

REPUBLIC OF KENYA



**TANATHI WATER WORKS  
DEVELOPMENT AGENCY**

**VOLUME I**

**TENDER DOCUMENT**

**CONSTRUCTION OF MWANYANI (KWA  
MALOVOO) DAM**

**TENDER No: TAWWDA/007/2025-2026**

**DATE: MARCH, 2026**

*Employer:*

*The Chief Executive Officer,  
Tanathi Water Works Development Agency,  
K.I.D.P Building  
Kalawa Road  
P.O. Box Private Bag  
KITUI.*

**ABBREVIATIONS AND ACRONYMS**

---

**TABLE OF CONTENTS**

ABBREVIATIONS AND ACRONYMS .....	3
SECTION I: INSTRUCTIONS TO TENDERERS (ITT) .....	4
SECTION II: TENDER DATA SHEET .....	30
SECTION III: GENERAL CONDITIONS OF CONTRACT .....	36
SECTION IV: CONDITIONS OF PARTICULAR APPLICATION .....	37
SECTION V: SPECIFICATIONS .....	38
SECTION VI: DRAWINGS .....	<b>Error! Bookmark not defined.</b>
SECTION VII: BILL OF QUANTITIES .....	39
SECTION VIII: TENDER FORMS .....	46
SECTION IX: FORMS OF SECURITY .....	56
SECTION X: APPLICATION TO PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD.....	62

## ABBREVIATIONS AND ACRONYMS

---

### ABBREVIATIONS AND ACRONYMS

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

**SECTION I: INSTRUCTIONS TO TENDERERS (ITT)**

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

**Table of Clauses**

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)	4
A. Introduction	7
1. Scope of Tender	7
2. Source of Funds	7
3. Eligible Tenderers	7
4. One Tender per Tenderer	8
5. Alternative Tenders by Tenderers	9
6. Cost of Tendering	9
7. Site Visit and Pre-Tender Meeting	9
B. Tendering Documents	10
8. Content of Tendering Documents	10
9. Clarification of Tendering Documents	11
10. Amendments of the Tendering Documents	11
C. Preparation of Tenders	12
11. Language of Tender	12
12. Documents Constituting the Tender	12
13. Documents Establishing Eligibility and Qualifications of the Tenderer	12
14. Lots Package	13
15. Form of Tender	14
16. Tender Prices	14
17. Tender Currencies	14
18. Tender Validity Period	15
19. Tender Security and Tender Securing Declaration	15
20. Format and Signing of Tender	16
D. Submission of Tenders	17
21. Sealing and Marking of Tenders	17
22. Deadline for Submission of Tenders	17
23. Late Tenders	18
24. Modification, Substitution and Withdrawal of Tenders	18
E. Opening and Evaluation of Tenders	18
25. Opening of Tenders	18
26. Confidentiality	20
27. Clarification of Tenders	20
28. Preliminary Examination of Tenders	20
29. Correction of Errors	21
30. Conversion to Single Currency	22
31. Comparison of Tenders	22
32. National Preference	22
33. Determination of the Lowest Evaluated Tender	23
34. Post-qualification of Tenderer	23
F. Award of Contract	23
35. Criteria of Award	23
36. Clarifications	24
37. Procuring Entity's Right to Accept any Tender and to Reject any or all Tenders	24
38. Procuring Entities Right to Vary Quantities at the Time of Award	25
39. Notification of Award	25
40. Signing of Contract	26
41. Performance Security	26
42. Advance Payment	26
43. Adjudicator	27
G. Review of Procurement Decisions	27
44. Right to Review	27

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

45. Time Limit on Review .....	27
46. Submission of Applications for Review by the Public Procurement Administrative Review Board.....	28
47. Decision by the Public Procurement Administrative Review Board .....	28
48. Appeal on the decision of the Review Board.....	29

**A. Introduction**

- 1. Scope of Tender**
- 1.1** 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 V (Technical Specifications) and VI (Drawings).
- 1.2** The successful Tenderer will be expected to complete the works by the required completion date specified in the **Tender Data Sheet**.
- 1.3** The objectives of the works are listed in the **Tender Data Sheet**. These are mandatory requirements. Any further details provided are intended solely to support these objectives and shall not, under any circumstances, be interpreted or used to diminish their significance.
- 2. Source of Funds**
- 2.1** 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**.
- 2.2** 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.
- 3. Eligible Tenderers**
- 3.1** A Tenderer may be a natural person, private or public company, government-owned institution, subject to sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the **Tender Data Sheet**, all parties shall be jointly and severally liable.
- 3.2** The Invitation for Tenders is open to all eligible Tenderers as outlined in sub-Clause 3.1 above.
- 3.3** National Tenderers shall satisfy all relevant licensing and/or registration with the appropriate statutory bodies in Kenya, such as the Ministry of Water and Irrigation, Ministry of Public Works or the Energy Regulatory Commission.
- 3.4** A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if they:
- a) Are associated or have been associated in the past directly or indirectly with employees or agents of the Procuring Entity or a member of a board or committee of the Procuring Entity;

---

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

- b) Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the Procuring Entity to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the works under this Invitation for Tenders;
- c) Have controlling shareholders in common; or
- d) Receive or have received any direct or indirect subsidy from any of them; or
- e) Have the same legal representative for purposes of this Tender; or
- f) Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
- g) Submit more than one Tender in this Tendering process, However, this does not limit the participation of subcontractors in more than one Tender, or as Tenderer and subcontractor simultaneously.

**3.5** A Tenderer will be considered to have a conflict of interest if they participated as a consultant in the preparation of the design or technical specification of the project and related services that are the subject of the Tender.

**3.6** Tenderers shall be update critical relevant information such as litigation information, accessing credit, critical equipment, labour force, among others.

**3.7** Government owned enterprises in Kenya may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration board or authorities and if they are not a dependent agency of the Government.

**3.8** Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

**4. One Tender per Tenderer**

**4.1** A firm shall submit only one Tender, in the same Tenderingprocess, either individually as a Tenderer or as a partner in a joint venture pursuant to ITT Clause 5.

**4.2** No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process.

**4.3** A firm, if acting in thecapacity of subcontractor in any Tender,

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

may participate in more than one Tender but only in that capacity.

4.4 A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or incases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.

**5. Alternative Tenders by Tenderers**

5.1 Tenderers shall submit offers that comply with the requirements of the Tendering documents, including the basic Tenderer's technical designas indicated in the specifications and Drawings and Bill of Quantities. Alternatives will not be considered, unless specifically allowed for in the **Tender Data Sheet**. If so allowed, sub-Clause 5.2 and 5.3 shall govern.

5.2 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.

5.3 If so allowed in the **Tender Data Sheet**, Tenderers wishing to offer technical alternatives to the requirements of the Tendering documents must also submit a Tender that complies with the requirements of the Tendering documents, including the basic technical design as indicated in the specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity.

**6. Cost of Tendering**

6.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

**7. Site Visit and Pre-Tender Meeting**

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is advised to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Tenderer's own expense.

7.2 The Procuring Entity may conduct a site visit and a pre-Tender meeting. The purpose of the pre-Tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.3 The Tenderer's designated representative is invited to attend a site visit and pre-Tender meeting which, if convened, will take place at the venue and time stipulated in the **Tender Data Sheet**.

7.4 The Tenderer is requested as far as possible, to submit any

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

questions in writing or by electronic means to reach the procuring Entity before the pre-Tender meeting. It may not be practicable at the meeting to answer all questions, but questions and responses will be transmitted in accordance with sub-Clause 7.5.

- 7.5 Minutes of the pre-Tender meeting, including the text of the questions raised and the responses given together with any responses prepared after the pre-Tender meeting will be transmitted within the time stated in the **Tender Data Sheet** to all purchasers of the Tendering documents. Any modification of the Tendering documents listed in sub-Clause 8.1 that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT sub Clause 10.2 and not through the minutes of the pre-Tender meeting.
- 7.6 Non attendance during the site visit or pre-Tender meeting will not be a cause for disqualification of a Tenderer unless specified to the contrary in the **Tender Data Sheet**.

**B. Tendering Documents**

**8. Content of Tendering Documents**

- 8.1 The works required, Tendering procedures, and contract terms are prescribed in the Tendering Documents. In addition to the Invitation for Tenders, Tendering documents which should be read in conjunction with any addenda issued in accordance with ITT sub Clause 10.2 include:
- Section II Instructions to Tenderers
  - Section III Tender Data Sheet
  - Section IV General Conditions of Contract
  - Section V Conditions Of Particular Application
  - Section VI Specifications
  - Section VII Bill of Quantities
  - Section VIII Drawings
  - Section IX Forms of Tender
    - Form of Tender
    - Appendix to Tender
    - Confidential Business Questionnaire
    - Letter of Acceptance
    - Form of Contract Agreement
  - Section X Forms of Security
    - Tender Security Form
    - Performance Bank Guarantee
    - Advance Payment Guarantee
- 8.2 The number of copies to be completed and returned with the Tender is specified in the **Tender Data Sheet**.
- 8.3 The Invitation for Tenders issued by the Procuring Entity is not part of the Tendering Documents and is included for reference purposes only. In case of discrepancies between the

Commented [WU1]: Add letter of acceptance

---

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

Invitation for Tenders and the Tendering Documents listed in sub-Clause 8.1 above, the said Tendering Documents will take precedence.

- 8.4 The Procuring Entity is not responsible for the completeness of the Tendering Documents and their addenda, if they were not obtained directly from the authorized staff of the Procuring Entity.
- 8.5 The Tenderer is expected to examine all instructions, forms, terms and specifications in the Tendering documents. Failure to furnish all information required by the Tendering Documents or to submit a Tender substantially responsive to the Tendering documents in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

**9. Clarification of Tendering Documents**

- 9.1 A prospective Tenderer requiring any clarification of the Tendering documents may notify the Procuring Entity in writing, e-mail or facsimile at the Procuring Entity's address indicated in the **Tender Data Sheet**.
- 9.2 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 of Tenders prescribed in sub-Clause 22.1.
- 9.3 Copies of the procuring entity's response will be forwarded to all Purchasers of the Tendering documents, including a description of the inquiry, but without identifying its source.
- 9.4 Should the Procuring Entity deem it necessary to amend the Tendering documents as a result of a clarification, it shall do so following the procedure under ITT Clause 10.

**10. Amendments of the Tendering Documents**

- 10.1 Before the deadline for submission of Tenders, the Procuring Entity may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, modify the Tendering documents by issuing addenda.
- 10.2 Any addendum issued shall be part of the Tender documents pursuant to sub-Clause 8.1 and shall be communicated in writing, by e-mail or facsimile to all who have obtained the Tendering documents directly from the Procuring Entity.
- 10.3 In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity at its discretion shall extend, as necessary, the deadline for submission of Tenders, in accordance with sub-Clause 22.2

**C. Preparation of Tenders**

- 11. Language of Tender**
- 11.1** The Tender, and all correspondence and documents related to the Tender exchanged by the Tenderer and the Procuring Entity shall be written in the Tender language stipulated in the **Tender Data Sheet**. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the above stated language, in which case, for purposes of interpretation of the Tender, the translation shall prevail.
- 12. Documents Constituting the Tender**
- 12.1** The Tender submitted by the Tenderer shall consist of the following components:
- a) The Form of Tender (in the format indicated in Section VIII) completed in accordance with ITT Clause 15, 16 and 17;
  - b) Information requested by Instructions to TenderersITT sub-Clause 13.2; 13.3 and 13.4;
  - c) Tender Security in accordance with Instructions to TenderersITT Clause 19;
  - d) Priced Bill of Quantities;
  - e) Qualification Information Form and Documents;
  - f) Alternative offers where invited in accordance with Instructions to TenderersITT Clause 5;
  - g) Written confirmation authorizing the signatory of the Tender to commit the Tenderer in accordance with Instructions to TenderersITT sub Clause 19.2; and
  - h) And any information or other materials required to be completed and submitted by Tenderers, as specified in the **Tender Data Sheet**.
- 13. Documents Establishing Eligibility and Qualifications of the Tenderer**
- 13.1** Pursuant to ITT Clause 13, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.
- 13.2** In the event that pre-qualification of potential Tenderers has been undertaken, only Tenders from pre-qualified Tenderers will be considered for award of contract. These qualified Tenderers should submit their Tenders with any information updating the original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tendersubmission.

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

**13.3** 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**:

**13.4** Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **Tender Data Sheet**:

- a) The Tender shall include all the information listed in the **Tender Data Sheet** pursuant to sub-Clause 13.3 above for each joint venture partner;
- b) The Tender shall be signed so as to be legally binding on all partners;
- c) One of the partners will 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;
- d) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of a joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
- e) 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 statement to this effect shall be included in the authorization mentioned under (c) above as well as in the Tender and in the Agreement (in case of a successful Tender); and
- f) A copy of the joint venture agreement entered into by all partner shall be submitted with the Tender. Alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful Tender shall be signed by all partners and submitted with the Tender, together with a copy of the proposed Agreement.
- g) The Tender Security as stated in accordance with ITT Clause 19, and in case of a successful Tender, the Agreement, shall be signed so as to be legally binding on all partners.

**14. Lots Package**

**14.1** When Tendering for more than one contract under the lots arrangements, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being tendered in regard to:

- a) Average annual turnover;
- b) Particular experience including key production rates;
- c) Financial means, etc;

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

- d) Personnel capabilities; and  
e) Equipment capabilities.
- 14.2** In case the Tenderer fail to fully meet any of these criteria, it may be qualified only for those lots for which the Tenderer meets the above requirement.
- 15. Form of Tender** **15.1** The Tenderer shall fill the Form of Tender furnished in the Tendering Documents. The Form of Tender must be completed without any alterations to its format and no substitute shall be accepted.
- 16. Tender Prices** **16.1** The Contract shall be for the whole Works, as described in sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Tenderer.
- 16.2** The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Bill of quantities.
- 16.3** All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 15 days prior to the deadline for submission of Tenders, shall be included in the rates, prices and total Tender price submitted by the Tenderer.
- 16.4** 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**.
- 17. Tender Currencies** **17.1** The unit rates and prices shall be quoted by the Tenderer in the currency as specified in the **TenderData Sheet**.
- 17.2** Tenderers shall indicate details of their expected foreign currency requirements in the Tender, if any. The rates of exchange to be used by the Tenderers in arriving at the local currency equivalent shall be the selling rates for similar transactions established by the authority specified in the **Tender Data Sheet** prevailing on the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Tenderer. In any case, payments will be computed using the rates quoted in the Tender.
- 17.3** Tenderers may be required by the Procuring Entity to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices and in the Contract Data Sheet are reasonable and

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

responsive to sub-Clause 17.1.

**18. Tender Validity Period**

- 18.1** Tenders shall remain valid for the period specified in the **Tender Data Sheet** after the Tender submission deadline prescribed by the Procuring Entity, pursuant to ITT Clause 22. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non responsive.
- 18.2** In exceptional circumstances, prior to expiry of the original Tender validity period, the Procuring Entity may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing or by cable. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer agreeing to the request will not be required or permitted to otherwise modify the Tender, but will be required to extend the validity of its Tender Security for the period of the extension, and in compliance with ITT Clause 19 in all respects.
- 18.3** In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial Tender validity period, the contract price will be increased by a factor specified in the request for extension. The Tender evaluation shall be based on the Tender price without taking into consideration on the above correction.

**19. Tender Security and Tender Securing Declaration**

- 19.1** Pursuant to ITT Clause 12, where required in the **Tender Data Sheet**, the Tenderer shall furnish as part of its Tender, a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet**.
- 19.2** The Tender Security is required to protect the Procuring Entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to ITT sub-Clause 19.8.
- 19.3** The Tender Security shall be denominated in the currency of the Tender and shall be in one of the following forms:
- a) A Bank Guarantee;
- 19.4** The Tender Security shall be in accordance with the Form of the Tender Security included in Section IX or another form approved by the Procuring Entity prior to the Tender submission.
- 19.5** The Tender Security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 19.8 are invoked.
- 19.6** Any Tender not accompanied by a Tender Security in accordance with sub-Clauses 19.1 or 19.3 shall be rejected by the Procuring Entity as non-responsive, pursuant to ITT

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

Clause 28.

**19.7** The Procuring Entity shall immediately release any Tender Security if:

- a) The procuring proceedings are terminated;
- b) The Procuring Entity determines that none of the submitted Tenders is responsive;
- c) A contract for the procurement is entered into.

**19.8** The Tender Security shall be forfeited if the Tenderer:

- a) Withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which Tenders must remain valid;
- b) Rejects a correction of an arithmetic error pursuant to sub-Clause 29.2;
- c) Refuse to enter into a written contract in accordance with ITT Clause 40;
- d) Fails to furnish the Performance Security in accordance with ITT Clause 41.

**19.9** The Tender Security of a joint venture must be in the name of the joint venture submitting the Tender.

**20. Format and  
Signing of Tender**

**20.1** The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT Clause 12 of these Instructions to Tenderers, with the Form of Tender, and clearly marked "**ORIGINAL**". In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **Tender Data Sheet**, and clearly marked as "**COPIES**". In the event of discrepancy between them, the original shall prevail.

**20.2** The original and all copies of the Tenders 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. This authorization shall consist of a written confirmation as specified in the **Tender Data Sheet** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender, except for un-amended printed literature, shall be initialled by the person or persons signing the Tender.

**20.3** Any interlineations, erasures, or overwriting shall be valid only if they are initialled by the person or persons signing the Tender.

**20.4** The Tenderer shall furnish information as described in the

---

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to contract execution if the Tenderer is awarded the contract

**D. Submission of Tenders**

**21. Sealing and Marking of Tenders**

- 21.1** The Tenderer shall seal the original and each copy of the Tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 21.2** The inner and outer envelopes shall:
- a) Be addressed to the Procuring Entity at the address given in the **Tender Data Sheet**; and
  - b) Bear the Project name indicated in the **Tender Data Sheet**, the Invitation for Tenders (IFB) title and number indicated in the **Tender Data Sheet**, and a statement: “**DO NOT OPEN BEFORE,**” to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to ITT sub-Clause 22.1.
- 21.3** In addition to the identification required in sub-Clause 21.2, the inner envelopes shall also indicate the name and address of the Tenderer to enable the Tender be returned unopened in case it is declared late, pursuant to sub-Clause 22.1 and for matching purpose under ITT Clause 23
- 21.4** If the outer envelope is not sealed and marked as required by ITT sub clause 21.2, the Procuring Entity shall assume no responsibility for misplacement or premature opening of the Tender.

**22. Deadline for Submission of Tenders**

- 22.1** Tenders shall be received by the Procuring Entity at the address specified under ITT sub-Clause 21.2 no later than the date and time specified in the **Tender Data Sheet**.
- 22.2** The Procuring Entity may, in exceptional circumstances and at its discretion, extend the deadline for the submission of Tenders by amending the Tendering documents in accordance with ITT Clause 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.
- 22.3** The extension of the deadline for submission of Tenders shall not be made later than the period specified in the **Tender Data Sheet** before the expiry of the original deadline.

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

- 23. Late Tenders**
- 23.1** The Procuring Entity shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 22.
- 23.2** Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected and returned unopened to the Tenderer
- 24. Modification, Substitution and Withdrawal of Tenders**
- 24.1** A Tenderer may modify or substitute or withdraw its Tender after it has been submitted, provided that written notice of the modification, including substitution or withdrawal of the Tender, is received by the Procuring Entity prior to the deadline prescribed for submission of Tenders prescribed under ITT sub-Clause 22.1.
- 24.2** The Tenderer's modification or substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 20 and 21 with the outer and inner envelopes additionally marked "**MODIFICATION**" or **SUBSTITUTION** or "**WITHDRAWAL**" as appropriate. The notice may also be sent by electronic mail and facsimile, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders.
- 24.3** No Tender may be withdrawn, replaced or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Tender Form. Withdrawal of a Tender during this interval shall result in the Tenderer's forfeiture of its Tender Security, pursuant to the ITT sub-Clause 19.8.
- 24.4** Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the **Tender Data Sheet** or as extended pursuant to sub-Clause 22.2 shall result in the forfeiture of the Tender Security pursuant to ITT sub-Clause 19.8.
- 24.5** Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender modifications in accordance with this Clause, or included in the original Tender submission.
- E. Opening and Evaluation of Tenders**
- 25. Opening of Tenders**
- 25.1** The Procuring Entity will open all Tenders including modifications, substitution or withdraw notices made pursuant to ITT Clause 24, in public, in the presence of Tenderers or their representatives who choose to attend and other parties with legitimate interest and Tender proceedings, at the place on the date and at time specified in the **Tender Data Sheet**. The Tenderers' representatives who are present shall sign a register as proof of their

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

attendance.

- 25.2 Envelopes marked **"WITHDRAWAL"** shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 24 shall not be opened but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the "Power of Attorney" confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. Subsequently, all envelopes marked **"MODIFICATION"** shall be opened and the submissions therein read out in appropriate detail. Thereafter all envelopes marked or **"SUBSTITUTION"** opened and the submissions therein read out in appropriate detail.
- 25.3 All other envelopes shall be opened one at a time. The Tenderers' names, the Tender prices, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, the presence or absence of Tender security, and such other details as the appropriate tender opening committee may consider appropriate, will be announced by the Secretary of the Tender Opening Committee at the opening.
- 25.4 Tenders or modifications that are not opened and not read out at Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.
- 25.5 Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer's representative shall indemnify the Procuring Entity against any claim or failure to read out the correct information contained in the Tenderer's Tender.
- 25.6 No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 23.
- 25.7 The Secretary of the appropriate tender opening committee shall prepare minutes of the Tender opening. The record of the Tender opening shall include, as a minimum: the name of the Tenderers and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security.
- 25.8 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

affect the record.

**25.9** A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request.

**26. Confidentiality**

**26.1** Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.

**26.2** Any effort by a Tenderer to influence the Procuring Entity's processing of Tenders or award decisions may result in the rejection of his Tender.

**26.3** Notwithstanding sub-Clause 26.2, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

**27. Clarification of Tenders**

**27.1** To assist in the examination, evaluation, comparison of Tenders and post-qualification of the Tenderer, the Procuring Entity may, at its discretion, ask a Tenderer for clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered.

**27.2** The request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of Tenders in accordance with ITT Clause 29.

**27.3** From the time of Tender opening to the time of Contract award if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tender it should do so in writing.

**28. Preliminary Examination of Tenders**

**28.1** Prior to the detailed evaluation of Tenders, the Procuring Entity will determine whether:

- a) The Tender has been submitted in the required format;
- b) Any Tender Security submitted is in the required form, amount and validity period;
- c) The Tender has been signed by the person lawfully authorized to do so;
- d) The required number of copies of the Tender have been submitted;

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

- e) The Tender is valid for the period required;
  - f) All required documents and information have been submitted; and
  - g) Any required samples have been submitted.
- 28.2** The Procuring Entity will confirm that the documents and information specified under ITT Clause 12 and ITT Clause 13 have been provided in the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected.
- 28.3** The Procuring Entity may waive any minor informality, nonconformity, or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer
- 28.4** A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tendering documents, without material deviation or reservation. A material deviation or reservation is one that:
- a) Affects in any substantial way the scope, quality, or execution of the Works;
  - b) Limits in any substantial way, inconsistent with the Tendering documents, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
  - c) If rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.
- 28.5** If a Tender is not substantially responsive, it will be rejected by the Procuring Entity, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.
- 29. Correction of Errors**
- 29.1** Tenders determined to be substantially responsive will be checked by the Procuring Entity for any arithmetic errors. Errors will be corrected by the Procuring Entity as follows:
- a) If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;
  - b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall

---

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

prevail and the total shall be corrected; and

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

**29.2** The amount stated in the Tender will, be adjusted by the Procuring Entity in accordance with the above procedure for the correction of errors and, with, the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and the Tender Security may be forfeited in accordance with sub-Clause 19.8.

**30. Conversion to Single Currency**

**30.1** To facilitate the evaluation and comparison, the Procuring Entity will convert all Tender prices expressed in the amounts in various currencies in which the Tender prices are payable to Kenya Shillings at the selling exchange rate established for similar transactions by the Central Bank of Kenya ruling on the date specified in the **Tender Data Sheet**.

**31. Comparison of Tenders**

**31.1** The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive in accordance with ITT Clause 28.

**31.2** In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender price by adjusting the Tender price as follows:  
Making any correction for errors pursuant to ITT Clause 29;  
Excluding provisional sums and the provision, if any for contingencies in the Bill of Quantities, but including Day work , where priced competitively ; and  
Making appropriate adjustments to reflect discounts or other price modifications offered in accordance with sub-Clause 24.5.

**31.3** The Procuring Entity may waive any minor informality or non-conformity, which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative standing of any Tenderer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the Tendering documents or otherwise result in unsolicited benefits for the Procuring Entity will not be taken into account in Tender evaluation.

**32. National Preference**

**32.1** In the evaluation of Tenders the Procuring Entity shall apply exclusive preference to citizens of Kenya where the amounts are below the prescribed threshold of KShs.200 million;

**32.2** To qualify for the preference the candidate shall provide evidence of eligibility by:

- a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or
  - b) Providing proof of being a “citizen contractor” in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya.
- 32.3** The Minister of Finance may prescribe additional preference and/or reservation schemes, for example for procurements above these thresholds. If such additional preference schemes apply, details will be given in the **Tender Data Sheet**.
- 33. Determination of the Lowest Evaluated Tender** **33.1** The Tender with the lowest evaluated price from among those which are eligible, compliant and substantially responsive shall be the lowest evaluated Tender.
- 34. Post-qualification of Tenderer** **34.1** If specified in the **Tender Data Sheet**, post-qualification shall be undertaken.
- 34.2** The Procuring Entity will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in sub-Clause 13.3.
- 34.3** The determination will take into account the Tenderer’s financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer’s qualifications submitted by the Tenderer, pursuant to sub-Clause 13.3, as well as such other information as the Procuring Entity deems necessary and appropriate. Factors not included in these Tendering documents shall not be used in the evaluation of the Tenderer’s qualifications.
- 34.4** An affirmative determination will be a prerequisite for award of the contract to the Tenderer. A negative determination will result in rejection of the Tenderer’s Tender, in which event the Procuring Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer’s capabilities to perform satisfactorily.
- F. Award of Contract**
- 35. Criteria of Award** **35.1** Subject to ITT Clause 35 and 36, the Procuring Entity will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tendering documents and who has offered the lowest Evaluated Tender Price, provided that such

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

Tenderer has been determined to be:

- a) Eligible in accordance with the provisions of ITT Clause 3;
- b) Is determined to be qualified to perform the Contract satisfactorily;
- c) Successful negotiations have been concluded.

**35.2** If, pursuant to sub-Clause 14.1, this Contract is being awarded on a “lot and package” basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderer for award of more than one Contract.

**36. Clarifications**

**36.1** Clarifications may be undertaken with the lowest evaluated Tenderer relating to the following areas:

- a) A minor alteration to the technical details of the statement of requirements;
- b) Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the Tendering documents;
- c) A minor amendment to the Contract Data Sheet;
- d) Finalizing payment arrangements;
- e) Mobilization arrangements;
- f) Agreeing final delivery or work schedule to accommodate any changes required by the Procuring Entity;
- g) The methodology or staffing; or
- h) Clarifying details that were not apparent or could not be finalized at the time of Tendering.

**36.2** Clarifications shall not change the substance of the tender.

**37. Procuring Entity’s Right to Accept any Tender and to Reject any or all Tenders**

**37.1** Notwithstanding ITT Clause 35, the Procuring Entity reserves the right to accept or reject any Tender, and to cancel the Tendering process and reject all Tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers.

**37.2** Notice of the rejection of all Tenders shall be

---

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

given promptly within 14 days to all Contractors that have submitted Tenders.

**37.3** The Procuring Entity shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds.

**38. Procuring Entities Right to Vary Quantities at the Time of Award**

**38.1** The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of goods or related services originally specified in these Tendering documents (schedule of requirements) provided this does not exceed by the percentage indicated in the **Tender Data Sheet**, without any change in unit price or other terms and conditions of the Tender and Tendering documents.

**39. Notification of Award**

**39.1** The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to expiration of the Tender validity period by e-mail or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Contractor in consideration of the provision and maintenance of the Work(s) as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

**39.2** The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security in accordance with ITT Clause 41 and signing the Contract in accordance with sub-Clause 40.2

**39.3** At the same time as the person submitting the successful Tender is notified, the Procuring Entity will notify each unsuccessful Tenderer, the name of the successful Tenderer and the Contract amount and will discharge the Tender Security of the Tenderer pursuant to ITT sub Clause 19.7.

**39.4** If, after notification of award, a Tenderer wishes to ascertain the grounds on which its Tender or application for pre-qualification was unsuccessful, it should address its request to the secretary of the Tender Committee that authorized the award of contract. The secretary of the Tender Committee shall, within fourteen days after a request, provide written reasons as to why the Tender, proposal or application to be pre-qualified was unsuccessful. However, failure to take this opportunity to clarify the grounds for rejection does not affect the Tenderer's right to seek immediate review by the

SECTION I: INSTRUCTIONS TO TENDERERS (ITT)

---

Public Procurement Administrative Review Board under Clause 45.

**40. Signing of Contract**

**40.1** Promptly, and in no case later than 14 days, after notification, Procuring Entity shall send the successful Tenderer the Agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.

**40.2** Within the period specified in the notification or Tender Data Sheet but not earlier than fourteen (14) days since notification of award of contract, the successful Tenderer shall sign and date the contract and return it to the Procuring Entity.

**41. Performance Security**

**41.1** Within thirty (30) days but after 14 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the Tender Data Sheet and the Contract Data Sheet, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.

**41.2** If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee, it shall be issued either:

a) At the Tenderer's option, by a bank located in Kenya, or a foreign bank through a correspondent bank located in Kenya;

b) With the consent of the Procuring entity, directly by a foreign bank acceptable to the Procuring entity.

**41.3** Failure of the successful Tenderer to comply with the requirement of sub-Clause 41.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security, in which event the Procuring Entity may make the award to the next lowest evaluated Tenderer or call for new Tenders.

**42. Advance Payment**

**42.1** The Procuring Entity will provide an Advance Payment as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the Tender Data Sheet.

**42.2** The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section IX. For the purpose of receiving the Advance Payment, the

Tenderer shall make an estimate of, and include in its Tender, the expenses that will be incurred in order to commence work. These expenses will relate to the purchase of equipment, machinery, materials, and on the engagement of labour during the first month beginning with the date of the Procuring Entity's "Notice to Commence" as specified in the Contract Data Sheet.

**43. Adjudicator**

- 43.1** 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.

**G. Review of Procurement Decisions**

**44. Right to Review**

- 44.1** A Tenderer who claims to have suffered or risk suffering, loss or damage or injury as a result of breach of a duty imposed on a Procuring Entity or an Approving Authority by the Public Procurement and Disposal Act, 2015 and the Public Procurement and Disposal Regulations 2015, the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:
- a) The choice of procurement method;
  - b) a decision by the Procuring Entity to reject all Tenders, proposals or quotations;
  - c) Where a contract is signed in accordance to Section 68 of the Public Procurement and Disposal Act, 2015;
  - d) Where an appeal is frivolous.

**45. Time Limit on Review**

- 45.1** The Tenderer shall submit an application for review in the number of copies and pay fees as prescribed by the Public Procurement and Disposal Regulations 2015 within fourteen (14) days of the time the Tenderer became or should have become aware of the circumstances giving rise to the complaint or dispute.

**46. Submission of Applications for Review by the Public Procurement Administrative Review Board**

**46.1** 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.

**46.2** The application for administrative review shall be in accordance with the requirements of Regulation 73 of the Public Procurement and Disposals Regulations, 2015, including:

- a) Reasons for the complaint, including any alleged breach of the Act or Regulations;
- b) An explanation of how the provisions of the Act and or Regulation has been breached or omitted, including the dates and name of the responsible public officer, where known;
- c) Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request;
- d) Remedies sought;
- e) Any other information relevant to the complaint.

**47. Decision by the Public Procurement Administrative Review Board**

**47.1** The Administrative Review Board shall within thirty days after receipt of an application for administrative review deliver a written decision which shall indicate:

- a) Annuling anything the Procuring Entity has done in the procurement proceedings, including annulling the procurement proceedings in their entirety;
- b) Giving directions to the Procuring Entity with respect to anything to be done or redone in the procurement proceedings;
- c) Substituting the decision of the Review Board for any decision of the Procuring Entity in the procurement proceedings;
- d) Order the payment of costs as between parties to the review.

**47.2** The decision made by the Review Board shall, be final and binding on the parties unless judicial review thereof commences within fourteen (14) days from the date of the Review Board's

decision.

- 48. Appeal on the decision of the Review Board**
- 48.1** Any party to the review aggrieved by the decision of the Review Board may appeal to the High Court and the decision of the High Court shall be final.

**SECTION II: TENDER DATA SHEET**

SECTION II: TENDER DATA SHEET

**Tender Data Sheet (TDS)**

**Instructions to Tenderers Clause Reference**

<b>TDS Reference Number</b>	<b>ITT Clause Number</b>	<b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b>
<b>A. Introduction</b>		
1.	1.1	The Procuring Entity is <b>TANATHI WATER WORKS DEVELOPMENT AGENCY.</b>
2.	1.1	Name of Project is <b>CONSTRUCTION OF MWANYANI (KWA MALOVO) DAM.</b>
3.	1.2	The expected completion date of the works is <b>8MONTHS FROM THE DATE OF COMMENCEMENT OF WORKS.</b>
	1.3	The Objectives of the Project are <b>TO CONSTRUCT MWANYANI (KWA MALOVO) DAM.</b>
5.	2.1	Name of financing institution is <b>THE KENYAN GOVERNMENT THROUGH TANATHI WATER WORKS DEVELOPMENT AGENCY.</b>  Name of the Procuring Entity is <b>TANATHI WATER WORKS DEVELOPMENT AGENCY.</b>  Financial Year: <b>2026/2026</b>  Description of works under the contract include but not limited to: <ul style="list-style-type: none"> <li>▪ <b>Construction of homogeneous earthfill dam embankment.</b></li> <li>▪ <b>Construction of a spillway.</b></li> </ul>
6.	2.2	The loan/ credit number is <b>NOT APPLICABLE.</b>
7.	5.1	Alternative Tenders are <b>NOT ALLOWED</b> in this Tender.
8.	5.2	Alternative time for completion <b>IS NOT APPLICABLE</b>
9.	3.1	Only Tenderers registered as <b>CIVIL ENGINEERING CONTRACTORS REGISTERED AS NCA 1 TO NCA 6(WATER OPTION)WITH THE NATIONAL CONSTRUCTION AUTHORITY SHALL BE ELIGIBLE FOR THIS TENDER</b>  This Tender is: <b>OPEN TO ALL ELIGIBLE TENDERERS</b>
10.	7.3	Pre-Tender meeting/visit <b>10<sup>th</sup>April 2026</b> The Tenderer's Representative must meet the following requirements:  <ol style="list-style-type: none"> <li>1. <b>Educational Qualification:</b> Hold a minimum of a Bachelor of Science degree in Civil Engineering or an equivalent qualification from a recognized institution.</li> <li>2. <b>Professional Registration:</b> Be duly registered as a Graduate Engineer by a recognized professional body (e.g., Engineers Board of Kenya or equivalent).</li> </ol>

SECTION II: TENDER DATA SHEET

		<p>3. <b>Authorization Letter:</b> Provide an official letter of authorization from the Tenderer confirming their appointment as the Tenderer's Representative.</p> <p><b>Location:</b> Emali Mulala ward administration office, in Emali town <b>Time:</b> 12:00 noon</p>
11.	7.5	The minutes of the Pre-Tender meeting will be <b>SENT TO TENDERER'S EMAIL ADDRESS PROVIDED DURING PRE TENDER SITE VISIT WITHIN 7(SEVEN) WORKING DAYS AFTER DATE OF PRE SITE VISIT</b>
	7.6	<b>Non-attendance</b> at the pre-tender meeting <b>WILL</b> result to <b>Automatic disqualification.</b>

**B. Tendering Documents**

12.	8.2	The number of copies to be completed and returned with the Tender is <b>1 ORIGINAL AND 2 COPIES</b>
13.	9.1	Address for clarification of Tendering Document is: <b>THE CHIEF EXECUTIVE OFFICER, TANATHI WATER WORKS DEVELOPMENT AGENCY, P.O. BOX PRIVATE BAG KITUI, E: MAIL:<a href="mailto:info@tanathi.go.ke">info@tanathi.go.ke</a> Tel No. 0792048012</b>
14.	9.2	Period to Respond to request for clarification by the Procuring Entity: <b>7(SEVEN) DAYS</b>  Period Prior to deadline for submission of Tenders for Tenderers to request clarification <b>10(TEN) DAYS</b>

**C. Preparation of Tenders**

15.	11.1	Language of Tender and all correspondence shall be <b>ENGLISH</b>
16.	13.3	<p>Other information or materials required to be completed and submitted by Tenderers :</p> <p>a) Copies of original documents defining the <b>Power of Attorney authorizing the signatory of the Tender to commit the Tenderer, Copy of valid NCA license, Bid Security (from Bank), Letter of Bid, Valid Tax Compliance Certificate, Business Permit and certificate of incorporation.</b></p> <p>b) The minimum required annual volume of construction work for the successful Tenderer in any of the last 2 years shall be: <b>KES 15,000,000.00</b></p> <p>c) Experience as contractor in the construction of at least <b>two earth dams or water pans</b> project of a nature and complexity equivalent to the Works in the last 5 years (to comply with this requirement, works cited should be at least 50 percent complete supported by letter of award, Local Supply Order(LSO) and completion</p>

SECTION II: TENDER DATA SHEET

		<p>certificate-for completed projects).</p> <p>d) The essential equipment to be made available for the Contract by the successful Tenderer (proposals for timely acquisition or own, lease, hire, etc) shall be:</p> <ol style="list-style-type: none"> <li>1. <b>2No. Tipper Trucks of 18T</b></li> <li>2. <b>1No. Excavator</b></li> <li>3. <b>1No. wheel loader</b></li> <li>4. <b>1 No Pick Up</b></li> <li>5. <b>1No Total Station</b></li> <li>6. <b>1 No. Padfoot (Sheepsfoot) Roller Compactor.</b></li> <li>7. <b>1No. Grader</b></li> <li>8. <b>1No. Water bowser</b></li> </ol> <p>e) A Site Agent with a minimum of 5(Five) years experience in works of an equivalent nature and volume. Bsc Civil Engineering or Equivalent. Registered with a professional body (EBK/IEK or any other relevant institution)</p> <p>f) Engineering Surveyor with a minimum of 5 (Five) years' experience in works of an equivalent nature and volume. BSc/Diploma in Engineering Survey.</p> <p>g) A Foreman with a minimum of 4(Four) years experience in works of an equivalent nature and volume. Diploma in Civil/Water Engineering. Registered with a professional body</p> <p>h) Evidence of Ksh 6,000,000 working capital for this contract.</p> <p>i) Information regarding litigation, current commitments</p>
17.	13.4	<p>In the case of joint venture each partner shall submit information required under Clause ITT Clause 13.4. In addition, the Tenderer shall furnish the following,</p> <ol style="list-style-type: none"> <li>a) <b>ASSET OWNERSHIP OF EACH PARTNER</b></li> <li>b) <b>STAFF CONTRIBUTION FROM EACH PARTNER</b></li> </ol>
18.	16.4	<p>The price shall be <b>FIXED</b> Information to be submitted with the Tender are: <b>NONE</b></p>
19.	17.1	<p>The currency in which the prices shall be quoted shall be <b>KENYA SHILLING</b></p>
20.	17.2 30.2	<p>The authority for establishing the rates of exchange shall be <b>CENTRAL BANK OF KENYA.</b></p> <p>The applicable date for exchange rates for tendering and evaluation purposes is 28 days earlier than the final deadline for the submission of tenders.</p>
21.	18.1	<p>The Tender validity period shall be <b>NINETY (90)days.</b></p>
22.	19.1	<p>The amount of Tender Security shall be <b>Ksh420,000</b></p>
23.	20.1	<p>The Tenderer should submit <b>1 ORIGINAL AND 2 COPIES</b> of the Tender.</p>

SECTION II: TENDER DATA SHEET

24.	20.2	Written confirmation of authorization are: <b>PROVIDE POWER OF ATTORNEY</b>
-----	------	---

<b>D. Submission of Tenders</b>		
25.	21.2 a)	Tenders shall be submitted to: <b>THE CHIE EXECUTIVE OFFICER, TANATHI WATER WORKS DEVELOPMENT AGENCY, K.I.D.P.BLG KALAWA RD P.O. BOX PRIVATE BAG KITUI</b>
26.	21.2 b)	Project name: <b>CONSTRUCTION OF MWANYANI (KWA MALOVOO) DAM.</b>  Tender number: <b>TAWWDA /007/2025-2026</b>  Time and date for submission: <b>On or before 16<sup>th</sup> April 2026 AT 12.00 noon.</b>
27.	22.1	The deadline for Tender submission is a) <b>Thursday 16<sup>th</sup> April 2026</b> b) <b>Time 12.00 noon</b>
28.	22.3	The extension of the deadline for submission of Tenders shall be made not later than <b>SEVEN (7) DAYS</b> before the expiry of the original deadline.
29	24.4	Expiry of Tender validity is: <b>90 days</b>

<b>E. Opening and Evaluation of Tenders</b>		
29.	25.1	The Tender opening shall take place at:  <b>TANATHI WATER WORKS DEVELOPMENT AGENCY- BOARD ROOM, KITUI</b>  <b>ON 16<sup>th</sup> April 2026 AT 12.00 noon.</b>
30.	32.3	Additional Preference: <b>None</b>
31.	34.1	Post- qualification will <b>BE UNDERTAKEN</b>
32.	38.1	Percentage for quantities increase or decrease is <b>TEN (10) PERCENT</b>

SECTION II: TENDER DATA SHEET

---

<b>F. Award of Contract</b>		
<b>33.</b>	<b>41.1</b>	The amount of Performance Security shall be <b>TEN (10) PERCENT OF THE CONTRACT PRICE</b>
<b>34.</b>	<b>42.1</b>	Advance Payment shall <b>NONE</b>
<b>35.</b>	<b>43.1</b>	The proposed adjudicator for the project is: NOT APPLICABLE
<b>G. Review of Procurement Decisions</b>		
<b>37.</b>	<b>46.1</b>	The address for submitting appeals to Administrative Review Board : The Secretary, Public Procurement Administrative Review Board , The Public Procurement Oversight Authority, 10 <sup>th</sup> Floor ,National Bank House, P.O. Box 58583-00200, NAIROBI, Kenya. Tel: +254 (0) 20 3244000 Email: <a href="mailto:info@ppoa.go.ke">info@ppoa.go.ke</a> Website: <a href="http://www.ppoa.go.ke">www.ppoa.go.ke</a>

**SECTION III: GENERAL CONDITIONS OF CONTRACT**

SECTION IV: CONDITIONS OF PARTICULAR APPLICATION

---

**SECTION IV: CONDITIONS OF PARTICULAR APPLICATION**

SECTION V: SPECIFICATIONS

---

**SECTION V: SPECIFICATIONS**

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

**SECTION VI: BILL OF QUANTITIES**

**CIVIL WORKS FOR CONSTRUCTION OF MWANYANI (KWA MALOVOO) EARTH  
DAM**

**SUMMARY BILLS OF QUANTITIES**

BILL NO.	DESCRIPTION	AMOUNT	
		KES	Cts
1	Preliminaries & General Items	-	
2	Earth Dam	-	
3	Spillway	-	
	<b>Sub-TOTAL</b>	-	
	10% Contingency	-	
	<b>TOTAL</b>	-	
	Add: 16% VAT	-	
	<b>GRAND TOTAL</b>	-	

**CIVIL WORKS FOR CONSTRUCTION OF MWANYANI (KWA  
MALOVOO) EARTH DAM**

**BILL NO. 1: PRELIMINARIES & GENERAL ITEMS**

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>RATE, KES</b>	<b>AMOUNT, KES</b>
	<b>Contractual Requirements</b>				
1.1	No separate payment shall be made for meeting contractual requirements. The Contractor shall be required to meet all contractual obligations like provision of Performance Bond and Insurances, the cost of which shall be included in his rates				
	<b>Special Requirements</b>				
1.2	Mobilization and demobilization of Contractor's equipment. Contractor's Camp and Storage Yard: Allow for erection of the Contractor's Camp(s), Offices, Storage Yard and other facilities including mobilization, demobilization and movement of the works site on Completion. Include for all equipment, temporary measures, machines, tools, materials, facilities for workers, water and electricity supply etc. all as specified for execution of the Works, for the entire Contract Period.	LS	1		-
1.3	Allow for provision, erection project branding at the site as indicated by the Engineer's Representative, within the Project Area, Steel fabricated and stencil written. Design to be approved by the Resident Engineer.	No.	1		-
					-

**CIVIL WORKS FOR CONSTRUCTION OF MWANYANI (KWA  
MALOVOO) EARTH DAM**

**BILL NO. 1: PRELIMINARIES & GENERAL ITEMS**

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE, KES	AMOUNT, KES
1.4	Allow a Provisional Sum of Kenya Shillings One Million Five Hundred Thousand Only (KES 1,500.000) for the Project management during the construction period. The sum shall cater for superintendence of the works, coordination meetings, review and approval of contractor's submissions, hold-point and milestone inspections, verification of compliance with specifications and drawings, review and approval of As-Built drawings and documentation, certification of works, and overall effective technical supervision.	PS	1		-
					-
1.5	Allow Sum Kshs.100,000 for public participation, capacity Building, Project Tree Planting and Handing Over	LS	1		-
1.60	Construct and maintain temporary site access and haul roads, including clearing, grubbing, formation, compaction, and provision of suitable gravel surfacing to ensure safe movement of construction equipment and materials, all as directed by the Engineer.	LS	1		-
1.70	Provide, erect, and maintain site sanitation facilities, including lavatories and latrines for use by site personnel during the construction period, and remove on completion of works, all to the satisfaction of the Engineer and in compliance with public health regulations.	LS	1		-
1.8	Allow for preparation and provision of As-Built Drawings in accordance with of GCC	L.S	1		-
1.9	Allow sum of KES 470,000.00 for EIA report and NEMA licence acquisition,	PC Sum	1		-

**CIVIL WORKS FOR CONSTRUCTION OF MWANYANI (KWA  
MALOVOO) EARTH DAM**

**BILL NO. 1: PRELIMINARIES & GENERAL ITEMS**

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE, KES	AMOUNT, KES
	Compensation, RAP and related activities				
1.10	Allow a Provisional Sum of KSh 500,000 for office equipment (furniture and laptops).	PS	1		-
1.11	Allow for planting trees(Mango (Mangifera indica), Melia volkensii (Mukau) or Acacia / Vachellia species) for environmental conservation	No.	200		-
1.12	Add percentage adjustment for contractor's attendance, overheads and profits with respect to Item 1.4, 1.5, 1.9 and 1.10	%	5%		-
<b>Total carried to grand summary for BILL No. 1</b>					<b>-</b>

**CIVIL WORKS FOR CONSTRUCTION OF MWANYANI (KWA MALOVOO)  
EARTH DAM**

**BILL NO. 2: EARTH DAM**

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE, KES	AMOUNT, KES
<b>2.1</b>	<b>Site Clearance</b>				
2.1.1	Site clearance of the embankment, reservoir area, borrow areas and transport of waste materials to spoil areas	m <sup>2</sup>	10,367		-
					-
	<b>Trees and stumps removal</b>				-
					-
2.1.2	Trees girth exceeding 0.45m, holes backfilled with excavated material	Nr.	34.00		-
					-
					-
					-
<b>2.2</b>	<b>Embankment Construction</b>				
	The rates shall include for all strutting, shuttering, stabilising the excavation faces and keeping the excavation free of water by pumping, bailing or other means				-
2.2.1	Excavate in normal materials for the cut-off trench and the main embankment. The rate shall allow for trimming the side to the design slope.	m <sup>3</sup>	3,222		-
2.2.2	Excavate in rock in the cut-off trench for the main embankment	m <sup>3</sup>	358		-
2.2.3	Excavate, transport, place and compact impervious clayey material in the cut-off trench. The rates shall be for compacted fill and shall include haulage from the stock pile/borrow pit(not exceeding 10Km from site) , watering and compacting to the maximum dry density.	m <sup>3</sup>	3,580		-
2.2.4	Excavate, Transport, place and compact approved material in the main embankment. The rate shall include haulage from the stock pile/borrow pit (not exceeding 10Km from site) and compacting	m <sup>3</sup>	5,459		-
2.2.5	Provide rock filling for the cutoff drain as per the construction drawings	m <sup>3</sup>	1,080.00		-

CIVIL WORKS FOR CONSTRUCTION OF MWANYANI (KWA MALOVOO)  
EARTH DAM

BILL NO. 2: EARTH DAM

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE, KES	AMOUNT, KES
					-
					-
					-
	Total Carried to Collection page BILL No. 2: Earth Dam				-

CIVIL WORKS FOR CONSTRUCTION OF MWANYANI (KWA  
MALOVOO) EARTH DAM

BILL NO. 3: SPILLWAY

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE, KES	AMOUNT, KES
<b>3.1</b>	<b>Earthworks</b>				
3.1.1	Excavate in normal materials for the spillway. The rate shall allow for trimming the side to a slope of 1 in 2 for the spillway sidewalls.	m <sup>3</sup>	1836		-
3.1.2	Excavate in rock for the spillway. The rate shall allow for trimming the side to a slope of 1 in 2 for the spillway sidewalls.	m <sup>3</sup>	204		-
<b>3.2</b>	<b>Spillway Reinforced Concrete sills</b>				
3.2.1	Vibrated 50 mm thick designated class 16/20 as per UNI EN 206 blinding for the spillway sills foundation	m <sup>3</sup>	3		-
3.2.2	Vibrated reinforced concrete designated class 25/30 as per UNI EN 206 spillway sills	m <sup>3</sup>	20		-
	<b>High yield deformed bars type 2 as per KS 573:2014. Minimum yield tensile strength of 500 N/mm<sup>2</sup></b>				
3.2.3	All sizes	Kg	427.2		-
<b>3.3</b>	<b>Protection and Support of Surface Excavation</b>				
3.3.1	Furnishing, transporting, preparing, placing and filling gabions.	m <sup>3</sup>	60		-
3.3.2	Provide, lay and joint 200mm thick and mortar-bedded riprap(stone pitching) on prepared surface for spillway chute. Hard durable approved rock and jointing with cement mortar (1:4) mix to full depth of pitching.	m <sup>2</sup>	860		-
<b>Total carried to grand summary for BILL No. 3</b>					<b>-</b>

**SECTION VI: DRAWINGS**  
(Submitted as a separate document)

**SECTION VII: TENDER FORMS**

### A. Form of Tender

To: [Tanathi Water Works Development Agency]

We offer to execute the [name and identification number of contract] in accordance with the Conditions of Contract accompanying this Tender for the Contract Price of [amount in numbers], [amount in words] [name of currency].

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one foreign equals [insert local]	Inputs for which foreign currency is required
(a)			
(b)			

The advance payment required is:-

Amount	Currency
(a)	
(b)	

We accept the appointment of [name proposed in Tender Data Sheet] as the adjudicator.

or  
We do not accept the appointment of [name proposed in Tender Data Sheet] as the Adjudicator, and propose instead that [name] be appointed as Adjudicator, whose daily fees and biographical data are attached.

We are not participating, as Tenders, in more than one Tender in this Tendering process other than alternative Tenders in accordance with the Tendering documents.

Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the contract has not been declared ineligible by the Kenya Government under Kenya's laws or any other official regulations.

This Tender and your written acceptance of it shall constitute a binding Contract between us.

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

We hereby confirm that this Tender complies with the Tender validity and Tender Security required by the Tendering documents and specified in the Tender Data Sheet.

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Tenderer: \_\_\_\_\_

Address: \_\_\_\_\_

**B. Appendix to Tender**

**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**

<b>Index code</b>	<b>Index description</b>	<b>Source of index</b>	<b>Base value and date</b>	<b>Tenderer's related currency amount</b>	<b>Range of weighting Proposed by the Procuring Entity</b>	<b>Tenderer's proposed weighting</b>
	Nonadjustable	—	—	—	a: _____* b: _____ to _____* c: _____ to _____* d: _____ to _____* e: _____ to _____* etc.	a: _____* b: _____ c: _____ d: _____ e: _____ etc.
<b>Total</b>						<b>1.00</b>

**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 Currency 1	Range of weighting Proposed by the Procuring Entity	Tenderer's proposed weighting
	Nonadjustable	—	—	—		a: _____* b: _____ to _____* c: _____ to _____* d: _____ to _____* e: _____ to _____* etc.	a: _____* b: _____ c: _____ d: _____ e: _____ etc.
<b>Total</b>							<b>1.00</b>

**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 x B	D Percentage of Net Tender Price (NBP) $\frac{100xC}{NBP}$
Local currency		1.00		
Foreign currency #1				
Foreign currency #2				
Foreign currency #				
Net Tender Price				100.00
Provisional sums expressed in local currency	*	*	*	
<b>TENDER PRICE</b>				

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Tenderer: \_\_\_\_\_

Address: \_\_\_\_\_

### C. 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 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. Refer also 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.

<b>Sections of the Works</b>	<b>Value of subcontract</b>	<b>Subcontractor (name and address)</b>	<b>Experience in similar work</b>
(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 receive instructions for 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 fulfil the requirements of sub-Clauses 12.1 of the Instructions to Tenderers, if applicable.

**D. Form of Contract Agreement**

This Agreement, made the .....[day] day of.....[month], .....[year] between  
.....  
.....  
[name and address of Procuring Entity] (hereinafter called "the Procuring Entity") and  
.....  
.....  
[name and address of Contractor] (hereinafter called "the Contractor") of the other part.

Whereas the Procuring Entity is desirous that the Contractor execute  
.....  
[name and identification number of contract] (hereinafter called "the Works") with the objectives  
of.....  
.....  
[insert functional objectives of the works] and the Procuring Entity has accepted the Tender by the  
Contractor for the execution and completion of such works and the remedying of any defects therein  
in the sum of .....  
.....  
[contract price in words and figures] (hereinafter called "Contract Price").

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS:**

- 1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement;
- 2. In consideration of the payments to be made by the Procuring Entity to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Procuring Entity to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract;
- 3. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein 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.

In Witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of \_\_\_\_\_

Was hereunto affixed in the presence of: \_\_\_\_\_

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

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

Tendering Signature of Procuring Entity \_\_\_\_\_

Binding Signature of Contractor \_\_\_\_\_

**SECTION VIII: FORMS OF SECURITY**

## A. Tender Security (Bank Guarantee)

*[If required, the **Bank/Tenderer** shall fill in this Guarantee form in accordance with the instructions indicated in brackets.]*

*[insert bank's name, and address of issuing branch or office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

**Date:** *[insert date]*

**TENDER GUARANTEE No.:** *[insert number]*

We have been informed that *[insert name of the Tenderer; if a joint venture, list complete legal names of partners]* (hereinafter called "the Tenderer") has submitted to you its Tender dated *[insert date]* (hereinafter called "the Tender") for the execution of *[insert name of Contract]* under Invitation for Tenders No. *[insert IFT number]* ("the IFT").

Furthermore, we understand that, according to your conditions, Tenders must be supported by a Tender Guarantee.

At the request of the Tenderer, we *[insert name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in the currency of the Purchaser's Country or the equivalent amount in an international freely convertible currency]* (*[insert amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer;

- a) Has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender; or
- b) Does not accept the correction of errors in accordance with the Instructions to Tenderers (hereinafter "the ITT") of the IFT; or
- c) Having been notified of the acceptance of its Tender by the Procuring Entity during the period of Tender validity;
  - (i). Fails or refuses to execute the Contract Form, if required, or
  - (ii). Fails or refuses to furnish the Performance Security, in accordance with the ITT.

This Guarantee shall expire;

- a) If the Tenderer is the successful Tenderer, upon our receipt of copies of the Contract signed by the Tenderer and of the Performance Security issued to you by the Tenderer; or
- b) If the Tenderer is not the successful Tenderer, upon the earlier of;
  - (i) Our receipt of a copy of your notification to the Tenderer that the Tenderer was unsuccessful, or



## **B. Performance Bank Guarantee [Unconditional]**

[The **Bank/successful Tenderer** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if the Procuring Entity requires this type of security.]

*[insert bank's name, and address of issuing branch or office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

**Date:** *[insert date]*

**PERFORMANCE GUARANTEE No.:** *[insert Performance Guarantee number]*

We have been informed that *[insert name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Contractor, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, 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 hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change, addition or other modification of 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 hereby waive notice of any change, addition, or modification.

This guarantee shall expire not later than thirty days from the date of issuance of the Taking-Over Certificate.

*[signature(s) of an authorized representative(s) of the Bank]*

### C. Bank Guarantee for Advance Payment

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

**Beneficiary:** \_\_\_\_\_ *[Name and Address of Procuring Entity]*

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

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_

We have been informed that *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the contract]* dated \_\_\_\_\_ with you, for the execution of *[name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[amount in figures]* (\_\_\_\_) *[amount in words]* is to be made against an advance payment guarantee.

At the request of the Contractor, we *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (\_\_\_\_) *[amount in words]* 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 under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between \_\_\_\_\_ *[name of Procuring Entity]* and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or 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 eighty (80) percent of the Contract Price has been certified for payment, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

Yours truly,  
Signature and seal: \_\_\_\_\_  
Name of Bank: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date: \_\_\_\_\_

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

**FORM RB 1**

**REPUBLIC OF KENYA  
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

BETWEEN

.....APPLICANT

AND

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

---

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

---

**REQUEST FOR REVIEW**

---

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax No.....Tel. No.....Email ....., hereby request the Public  
Procurement Administrative Review Board to review the whole/part of the above mentioned  
decision on the following grounds , namely:-

- 1.
  - 2.
- etc.

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

- 1.
  - 2.
- etc

SIGNED ..... (Applicant)

---

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

---

**FOR OFFICIAL USE ONLY**

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

SIGNED

---

Board Secretary