



**NYANAS WATER & SANITATION COMPANY LIMITED**  
**P.O. Box 282, Sondu**

**PROJECT TITLE: CONSTRUCTION OF SONDU – AHERO HIGHWAY**

**TENDER NAME: CONSTRUCTION OF WATER PIPELINE TO NYABONDO  
TRAUMA CENTRE**

**TENDER NO: KWSC - NYANAS/02/RBW/2018 - 2019**

**NOVEMBER 2018**

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## SECTION I: INVITATION FOR TENDERS

**DATE: 21.11.2018**

**TENDER REFERENCE NO: KWSC - NYANAS/02/RBW/2018-2019**

### **TENDER NAME: CONSTRUCTION OF WATER PIPELINE TO NYABONDO TRAUMA CENTRE**

1. Nyanas Water and Sanitation Company Ltd invite sealed tenders for construction of water pipeline to Nyabondo Trauma Centre
2. Interested eligible candidates may obtain further information and inspect tender documents (and additional copies) at Kisumu Water and Sewerage Company Ltd (KIWASCO) Offices, Nafaka House, Oginga Odinga Street, Opposite Swan Center, P.O Box 3210-40100, Kisumu during normal working hours.
3. A complete set of Tender Documents may be purchased by any interested eligible Tenderer upon payment of a non-refundable fee of **Kenya Shillings One Thousand only (Ksh. 1,000)**, in the form of cash or bankers cheque payable to Kisumu Water and Sewerage Company Ltd. Alternatively, the documents may be downloaded from KIWASCO website [www.kiwasco.co.ke](http://www.kiwasco.co.ke). Interested bidders who download the documents **must** send their particulars immediately through email [aogwang@kiwasco.co.ke](mailto:aogwang@kiwasco.co.ke) for registration purposes before the tender closing date. **Bidders are advised to visit the website regularly to check any additional information, clarifications or addenda.**
4. Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for a period of 60 days from the closing date of the tender.
5. All tenders **must** be accompanied by a tender security of Five Hundred Thousand Kenya Shillings (**Ksh. 500,000.00**) in the form of banker's cheque, bank guarantee or Insurance guarantee from a reputable insurance firm and in the format attached. The security shall be valid for 90 days.
6. **A mandatory site visit will be held on 29<sup>th</sup> November 2018, from 10.00am.** All interested bidders will be expected to assemble at Nyanas Water and Sanitation Company offices at Sondu at exactly 10.00am before proceeding to the site. All interested bidders are expected to arrange for their own means of transport.
7. Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender name and reference number and be deposited in the tender box provided at KIWASCO offices, entrance opposite the Managing Director's office properly addressed to ;

**Managing Director  
Kisumu Water and Sewerage Company  
P.O. Box 3210  
KISUMU**

**To be received on or before Tuesday, 11<sup>th</sup> of December 2018 at 12.00 noon.**

Tenders will be opened immediately thereafter in the presence of Tenderers or their representatives who choose to attend the opening shortly after the deadline on the date specified in the invitation at the Company Boardroom.

For this Tender:

The Purchaser's Technical Representative is:-

THE HEAD OF TECHNICAL SERVICES  
KISUMU WATER AND SEWERAGE COMPANY LIMITED  
P O BOX 3210  
KISUMU, KENYA.  
TELEPHONE: 057- 2023977 / 2024100 / 2023456  
FAX: 057- 2024604

## **SECTION II - INSTRUCTIONS TO TENDERERS**

**Note:** The tenderer must comply with the following conditions and instructions and failure to do so is liable to result in rejection of the tender.

### **GENERAL**

#### **1. Definitions**

- (a) “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.
- (b) “Approved tenderer” means the tenderer who is approved by the Employer
- (c) 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.”
- (d) “Employer” means a Central Government Ministry, Local Authority, State Corporation or any other Public Institution.

#### **2. Eligibility and Qualification Requirements**

##### **2.1 Eligibility requirements**

- 2.1.1 This invitation to tender is open to all tenderers who are qualified as stated in the appendix.
- 2.1.2 The procuring entity’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by 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 goods under this Invitation for tenders.
- 2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

## **2.2 Qualification Requirements**

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 carry out the subject Contract. To this end, the tenderer shall be required to provide the following information:

- (a) Details of experience and past performance of the tenderer on the works of a similar nature and details of current work on hand 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 (if any), 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 gphant 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 employer.
- (f) Details of any current litigation or arbitration proceedings in which the tenderer is involved as one of the parties.

## **2.3 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 done 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 price to be charged for the tender document shall be Kshs.1, 000/=
- 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 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 shall 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. There shall be no any other designated time for site visit except for the time

indicated in the invitation to tenders. Site visit shall be mandatory and any bidder who shall have not visited the site will be regarded as non-responsive.

## **5 Tender Documents**

### **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 Sub contractors
- 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 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

## **PREPARATION OF TENDERS**

### **8 Language of Tender**

8.1 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.

### **9 Documents Comprising the Tender**

9.1 The tender to be prepared by the tenderer shall comprise:

- i. The Form of Tender and Appendix thereto,
- ii. Tender Security
- iii. Priced Bills of Quantities and Schedules
- iv. Information on eligibility and qualification
- v. Any other materials required to be completed and submitted in accordance with the Instructions to Tenderers.

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 Tender Prices**

- 10.1 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 or 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
- 10.2 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.

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.

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 this instruction.

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.

- 10.3 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 and Variation of Prices [V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.

- 10.4 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of authorization and readiness to supply.
- 10.5 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 basic rates and shall submit with his tender such other supporting information as required under clause 70 of the Conditions of Contract Part II.
- 10.6 Contract price variations shall not be allowed within the first 12 months of the contract.
- 10.7 Where quantity contract variation is allowed, the variation shall not exceed 15% of the original contract quantity.
- 10.8 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## **11 Currencies of Tender and Payment**

- 11.1 Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.
- 11.2 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.
- 11.3 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.
- 11.4 Tenderers must enclose with their tenders, a brief justification of the foreign currency requirements stated in their tenders.

## **12 Tender Validity**

- 12.1 The tender shall remain valid and open for acceptance for a period of sixty (60) days from the specified date of tender opening or from the extended

date of tender opening (in accordance with clause 7.4 here above) whichever is the later.

- 12.2 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 extend the validity of his Tender Surety correspondingly.

### **13 Tender Security**

- 13.1 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.
- 13.2 The tender security shall not exceed 2 percent of the tender price.
- 13.3 The Tender Security shall be valid at least thirty (30) days beyond the tender validity period.
- 13.4 Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive.
- 13.5 The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible but not later than twenty eight (28) 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.
- 13.6 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.

## **14 No Alternative Offers**

14.1 The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix.

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.

14.2 The tenderer 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 Pre-tender Meeting**

15.1 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.

15.2 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 cause for disqualification of a bidder.

## **16 Format and Signing of Tenders**

- 16.1 The tenderer shall prepare his tender as outlined in clause 9 above and mark appropriately one set “ORIGINAL”.
- 16.2 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.
- 16.3 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 persons signing the tender.

## **SUBMISSION OF TENDERS**

### **17 Sealing and Marking of Tenders**

- 17.1 The tenderer shall seal the original of the tender in separate envelope, duly marking the envelope as “ORIGINAL”. The envelope shall then be sealed in an outer separate envelope.
- 17.2 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.
- 17.3 The inner envelope shall 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.
- 17.4 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.

### **18 Deadline for Submission of Tenders**

- 18.1 Tenders must be received by the Employer at the address specified in clause 17.2 and on the date and time specified in the Letter of Invitation, subject to the provisions of clause 7.4, 18.2 and 18.3.

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.

18.2 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.

18.3 Any tender received by the Employer after the prescribed deadline for submission of tender will be returned unopened to the tenderer.

## **19 Modification and Withdrawal of Tenders**

19.1 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 prescribed deadline for submission of tenders.

19.2 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.

19.3 No tender may be modified subsequent to the deadline for submission of tenders.

19.4 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.

19.5 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 Contract or 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.

## **TENDER OPENING AND EVALUATION**

### **20 Tender Opening**

- 20.1 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 are present shall sign a register evidencing their attendance.
- 20.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 19, 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 documents have been properly signed and whether the tenders are generally in order.
- 20.3 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.
- 20.4 The Employer shall prepare minutes of the tender opening including the information disclosed to those present.
- 20.5 Tenders not opened and read out at the tender opening shall not be considered further for evaluation, irrespective of the circumstances.

### **21 Process to be Confidential**

- 21.1 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.
- 21.2 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.

### **22 Clarification of Tenders**

- 22.1 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 24.

22.2 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.

### **23 Determination of Responsiveness**

23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.

23.2 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.

23.3 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.

23.4 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.

### **24 Correction of Errors**

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 builder'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 13.

## **25 Conversion to Single Currency**

25.1 For compensation of tenders, the tender price shall first be broken down into the respective amounts payable in various currencies by using the selling rate or rates of the Central Bank of Kenya ruling on the date twenty one (21) days before the final date for the submission of tenders.

25.2 The Employer will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Day works where priced competitively) to Kenya Shillings at the selling rates stated in clause 25.1.

## **26 Evaluation and Comparison of Tenders**

- 26.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 23.
- 26.2 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 clause 24.
  - (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.
- 26.3 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.
- 26.4 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.
- 26.5 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 29 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.
- 26.6 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 sub-contract work valued at more than 50% of the Contract Price excluding provisional sums to a non-indigenous sub-contractor.
- 26.7 Preference where allowed in the evaluation of tenders shall not exceed 15%

- 26.8 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 26.9 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 26.10 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.
- 26.11 Poor past performance shall not be used as an evaluation criteria unless specifically provided for in the appendix.

## **27 AWARD OF CONTRACT**

### **Award Criteria**

- 27.1 Subject to Sub-clause 27.2, 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.
- 27.2 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.

## **28 Notification of Award**

- 28.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the 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.

- 28.2 At the same time that the Employer notifies the successful tenderer that his tender has been accepted, the Employer shall notify the other tenderers that the tenders have been unsuccessful.
- 28.3 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.
- 28.4 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.

## **29 Performance Guarantee**

- 29.1 Within fourteen [14] 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.
- 29.2 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 or insurance company approved by the Employer and located in the Republic of Kenya.

29.3 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.

## **30 Advance Payment**

An advance payment, if approved by the Employer, shall be made under the Contract, if requested by the Contractor, in accordance with clause 60(1) 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.

### **31 Corrupt or fraudulent practices**

31.1 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.

## APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	Eligible bidders must: <ul style="list-style-type: none"> <li>• Be incorporated in Kenya</li> <li>• Have complied with all tax requirements that shall be confirmed from KRA</li> <li>• Be an established business and show proof</li> </ul>
2.1.3	The qualification statement shall be drawn on bidder's letterhead, signed and stamped
2.1.4	A statement declaring bidder is not ineligible for corrupt and fraudulent practices shall be drawn on bidder's letterhead, signed and stamped
2.2	<ul style="list-style-type: none"> <li>• Demonstrate details of past performance of at least 3 projects or works of similar nature. Bidders must attach clear copies of completion certificates and contracts, and contact details for three projects of similar nature completed within the last 5 years and of at least <b>KES 5 million</b> each.</li> <li>• Provide Qualifications and experience of key personnel proposed for administration and execution of the contract both on and off site. Qualifications should be as follows:               <ul style="list-style-type: none"> <li>❖ Project Manager (Key partner/director). Degree in any relevant field and minimum 10 years of post-qualification experience and minimum 5 years' experience in similar assignments (water infrastructure works)</li> <li>❖ Site Agent – Degree in Bsc, civil engineering or equivalent and minimum 6 years of post-qualification experience and minimum 4 years' experience in similar assignments (water infrastructure works)</li> <li>❖ Water Works Foreman – Diploma in water engineering or equivalent and minimum 5 years of post-qualification experience and minimum 3 years' experience in similar assignments (water infrastructure works)</li> <li>❖ Site Engineering Surveyor – Ordinary National Diploma in Engineering Survey or equivalent and minimum 5 years of post-qualification experience and minimum 3 years' experience in similar assignments (water infrastructure works)</li> </ul> </li> <li>• Major items of construction plant and equipment proposed for use in carrying out the contract. Minimum mandatory required equipment:               <ul style="list-style-type: none"> <li>❖ Concrete mixer – 0.3m<sup>3</sup> (1 No.)</li> <li>❖ Survey Equipment – 1 no</li> <li>❖ Pipeline pressure testing equipment – 1 no</li> <li>❖ Excavator/Backhoe loader with rock breaker head attachment (bucket capacity at least 0.5m<sup>3</sup>)</li> <li>❖ Light duty truck (pickup or equivalent)</li> <li>❖ Air Compressor – 1no</li> <li>❖ 0.73m<sup>3</sup> Concrete Dumper – 1no</li> </ul> </li> </ul>

	<p>Must provide proof of ownership or if leased proof of lease agreement.</p> <ul style="list-style-type: none"> <li>• Draft program of works – Logical detailed work plan with a maximum period of performance of 12 weeks. Must be presented in weeks of 7 calendar days.</li> <li>• Methodology to carry out the various components for the works as summarized below: <ul style="list-style-type: none"> <li>❖ Project/site management</li> <li>❖ Health and safety management</li> <li>❖ Environmental management</li> <li>❖ Quality management</li> </ul> </li> <li>• The technical evaluation pass mark shall be 70%.</li> </ul>	
2.3	Joint ventures will not be applicable in this tender.	
4.0	Mandatory site visit will be held on 29 <sup>th</sup> November 2018 from 10.00am. Failure to attend shall lead to disqualification.	
5.1 - c	This shall be filled and is mandatory	
5.1 - g	This shall be filled and stamped and is mandatory	
10.4	This is not applicable in this tender	
15.0	There will be no pre-tender meeting	
17.2	The tenders shall be submitted to the following address: The Managing Director Kisumu Water and Sewerage Company Ltd Nafaka House, Oginga Odinga Street, Opposite Swan Center P.O Box 3210 – 40100 Kisumu	
26.11	Poor past performance shall be considered during the evaluation process	
30	Advance payment shall not be applicable in this tender	
<b>There will be preliminary evaluation where we will check proof of legal existence of the bidder. Lack of any of them will lead to automatic disqualification. The following will be checked at this stage:</b>		
<b>Category</b>	<b>Description</b>	<b>Mandatory attachment</b>
Business Registration (Must be valid and current)	Certificate of Registration/Incorporation	Attach a copy certificate of incorporation/registration
	Must be registered by the National Construction Authority under the category of Water Works ( Must be NCA 1 to 7)	Attach current and valid copy of NCA registration certificate for water works
	KRA Tax Compliance certificate	Attach current and valid copy of certificate of tax compliance
	KRA PIN Certificate	Attach copy of the PIN Certificate
	Business Permit	Attach a copy of the valid and current business permit
	Bid Bond	This will be checked, whether the bid bond has been attached
	Confidential business questionnaire	This will be checked, whether it has been filled, signed and stamped



Company Profile	Summary of the company profile and financial capacity	<ol style="list-style-type: none"> <li>1. Company ownership and management structure, physical location and head office. This should include list of directors and affiliated entities.</li> <li>2. Litigation history (provide a list of cases instituted by or against the bidder in the last 5 years, including any investigations by a government agency)</li> </ol>
Financial Capacity	Proof of financial capacity to fund the project	<ol style="list-style-type: none"> <li>1. Detailed bank statement for the past 6 months. The bank statement must be current, certified and stamped by the issuing bank with minimum bank balance of KES 2 Million.</li> <li>2. Lines of credit or approved bank overdraft of minimum KES 7 Million. The letters of credit lines or bank overdrafts must be stamped and certified by an authorized signatory, valid for the period of the performance of the project.</li> <li>3. Audited financial statements for the last three years</li> </ol>
Financial Evaluation	<p><b>Financial evaluation</b> will be the last stage of evaluation. Only firms who qualify from the technical evaluation will be eligible to proceed to financial evaluation. The firm with the lowest evaluated bid will be awarded at this stage.</p>	
	<p>Performance bond shall be 10% of the contract sum and shall be received within 14 days from the date of contract award</p>	

## **SECTION III - CONDITIONS OF CONTRACT**

### **1. Definitions**

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

**“Bills of Quantities”** means the priced and completed Bill of Quantities forming part of the tender [where applicable].

**“Schedule of Rates”** means the priced Schedule of Rates forming part of the tender [where applicable].

**“The Completion Date”** means the date of completion of the Works as certified by the Employer’s Representative.

**“The Contract”** means the agreement entered into by the Employer and the Contractor as recorded in the Agreement Form and signed by the parties.

**“The Contractor”** refers to the person or corporate body whose tender to carry out the Works has been accepted by the Employer.

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

**“The Contract Price”** is the price stated in the Letter of Acceptance.

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

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

**“The Defects Liability Certificate”** is the certificate issued by Employer’s Representative upon correction of defects by the Contractor.

**“The Defects Liability Period”** is the period named in the Appendix to Conditions of Contract and calculated from the Completion Date.

**“Drawings”** include calculations and other information provided or approved by the Employer’s Representative for the execution of the Contract.

**“Employer”** Includes Central or Local Government administration, Universities, Public Institutions and Corporations and is the party who employs the Contractor to carry out the Works.

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

**“Site”** means the place or places where the permanent Works are to be carried out including workshops where the same is being prepared.

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

**“Employer’s Representative”** is the person appointed by the Employer and notified to the Contractor for the purpose of supervision of the Works.

**“Specification”** means the Specification of the Works included in the Contract.

**“Start Date”** is the date when the Contractor shall commence execution of the Works.

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

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

**“A Variation”** is an instruction given by the Employer’s Representative which varies the Works.

**“The Works”** are what the Contract requires the Contractor to construct, install, and turnover to the Employer.

## **2. Interpretation**

2.1 In interpreting these conditions of contract, singular also means plural, male also means female or neuter and the other way round. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Engineer will provide instructions clarifying queries about these conditions of contract.

2.1 If sectional completion is specified in the Appendix to Conditions of contract, reference in the Conditions of Contract to the Works, the completion date and the intended completion date apply to any section of the works (other than references to the Intended Completion Date for the whole of the works)

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

- (1) Agreement,
- (2) Letter of Acceptance,
- (3) Contractor’s Tender,
- (4) Conditions of Contract,
- (5) Drawings,
- (6) Bills of Quantities
- (7) Any other documents listed in the appendix to Conditions of Contract as forming part of the contract

Immediately after execution of the contract, the parties shall be furnished with a copy of each of all the contract documents. Further, as and when necessary, the contractor shall furnish the Project Engineer (always with a copy to the Employer) with three (3) copies of such further drawings or details or descriptive schedules as are reasonably necessary either to explain or amplify the contract drawings or to enable the contractor to carry out and complete the works in accordance with these conditions.

### **3. Language and Law**

3.1 The ruling language of the Contract shall be English language and the law governing the Contract shall be the law of the Republic of Kenya.

### **4. Project Engineer's decisions**

4.1 Except where otherwise specifically stated, the Employer's Representative will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

### **5. Delegations**

5.1 The Project Engineer may delegate any of his duties and responsibilities to others after notifying the contractor but any such delegation shall only be done with the written consent of the Employer (Managing Director)

### **6. Communications**

6.1 Communications between the parties shall be effective only when in writing. A notice shall be effective fourteen days after it is sent to any party's last known address.

### **7. Sub-contracting**

7.1 The Contractor shall not sub-contract and or assign this Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor's obligations.

## **8. Other Contractors**

8.1 The contractor shall cooperate and share with the Employer as per the directions of the Project Engineer. The contractor shall also provide facilities and services for its sub-contractors, if any. The Employer may modify the said list of other contractors etc. and shall notify the Contractor of any such modification.

## **9. Personnel**

9.1 The contractor shall employ key personnel with relevant adequate qualifications, to carry out the function stated in the contract or other personnel approved by the Project Engineer. The Project Engineer will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel executing the contract as at that time. If the Project Engineer asks the contractor to remove a person who is a member of the contractor's staff or workforce, stating the reasons, the contractor shall ensure that the person leaves the site within seven days and has no further connection with the work in the contract.

## **10. Works**

10.1 The Contractor shall construct and install the Works in accordance with the Contract documents. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Employer's Representative, and complete them by the Intended Completion Date.

## **11. Safety and Temporary Works**

11.1 The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Engineer and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.

- 11.2 The Project Engineer's approval shall not alter the contractor's responsibility for design of the temporary works and all drawings prepared by the contractor for the execution of the temporary or permanent works, shall be subject to prior approval by the Project Engineer before they can be used.
- 11.3 The contractor shall be responsible for the safety of all activities on the site during the whole period of contract.

## **12. Discoveries**

- 12.1 Anything of historical or other interest or significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Employer's Representative of such discoveries and carry out the Employer's Representative's instructions for dealing with them.

## **13. Work Program**

- 13.1 The Contractor shall within 14 days after the date of the Letter of Acceptance, submit to the Project Engineer for approval a program showing the general methods, arrangements, order and timing (including *critical path*) for all the activities in the Works. An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining works, including any changes to the sequence of activities.

The contractor shall submit to the Project Engineer for approval an updated program at intervals not longer than one month. If the contractor does not submit an updated program within this period, the Project Engineer may withhold the amount until the next payment after the date on which the overdue program has been submitted. The Project Engineer's approval of the program shall not alter the contractor's obligations. The contractor may revise the program and submit it to the Project Engineer again at any time. A revised program shall show the effect of Variations and Compensation Events.

## **14. Possession of Site**

- 14.1 The Employer shall give possession of all parts of the Site to the Contractor. The site possession shall be immediate after the signing of the contract.

## **15. Access to Site**

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

## **16. Instructions**

- 16.1 The Contractor shall carry out all instructions of the Project Engineer which are in accordance with the Contract. All instructions shall be in writing and verbal ones shall be confirmed in writing within 24hrs. The instruction issued to the contractors appointed representative, shall be deemed to have been received.

## **17 Extension or Acceleration of Completion Date**

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

## **18 Management Meetings**

- 18.1 A Contract management meeting shall be held regularly and attended by the Project Engineer and the Contractor. Its business shall be to review the plans for the remaining Work. The Project Engineer shall record the business of management meetings and provide copies of the record to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Engineer either at the management meeting or after the management meeting and stated in writing to all who attend the meeting.



## **19 Early Warning**

- 19.1 The contractor shall warn the Project Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the contract price or delay the execution of the works. The project Engineer may require the contractor to provide an estimate of the expected effect of the future event or circumstance on the contract price and completion date. The estimate shall be provided by the contractor as soon as reasonably possible.
- 19.2 The contractor shall cooperate with the Project Engineer in making and considering proposals on how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instructions of the Project Engineer.

## **20 Defects**

- 20.1 The Project Engineer shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Project Engineer may instruct the Contractor to search for a defect and to uncover and test any Work that the Project Engineer considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor. However if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.
- 20.2 The Project Engineer shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract. The defects liability period shall be extended for as long as the defects remain to be corrected.
- 20.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Project Engineer's notice. If the Contractor has not corrected a defect within the time specified in the Project Engineer's notice, the Project Engineer will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

## **21. Bills of Quantities**

- 21.1 The Bills of Quantities shall contain items for the design, construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rates in the Bills of Quantities for the pipeline extensions.
- 21.2 The Bills of Quantities shall not be varied except with the written authorization of the Employer. If the final quantity of the work done differs from the quantity in the Bills of Quantities for the particular item by more than 30% and provided the change exceeds 10% of the initial contract price, the Project Engineer shall adjust the rate to allow for the change. So long as the requisite authorization shall be sought from the Employer before any quantity of works is done based on variation of the Bills of Quantities.
- 21.3 If requested by the Project Engineer, the Contractor shall provide the Project Engineer with a detailed cost breakdown of any rate in the Bills of Quantities.

## **22 Variations**

- 22.1 This is a fixed contract; therefore no variations are allowed.

## **23 Payment Certificates, Currency of Payments and Advance Payments**

- 23.1 The contractor shall submit to the Project Engineer monthly applications for payment giving sufficient details of the work done and materials on site and the amounts which the Contractor considers himself to be entitled to. The project Engineer shall check the monthly application and certify the amount to be paid to the Contractor within 14 days. The value of the work executed and payable shall be determined by the Project Engineer.
- 23.2 The value of the work executed shall comprise the value of the quantities of the items in the bills of quantities completed (if any) and compensation events.
- 23.3 Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Engineer within 30 days of the date of issuance of each certificate. No interest shall be chargeable and or claimed by the Contractor if the Employer makes a late payment, so long as all the certificates shall be certified within 45 days of issuance of the certificate by the Projects Engineer.
- 23.4 If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, The Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

23.5 Items of the works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the contract.

23.6 The contract price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings.

## **24. Retention**

24.1 The employer shall retain from each payment due to the contractor 10% of each payment due under the contract until completion of the whole of the works. On completion of the whole of the works, half the total amount retained shall be repaid to the contractor and the remaining half when the defects liability period has passed and the Project Engineer has certified that all the defects notified to the contractor before the end of the period have been corrected and only after the Employer has taken over the works.

## **25. Liquidated Damages**

25.1 The Employer may deduct liquidated damages from payments due to the contractor. Payment of liquidated damages shall not alter the contractor's liabilities.

25.2 If the intended completion date is extended after liquidated damages have been paid, the Project Engineer shall correct any overpayment of liquidated damages by the contractor by adjusting the next payment certificate.

## **26. Completion and taking over**

26.1 Upon deciding that the Work is complete the Contractor shall request the Project Engineer to issue a Certificate of Completion of the Works, upon deciding that the Work is completed. The Employer shall take over the Site and the Works within seven days of the Project Engineer's issuing a Certificate of Completion.

## **27. Final Account**

27.1 The Contractor shall supply the Project Engineer with a detailed final account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Engineer shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Engineer shall issue within 21 days a

schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Project Engineer shall decide on the amount payable to the Contractor and issue a Final Payment Certificate. The Employer shall pay the Contractor the amount so certified within 60 days of the issue of the Final Payment Certificate.

## **28. Termination**

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

- a) the Contractor stops Work for 30 days continuously without reasonable cause or authority from the Project Engineer
- b) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- c) the Project Engineer gives notice that failure to correct a particular defect is a fundamental breach of Contract and if the Contractor fails to correct it within a period no exceeding 30 days of time determined by the Project Manager.
- d) the contractor does not maintain a security, which is required according to this contract.

28.2 When either party to the contract gives notice of a breach of contract to the Project Engineer for a cause other than those listed under clause 28.1 above, the Project Manager shall decide whether the breach is fundamental or not. The Project Engineer shall subsequently communicate his decision within 15 days to the parties.

28.3 Notwithstanding the above, the Employer may terminate the contract at its convenience and in once so terminated the Project Engineer shall issue a Final Certificate for the work done by the time of the termination within 15 days of such termination and the Employer shall satisfy such certificate within 45 days of its issuance.

28.4 If the contract is terminated, the Contractor shall stop work immediately, make the site safe and secure, and leave the site within 20 days or as shall be detailed by the engineer. The Project Engineer shall immediately thereafter arrange for a meeting for the purpose of taking record of the works executed and materials, goods, equipment and temporary buildings on site.

## **29 Payment upon Termination**

- 29.1 If the contract is terminated because of a fundamental breach of contract by the contractor, the Project Engineer shall issue a certificate of the value of the work done and materials ordered and delivered to site up to the date of the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the employer exceeds any payment due to the contractor, the difference shall be a debt payable by the contractor.
- 29.2 If the contract is terminated for the Employer's convenience or because of a fundamental breach of contract by the employer, the Project Engineer shall issue a certificate for the value of the work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the contractor's personnel employed solely on the works, and the contractor's costs of protecting and securing works.
- 29.3 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on Site, plant, equipment and temporary works.
- 29.4 The Contractor shall, during the execution or after the completion of the Works under this clause, remove from the Site as and when required within such reasonable time as the Project Engineer may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to him, and in default thereof, the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

Until after completion of the Works under this clause, the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Project Engineer shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

### **30. Release from Performance**

30.1 If the contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Engineer shall certify that the contract has been frustrated. The Contractor shall make the site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it.

### **31. Corrupt Gifts and Payments of Commission**

31.1 The contractor shall not:

- a) Offer or give or agree to give to any person in the service of the Employer any gifts or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the Employer or for showing or forbearing to show favor or disfavor to any person in relation to this or any other contract with the Employer.
- b) Enter into this or any other contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the contract is made particulars of any such commission and the terms and conditions of any other agreement for the payment thereof have been disclosed in writing to the Employer.

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

### **32. Settlement of Disputes**

32.1 In case any dispute or difference shall arise between the Employer and the Contractor, either during the progress or after the completion or termination of the works, such dispute shall be notified In writing by either party to the other with a request to submit it to arbitration and to concur In the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties.

- 32.2 The arbitration may be on the construction of this contract or on any other thing of whatsoever nature arising thereunder or in connection with, including any matter or thing left by this contract to the discretion of the Project Engineer, or the withholding by the Project Engineer of any certificate to which the contractor may claim to be entitled to or the measurement and valuation, or the rights and liabilities of the parties subsequent to the termination of contract.
- 32.3 Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not been given by the applying party within thirty days of the occurrence or discovery of the matter or issue giving rise to dispute.
- 32.4 Notwithstanding the issue of a notice as stated above, the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties.
- 32.5 All other matters shall only be referred to arbitration after the completion or alleged completion of the works or termination or alleged termination of the contract unless the employer and the contractor agree otherwise in writing.

### **33. Insurance**

- 33.1 The Contractor shall be responsible for and shall take out appropriate cover against, among other risks, personal injury; loss of or damage to the Works, materials and plant; and loss of or damage to property.

### **34 Contract Security**

- 34.1 The contractor shall furnish at the time of executing the contract and at its own expense, a performance bond satisfactory to the Employer in an amount equal to ten percent of the contract price as a guarantee of good faith on behalf of the contractor that the contract shall be in effect in during the full term of the contract.

## SECTION IV – BILLS OF QUANTITIES

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
No.				Kshs	Kshs
	<b><u>PRINCIPLE COMPONENT OF WORKS</u></b>				
1	Intake Works	Sum	1		
2	Treatment works	Sum	1		
3	Civil Works (Excavation)	Sum	1		
4	Water Distribution Rehabilitation	Sum	1		
5	Chamber Construction	Sum	1		
6	Clear Water Tanks	Sum	1		
7	Provisional Sums	Sum	1		
	<b>GRAND TOTAL</b>				
	<b><u>PREAMBLE TO THE BILL OF QUANTITIES</u></b>				
	<b><u>CLASS A : GENERAL ITEMS</u></b>				
4	The nature of this contract is measured unit price contract and the bill of quantities shall reflect this fact.				
5	The Bill of Quantity is divided into several parts as following:				
	ELEMENT NO. 1. Intake Works				
	ELEMENT NO. 2. Treatment Works				
	ELEMENT NO. 3. Civil Works ( Excavation)				
	ELEMENT NO. 4. Rehabilitation of the existing water distribution system				
	ELEMENT NO. 5. Chamber Construction				
	ELEMENT NO. 6. Clear Water tanks				



	ELEMENT NO. 7. Provisional Sums				
<b>6</b>	Bill of Quantity shall be read and construed in conjunction with other Contract documents				
<b>7</b>	The Tenderer is obliged to check the number of pages of the Bill of Quantities and should any be found missing or duplicated or the figures indistinct, the Tenderer must notify the Employer/Engineer at once and have the matter rectified before the Tender is submitted. No liability whatsoever will be accepted in respect of any claim for errors in the Tenderer's offer resulting from failure to comply with the afore-going				
<b>8</b>	The Tenderer is deemed to have visited the site and fully acquainted himself with the location of where the project work is to be carried out and to all conditions which may affect the performance of the works				
<b>9</b>	The Tenderer is also deemed to have to have surveyed the actual condition of the site and made his own assessment of the type and extent of the works prior to submitting his offer.				
	<b>MATERIALS</b>				
<b>10</b>	All materials used are to be of the right quality and subject to Employer/Engineer approval.				
	<b>RATES/PRICES</b>				
<b>11</b>	The unit rates entered against the various items in the following Bill of Quantities includes all operations for execution and completion of various items of work, in every aspect till the final acceptance as specified in the contract document.				
<b>12</b>	The rate shall also cover all costs, without being limited to,all charges for site installations, relocations, supervision, labour, transportation and supply of materials, the performance of all services and the fulfillment of all obligations and responsibilities herein defined.				
<b>13</b>	The Tenderer shall be deemed to have fully considered all the conditions, obligations, and requirements of the Tender documents before inserting the respective unit price against the various items of bill of quantities.				

<b>NYANAS REHABILITATION BILL OF QUANTITIES</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>RATE</b>	<b>AMOUNT</b>
<b>No.</b>				<b>Kshs</b>	<b>Kshs</b>
	<b><u>REHABILITATION OF NYANAS TREATMENT WORKS</u></b>				
	<b><u>ELEMENT NO 1 : INTAKE WORKS</u></b>				
<b>1</b>	<b><u>Pumps</u></b>				
	<b><u>Supply, transport to site and install</u></b>				
<b>1.1</b>	1Nr. Centrifugal pump (Flow 360m3/hr,Dynamic head 20m) complete with surge protectors, independent motors, starter panels with 3Nr compartments, strainers, base plate, fixing bolts and grouting	nr	1		
<b>1.2</b>	25mm dia.Minimum and Maximum pressure gauge (20m head).	nr	1		
<b>2</b>	<b><u>Pump House</u></b>				
<b>2.1</b>	Allow for plastic (PVC) trunking 200mm X 100mm X 3mm thick of the wiring system within the pump house as directed and approved by the Project Engineer.	m	6		
<b>2.2</b>	Allow for provision of a Lever block Chain Hoist complete with H - beam steel rail, fixed on both sides of the walls as specified and directed by the Engineer	nr	1		
<b>2.3</b>	Allow for provision of a Three phase Variable speed drive 230 X 155 X 164mm, 380V 50Hz/60Hz input/output,55KW/125HP capacity, as directed by the Engineer	nr	1		
<b>2.4</b>	Ditto 380V 50Hz/60Hz 90KW/125HP Capacity	nr	1		
<b>3</b>	<b><u>Raw Water Pumped Mains</u></b>				

<b>3.1</b>	Allow a Provisional Sum of Kshs 300,000 for general rehabilitation works at the Intake site including replacement of broken / exposed sections of Raw Water Pipe, backfilling of exposed pipes, etc as directed by the Engineer	PC	1	300,000	300,000.00
	<b>TOTAL CARRIED TO SUMMARY</b>				
	<b><u>ELEMENT NO 2 :TREATMENT WORKS</u></b>				
<b>4</b>	<b><u>Flocculation/Coagulation Tank</u></b>				
<b>4.1</b>	Allow for removal of silt from the Flocculation & Coagulation Channel and cart away to tip identified by the Contractor in liason with the Local Authority.	LS	1		
<b>4.2</b>	Scrub out scaling and chemical deposits on the inner faces of walls and base of the Flocculation & Coagulation Channel and dispose to Approved tip. Contractor to include for draining the Channels to allow the work.	Sm	246		
<b>4.3</b>	Provide all material and apply Epoxy wall and floor coating, "MASTERSTOP 1110T" or approved equivalent, on internal surfaces of Flocculation & Coagulation Channel walls and floor. Rate to include for preparation of surface to receive Epoxy coating as per manufacturer's instructions.	Sm	246		
	<b>PAGE CARRIED TO COLLECTION</b>				

<b>5</b>	<b><u>Sealer</u></b>				
<b>5.1</b>	Provide and lay plastic joint 25mm x 25mm sealer or approved equivalent on joints of base slab and the external walls	m	82		
<b>6</b>	<b><u>Washout Chamber</u></b>				
<b>6.1</b>	Hack out loose concrete along cracks on walls of the washout valve chamber and prepare surface for crack repair.	Sm	8		
<b>6.2</b>	Provide all materials and repair cracks on the walls. Repair to be carried out using approved concrete repair / waterproofing agent in accordance with the manufacturer's instructions and as directed by the engineer.	Sm	8		
<b>7</b>	<b><u>Painting of Handrails</u></b>				
<b>7.1</b>	Rub down old paint on metal tubing handrails along walkways and prepare surfaces to receive new paint.	m	80		
<b>7.2</b>	Provide and apply 3 coats of approved Blue Aluminum Paint on Hand railing.	m	80		
<b>7.3</b>	Allow application of Mordant Solution to remove galvanizing on handrails to receive Blue aluminum paint	m	80		
<b>8</b>	<b><u>Sedimentation Tanks</u></b>				
<b>8.1</b>	Allow for removal of silt from the Sedimentation Channel and cart away to tip identified by the Contractor in liaison with the Local Authority.	PC	1		
<b>8.2</b>	Scrub out scaling and chemical deposits on the inner faces of walls and base of the Sedimentation tank and dispose to Approved tip. Contractor to include for draining the Sedimentation channel to allow the work.	Sm	519		
<b>8.3</b>	Provide all material and apply Epoxy wall and floor coating, "MASTERSTOP 1110T" or approved equivalent, on internal surfaces of Sedimentation tank walls and floor. Rate to include for preparation of surface to receive Epoxy coating as per manufacturer's instructions.	Sm	519		
<b>9</b>	<b><u>Sealer</u></b>				
<b>9.1</b>	Provide and lay plastic joint 25mm x 25mm sealer or approved equivalent on joints of base slab and the external walls	m	69		
<b>10</b>	<b><u>Painting of Handrails</u></b>				

<b>10.1</b>	Rub down old paint on metal tubing handrails along walkways and prepare surfaces to receive new paint.	m	70		
<b>10.2</b>	Provide and apply 3 coats of approved Blue Aluminum Paint on Hand railing.	m	70		
<b>10.3</b>	Allow application of Mordant Solution to remove galvanizing on handrails to receive aluminum paint	m	70		
	<b>PAGE CARRIED TO COLLECTION</b>				

<b>11</b>	<b><u>Washout Chamber</u></b>				
<b>11.1</b>	Hack out loose concrete along cracks on walls of the washout valve chamber and prepare surface for crack repair.	Sm	8		
<b>11.2</b>	Provide all materials and repair cracks on the walls. Repair to be carried out using approved concrete repair / waterproofing agent in accordance with the manufacturer's instructions and as directed by the engineer.	Sm	8		
<b>12</b>	<b><u>Chemical Mixing Chambers</u></b>				
<b>12.1</b>	Allow Kes 50,000 provision for rehabilitation of 2 nr Soda Ash mixing chambers (2.2m Long X 2.2m Wide X 2m deep) as directed by the Engineer. The works includes Hacking, plastering and waterproofing of the internal and external chamber walls	nr	2	50,000	100,000.00
<b>13</b>	<b><u>Pumps</u></b>				
	<b><u>Supply, transport to site and install</u></b>				
<b>13.1</b>	1nr centrifugal pump complete with; surge protectors, independent motors, starter panels with 3Nr compartments, strainers, level sensors, pressure switch, base plate, fixing bolts, grouting, etc., for the following characteristics: Flow 360m <sup>3</sup> /hr, Total head 160m.	nr	1		
<b>13.2</b>	25mm dia. pressure gauge of approved make (pumping head approximate 160m)	nr	3		
	<b>TOTAL CARRIED TO SUMMARY</b>				

	<b>ELEMENT NO: 3</b>				
<b>14</b>	<b><u>CLASS L : Excavation</u></b>				
<b>14.1</b>	Allow for trenching to a minimum depth of 1.0m, in soft rock or as directed by the engineer	Cm	70		
<b>14.2</b>	Ditto extra for hard rock	Cm	10		
	<b>TOTAL CARRIED TO SUMMARY</b>				

	<b><u>ELEMENT NO 4 : REHABILITATION OF EXISTING WATER DISTRIBUTION SYSTEM</u></b>				
<b>15</b>	<b><u>Repair of Leaking Sections of Distribution Mains</u></b>				
<b>15.1</b>	Allow for removing the existing 100mm dia GI Pipe feeding the 400m <sup>3</sup> Contact tank and replacing it with a 150mm dia. Distance of 30m.	nr	5		
	<b>PAGE CARRIED TO COLLECTION</b>				



	<b>CLASS I : PIPEWORK - PIPES</b>				
	<u>Supply, transport to site, lay and fit the following pipes in trenches</u>				
<b>16</b>	<b><u>UPVC Class D Socket and Spigot pipes for PN 16</u></b>				
<b>16.1</b>	400mm dia.	nr	10		
<b>16.2</b>	300mm dia.	nr	10		
<b>16.3</b>	225mm dia.	nr	10		
<b>16.4</b>	160mm dia.	nr	25		
<b>16.5</b>	100mm dia.	nr	84		
	<b>CLASS J : PIPEWORK - FITTINGS &amp; VALVES</b>				
	<b>Note: All shall have a pressure rating of 16 bar</b>				
	<u>Supply, transport to site and fit in trenches</u>				
<b>17</b>	<b>Bulk Meter - Insertion Probe with loggers Type EMF</b>				
<b>17.1</b>	300mm dia.	nr	3		
<b>17.2</b>	225mm dia.	nr	1		
<b>17</b>	<b>Mechanical Meters</b>				
<b>17.1</b>	160mm dia. Qn 150m <sup>3</sup> /hr	nr	1		
<b>17.2</b>	110mm dia. Qn 100m <sup>3</sup> /hr	nr	1		
<b>18</b>	<b>Flange Adaptor</b>				
	<b>Note: All shall conform to EN 1092 and have a pressure rating of 16bar</b>				
<b>18.1</b>	400mm dia.	nr	2		
<b>18.2</b>	300mm dia.	nr	6		
<b>18.3</b>	225mm dia.	nr	2		
<b>18.4</b>	160mm dia.	nr	2		
<b>18.5</b>	110mm dia.	nr	2		

<b>19</b>	<b>Weldon Flange for PN 16</b>				
<b>19.1</b>	400mm dia.	nr	2		
<b>19.2</b>	300mm dia.	nr	2		
<b>20</b>	<b>Valves for PN 16</b>				
<b>20.1</b>	400mm dia. Butterfly valve	nr	1		
<b>20.2</b>	300mm dia. Butterfly valve	nr	4		
<b>20.3</b>	225mm dia. Butterfly valve	nr	1		
<b>20.4</b>	160mm dia. Butterfly valve	nr	1		
<b>20.5</b>	110mm dia. Gate valve Pegler	nr	1		
	<b>PAGE CARRIED TO COLLECTION</b>				

<b>21</b>	<b>Concentric Taper</b>				
	<b>Note: All shall be flanged on both ends and have a pressure rating of 16bars</b>				
<b>21.1</b>	400mm X 300mm dia Concentric Taper	nr	2		
<b>22</b>	<b>Couplings for PN 16</b>				
<b>22.1</b>	300mm dia. VJ couplings	nr	5		
<b>22.2</b>	225mm dia. VJ couplings	nr	5		
<b>22.3</b>	160mm dia. VJ couplings	nr	10		
<b>23</b>	<b>Gasket</b>				
<b>23.1</b>	4mm thick Rubber Gasket	roll	1		
<b>24</b>	<b>UPVC Adaptors</b>				
<b>24.1</b>	110mm dia.	nr	2		
<b>25</b>	<b>Bolts and Nuts</b>				
	<b>Note: Bolts, Washers and Nuts shall conform to BS EN 1515-1 and BS EN 1515-2</b>				
<b>25.1</b>	M27	nr	128		
<b>25.2</b>	M24	nr	208		
<b>25.3</b>	M20	nr	192		
<b>25.4</b>	M16	nr	60		
	<b>TOTAL CARRIED TO SUMMARY</b>				

	<b>ELEMENT NO.5</b>				
<b>26</b>	<b><u>CLASS K : CHAMBER CONSTRUCTION</u></b>				
	-				
<b>26.1</b>	Excavate for, provide all material and construct concrete chamber for Inlet & Outlet Valves size 1.2m x 1.2m depth n.e. 1.5m, including for supply and fixing of 100mm thick precast reinforced concrete cover as directed by the engineer. Include for, indicator posts, step irons, backfilling and removal of surplus excavated material.	nr	3		
	<b>TOTAL CARRIED TO SUMMARY</b>				

	<b>ELEMENT NO. 6</b>				
<b>27</b>	<b><u>CLEAR WATER TANK</u></b>				
<b>27.1</b>	Supply and fix galvanized mild steel (GMS) vertical ladder, height n.e. 3.5m, fixed to external wall of tank as directed by the engineer.	nr	3		
<b>27.2</b>	Supply and fix Level indicator, height n.e. 3.5m, fixed to external wall of tank as directed by the engineer.	nr	3		
<b>27.3</b>	Supply and install 150mm dia. flanged Ball Float Valve (Biwater Series 1048 or Approved Equivalent) at Inlet Pipe into the tank.	nr	3		
	<b>TOTAL CARRIED TO SUMMARY</b>				
	<b>PAGE CARRIED TO COLLECTION</b>				

<b>28</b>	<b><u>ELEMENT NO : 7</u></b>				
	<b><u>PROVISIONAL SUMS</u></b>				
<b>28.1</b>	Allow a Provisional Sum of Kshs. 600,000 for project Administration	PS	1	1,000,000.00	1,000,000.00
<b>28.2</b>	Allow 5% Contingencies				
	<b>TOTAL CARRIED TO SUMMARY</b>				

	<b><u>SUMMARY</u></b>				
	Element No 1 : Intake Works				
	Element No 2 : Treatment Works				
	Element No 3 : Civil Works (Excavation)				
	Element No 4 : Rehabilitation of the Existing Water distribution				
	Element No 5 : Chamber Construction				
	Element No 6 : Clear Water Tank				
	Element No 7 : Provisional Sums				
	<b><u>GRAND SUMMARY</u></b>				

**SECTION VIII – STANDARD FORMS  
FORM OF TENDER**

TO: \_\_\_\_\_  
[Name of Employer) \_\_\_\_\_  
[Date] \_\_\_\_\_  
\_\_\_\_\_ [Name of Contract]

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs. \_\_\_\_\_ [Amount in figures] Kenya Shillings \_\_\_\_\_ [Amount in words]
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until \_\_\_\_\_ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
4. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_

duly authorized to sign tenders for and on behalf of

\_\_\_\_\_ [Name of Employer]

of \_\_\_\_\_ [Address of Employer]

Witness; Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

## APPENDIX TO FORM OF TENDER

(This appendix forms part of the tender)

CONDITIONS OF CONTRACT	CLAUSE	AMOUNT
Tender Security (Bank Guarantee only)		Kshs 500,000.00
Amount of Performance Security (Unconditional Bank Guarantee)		10 percent of Tender Sum in the form of Unconditional Bank Guarantee
Program to be submitted		Not later than <u>14</u> days after issuance of Order to Commence
Cashflow estimate to be submitted		Not later than <u>14</u> days after issuance of Order to Commence
Period for commencement, from the Engineer's order to commence		<u>14</u> days
Time for completion		12 weeks
Defect Liability period		6 Months
Percentage of Retention		<u>10%</u> of Interim Payment Certificate
Minimum amount of interim certificates		Kshs. 2,500,000.00 except for 1 <sup>st</sup> and last certificates
Appointer of Arbitrator		Chief Justice of The Republic of Kenya
Notice to Employer and Engineer		The Employers address is: The Managing Director, Kisumu Water and Sewerage Company Ltd, P.O Box 3210 -40100, Kisumu.  The Engineer's address is: PO Box 3210 Kisumu

Signature of Tender..... Date.....



**LETTER OF ACCEPTANCE**  
**[Letterhead paper of the Employer]**

\_\_\_\_\_ [Date]

To: \_\_\_\_\_

[Name of the Contractor]

[Address of the Contractor]

\_\_\_\_\_

Dear Sir,

This is to notify you that your Tender dated \_\_\_\_\_

For the execution of \_\_\_\_\_

[Name of the Contract and identification number, as given in the Tender documents]  
for the Contract Price of Kshs. \_\_\_\_\_

[Amount in figures] [Kenya Shillings \_\_\_\_\_ (amount in  
words)] in accordance with the Instructions to Tenderers is hereby accepted.

You are hereby instructed to proceed with the execution of the said Works in  
accordance with the Contract documents.

Authorized Signature

.....

Name and Title of Signatory

.....

Attachment: Agreement

## **FORM OF AGREEMENT**

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_  
20 \_\_\_\_\_ between  
of [or whose registered office is situated at] \_\_\_\_\_  
(hereinafter called "the Employer") of the one part AND  
\_\_\_\_\_ of [or whose registered  
office is situated at] \_\_\_\_\_  
(hereinafter called "the Contractor") of the other part.

WHEREAS THE Employer is desirous that the Contractor executes

\_\_\_\_\_ (name and identification number of Contract ) (hereinafter called "the Works")  
located at \_\_\_\_\_ [Place/location of the Works] and the  
Employer has accepted the tender submitted by the Contractor for the execution  
and completion of such Works and the remedying of any defects therein for the  
Contract Price of Kshs \_\_\_\_\_ [Amount in figures], Kenya  
Shillings \_\_\_\_\_ [Amount in words].

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.
  - (i) Letter of Acceptance
  - (ii) Form of Tender
  - (iii) Conditions of Contract Part I
  - (iv) Conditions of Contract Part II and Appendix to Conditions of Contract
  - (v) Specifications
  - (vi) Drawings
  - (vii) Priced Bills of Quantities
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and 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 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.

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 \_\_\_\_\_

Binding Signature of Employer \_\_\_\_\_

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

In the presence of (i) Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

[ii] Name \_\_\_\_\_

Address \_\_\_\_\_

Signature\_\_

**FORM OF TENDER SECURITY**

WHEREAS .....(hereinafter called “the Tenderer”) has submitted his tender dated ..... for the construction of .....  
..... (name of Contract)

KNOW ALL PEOPLE by these presents that WE ..... having our registered office at .....(hereinafter called “the Bank”), are bound unto .....(hereinafter called “the Employer”) in the sum of Kshs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this ..... Day of .....20.....

THE CONDITIONS of this obligation are:

1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers  
Or
2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
  - (a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
  - (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;
  - (c) Rejects a correction or an arithmetic error in the tender.

We undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the said date.

\_\_\_\_\_

[Date ]

\_\_\_\_\_

[signature of the Bank]

\_\_\_\_\_

[Witness]

\_\_\_\_\_

[Seal]

(Amend accordingly if provided by the Insurance Company)

**PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)**

To:

(Name of Employer) \_\_\_\_\_ (Date) \_\_\_\_\_  
\_\_\_\_\_(Address of Employer)

Dear Sir,

WHEREAS \_\_\_\_\_(hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. \_\_\_\_\_ Dated \_\_\_\_\_ to execute \_\_\_\_\_ (Hereinafter called “the Works”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognised bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee:

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Kshs. \_\_\_\_\_ (Amount of Guarantee in figures) Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words), and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of Kenya Shillings \_\_\_\_\_ (Amount of Guarantee in words) as aforesaid without your needing to prove or to show grounds or reasons for your demand for 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 be valid until the date of issue of the Certificate of Completion.

SIGNATURE AND SEAL OF THE GUARANTOR \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

(Amend accordingly if provided by Insurance Company)

**BANK GUARANTEE FOR ADVANCE PAYMENT**

To: \_\_\_\_\_[name of Employer] \_\_\_\_\_(Date)  
\_\_\_\_\_ [address of Employer]

Gentlemen,

Ref: \_\_\_\_\_[name of Contract]

In accordance with the provisions of the Conditions of Contract of the above-mentioned Contract, We, \_\_\_\_\_[name and Address of Contractor] (hereinafter called “the Contractor”) shall deposit with \_\_\_\_\_[name of Employer] a bank guarantee to guarantee his proper and faithful performance under the said Contract in an amount of Kshs. \_\_\_\_\_[amount of Guarantee in figures] Kenya Shillings \_\_\_\_\_[amount of Guarantee in words].

We, \_\_\_\_\_[bank or financial institution], as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to \_\_\_\_\_[name of Employer] on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding Kshs \_\_\_\_\_[amount of Guarantee in figures] Kenya Shillings

\_\_\_\_\_ [amount of Guarantee in words], such amount to be reduced periodically by the amounts recovered by you from the proceeds of the Contract.

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 there under or of any of the Contract documents which may be made between [name of Employer] 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.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until \_\_\_\_\_(name of Employer) receives full payment of the same amount from the Contract.

Yours faithfully,

Signature and Seal \_\_\_\_\_

Name of the Bank or financial institution \_\_\_\_\_ Address

\_\_\_\_\_

Date \_\_\_\_\_

Witness: Name: \_\_\_\_\_

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

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

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

## **TENDER QUESTIONNAIRE**

Please fill in block letters.

1. Full names of tenderer

.....

2. Full address of tenderer to which tender correspondence is to be sent  
(unless an agent has been appointed below)

.....

3. Telephone number (s) of tenderer

.....

4. Telex address of tenderer

.....

5. Name of tenderer's representative to be contacted on matters of the tender  
during the tender period

.....

6. Details of tenderer's nominated agent (if any) to receive tender notices. This  
is essential if the tenderer does not have his registered address in Kenya  
(name, address, telephone, telex)

.....

Signature of Tenderer

Make copy and deliver to : \_\_\_\_\_ ( Name of Employer)



**CONFIDENTIAL BUSINESS QUESTIONNAIRE**

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c) and 2 (d) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form.

Part 1 – General

Business Name .....

Location of business premises;           Country/Town.....

Plot No..... Street/Road .....

Postal Address..... Tel No.....

Nature of Business.....

Current Trade Licence No..... Expiring date.....

Maximum value of business which you can handle at any time: K.  
pound.....

Name of your bankers.....

Branch.....

Part 2 (a) – Sole Proprietor

Your name in full..... Age.....

Nationality..... Country of Origin.....

\*Citizenship details .....

Part 2 (b) – Partnership

Give details of partners as follows:

	Name in full	Nationality	Citizenship Details	Shares
1.	.....	.....	.....	.....
2.	.....	.....	.....	.....
3.	.....	.....	.....	.....

Part 2(c) – Registered Company:

Private or  
public.....State  
the nominal and issued capital of the Company-

Nominal Kshs.....

Issued Kshs..... Give

details of all directors as follows:

Name in full. Nationality. Citizenship Details\*. Shares.

- 1. ....
- 2. ....
- 3. ....
- 4. ....

Part 2(d) – Interest in the Firm:

Is there any person / persons in .....(Name of Employer) who has  
interest in this firm? Yes/No.....(Delete as necessary)

I certify that the information given above is correct.

.....  
(Title) (Signature) (Date)

\* Attach proof of citizenship

**SCHEDULE OF LABOUR:- BASIC RATES**

LABOUR CATEGORY	UNIT (MONTH/SHIFT/HOUR)	RATES

Categories to be generally in accordance with those used by the Kenya Building  
Construction and Engineering and Allied Trades  
Workers' Union.

**DETAILS OF SUB-CONTRACTORS**

If the Tenderer wishes to sublet any portions of the Works under any heading, he must give below details of the sub- contractors he intends to employ for each portion.

Failure to comply with this requirement may invalidate the tender.

(1) Portion of Works to be sublet:

.....

[i] Full name of Sub-contractor

and address of head office: .....

..... (ii)

Sub-contractor's experience  
of similar works carried out in the  
last 3 years with  
Contract value:

.....

.....

..... (2)

Portion of Works to sublet:

.....

(i) Full name of sub-contractor and  
address of head office:

.....

.....

..... (ii)

Sub-contractor's experience  
of similar works carried out  
in the last 3 years with  
contract value:

.....

.....

\_\_\_\_\_  
[Signature of Tenderer)

\_\_\_\_\_  
Date

**CERTIFICATE OF TENDERER’S VISIT TO SITE**

This is to certify that

[Name/s].....

.....

Being the authorized representative/Agent of [Name of Tenderer]

.....

.....

participated in the organized inspection visit of the site of the works for the (Name of Contract: .....)

..... day of.....20.....

Signed.....

(Employer’s Representative)

.....

NOTE: This form is to be completed whether the site visit is made at the time of the organized site or privately organized.

**FORM OF WRITTEN POWER-OF-ATTORNEY**

The Tenderer consisting of a joint venture shall state here below the name and address of his representative who is authorised to receive on his behalf correspondence in connection with the Tender.

.....  
(Name of Tenderer's Representative in block letters)

.....  
(Address of Tenderer's Representative)

..... (Signature of Tenderer's Representative)

**KEY PERSONNEL**

DESIGNATION	NAME	NATIONALITY	SUMMARY OF QUALIFICATIONS AND EXPERIENCE
Headquarters: 1. Director 2. 3. 4. 5. etc.			
Site Office: 1. Site Superintendent 2. 3. 4. 5. etc.			

I certify that the above information is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

**SCHEDULE OF COMPLETED WATER WORKS CARRIED OUT BY  
THE TENDERER IN THE LAST THREE YEARS**

DESCRIPTION OF WORKS AND CLIENT	TOTAL VALUE OF WORKS (KSHS)	CONTRACT PERIOD (YEARS)	YEAR COMPLETED

I certify that the above Civil Works were successfully carried out and completed by ourselves.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

\*Value in Kshs using Central Bank of Kenya mean exchange rate at a reference date 30 days before date of tender opening.



**SCHEDULE OF ONGOING PROJECTS**

DESCRIPTION OF WORK AND CLIENT	CONTRACT PERIOD	DATE OF COMMENCEMENT	DATE OF COMPLETION	TOTAL VALUE OF WORKS (KSHS.)	PERCENTAGE COMPLETED TO DATE

I certify that the above Civil Works are being carried out by ourselves and that the above information is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

**OTHER SUPPLEMENTARY INFORMATION**

1. Financial reports for the last five years, balance sheets, profit and loss statements, auditors' reports etc. List them below and attach copies.

.....  
 .....  
 .....

2. Evidence of access to financial resources to meet the qualification requirements. Cash in hand, lines of credit etc. List below and attach copies of supporting documents

.....  
 .....  
 .....

3. Name, address, telephone, telex, fax numbers of the Tenderer's Bankers who may provide reference if contacted by the Employer.

.....  
 .....  
 .....

4. Information on current litigation in which the Tenderer is involved.

OTHER PARTY (IES)	CAUSE OF DISPUTE	AMOUNT INVOLVED (KSHS)

I certify that the above information is correct.

.....  
 .....

Title  
Date

Signature

**DECLARATION FORM**

To \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The tenderer i.e. (name and address) \_\_\_\_\_  
\_\_\_\_\_ declare the following:

- a) Has not been debarred from participating in public procurement.
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

(To be signed by authorized representative and officially stamped)

**LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

\_\_\_\_\_  
\_\_\_\_\_

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) \_\_\_\_\_  
\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICERFORM 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