weighting |
|------------|---------------------|-----------------------------|-----------------------------|----------------------------------|-----------------------------|
| Fixed | Nonadjustable | To be attached by Bidder(1) | To be attached by Bidder(2) | | a =0.1 |
| LL | Local Labour | | | | b = |
| FU | Fuel and Lubricants | | | | c = |
| CE | Cement | | | | d = |
| | | | | Total | 1.00 |

- (1) Base Date is the date defined in the General Conditions of Contract, and the Base Value is that value at the Base Date
- (2) Sources of indices are to be attached as a table giving: Index Code
Index Description
Currency of Index
Details and Source of Index
Base Value and Base Date of Index
- (3) Price Adjustment Formula for Local Currency Component shall be in accordance with Sub-Clause 13.8 of the General Conditions of Contract.

Table B. Foreign Currency (FC)

| Index Code | Index Description | Source of Index | Base Value and Date | Bidder's Related Currency Amount | Bidder's Proposed Weighting |
|------------|-----------------------------------|------------------------------|------------------------------|----------------------------------|-----------------------------|
| Fixed | Nonadjustable | To be attached By Bidder (1) | To be attached By Bidder (2) | | a =0.1 |
| EL | Expatriate Labour | | | | e = |
| EQ | Contractor's Equipment and Spares | | | | f = |
| RS | Reinforcement Steel | | | | g = |
| EX | Explosives | | | | h = |
| BI | Steel Pipes | | | | i = |
| | | | | Total | 1.00 |

- (1) Base Date is the date defined in the General Conditions of Contract, and the Base Value is that value at the Base Date
- (2) Sources of indices are to be attached as a table giving: Index Code, Index Description, Currency of Index, Details and Source of Index, Base Value and Base Date of Index
- (3) This table should be repeated for each foreign currency
- (4) The Rate of exchange is
- (5) Price Adjustment Formula for Foreign Currency Component shall be in accordance with Sub-Clause 13.8 of the General Conditions of Contract.

Sub- Clause 13.8 General Conditions of Contract

Range of acceptable weightings (coefficients) for price adjustment formulae

As guidance to bidders and for the purpose of checking their submissions, the employer has estimated and provided a range of acceptable weightings for related major construction inputs in accordance with the potential range of construction methodologies, based on estimated cost in a common currency, in accordance with the table below:

| Description of index | %range of weighting |
|----------------------|---------------------|
| Fixed | 10 |
| Labour | 7 to12 |

| | |
|-----------------------------------|---------|
| Fuels and lubricants | 10to 15 |
| Contractor's equipment and spares | 35to 40 |
| Cement | 2 to 7 |
| Reinforcement and steel products | 1 to 3 |
| Explosives | 1 to 5 |
| Steel Pipes | 30to 35 |
| Total | 100 |

(ii) Bill of Quantities

A. Preamble

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and Particular Conditions of Contract, Technical Specifications and Drawings.
2. The brief description of the items in the Bill of Quantities is purely for the purpose of identification, and in no way modifies or supersedes the detailed descriptions given in the conditions of Contract and Specifications for the full direction and description of work and materials.
3. The quantities given in the Bill of Quantities are estimated and provisional, and are given to provide a common basis for bidding. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Engineer and agreed by the Contractor and valued at the rates and prices bid in the priced Bill of Quantities, where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.
4. There is no guarantee to the Contractor that he will be required to carry out all the quantities of work indicated under anyone particular item or group of items in the Bill of Quantities.
5. The price and rates entered in the Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all constructional plant to be used, labour, insurance, performance bond, supervision, compliance testing, materials, erection, maintenance of works, overheads and profits, taxes and duties together with all general risks, liabilities and obligations set out or implied in the Contract, transport, electricity and telephones, water, use and replenishment of all consumables, including those required under the Contract by the Engineer and his staff.
6. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities.
7. Any entry of "nil" or any other price or rate that shall render the Bid unresponsive in accordance with Clause 24 of the instructions to Bidders, unless deemed justifiably covered elsewhere in the Bills of Quantities, may lead to the entire Bid being rejected
8. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no Items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.
9. General directions and descriptions of work and materials are not necessarily repeated or summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.
10. Provisional Sums included and so designated in the Bill of Quantities shall be expended in whole or in part at the direction and discretion of the Engineer in accordance with Clause13 of the Conditions of Contract.
11. The method of measurement of completed work for payment shall be in accordance with *the Specifications*.
12. "Authorized" "Directed" or "Approved" shall mean the authority, direction or approval of the Engineer.
13. Unless otherwise stated, all measurements shall be net taken on the finished work carried out in accordance with the details shown on the drawings or instructed, with no allowance for extra cuts or fills, waste or additional thickness necessary to obtain the minimum finished thickness or dimensions required in this contract. Any work performed in excess of the requirements of the plans and Specifications will not be paid for, unless ordered in writing by the Engineer.
14. Errors will be corrected by the Employer for any arithmetic errors in computation or

summation as follows:

- (a) Where there is a discrepancy between amounts in figures and in words, the amount in words will govern; and
 - (b) where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer, there is an obviously gross misplacement of the decimal point in the unit price, in which event the total amount as quoted will govern and the unit rate will be corrected.
15. Expenditure on provisional sums shall be as directed by the Engineer. Where provisional sums are meant for works directly related to the main contract works, the Engineer may procure the necessary services but the payment will be made as provided for in the contract
16. Units of Measurement and Abbreviations used herein shall have the following meanings:

| Unit | Abbreviation | Unit | Abbreviation |
|---------------------|--------------|-------------------|-----------------------|
| cubic metre | cu m | Litre | L |
| hectare | ha | Millimetre | mm |
| hour-kilo | hrk | month | m |
| gram-kilo | gk | number | No. |
| metre | m | squaremetre | m ² orsqm |
| lump-sum | LSum, LS | square millimeter | mm ² or sq |
| Provisional | PS, Prov | vehicle | Veh |
| Sum-metre | Summ | Week | Wk |
| Metric-ton(1,000kg) | T | | |

(iii) Technical Proposal

- Site Organization
- Method Statement
- Mobilization Schedule
- Construction Schedule
- Equipment
- Others

C. Mobilization Schedule

E. Personnel
FormPER-1: Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements stated in Section III. The data on their experience should be supplied using the Form below for each candidate.

| | |
|----|--------------------|
| 1. | Title of position* |
| | Name |
| 2. | Title of position* |
| | Name |
| 3. | Title of position* |
| | Name |
| 4. | Title of position* |
| | Name |

*As listed in Section III.

FormPER-2: Resume of Proposed Personnel

| |
|----------------|
| Name of Bidder |
|----------------|

| | | |
|-----------------------|-----------------------------|------------------------------------|
| Position | | |
| Personnel information | Name | Date of birth |
| | Professional qualifications | |
| Present employment | Name of employer | |
| | Address of employer | |
| | Telephone | Contact(manager/personnel officer) |
| | Fax | E-mail |
| | Job title | Years with present employer |

Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

| From | To | Company/Project/Position/Relevant technical and management experience |
|------|----|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

F. Bidders Qualification

To establish its qualifications to perform the contract in accordance with Section III (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.

FormELI- 1: Bidder’s Information Sheet

| Bidder's Information | |
|--|--|
| Bidder's legal name | |
| In case of JV, legal name of each partner | |
| Bidder's country of constitution | |
| Bidder's year of constitution | |
| Bidder's legal address in country of constitution | |
| Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address) | |
| Attached are copies of the following original documents. | |

Form ELI-2: JV Information Sheet
Each member of a JV must fill in this form

| JV/Specialist Subcontractor Information | |
|---|--|
| Bidder's legal name | |
| JV Partner's or Subcontractor's legal name | |
| JV Partner's or Subcontractor's country of constitution | |
| JV Partner's or Subcontractor's year Of constitution | |
| JV Partner's or Subcontractor's legal address in country of constitution | |
| JV Partner's or Subcontractor's authorized representative information (name, address, telephone numbers ,fax numbers, e-mail address) | |
| Attached are copies of the following original documents. | |

Form CON-2: Historical Contract Non-Performance
[The following table shall be filled in for the Bidder and for each partner of a Joint Venture]

Bidder's Legal Name:.....

Date:.....

Joint Venture Party Legal Name: _____

ICB No. and title:_____

Page_____of_____pages

| | | | |
|--|---------------------------------------|---|--|
| Non-Performing Contracts in accordance with Section III. Qualification Criteria and Requirements | | | |
| <div><input type="checkbox"/> Contract non-performance not occur during the years specified in Section III. Qualification Criteria and Requirements. Sub-Factor 2.1.</div> <div><input type="checkbox"/> Contract(s) not performed during the wars specified in Section III Qualification Criteria and Requirements, requirement 2.1</div> | | | |
| Year | Non performed portion of contract | Contract Identification | Total Contract \mount(current value, US\$ equivalent) |
| | | Contract Identification: Name of Employer: Address of Employer: Reason(s)for non-performance: | |
| Pending Litigation in accordance with Section HI. Qualification Criteria and Requirements | | | |
| <div><input type="checkbox"/> No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor2.2.</div> <div><input type="checkbox"/> Pending litigation in accordance with Section III, Qualification Criteria and Requirements. Sub-Factor 2.2 as indicated below.</div> | | | |
| Year | Outcome Percentage as of Total Assets | Contract Identification | Total Amount Contract (current value, US\$ equivalent) |
| | | Contract Identification: Name of Employer: Address of Employer: Matter in dispute: | |
| | | | |

Form FIN- 1: Financial Situation

Each Bidder or member of a JV must fill in this form

| FinancialDataforPrevious3Years[US\$Equivalent] | | |
|--|--------|--------|
| Year1: | Year2: | Year3: |

Information from Balance Sheet

| | | | |
|---------------------|--|--|--|
| Total Assets | | | |
| Total Liabilities | | | |
| Net Worth | | | |
| Current Assets | | | |
| Current Liabilities | | | |

Information from Income Statement

| | | | |
|----------------------|--|--|--|
| Total Revenues | | | |
| Profits Before Taxes | | | |
| Profits After Taxes | | | |

- ☐ Attached are copies of certified financial statements (balance sheets including all related notes, and income statements) for the last three years, as indicated above, complying with the following conditions.
 - All such documents reflect the financial situation of the Bidder or partner to a JV, and not sister or parent companies.
 - Historic financial statements must be audited by a certified accountant.
 - Historic financial statements must be complete, including all notes to the financial statements.
 - Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted
- ☐ Attached original copies of bank statement for the last1 year.

FormFIN-2: Average Annual Construction Turnover

Each Bidder or member of a JV must fill in this form

| Annual Turnover Data for the Last 3Years (Construction only) | | | |
|--|--------------------|---------------|--------------------|
| Year | Amount Currency | Exchange Rate | US\$ Equivalent |
| | | | |
| | | | |
| | | | |
| Average Annual Construction Turnover | | | |

The information supplied should be the Annual Turnover of the Bidder or each member of a JV in terms of the amounts billed to clients for each year for work in progress or completed, converted to Kshs.at the rate of exchange at the end of the period reported.

FormFIN-3: Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as indicated in Section III (Evaluation and Qualification Criteria)

| Financial Resources | | |
|---------------------|---------------------|--------------------------------|
| No. | Source of financing | Amount KES or(US\$ equivalent) |
| 1 | | |
| 2 | | |
| 3 | | |
| | | |

Form FIN-4: Current Contract Commitments/Works in Progress

Bidders and each partner to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

| Current Contract Commitments | | | | | |
|------------------------------|------------------|--------------------------------------|--|---------------------------|--|
| No. | Name of Contract | Employer's Contact Address, Tel, Fax | Value of Outstanding Work [Current Kshs. Equivalent] | Estimated Completion Date | Average Monthly Invoicing Over Last Six Months [Kshs. month] |
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| | | | | | |

FormEXP- 1: General Construction Experience
Each Bidder or member of a JV must fill in this form

| General Construction Experience | | | | |
|---------------------------------|-------------------|-------|--|----------------|
| Starting Month Year | Ending Month Year | Years | Contract Identification and Name and Address of Employer Brief Description of the Works Executed by the Bidder | Role of Bidder |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | | | |
|--|--|--|--|--|
| | | | | |
|--|--|--|--|--|

Form EXP-2(a): Specific Construction Experience

Fill up one (1) form per contract.

| Contract with Similar Size and Nature | | |
|---|---|-----------------|
| Contract No..... | Contract Identification | |
| Award Date | | Completion Date |
| Role in Contract | <input type="checkbox"/> Contractor <input type="checkbox"/> Management Contractor <input type="checkbox"/> Subcontractor | |
| Total Contract Amount | KES or US\$ | |
| If partner in a JV or subcontractor, specify participation of total Contract amount | Percent of Total | Amount |
| | | |
| Employer's Name Address Telephone Number Fax Number E-mail | | |
| Description of the key activities in accordance with Criteria2.4.2(a)of Section III | | |
| | | |

FormEXP-2(b): Specific Construction Experience in Key Activities

Fill up one (1) form per contract.

| Contract with Similar Key Activities | | |
|--|---|-----------------|
| Contract No | Contract Identificati on | |
| Award Date | | Completion Date |
| Role in Contract | <input type="checkbox"/> Contractor <input type="checkbox"/> Management Contractor <input type="checkbox"/> Subcontractor | |
| Total Contract Amount | KES or US\$ | |
| If partner in a JV or subcontractor, specify participation of total Contract amount | Percent of Total | Amount |
| | | |
| Employer's Name Address Telephone Number Fax Number E-mail | | |
| Description of the key activities in accordance withCriteria2.4.2(b)of Section III | | |
| | | |

G. Form of Bid Security

(Bank Guarantee)

Beneficiary:

Date: __

BID GUARANTEE No.: _____

We have been informed that _____ (hereinafter called "the Bidder") has submitted to you its bid dated _____ (hereinafter called "the Bid") for the execution of _____ under Invitation for Bids No.

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (____) upon Receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) Has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of the Bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 459.

.....
[Signature(s)]

H. Form of Bid -Securing Declaration

Date:_____ Bid No.:_____ Alternative No.:

To:

We, the undersigned, declare that:

We understand that according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of.....starting on.....,if we are in breach of our obligation(s)under the bid conditions, because we:

- (a) Have withdrawn our Bid during the period of bid validity specified in the Letter of Bid; or
- (b) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or(ii) twenty-eight days after the expiration of our Bid.

Signed:

In the capacity of

Name:_____

Duly authorized to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on_____day of_____,_____ Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]

SECTION V: GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract shall be those of the “Conditions of Contract for CONSTRUCTION FOR BUILDING AND ENGINEERING WORKS DESIGNED BY THE EMPLOYER”, 2nd Edition 2017, prepared and published by the Fédération Internationale des Ingénieurs-Conseil (FIDIC). These General Conditions of Contract are subject to the amendments and additions set out in Part 2. Particular Conditions of Contract. The General Conditions of Contract are available from:

FIDIC
P.O. Box
311215
Geneva
15 Switzerland
and
Phone: +41 22 799 4905
Fax: +41 22 799 4901
Email: fidic.pub@fidic.org www.fidic.org

APPENDIX

A. General Conditions of Dispute Board Agreement

1. Definitions Each "Dispute Board Agreement" is a tripartite agreement by and between:

- (a) The "Employer";
- (b) The "Contractor"; and
- (c) The "Member" who is defined in the Dispute Board Agreement as being:
 - (i) the sole member of the "DAB" and, where this is the case, all references to the "Other Members" do not apply, or
 - (ii) one of the three persons who are jointly called the "DAB" (or "Dispute Board") and, where this is the case, the other two persons are called the "Other Members."

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

- (a) The Commencement Date defined in the Contract,
- (b) When the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or

- (c) When the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Agreement shall terminate upon the expiry of this period.

3. Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Engineer. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:

- (a) Experienced in the work which the Contractor is to carry out under the Contract,
- (b) Experienced in the interpretation of contract documentation, and
- (c) Fluent in the language for communications defined in the Contract.

4. General Obligations of the Member

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or Engineer, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed

procedural rules;

- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5. General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- (a) Be appointed as an arbitrator or in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the DB under Sub-Clause 20.4 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to

the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
 - (i) being available on 28 days' notice for all site visits and hearings;
 - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
 - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
 - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which the Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

- (b) A daily fee which shall be considered as payment in full for:
 - (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
 - (ii) each working day on Site visits, hearings or preparing decisions; and
 - (iii) each day spent reading submissions in preparation for a hearing.
- (c) All reasonable expenses including necessary travel expenses (airfare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b)

of this Clause;

- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause⁶.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the Contract Data shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and airfares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visitor hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or

(ii) resign his/her appointment by giving notice under Clause⁷.

7. Termination

At any time : (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without

prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

8. Default of the Member

If the Member fails to comply with any of his obligations under Clause 4(a)-(d) above, he shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members

(if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

If

the Member fails to comply with any of his obligations under Clause 4

(e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the noncompliance and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

9. Disputes

Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

B. PROCEDURAL RULES

Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

The timing of and agenda for each site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavor to prevent potential problems or claims from becoming disputes.

Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be coordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

If any dispute is referred to the DB in accordance with Sub-Clause 20.4 of the Conditions of Contract, the DB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:

- (a) Act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
- (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written

documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

The Employer and the Contractor empower the DB, among other things, to:

- (a) establish the procedure to be applied in deciding a dispute,
- (b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,
- (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
- (d) take the initiative in ascertaining the facts and matters required for a decision,
- (e) make use of its own specialist knowledge, if any,
- (f) decide upon the payment of financing charges in accordance with the Contract,
- (g) decide upon any provisional relief such as interim or conservatory measures, and
- (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.

The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:

- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
- (b) it shall endeavor to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, whom require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
- (c) if a Member fails to attend a meeting or hearing, or to perform any required function, the other two Members to make a decision, unless:
 - (i) either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Members not to make a decision.
 - (iii)

SECTION VI: PARTICULAR CONDITIONS

The following Particular Conditions of Contract shall amend or supplement the General Conditions of Contract. Additional Sub-Clauses follow consecutively the Sub-Clauses in the General Conditions.

When never there is a conflict; the provisions here in shall prevail over those in the General Conditions.

Part A: Contract Data

| Conditions | Sub-Clause | Data |
|-----------------------------|---------------|---|
| | 1.1.1.3 | Delete the contents of this Sub-Clause and replace with the following: “Whenever the expression “Letter of Acceptance is found in the Contract, it shall be understood as “Memorandum of Understanding”, as defined in Sub-Clause 1.1.2.11 below”. |
| Letter of Tender | 1.1.1.4 | Delete the contents of this Sub-Clause and replace with the following: “ Letter of Tender ” means the documents entitled Letter of Technical Tender and Letter of Price Tender, which were completed by the Contractor and include the signed offer to the Employer for the Works.” |
| Tender | 1.1.1.8 | At the end of this Sub-Clause, add: “The word “Tender “is synonymous with“ Bid” and the words “Tender Documents” with “Bid Documents”. |
| Employer's name and address | 1.1.2.2 & 1.3 | The Chief Executive Officer Tanathi Water Works Development Agency K.I.D.P. Building, Kalawa Road Private Bag-90200 Kitui, Kenya Email: info@tanathi.go.ke |
| Engineer's name and address | 1.1.2.4 & 1.3 | The Engineer is:- General Manager–Infrastructure Development Tanathi Water Works Development Agency K.I.D.P. Building, Kalawa Road Private Bag -90200 Kitui, Kenya Email: info@tanathi.go.ke |

| | | |
|---|----------|---|
| Memorandum of Understanding | 1.1.2.11 | Add the following new Sub-Clauses: “ Memorandum of Understanding ” means a document signed by the Employer and the Contractor confirming agreement reached during the pre-contract meeting, further to the Employer’s evaluation of the Contractor’s Tender. Memorandum of understanding shall have the same meaning as the minutes of negotiation meeting. |
| Chief Resident Engineer | 1.1.2.3 | “ Chief Resident Engineer ” means an assistant to the Engineer, named in the Appendix to Tender, who will be resident on the Site and is appointed from time to time by the Engineer under Sub-Clause 3.2 and notified to the Contractor. |
| Time for Completion | 1.1.3.3 | 18 Months |
| Defects Notification Period | 1.1.3.7 | 12 Months |
| Provisional Item | 1.1.4.13 | Add the following new Sub-Clause: “ Provisional Item ” means an item of work (if any) which is specified in the Contract as a provisional item, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [<i>Provisional Items</i>]. |
| Electronic communication transmission systems | 1.3 | Not Applicable |
| Governing Law | 1.4 | Law of the Republic of Kenya |
| Ruling language | 1.4 | English |
| Language for communications | 1.4 | English |
| Time for right of access to all Parts of the Site | 2.1 | Not later than the Commencement Date |

| Conditions | Sub-Clause | Data |
|------------|------------|------|
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|--|---------------------|---|
| | | |
| Permits, Licenses or Approvals | 2.2 | <p>Insert at the end of Subclause 2.2:</p> <p>“The assistance provided by the Employers shall in no way relieve the Contractor of the responsibility for obtaining such permits, licenses or approvals outlined in this Subclause 2.2”</p> <p>In addition to the above:</p> <p>vi) The Contractor must ensure that all required permits, License’s or approvals that he obtains in relation to the Works are transferable to the Employer.</p> <p>viii) The Contractor shall carry out the Works so as to comply with all permits, licenses or approvals and not do, or permit to be done, anything that breaches or would be likely to breach the terms of any such required permits, licenses or approvals.</p> <p>The Contractor shall indemnify, hold harmless and defend the Employer, its directors, officers, employees, agents, the Agent and the Finance Parties against all penalties and liabilities of every kind arising from any breach of the permits, licenses or approvals that the Contractor has obtained or for any failure to obtain or give the permits, licenses or approvals</p> <p>That the Contractor was to obtain."</p> |
| Engineer's Duties and Authority | 3.1 (b) (ii) | <p>Add the following to this Sub-Clause:</p> <p>"Unless the Employer notifies the Contractor in writing otherwise, the Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of these Conditions:</p> <p>(a) Sub-Clause 8.1: the issuing of a notice of the Commencement Date;</p> <p>(b) Sub-Clause 8.8: the issuing of an instruction to suspend the progress of the Works, the effect of which is liable to give rise to a determination in accordance with Sub-Clause 8.9;</p> |

| Conditions | Sub-Clause | Data |
|-------------------------------|------------|--|
| | | (c) The maximum value of Variation issued under Sub clause 13 [Variations and Adjustments] by the Engineer shall not exceed Kshs 500,000 excluding adjustments for changes in cost pursuant to Sub clauses 13.7 and 13.8 |
| Performance Security | 4.2 | The performance security will be in the form of an 'unconditional Bank Guarantee' in the amount(s) of Ten (10) percent of the Accepted Contract Amount and in the same currency of the Accepted Contract Amount. |
| Contractor's Representative | 4.3 | After the first paragraph, add the following paragraph: " The Contractor's Representative shall be a professionally qualified civil or structural Engineer registered with Engineers Board of Kenya as a Registered Engineer or as a temporary Registered Engineer for foreign expatriates with at least 20 years' experience in water related projects and construction projects and shall have at least 10 years' experience in managing projects similar to the works under the Contract ". If the Contractor constitutes a joint venture, association, consortium or other unincorporated grouping of two or more persons, the lead partner shall provide the Contractor's Representative." |
| Subcontractors | 4.4 | After the Sub-clause 4.4(b) Subcontractors add sub contracted works shall not exceed 30% |
| Site data | 4.10 | At the end of part(e) insert " The Employer does not guarantee the accuracy of the data and the Contractor is deemed to have familiarized and Satisfied himself with the site conditions". |
| Protection of the Environment | 4.18 | Insert at the end of Subclause 4.18 " The Contractor shall comply with Environmental Management and Coordination Act 1999 and Public Health and safety Act. |

| Conditions | Sub-Clause | Data |
|--|--------------|---|
| Labour Laws | 6.4 | After the first paragraph, add the following paragraph: Insert "The Contractor shall comply with Labour Laws of Kenya". |
| Normal working hours | 6.5 | Resident Engineer's staff Monday to Friday: 08.00 to 13.00 Hrs 14.00 to 17.00 Hrs Saturday: 08.00 to 13.00 Hrs |
| Delay damages for the Works | 8.7 | 0.05% of the Accepted Contract Amount per Day or part thereof. |
| Maximum amount of delay damages | 8.7 | Ten Percent (10%) of the Accepted Contract Amount. |
| Evaluation | 12.3 | In sub-paragraph (a)(i), delete "10%" and replace with "15%". Delete parts (a)(ii) and (a)(iii) |
| Tender Make-up | 12.5 | Add the following new Sub-Clause: "The Contractor shall provide tender make-up attached to the tender document or Basis of the tender prices". |
| Provisional Sums | 13.5.(b)(ii) | Fifteen Percent (15%) |
| Adjustments for Changes in Cost | 13.8 | Coefficients and cost indices shall be in accordance with Appendix to Bid, Schedule of Adjustment Data |
| Total Advance Payment | 14.2 | One advance payment for Ten Percent (10%) of the Accepted Contract Amount less provisional Sums payable in the currencies and proportions in which the Accepted Contract Amount is payable. The contractor should submit unconditional bank guarantee for the Equivalent value. |
| Start repayment of advance payment | 14.2(a) | After certification of Twenty (20) percent of the Accepted Contract Amount |
| Repayment amortization rate of advance payment | 14.2(b) | 10% of the amount of monthly interim payment certificates, and completely repaid prior to the time when 70 percent (70%) of the accepted Contract Amount Less Provisional Sums has Been certified for payment. |
| Percentage of Retention | 14.3(c) | 10% of interim payment certificates. |
| Limit of Retention Money | 14.3(c) | 10% of the Accepted Contract Amount |
| Minimum Amount of Interim Payment Certificates | 14.6 | Kshs 50 million but frequency limited to one per month. |

| Conditions | Sub- Clause | Data |
|---|----------------|--|
| Publishing source of commercial interest rates for financial charges in case of delayed payment | 14.8 | Central Bank of Kenya Add "No financial penalty charges shall be levied on payments that become due for payments in the months of July and August. "In paragraph two delete the word " Discount Rate" and replace with base lending rate |
| Termination by Employer | 15.2 | After sub-paragraph (f): (g) Or, has become liable in accordance with Sub-Clause 8.7 for the maximum amount of Delay Damages stated in the Appendix to Tender." In paragraph starting with "In any of these events or circumstances "Delete the words, "the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in The case of sub paragraph (e.)or f)," |
| Maximum total liability of the Contractor to the Employer | 17.6 | The Accepted Contract Amount |
| Periods for submission of insurance: | 18.1 | (a) Evidence of insurance- 14 days (b) relevant policies -28 days |
| Insurance for the works, plants and materials | 18.2 | The minimum is the value of the all works. |
| Insurance of equipment | 18.2 | The minimum shall be Kshs. 100,000,000 for Unlimited occurrences |
| Maximum amount of deductibles for insurance of the Employer's risks | 18.2 | Not applicable |
| Minimum amount of third party insurance | 18.3 | The minimum shall be Kshs 100,000,000 (Kshs Hundred Million)for unlimited occurrences. |
| Date by which the DAB shall be appointed | 20.2 | 28 days after the Commencement date |
| The DAB shall be comprised of | 20.2 | Three members |
| List of potential DAB sole members | 20.2 | None |
| Appointment(if not agreed)to be made by | 20.3 | The Chairman, The Chartered Institute of Arbitrators, Kenya Branch |
| Institute administering the arbitration; including appointing authority for Arbitration | 20.6(a) | The Chartered Institute of Arbitrators, Kenya Branch |
| Rules of arbitration | 20.6(a) | Chattered Institute of Arbitration, Kenya Branch Rules |
| Place of arbitration | 20.6(b) | Nairobi |
| Language of arbitration | 20.6(c) | English |

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| Failure to Comply with Dispute Adjudication Board's Decision | 20.7 | Add " In the event a party fails to comply with the binding decision of the Dispute Adjudication Board(DAB), the other party may refer the failure to arbitration without first having to refer the matter to DAB and then wait For amicable period to expire. |
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SECTION VII: DRAWINGS

(Submitted as a separate document. See Volume II of the Tender Documents)

SECTION VIII: BILL OF QUANTITIES

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BILL No. 1-A DESIGN COSTS

63 | P a g e

EXPANSION AND AUGMENTATION OF MASINGA KTTUI INTAKE WORKS

BILL No. 1 GENERAL ITEMS

| ITEM | DESCRIPTION | UNIT | QTY | RATE Kes | Amount Kes |
|------|---|----------|------|-------------|---------------|
| | CONTRACTUAL REQUIREMENTS | | | | |
| 1.1 | Provide for a performance Security. See Conditions of contract. | Sum | 1 | | |
| 1.2 | Provide for Insurance of the works and Contractor's Equipment. See conditions of contract. | Sum | 1 | | |
| 1.3 | Provide for Third Party Insurance see Conditions of Contract. | Sum | 1 | | |
| 1.4 | Provide for Insurance against accident or injury to Workmen. See conditions of Contract. | Sum | 1 | | |
| 1.5 | Establish and Maintain Contractor's camps, offices, facilities, etc., and move Plant to site. | Sum | 1 | | |
| | SPECIFIED REQUIREMENTS | | | | |
| | Accommodation and Establishment of site office for the Resident Engineer's staff | | | | |
| 1.6 | Provide a provisional sum of Kshs. 1,000,000 for the renting of Engineer's site office. | Prov Sum | 1 | | |
| 1.7 | Provisional sum for furnishing and equipping the R. E's offices. To include furniture, laptop computers, digital cameras, printers, Survey Equipment cameras etc) for use by the Engineer's Staff | Prov Sum | 1 | | |
| 1.8 | Allow a P.C. Sum of Kshs. 100,000 per month for provision of furnished Accommodation for the use of the Resident Engineer, including day & night security, House Cleaner, Crockery, Electricity, Water Supply, Beddings etc. All to the satisfaction of the Engineer. | Month | 15 | | |
| 1.9 | Ditto but Kshs 80,000 for Assistant Resident Engineer | Month | 15 | | |
| 1.10 | Ditto but Kshs 50,000 for Inspector of works (1Nr), CAD Technician (1 Nr) | Month | 15 | | |
| 1.11 | Percentage addition to item 1.6 to 1.10 for contractor's overheads and profits | % | | | |
| | Services for the Engineer's Staff | | | | |
| 1.12 | Allow a sum of Ksh 5,200,000 to cater for Electromechanical Engineer, Health & Safety Officer, and Social/Environment experts | L/sum | 1.00 | | |

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|---|--|----------|--------|--|---|
| 1.13 | Allow a P.C. Sum of KShs. 8,000,000 for supply of 1Nr. 4WD Vehicle, Station Wagon / SUV, 3000cc Turbo Diesel or approved equivalent, including road license, number plate, etc. The vehicles to revert to Employer after completion of Contract. | No | 1 | | |
| Bill 1 Total carried to Summary page | | | | | ~ |
| 1.14 | Allow a P.C. Sum of KShs. 6,000,000 for supply of 1Nr. 4WD Vehicle, Double Cab or approved equivalent, 2800cc turbo diesel engine including road license, number plate, etc. The vehicles to revert to Employer after completion of Contract. | No | 1 | | |
| 1.15 | Allow Provisional sum for 2No driver's for the project vehicles | Psum | 1 | | |
| 1.16 | Allow a sum of KES 3,000,000 to cover Project Management and monthly site meetings. The rate to include all costs such as allowances , overtime, insurance, communications, stationery, works equipment's, reports and miscellaneous expenses. | Psum | 1 | | |
| 1.17 | Allow a sum of KES 5,000,000 to cover for capacity building, trainings, as shall be instructed by the project engineer | Psum | 1 | | |
| 1.18 | Allow a provisional sum of Ksh 3,000,000 for the maintenance, fueling, insurance and servicing of project vehicles for the duration of the contract. | Psum | 1 | | |
| 1.19 | Provide alternative transport of equivalent and equal specifications to Engineers staff before the acquisition of vehicles above. | km | 40,000 | | |
| 1.20 | P.C. Sum of Kshs. 1,000,000 for provision of communication facilities and services (telephone, email, fax, postal, courier services, etc.) for the Project / Site Offices and the Supervision Staff. | Prov Sum | 1 | | |
| 1.21 | Allow Ksh 4,000,000 for factory inspection and due diligence on the proposed suppliers of the electromechanical equipment | Prov Sum | 1 | | |
| 1.22 | Allow a provisional sum of Kshs 500,000 for the Engineer's staff mobile phone airtime charges. | Prov Sum | 1 | | |
| Project Signboards and Plaque | | | | | |

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EXPANSION AND AUGMENTATION OF MASINGA KITUI INTAKE WORKS

BILL No. 2 INTAKE WORKS

| ITEM | DESCRIPTION | UNIT | QTY | RATE Kes (120) | Amount Kes |
|------|---|------|-------|-------------------|---------------|
| | INTAKE PUMPS - 3 PHASE (prices to include transport and installation) | | | | |
| 2.1 | Provide an electrical submersible KSB pump 150 m3/hr, against 100 m head at the new pontoon cw switchgear , control panels and surge protection | Nr | 3 | | |
| 2.2 | Provide an electrical KSB pump 150 m3/hr, against 100 m head at the Matuu treatment works, control panels and surge protection | Nr | 1 | | |
| | PIPELINE AND FITTINGS | | | | |
| 2.3 | Provide for supply and place Flanged DN 400 mm PN 16 cast iron gate valve | Nr | 2 | | |
| 2.4 | Supply and place Flanged non-return valve DN 400 mm PN 16 (cast iron construction). Price to include mechanical joints. | Nr | 3 | | |
| 2.5 | Design, supply and install for the floating plontoon complete with buoyancy equipment, necessary fittings and accessories | Sum | 1 | | |
| 2.6 | Allow for provision and placing of steel anchor block with stay cables similar to the existing | Sum | 1 | | |
| 2.7 | Allow for excavation works at the intake works | m3 | 19800 | | |
| | MISCELLNEOUS ELECTROMECHANICAL WORKS | | | | |
| 2.8 | Grilled electro-forged FeB360 hot~dip galvanized steel protection of pumps (partly submerged) | Kg | 3,925 | | |
| 2.9 | Sound blanket (Noise blanket to be installed on the electric pumps] | Nr | 3 | | |
| 2.10 | Noise rubber (Vibration attenuating bearing to be installed on electric pumps) | Nr | 18 | | |
| 2.11 | Allow Khs 10,000,000 for installation of electrical components including 800 metres 3- phase electrical cables for pumps and control panels | PSum | 1 | | |
| 2.12 | Supply 1 No small maintenance boat (fiberglass) with 50HP 4 stroke outboard motor / boat engine. Approvals to be made by the Engineer | Nr | 1 | | |
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EXPANSION AND AUGMENTATION OF MASINGA KITUI INTAKE WORKS

BILL No. 3 RAW WATER MAIN

| ITEM | DESCRIPTION | UNIT | QTY | RATE Kes | Amount Kes |
|------|---|------|-----|-------------|---------------|
| | DEMOLITION AND SITE CLEARANCE | | | | |
| 3.1 | General bush clearance along pipe route specifications clause 2.1 | M | 500 | | |
| 3.2 | Trees and stumps girth n.e 320 mm | Nr | 15 | | |
| | TRENCH EXACATION | | | | |
| 3.3 | Trench for 400 mm DN depth n.e 1.0 m | M | 600 | | |
| 3.4 | Ditto but depth 1.0 - 1.5 m | M | 100 | | |
| 3.5 | Ditto but depth 1.0 - 2.0 m | M | 100 | | |
| | PIPELINE | | | | |
| 3.6 | Epoxy coated, cement lined Steel pipe DN 400 mm PN 16 with double flanged flexible joints at every 12 meters. Costs inclusive of supplying, laying, jointing (flanged) and installation of the flexible joints. | M | 800 | | |
| | BENDS - PN16 | | | | |
| 3.7 | Epoxy coated DN 400 mm on steel 90 degrees | Nr | 3 | | |
| 3.8 | Ditto 45 degrees | Nr | 1 | | |
| 3.9 | Ditto 22.5 degrees | Nr | 1 | | |
| | MARKER POST | | | | |
| 3.10 | Pipeline maker post | Nr | 2 | | |
| | THRUST AND ANCHOR BLOCKS | | | | |
| 3.11 | Ditto concrete volume 0.6 - 0.65 m3 | Nr | 3 | | |
| | VALVES AND FITTINGS PN 16 | | | | |
| 3.12 | DN 400 mm sluice valve | Nr | 2 | | |
| 3.13 | DN 400 mm flanged adaptor c/w bolts, nuts, washers and accessories to make water tight joint | Nr | 4 | | |
| | FLOATING PONTOON FOR PIPES | | | | |
| 3.14 | Supply and install PE Plastic Floating Pontoon for the steel DN 400mm raw water rising main. Cost to include stainless steel bolts, nuts and washers of grade as in the specifications | Nr | 80 | | |
| | | | | | |
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[illegible]

EXPANSION AND AUGMENTATION OF MASINGA KITUI INTAKE WORKS
BILL No. 4 CLEAR WATER PUMPS

[illegible]

[illegible]

EXPANSION AND AUGMENTATION OF MASINGA KTTUI INTAKE WORKS
BILL No. 5 REHABILITATION WORKS

| ITEM | DESCRIPTION | UNIT | QTY | RATE Kes | Amount Kes |
|------|--|----------|-----|-------------|---------------|
| 5.1 | Replacement of the 120m ³ Backwash Steel elevated Tank panels. Shop drawings to be submitted to the Engineer for approval. | Nr | 1 | | |
| 5.2 | Allow for a provisional sum of Kshs 22,000,000 for the Rehabilitation at the treatment plant which includes but not limited to Replace existing Tower ladder, Servicing the existing Control panel, Replace Raw water meter 400mm with a digital smart water meter, Replace 7No. Chemical solution dozers, Replace Chemical solution lines, Replace Chemical House Wooden Double Doors 2No. & Single Doors 3No., Replace 3No. Chemical Mixing Chambers stop gates, replace 12No. Penstocks, replace Lamella plates (5No.), Filter media (graded sand) 50Tonnes which involves Topping up of graded sand and gravel of different sizes for better results, Sealing joints at Sedimentation/Filter Units, replace 15No. Sedimentation tanks Stop gates, and replace 9No. Manual plates stainless steel as shall be instructed by the project engineer. | Prov Sum | 1 | | |
| | | | | | |
| | Allow for a provisional sum of Kshs 10,000,000 for the Rehabilitation at the pump house which includes but not limited to Replace Lighting – Assorted bulbs & florescent bulbs, Replace bearing for 1No. 415 KW High lift pumps, Replace Hydraulic valves PN 16, DN 300(3No.), washouts, non-return valve DN 300 (3No.), and sluice valves PN 64, DN 300 (3No.) as shall be instructed by the project engineer. | prov sum | 1 | | |
| | | | | | |

| | | | | | |
|---|--|----------|-----|--|--|
| 5.3 | Allow for a provisional sum of Kshs 15,000,000 for the Rehabilitation of the existing floating intake which includes but not limited to Replace 64No. Leaking rubber joints and repairing 1500m Pipeline, Anchoring Floating pontoon the four (4) corners, 2No. LED lighting required for the control panel, Replace 3No. Surge suppressing valve 200mm, Replace 7No. Power supply line concrete poles (KPLC to be contacted), Replace 1No. Raw water meter DN400mm, Replace 6No. x 4 corners x 50m Pipeline Anchor ropes, Replace 15No. Bolt and Nuts for the flange plus rubber gaskets, Repair the boat hole, replace the rotten wood that holds the engine and service the engine, and Replace 3no. that are worn-out Floater seal as shall be directed by the project engineer. | prov sum | 1 | | |
| Bill 5 Total carried to Summary Page | | | | | |
| 5.4 | Allow for a provisional sum of Kshs 12,000,000 for the Rehabilitation of the 9,000m ³ /day treatment plant which includes but not limited to Replace 14No. Faulty penstocks, topping up Filter media (graded sand and gravel), Sealing the path joints for sedimentation tanks, and Replacing 3No. Chemical dosing pen-stocks as shall be instructed by the project engineer. | prov sum | 1 | | |
| 5.5 | Allow a provisional sum of 500,000 for rebranding and repainting guardrails, offices and gate of the treatment works including permanent signboard as directed by the Engineer | prov sum | 1 | | |
| 5.6 | Allow for Ksh 2,500,000 for supply of lab equipment, Transmission main smart meters and training of staff at the WTP | prov sum | 1 | | |
| 5.7 | Provide and fix 40mm diameter tubing of handrail consisting of handrail and guard rail and parallel middle rail with balusters at maximum 1500mm centres | m | 800 | | |
| 5.8 | Supply, and installation of a SCADA system for the smart meters | L/sum | 1 | | |
| | | | | | |
| | | | | | |
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[illegible]

BILL NO.6 RENOVATION OF OFFICE BLOCK C

| ITEM | DESCRIPTION | UNIT | QTY | RATE | AMOUNT |
|------|---|----------|-----|-------|--------|
| | | | | Kshs. | Kshs. |
| | ROOFING | | | | |
| | LEAK IDENTIFICATION | | | | |
| 6.1 | Allow a provisional sum of roof leak testing and detection scanning through all nail rows and overlaps. | Sum | 1 | | |
| | LEAK PROOFING AND REPAIRS AT NAILS | | | | |
| 6.2 | Allow for removal of rusted and loose nails, replacement of nails, application of urathane roof cement at defective area and retesting of the defective sections | Sum | 1 | | |
| | LEAK PROOFING AND REPAIRS AT ROOFING SHEETS OVERLAPS | | | | |
| 6.3 | Allow for removal of debris and rust from defective section, apply a uniform layer of metal roofing base coat 6" each way of the defective area, cover base coat with a glass fabric membrane, apply a top coat of urethane cement over membrane and extend to cover 6" onto surrounding sections and retest repaired section | Sum | 1 | | |
| | ROOFING SHEETS | | | | |
| 6.4 | Allow for removal and replacement of leaking roofing sheets with similar quality and color as existing as directed by the project manager | SM | 20 | | |
| | TIMBER TRUSSES | | | | |
| 6.5 | Allow for the repair of damaged roof trusses including replacing rotten sections to the approval of the Project Manager | Prov Sum | 1 | | |
| | RAIN WATER GOODS | | | | |
| 6.6 | Allow for removal of debris, dirt and rusted sections valley section | Sum | 1 | | |
| 6.7 | Allow for repair of leaking section by the same regime described for the roofing sheets | Sum | 1 | | |
| 6.8 | Allow for replacement of rusted sections of the iron gutters with similar quality material approved by the Engineer | M | 20 | | |
| | REPAIR WORKS | | | | |
| 6.9 | Allow for removal for removal and disposal of all damaged ceiling board sections as directed by the project manager | Prov Sum | 1 | | |
| 6.10 | Allow for the repair of damaged bradering including replacing rotten sections to the approval of the Project Manager | Prov Sum | 1 | | |

| Bill 6 Total carried to Grand Summary | | | | | |
|---------------------------------------|--|----------|-----|--|--|
| | CEILING WORKS | | | | |
| 6.11 | Allow for provision and fixing of 12 mm thick celotex soft board including cornice, skimming, painting and all necessary accessory and leaving inspection openings as directed by the project Engineer | SM | 200 | | |
| | PREPARATION WORKS | | | | |
| 6.12 | Allow for hacking and removal of existing floor and placing an average of 15 mm thick floor screed to receive tiles | Prov Sum | 1 | | |
| | FLOOR WORKS | | | | |
| 6.13 | Allow for supply and installation of floor tiles including all accessories (<i>Colour and size to be instructed from factory visit</i>) as directed by the project Engineer | SM | 50 | | |
| | PAINT WORK | | | | |
| | Preparation Works | | | | |
| 6.14 | Allow for cleaning of wall groves filling with appropriate approved filler sanding and cleaning in preparation of wall for painting as per specifications and to Engineer's approval. (<i>Preparation of all surfaces to be approved by the Engineer before the contractor proceeds with painting</i>) | Sum | 1 | | |
| | Painting to Walls | | | | |
| | <i>Prepare and apply one undercoat and two finishing coats of plastic emulsion paint on:-</i> | | | | |
| 6.15 | Ditto to walls internally | SM | 200 | | |
| 6.16 | Ditto to walls internally | SM | 200 | | |
| 6.17 | Ditto to Surfaces of steel casement windows and doors internally & externally. | SM | 15 | | |
| 6.18 | Ditto reveals and jumps of openings internally and externally. | SM | 20 | | |
| | <i>Knot, prime ,stop, prepare and apply one coat and two finishing coats of gloss oil paint on wooden works.</i> | | | | |
| 6.19 | Ditto to timber main entrance door internally and externally | SM | 5 | | |
| 6.20 | Ditto to timber door frame | SM | 5 | | |
| | | | | | |
| 6.21 | Allow for ksh 1,500,000 for purchase of workstations and office furniture | Prov sum | 1 | | |
| | | | | | |
| | | | | | |
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| | | | | | |
| | | | | | |

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Total from Page 1

Bill 6 Total carried to Grand Summary

BILL NO.7 REPAIR OF KAMUTHUMBA RISING MAIN, MASINGA RETURN LINE AND KANYONYO LINES

| ITEM | DESCRIPTION | UNIT | QTY | RATE | AMOUNT |
|------|--|------|------|-------|--------|
| | | | | Kshs. | Kshs. |
| | RISING MAIN | | | | |
| | Washouts | | | | |
| 7.1 | Replace washouts PN 25 on the rising main on the DN 400mm including all accessories | No | 6 | | |
| | Air valves PN 25 on DN 400mm Rising Mains | | | | |
| 7.2 | Ductile Iron airvalve with inlet flange, Fusion bonded epoxy coating in compliance with the specifications | No | 3 | | |
| | Valve Chambers for Rising main | | | | |
| 7.3 | Replace 1.8m x 1.4m valve chambers. | No | 10 | | |
| | Washouts on Masinga return pipeline DN 250 - 200mm | | | | |
| 7.4 | Replace washouts PN 25 on the rising main. DN 400mm including all accessories | No | 1 | | |
| | Air valves PN 25 on DN 250mm pipeline | | | | |
| 7.5 | Ductile Iron Double orifice air valve DN 80mm with inlet flange, Fusion bonded epoxy coating in compliance with the specifications | No | 7 | | |
| | Sluice Valves PN 25 | | | | |
| 7.6 | Flanged Ductile Iron Sluice valve, Fusion bonded epoxy coating in compliance with DIN 3476 part 1 and EN 14901. for DN 400mm steel pipe rising main | No | 2 | | |
| 7.7 | Flanged Ductile Iron Sluice valve, Fusion bonded epoxy coating in compliance with DIN 3476 part 1 and EN 14901. for DN 250mm pipeline | No | 2 | | |
| | TRENCH EXACATION | | | | |
| 7.8 | Trench for 250mm - 83mm DN depth n.e 1.0 m | m3 | 3500 | | |
| 7.9 | Ditto but depth 1.0 - 1.5 m | m3 | 255 | | |
| 7.10 | Ditto but depth 1.0 - 2.0 m | m3 | 750 | | |
| 7.11 | Supply, lay and joint Epoxy coated cement lined steel pipe DN 400mm PN 25 on the leaking sections of the pipeline along the rising mains. Cost inclusive of the fittings (flanged) | m | 50 | | |

[illegible]

SECTION IX: SPECIFICATIONS
(Submitted as a separate document. See Volume III)

SECTION X: CONTRACT FORMS

A. Notification Letter

[Letter head paper of the Employer]

[Date]

To: *[Name and address of the Contract or]*

Dear Sir/Madam:

This is to notify you that your Tender dated *[insert date]* for Expansion and Augmentation of Masinga Kitui Intake Works Project –, for an amount equivalent to approximately *[amount in words]* United States Dollars (*[number]* USD) to be paid in Foreign Currency, and *[amount in words]* United States Dollars (*[number]* USD) to be paid in Local Currency, subject to correction and amendment during the pre-contract meeting, is hereby accepted in principle by the Tanathi Water Works Development Agency.

You are requested to attend the pre-contract meeting at Tanathi Water Works Development Agency headquarters in K.I.D.P. Building, Kalawa Road, Kitui Kenya, scheduled for *[insert date and time]*.

Authorized Signature: _____

Name of Signatory: _____

Title of Signatory: _____

For and on behalf of the Employer: Tanathi Water Works Development Agency.

B. Contract Agreement

This Agreement made the _____ day of _____, 202_, between the Tanathi Water Works Development Agency headquarters in K.I.D.P. Building, Kalawa Road, Kitui, Kenya, (here in after called “the Employer”), of the one part, and _____ of _____ (herein after called “the Contractor”), of the other part,

Whereas the Employer desires that the Works known as Consultancy Services for Expansion and Augmentation of Masinga Kitui Intake Works Project should be executed by the Contractor, and has accepted a Tender by the Contractor for the design (to the extent specified in the Contract), execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents:
 - (a) This Contract Agreement;
 - (b) the Memorandum of Understanding, signed by both Parties, dated _____;
 - (c) the Letter of Technical Tender, the Letter of Price Tender and the Appendix to Price Tender, dated ___;
 - (d) the Particular Conditions of Contract (incorporating Addenda, if any);
 - (e) the General Conditions of Contract;
 - (f) the Specification (incorporating Addenda, if any);
 - (g) the Drawings (incorporating Addenda, if any);
 - (h) the priced Bill of Quantities, including Preamble and Notes on Measurement and Payment (incorporating Addenda, if any); and
 - (i) The completed Tender Schedules and any other documents forming part of the Contract.
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to design (to the extent specified in the Contract), execute and complete the Works and to remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the design (to the extent specified in the Contract), execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by

the Contract. The Accepted Contract Amount is the equivalent of *[amount in words]* United States Dollars(*[number]* USD) to be paid in Foreign Currency, and *[amount in words]* United States Dollars(*[number]* USD) to be paid in Local Currency.

5. The Base Date, as defined in the Contract, is _____ *[to be inserted before signing the Agreement]*.
6. The Time for Completion is _____ days from the Commencement Date, which is _____ *[Insert the Commencement Date if known]*.

In Witness there of the parties here to have caused this Agreement to be executed in accordance with the laws of Kenya on the day, month and year indicated above.

Signed by: Signed by:
.....

Name of signatory: Name of signatory:
.....

Title of signatory: Title of signatory:
.....

Tanathi Water Works Development Agency

Name of Contractor (or lead company, in case of JV):

For and on behalf of the Employer in the presence of: For and on behalf of the Contractor in the presence of:

Witness:..... Witness:

Name: Name:

Position: Position:

Signed by:..... Signed by:

C. Performance Security

(Demand Guarantee)

The Guarantor: _____

[Bank's Name, and Address of Issuing Branch or Office]

The Beneficiary: Tanathi Water Works Development Agency

K.I.D.P. Building, Kalawa

Road, Kitui, Kenya

Attn.: The Chief Executive Officer

Date: _____

PERFORMANCE GUARANTEE No: _____

We, as the Guarantor, have been informed that _____ *[name of Contractor]* (herein after called "the Contractor" and referred to as "the Principal" in ICC Publication No. 458) has entered into contract dated...
.....with you for the **Expansion and Augmentation of Masinga Kitui Intake Works Project** and the remedying of any defects therein (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required, for ten percent (10%) of the Contract Price, such sum being payable in the types and proportions of currencies in which the Contract Price is payable.

At the request of the Contractor, we _____ *[name of Bank]* hereby irrevocably undertake to pay you, the Employer, any sum or sums not exceeding in total an amount of _____ *[amount in words and figures] [United States Dollars or Kenyan Shillings, as appropriate]*, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

We agree that no change or addition to or other modification to the terms of the Contract or of the Works to be performed there under or of any of the Contract Documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we here by waive notice of any

such change, addition or notification.

In the event of any claim under this guarantee, payment shall be effected to:

Tanathi Water Works Development Agency

[Bank name and address]

[Bank account No, swift code, etc.]

This guarantee shall expire no later than twenty-eight (28) days from the date of issuance of the Performance Certificate (calculated based on a copy of such Certificate which shall be provided to us) initially expected to be no later than the day of, which date we agree unconditionally shall be extended by us as required by the conditions of the Contract in response to the Contractor's written request for such extension(s), such request(s) to be presented to us before the expiry of the guarantee, and any demand for payment under this guarantee must be received by us at this office on or before that initially expected date or extended date as the case may be.

This guarantee shall be governed by the laws of Kenya and is subject to the ICC Uniform Rules for Demand Guarantees, published by the International Chamber of Commerce as ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20 (a) is hereby excluded.

.....

Signature (s)

**D. Advance Payment Security
(Demand Guarantee)**

The Guarantor: _____

[Bank's Name and Address of Issuing Branch or Office]

The Beneficiary: *Tanathi Water Works Development Agency*

K.I.D.P. Building, Kalawa

Road, Kitui, Kenya

Attn.: The Chief Executive Officer

Date: _____

ADVANCE PAYMENT GUARANTEE No: _____

We, as the Guarantor, have been informed that _____ *[name of Contractor]* (herein after called "the Contractor" and referred to as "the Principal" in ICC Publication No. 458) has entered into contract dated...with you for the **Expansion and Augmentation of Masinga Kitui Intake Works Project** and the remedying of any defects therein (herein after called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, An Advance Payment Guarantee is required, for ten percent (10%) of the Contract Price, less the value of Provisional Sums, such sum being payable in the types and proportions of currencies in which the Contract Price is payable.

At the request of the Contractor, we _____ *[name of Bank]* hereby irrevocably under take to pay you, the Employer, any sum or sums not exceeding in total an amount _____ *[amount in words and figures]* United States Dollars and _____ *[amount in words and figures]* Kenyan Shillings, upon receipt by us and in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified there in. We agree that no change or addition to or other modification to the terms of the Contract or of the Works to be performed there under or of any of the Contract Documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we here by waive notice of any such change, addition or notification.

In the event of any claim under this guarantee, payment

shall be effected to: Tanathi Water Works Development

Agency,

[Bank name and address]

[Bank account No, swift code, etc.]

The maximum amount of this guarantee may be progressively reduced by the amount of

the Advance Payment repaid by the Contractor, as indicated in copies of interim payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that the full amount of the Advance Payment has been repaid by the Contractor, or on the day of _____, whichever is earlier, but we agree unconditionally for this date to be extended by us in response to the Contractor's written request _____ for _____ such extension(s), such request(s) to be presented to us before the expiry of the guarantee. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date or extended date as the case may be.

This guarantee shall be governed by the laws of Kenya and is subject to the ICC Uniform Rules for Demand Guarantees, published by the International Chamber of Commerce as ICC Publication No.458, except that subparagraph (ii) of Sub-article 20 (a) is hereby excluded.

.....
Signature(s)

E. Form of Tender

To: The Chief Executive Officer
Tanathi Water Works Development Agency,
K.I.D.P. Building,
Kalawa Road
Private Bag 0200
Kitui, Kenya

Sir/Madam,

Ref: **Expansion and Augmentation of Masinga Kitui Intake Works Project**

Contract No.....

Having examined the drawings, Conditions of Contract, Specifications and Bills of Quantities for the construction of the above named works, we the undersigned, offer to construct complete and maintain the whole of the said works in conformity with the said Drawings, Conditions of contract, specifications and Bills of quantities for the sum of Shillings;

.....

.....

..(Kshs)or such other sum as may be ascertained in accordance with the said Conditions of Contract.

1.

Engineer's order to commence and to complete and deliver the whole of the works comprised in the contract within..... months, calculated from the last day of the fore said

Period in which the works are to be commenced.

2. We also undertake to produce the required Performance Bond from a bank or insurance Company (to be approved by you) in accordance with Clause 4.2 of the conditions of contract, within twenty-eight (28) days from the written notice to commence the works.

3. We agree to abide by this Tender for the period one hundred and twenty (120) days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

4. Unless and until a formal Agreement is prepared and executed, this Tender together with your letter of acceptance thereof, shall constitute a binding contract between us.

5. We acknowledge the receipt of the following Addendum to the Contract Documents (if none were received written one).

Addendum No: Date of Addendum

.....

.....

.....

6. We understand that you are not bound to accept the lowest of any Tender you may receive.

Signature..... Date.....

Name.....

Address.....

..... (Tenderer)

Signature..... Date.....

Name.....

Address.....

.....

..... (Witness)

F. Schedule of Adjustment Data

[In Tables A, B, and C, below, the Tenderer shall (a) indicate its amount of local currency payment, (b) indicate its proposed source and base values of indices for the different foreign currency elements of cost, (c) derive its proposed weightings for local and foreign currency payment, and (d) list the exchange rates used in the currency conversion. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.]

Table A. Local Currency

| Index code | Index description | Source of index | Base value and date | Tenderer's related currency amount | Range of weighting Proposed by the Procuring Entity | Tenderer's proposed weighting |
|--------------|-------------------|-----------------|---------------------|------------------------------------|---|-------------------------------|
| | Non adjust-Stable | — | — | — | a: _____* | a: _____* |
| | | | | | b: _____to_____* | b: _____ |
| | | | | | | c: _____ |
| | | | | | c: _____to_____* | d: _____ |
| | | | | | d: _____to_____* | e: _____ |
| | | | | | e: _____to_____* | etc. |
| | | | | | etc. | |
| Total | | | | | | 1.00 |

Table B. Foreign Currency

State type: [If the Tenderer wishes to quote in more than one foreign Currency, this table should be repeated for each foreign currency.]

| Index code | Index description | Source of index | Base value and date | Tenderer's related source currency in type/ amount | Equivalent in Foreign Currency1 | Range of weighting Proposed by the Procuring Entity | Tenderer's proposed weighting |
|------------|--------------------|-----------------|---------------------|--|---------------------------------|---|-------------------------------|
| | Non adjust~ stable | — | — | — | | a- _____ * | a- _____ |
| | | | | | | b- _____ to _____ * | * _____ |
| | | | | | | _____ * | b- _____ |
| | | | | | | c- _____ to _____ * | _____ |
| | | | | | | _____ * | c- _____ |
| | | | | | | d- _____ to _____ * | _____ |
| | | | | | | _____ * | d- _____ |
| | | | | | | e- _____ to _____ * | _____ |
| | | | | | | _____ * | e- _____ |
| | | | | | | etc. | |
| | | | | | | | etc. |
| Total | | | | | | | 1.00 |

Table C. Summary of Payment Currencies

For [insert name of Section of the Works]

[Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The Procuring Entity should insert the names of each Section of the Works.]

| Name of payment currency | A Amount of currency | B Rate of exchange (local currency per unit of foreign) | C Local currency equivalent $C = A \times B$ | D Percentage of Net Tender Price (NBP) $\frac{100 \times C}{NBP}$ |
|---|---------------------------------|--|--|---|
| Local currency | | 1.00 | | |
| Foreign currency#1 | | | | |
| Foreign currency#2 | | | | |
| Foreign currency# | | | | |
| Net Tender Price | | | | 100.00 |
| Provisional sums expressed in Local currency | * | * | * | |
| TENDER PRICE | | | | |

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Tenderer: _____

Address: _____

G. Confidential Business Questionnaire

- 1 **Individual Tenderer or Individual Members of joint Ventures**
- 1.1 Constitution or legal status of Tenderer: *[attach copy]* Place of registration: *[insert]*
Principal place of business: *[insert]*
Power of attorney of signatory of Tender: *[attach]*
Registration certificate *[attach]* current Business License *[attach]*
- 1.2 Total annual volume of construction work performed in two years, in Kenyan shillings as specified in the Tender Data Sheet; *[insert]*
- 1.3 Work performed as prime Contractor on works of a similar nature and volume over the last two years or as specified in the Tender Data Sheet in Kenyan Shillings. Also list details of work under way or committed, including expected completion dates.

| Project name and country | Name of client and contact person | Contractors Participation | Type of work performed and year of completion | Value of contract |
|--------------------------|-----------------------------------|---------------------------|---|-------------------|
| (a) | | | | |
| (b) | | | | |

- 1.4 Major items of Contractor's Equipment proposed for carrying out the works. List all information requested below. Referral so to sub-Clause 12.3 of the Instructions to Tenderers.

| Item of equipment | Description, make, and age (years) | Condition (new, good, Poor) and number available | Owned, leased (from whom?) or to be purchased (from whom?) |
|-------------------|------------------------------------|--|--|
| (a) | | | |
| (b) | | | |
| (c) | | | |
| (d) | | | |

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to sub-Clause 12.3 of the Instructions to Tenderers and Sub-Clause 10.1 of the General Conditions of Contract.

| Position | Name | Years of Experience (general) | Years of experience in proposed position |
|----------|------|-------------------------------|--|
| (a) | | | |
| (b) | | | |

- 1.6 Proposed sub-contractor and firms involved. Refer to Clause 7 of General Conditions of Contract.

| Sections of the Works | Value of subcontract | Subcontractor (name and address) | Experience in similar work |
|-----------------------|----------------------|----------------------------------|----------------------------|
| (a) | | | |
| (b) | | | |

- 1.7 Financial reports for the number of years specified in the Tender Data Sheet.

- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents.

- 1.9 Name, address, and telephone, e-mail address, and facsimile numbers of banks that may provide references if contracted by the Procuring Entity.

- 1.10 Information on current litigation in which the Tenderer is involved.

| Other party (ies) | Cause of dispute | Amount involved |
|-------------------|------------------|-----------------|
| (a) | | |
| (b) | | |

- 1.11 Statement of compliance with the requirements of sub-Clause 3.2 of the Instructions to Tenderers.

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

2. Joint Ventures

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

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

2.3 Attach the power of attorney of the signatory (ies) of the Tender authorizing signature of the Tender on behalf of the joint venture.

2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:

(a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

(b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and on behalf of any and all partners of the joint venture; and

(c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

3. **Additional Requirements**

3.1 Tenderers should provide any additional information required in the **Tender Data Sheet** or to fulfill the requirements of sub-Clauses 12.1 of the Instructions to Tenderers, if applicable.

**SECTION XI: APPLICATION TO PUBLIC PROCUREMENT
ADMINISTRATIVE REVIEW BOARD**

A. FORM RB 1

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....

..... (APPLICANT).....AND

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

Request for review of the decision of the..... (*Name of the Procuring Entity*)
of.....dated the...day of.....20.....in the matter of Tender No... of
.....20...

REQUEST FOR REVIEW

I/We....., the above named Applicant(s), of
address: Physical address..... Fax No.....

Tel. No.....Email, hereby request the Public
Procurement Administrative Review Board to review the whole/part of
the above mentioned decision on the following grounds, namely: ~

- 1.
- 2.
- etc.

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

- 1.
- 2.
- Etc.

SIGNED..... (Applicant)

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

FOR OFFICIAL USE ONLY

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

Of.....20.....

.....
SIGNED
Board Secretary