



REPUBLIC OF KENYA



NORTHERN WATER WORKS DEVELOPMENT AGENCY

FRAMEWORK CONTRACT

**TENDER NO. NWWDA/FC/03/2021-2023
SUPPLY AND DELIVERY OF MINERAL WATER**

**CHIEF EXECUTIVE OFFICER
NORTHERN WATER WORKS DEVELOPMENT
AGENCY P.O. BOX 495-70100
GARISSA.**

**TEL: +254-46-2103598/3797
EMAIL: info@nwwda.go.ke
WEBSITE: www.nwwda.or.ke**

ISSUE DATE: 6th JULY,2021

	INTRODUCTION	3
SECTION I	INVITATION TO TENDER	4
SECTION II	INSTRUCTIONS TO TENDERERS	5
	Appendix to Instructions to Tenderers.....	20
SECTION III	GENERAL CONDITIONS OF CONTRACT... ..	22
SECTION IV	SPECIAL CONDITIONS OF CONTRACT... ..	28
SECTION V	QUALIFICATION CRITERIA... ..	30
SECTION VI	SCHEDULE OF MATERIALS/REQUIREMENTS	32
SECTION VII	STANDARD FORMS	37
7.1	FORM OF TENDER	38
7.2	CONFIDENTIAL BUSINESS QUESTIONNAIRES FORMS.....	39
7.3	DECLARATION NOT TO BE INVOLVED IN CORRUPT/FRAUDULENT PRACTICES	40
7.4	TENDER SECURITY DECLARATION FORM... ..	41
7.5	CONTRACT FORM.....	43
7.6	PERFORMANCE SECURITY FORM... ..	51
7.7	BANK GUARANTTE FOR ADVANCE PAYMENT FORM.....	52
7.8	MANUFACTURER’S AUTHORIZATION FORM... ..	53
7.9	LETTER OF NOTIFICATION OF AWARD	54
8.0	REPUBLIC OF KENYA-PPARB	55

Introduction

- 1.1 This document has been prepared for framework agreement. **The winning bidders will be awarded supply and delivery for 2 years 2021/2023.**
- 1.2 The document includes a form for invitation for tender, instructions to candidates and a letter of application with attached forms for candidates to complete.

SECTION I - INVITATION FOR TENDERS

TENDER NO: NWWDA/FC/03/2021-2023

TENDER NAME: SUPPLY AND DELIVERY OF MINERAL WATER.

- 1.1 **Northern Water Works Development Agency (NWWDA)** invites sealed tenders from eligible candidate **for SUPPLY AND DELIVERY OF MINERAL WATER.**
- 1.2 Eligible candidates may obtain the tender documents from NWWDA Procurement Office during normal working hours upon payment of non-refundable fee of **Kshs1,000** cash or Bankers Cheque or download the document for free from the website www.nwwda.go.ke or tenders.go.ke/website .
- 1.3 Prices quoted should not be net inclusive of all taxes, and delivery costs, must be in Kenya Shillings and shall remain valid for at least 12 Months following the date of signing of frame work contract with the winning bidder.
- 1.4 Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and name and be deposited in the **Tender Box** at **Northern Water Works Development Agency, P. O. Box 495-70100 Garissa, Maji House, Kismayu Road**, or to be addressed to the **Chief Executive Officer Northern Water Works Development Agency** so as to be received on or before **Wednesday 21ST JULY, 2021 at 10. 00 a.m.**

**Chief Executive Officer
Northern Water Works Development
Agency. P. O. Box 495 - 70100
GARISSA**

SECTION II - INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.
- 2.1.2 The procuring entity's employees, committee members, Council 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.

2.2 Eligible Goods

- 2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components
- 2.2.3 The origin of goods is distinct from the nationality of the tenderer.

2.3 Cost of Tendering

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 The price to be charged for a copy of the tender document shall be Kshs.1,000/-.
- 2.3.3 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

2.4. The Tender Document

- 2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Tenderers
- (i) Invitation to Tender
 - (ii) Instructions to tenderers
 - (iii) General Conditions of Contract
 - (iv) Special Conditions of Contract
 - (v) Schedule of requirements
 - (vi) Technical Specifications
 - (vii) Tender Form and Price Schedules
 - (viii) Tender Security Form
 - (ix) Contract Form
 - (x) Performance Security Form
 - (xi) Bank Guarantee for Advance Payment Form
 - (xii) Manufacturer's Authorization Form
 - (xiii) Confidential Business Questionnaire
- 2.4.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

2.5 Clarification of Documents

- 2.5.1 A prospective tenderer requiring any clarification of this tender Document may notify the Procuring entity in writing or by post at the Entity's address indicated in the Invitation to Tender. The Procuring Entity will respond in writing to any request for clarification of the Tender documents, which it receives not later than seven (7) days

prior to the deadline for the submission of tenders, prescribed by the Procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

2.5.2 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.

2.6 Amendment of Documents

2.6.1 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.

2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them.

2.6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

2.7 Language of Tender

2.7.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchange by the tenderer and the Procuring entity, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

2.8 Documents Comprising of Tender

2.8.1 The tender prepared by the tenderers shall comprise the following components

- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below

- (b) documentary evidence established in accordance with paragraph 2.1 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) documentary evidence established in accordance with paragraph 2.2 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) tender security furnished in accordance with paragraph 2.14

2.9 Tender Forms

2.9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

2.10 Tender Prices

2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices of the goods it proposes to supply under the contract.

2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.

2.10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account unless the price variation is in accordance to article 1.3 above.

2.10.4 The validity period of the tender shall be **120** days from the date of submission of the tender.

2.11 Tender Currencies

2.11.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the Appendix to Instructions to Tenderers.

2.12 Tenderers Eligibility and Qualifications

2.12.1 Pursuant to paragraph 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1

2.12.3 The documentary evidence of the tenderers qualifications to perform the contract, if its tender is accepted, shall be established to the Procuring entity's satisfaction;

- (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.
- (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

2.13 Goods Eligibility and Conformity to Tender Documents

2.13.1 Pursuant to paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract

2.13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

2.13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristic of the goods;
- (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2)

- years, following commencement of the use of the goods by the Procuring entity; and
- (c) a clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

2.14. Tender Security

2.14.1 The tenderer shall furnish, as part of its tender, a duly filled in **tender security declaration form** in the form specified in the Invitation to tender.

2.14.2 The tender security declaration form shall be in the format provided in this tender document.

2.14.3 The tender security declaration form is a commitment on the part of the tenderer to protect the procuring entity from the risk of the tenderer's conduct which would otherwise jeopardize the tendering process, pursuant to paragraph 2.12.7.

2.14.4 The tender security declaration by the tenderer shall be binding between the procuring entity and the tenderer.

2.14.5 Any tender not secured in accordance with paragraph 2.12.1 and 2.12.2 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.20

2.14.6 Unsuccessful tenderers will be informed of the outcome, but not later than thirty (30) days after the expiration of the period of tender validity as prescribed by the procuring entity.

2.14.7 The successful tenderers will sign the contract, pursuant to paragraph 2.30 and furnish the performance security;

2.14.8 The prescribed actions in the tender security declaration may be

Effected;

(a) If a tenderer **withdraws** its tender **during** the period of tender validity specified by the procuring entity on the Tender Form; or

(b) In the case of a successful tenderer, *if* the tenderer fails:

(i) to sign the contract in accordance with paragraph 30

or

(ii) to furnish performance security in accordance with paragraph 31.

(c) If the tenderer rejects, correction of an error in the tender.

2.15 Validity of Tenders

2.15.1 Tenders shall remain valid for **120** days or as specified in the Invitation to tender after the date of tender submission prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

2.15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

2.16 Format and Signing of Tender

2.16.1 The Procuring entity shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern. However, the `original` and `copy` thereof should be similar otherwise the Procuring Entity may reject the tender application on account of differences between these two documents.

2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.

2.16.3 The tender shall have no interlineations, erasures, or overwriting 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.

2.17 Sealing and Marking of Tenders

2.17.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.

2.17.2 The inner and outer envelopes shall:

(a) be addressed to the Procuring entity at the address given in the Invitation to Tender:

(b) bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” **Wednesday 21ST JULY, 2021 at 11.00am.**

2.17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

2.18 Deadline for Submission of Tenders

Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 no later than **Wednesday 21ST JULY, 2021 at 11.00am.**

2.18.1 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended

2.18.2 Each leaf of the tender document shall be systematically paginated, and all the leafs shall be hard bound and any spiral binding or other alternative loose binding of any pages shall render the tender document non-responsive at the discretion of the procuring entity.

2.19 Modification and Withdrawal of Tenders

- 2.19.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring Entity prior to the deadline prescribed for submission of tenders.
- 2.19.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, email but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 2.19.3 No tender may be modified after the deadline for submission of tenders.
- 2.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.14.7
- 2.19.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.19.6 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.

2.20 Opening of Tenders

- 2.20.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **11.00 am on Wednesday 21ST JULY, 2021** and in the location specified in the Invitation to Tender.
- 2.20.2 The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.20.3 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.20.4 The Procuring entity will prepare minutes of the tender opening.

2.21 Clarification of Tenders

2.21.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

2.21.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.22 Preliminary Examination

2.22.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

2.22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price (if any) that is obtained by multiplying the unit price and quantity, the unit price shall prevail. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between amounts in words and figures the amount in words shall prevail;

2.22.3 The Procuring entity may waive any minor error/s in a tender which does/do not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.22.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

2.23 Conversion to Single Currency

2.23.1 Where other currencies are used, the procuring entity will convert these currencies to Kenya Shillings using the selling exchange rate on the rate of tender closing provided by the Central Bank of Kenya.

2.24 Evaluation and Comparison of Tenders

2.24.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22

2.24.2 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

2.24.3 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.

2.25 Preference

2.25.1 Preference where allowed in the evaluation of tenders shall not exceed 15%

2.26 Contacting the Procuring entity

2.26.1 Subject to paragraph 2.21 no tenderer shall contact the Procuring entity on any matter related to its tender, from the time of the tender submission to the time the contract is awarded.

2.26.2 Any effort by a tenderer to influence the Procuring entity in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

2.27 Award of Contract

(a) Post-qualification

2.27.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.

2.27.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

(b) Award Criteria

2.27.4 The Procuring entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

(c) Procuring entity's Right to Vary quantities

2.27.5 The Procuring entity reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions.

(d) Procuring entity's Right to accept or Reject any or All Tenders

2.27.6 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action

2.27.7 A tenderer who gives false information in the tender document about its qualifications or refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

2.27.8 The procuring entity shall give prompt notice of the termination to the tenderer and on request, give its reasons for termination within fourteen (14) days of receiving the request from any tenderer.

2.28 Notification of Award

2.28.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.

2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties

2.28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

2.29 Signing of Contract

2.29.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

2.29.2 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.

2.29.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

2.30 Performance Security

2.30.1 Within Thirty (30) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity which shall be 10% of the contract price.

2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

2.31 Corrupt or Fraudulent Practices

- 2.31.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;
- (i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
 - (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Procuring entity of the benefits of free and open competition;
- 2.31.2 The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 2.31.3 Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

Appendix to Instructions to Tenderers

Notes on the Appendix to the Instruction to Tenderers

1. The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to the corresponding clause in the instructions to Tenderers included in Section II and has to be prepared for each specific procurement.
2. The procuring entity should specify in the appendix information and requirements specific to the circumstances of the procuring entity, the goods to be procured and the tender evaluation criteria that will apply to the tenders.
3. In preparing the Appendix the following aspects should be taken into consideration;
 - (a) The information that specifies and complements provisions of Section II to be incorporated
 - (b) Amendments and/or supplements if any, to provisions of Section II as necessitated by the circumstances of the goods to be procured to be also incorporated
4. Section II should remain unchanged and can only be amended through the Appendix.
5. Clauses to be included in this part must be consistent with the public procurement law and the regulations.

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	NWWDA/FC/03/2021-2023: Supply and Delivery of Mineral Water (Reserved for firms owned by Youth, Women & People with disability)
2.14	<p>The tender security shall be in the form of a filled-in tender security declaration form as provided for in this tender document addressed to Northern Water Works Development Agency.</p> <p>The conditions under the tender security declaration shall be actionable;</p> <p>a) If the tenderer withdraws its tender during the period of tender validity as specified in clause 2.8 of the ITT.</p> <p>(b) In the case of a successful tenderer, <i>if</i> the tenderer fails:</p> <p>(i) to sign the contract in accordance with paragraph 30 or (ii) to furnish performance security in accordance with paragraph 31.</p> <p>(c) If the tenderer rejects, correction of an error in the tender.</p>
2.15	Tenders shall remain valid for 120 days from date of submission.
2.16.1	Bidder to submit both the ORIGINAL and a SIMILAR COPY of a completed bid to the Procuring entity with all the attachments as required.
2.18.1	Closing date will be Wednesday 21ST JULY, 2021 at 11.00am
2.18.2	Paginating and binding of tender document to be as per the instructions above.
2.23	Tender prices shall be in Kenyan Shillings(KES)
2.29.1	Contract signing

SECTION III - GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

3.1.1 In this Contract, the following terms shall be interpreted as indicated:-

- (a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.
- (d) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

3.2 Application

3.2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment

3.3 Country of Origin

3.3.1 For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.

3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

3.4 Standards

3.4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

3.5 Use of Contract Documents and Information

- 3.5.1 The tenderer shall not, without the Procuring entity's prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.
- 3.5.2 The tenderer shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above
- 3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the Procuring entity

3.6 Patent Rights

- 3.6.1 The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Procuring entity's country

3.7 Performance Security

- 3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.
- 3.7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.

3.7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

3.8 Inspection and Tests

3.8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.

3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.

3.8.4 The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or

3.8.5 Waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.

3.8.6 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.9 Packing

3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

3.10 Delivery and Documents

3.10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract.

3.10.2 Tenderers' to ensure that critical pages of the tender documents are duly stamped and signed e.g. Price schedules, tender form, confidential questionnaire etc.

3.11 Insurance

3.11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

3.12 Payment

3.12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract

3.12.2 Payments shall be made promptly by the Procuring entity as specified in the contract.

3.13 Prices

3.13.1 Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

3.13.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

3.13.3 Where contract price variation is allowed, the variation shall not exceed 15% of the original contract price.

3.13.4 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.

3.14. Assignment

3.14.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent

3.15 Subcontracts

3.15.1 The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract

3.16 Termination for default

3.16.1 The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part

- (a) if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity
- (b) if the tenderer fails to perform any other obligation(s) under the Contract
- (c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

3.16.2 In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, equipment similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar goods.

3.17 Liquidated Damages

3.17.1. If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of 10%

of the delayed goods. After this the tenderer may consider termination of the contract.

3.18 Resolution of Disputes

3.18.1 The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

3.18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

3.19 Language and Law

3.19.1 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

3.20 Force Majeure

3.20.1 The tenderer shall not be liable for forfeiture of its performance security or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

Notes on Special Conditions of Contract

The clauses in this section are intended to assist the procuring entity in providing contract-specific information in relation to corresponding clauses in the General Conditions of Contract.

The provisions of Section IV complement the General Conditions of Contract included in Section III, specifying contractual requirements linked to the special circumstances of the procuring entity and the goods being procured. In preparing Section IV, the following aspects should be taken into consideration.

- (a) Information that complement provisions of Section III must be incorporated and
- (b) Amendments and/or supplements to provisions of Section III, as necessitated by the circumstances of the goods being procured must also be incorporated.

SPECIAL CONDITIONS OF CONTRACT

- 4.1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.
- 4.2. Special conditions of contract as relates to the GCC

REFERENCE OF GCC	OF SPECIAL CONDITIONS OF CONTRACT
3.7.1	NA
3.12.1	Payment is after delivery and acceptance of goods
3.18.1	As per provisions of 3.18

SECTION V-QUALIFICATION CRITERIA

The applicant shall meet the following criteria

EVALUATION STAGES

STAGE 1:

1.	MANDATORY REQUIREMENTS	Yes	No	Remarks
	Submission of valid documents under listed:-			
	i) Copy of valid Certificate of Incorporation / Registration certificate			
	ii) Copy of the latest CR12(for the Incorporated companies)			
	iii) Copy Valid Tax compliance Certificate			
	iv) Copy of valid business permit			
	v) Copy of current AGPO certificate (From the County Government or The National Treasury)			
	vi) The bid document/s to be systematically paginated.			
	vii) Submit a duly `filled up` tender declaration form in the format provided in this tender document, addressed to Northern Water Works Development Agency.			
	viii) Submit two copies of the tender document marked (Original & Copy). The Copies must be signed and stamped.			
	X1) Must have a distribution outlet with Garissa county			
	STAGE 2			
2	TECHNICAL AND OTHER REQUIREMENTS	Required Marks	Awarded Marks	Remarks
	i)Volume of business the firm can handle per month (at least KES 100,000)	9		
	ii) Similar jobs carried out in the past (attach proof in the form of transaction documents-LPOs/Contract)	25		
	iii) Business Experience/Number of years in business.	14		
	iv)Previous dealings with NWWDA - will address issues such as:- <ul style="list-style-type: none"> • Late delivery (Less 3) • Partial delivery(less 5) • Poor services/quality goods/returns e.g. Counterfeit Goods (less 6) NB: Those who haven`t been engaged by NWWDA in the past will be exempted/score all.	14		
	v) Provide information on: Telephone/mobiles, E-mail address and contact person(s)	9		
	vi) Provide certified bank statements for the last one year	12		
	vii). Company profile / business profile	9		
	viii) Complete Confidential Business Questionnaire attached	8		
	Total Marks	100		

NB: Only bidders who score 75% marks and above will be subjected to financial evaluation. Those who score below this mark will be eliminated at this stage and will not be considered further.

SECTION VI - SCHEDULE OF MATERIALS/REQUIREMENTS

NORTHERN WATER WORKS DEVELOPMENT AGENCY

TENDER NO. NWWDA/FC/03/2021-2023: SUPPLY AND DELIVERY OF MINERAL WATER

S/No	ITEM DESCRIPTION	UNIT OF ISSUE	PRICE/UNIT	REMARK
1	Mineral water -18ltrs	NO		
2	Mineral water - 20ltrs	NO		

NB:

- i. Prices should include all **the taxes**. All the specifications stated above are mandatory.
- ii. All the specifications stated above are mandatory
- iii. The lowest evaluated price for bidders who shall meet all the specification shall be considered for award as long as the prices are established to be within the prevailing market price.
- iv. Under no circumstances shall the candidates once approved to supply any of the above listed item, change/or request for changes of the indicated unit prices/s of such items within twelve (12) months following the date indicated on the framework contract.

Signature of tenderer _____

Stamp _____

SECTION VII - STANDARD FORMS

Notes on the sample Forms

1. Form of Tender -The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. Confidential Business Questionnaire Form - This form must be completed by the tenderer and submitted with the tender documents.
3. Tender Security Form -When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.
4. Contract Form -The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.
5. Performance Security Form - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
6. Bank Guarantee for Advance Payment Form - When Advance payment is requested for by the successful bidder and agreed by the procuring entity, this form must be completed fully and duly signed by the authorized officials of the bank.
7. Manufacturers Authorization Form - When required by the tender documents this form must be completed and submitted with the tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.

7.1 FORM OF TENDER

Date _____

Tender No.

To: **The Chief Executive Officer**
Northern Water Works Development Agency
P.O Box 495-70100
Garissa.

Gentlemen and/or Ladies:-

1. Having examined the Tender documents including Addenda No. (Insert numbers if any) the **receipt** of which is hereby duly acknowledged, we the undersigned, **offer to provide required Services/works/goods under this tender** in conformity with the said Tender document for the sum of (FIGURES:.....),(WORDS:.....)[Total Tender amount in words and figures] or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to provide the **required items** (Goods, Works or Services) in accordance with the conditions of the tender.
3. We agree to abide by this Tender for a period of 120 days from the date fixed for **Tender submission** of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract between us subject to the signing of the contract by both parties.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 2021

[Signature] [In the capacity of]

Duly authorized to sign tender for and on behalf of _____

Company's Stamp/ Seal

7.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c) whichever applied 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.

Plot No..... Street/Road

Postal Address Tel No. Fax E mail

Nature of Business

Registration Certificate No.

Maximum value of business which you can handle at any one time – KES.

Name of your bankers Branch

	<p>Part 2 (a) – Sole Proprietor</p> <p>Your name in full Age</p> <p>Nationality Country of origin</p> <ul style="list-style-type: none"> • Citizenship details • 																								
	<p>Part 2 (b) Partnership</p> <p>Given details of partners as follows:</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Name</th> <th style="text-align: left;">Nationality</th> <th style="text-align: left;">Citizenship Details</th> <th style="text-align: left;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship Details	Shares	1.	2.	3.	4.				
Name	Nationality	Citizenship Details	Shares																						
1.																						
2.																						
3.																						
4.																						
	<p>Part 2 (c) – Registered Company</p> <p>Private or Public</p> <p>State the nominal and issued capital of company-</p> <p>Nominal KES</p> <p>Issued KES.</p> <p>Given details of all directors as follows</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Name</th> <th style="text-align: left;">Nationality</th> <th style="text-align: left;">Citizenship Details</th> <th style="text-align: left;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>5.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship Details	Shares	1.....	2.....	3.....	4.....	5.....
Name	Nationality	Citizenship Details	Shares																						
1.....																						
2.....																						
3.....																						
4.....																						
5.....																						
Date	Signature of Candidate																								

- If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

7.3 DECLARATION NOT TO BE INVOLVED IN CORRUPT OR FRAUDULENT PRACTICES

TO: The Chief Executive Officer

Date: _____

Northern Water Works Development Agency

P.O Box 495-70100

Garissa.

Ladies and/or Gentlemen,

Being duly authorized to represent and act on behalf of _____ (name of firm) (herein after referred to as `the Applicant`) and having reviewed and fully understood all of the tender information provided, the undersigned hereby admit that _____ (name of the firm) has **Never Been Involved in any Corrupt or Fraudulent Practices** and further commit **Not to be Involved in any Corrupt or Fraudulent Practices and that We Shall Observe the Highest Standard of Ethics during the Procurement Process and Execution of Contracts.**

We further agree (by signing this declaration hereunder) that failure to comply with the above may lead to:

- i. Rejection of our proposal;
- ii. Having our firm`s details submitted to the Public Procurement Administrative Review Board (PPARB) for the purpose of debarring our firm from participating in public procurement in Kenya

Signed:	Signed:	Signed:
Name:	Name:	Name:
Designation:	Designation:	Designation:

7.4 TENDER SECURITY DECLARATION FORM

(The bidder shall complete this form in accordance with the instructions indicated)

Date:

(Insert date (as day, month, and year) of Bid Submission)

Tender No.:

(Insert number of bidding process)

To: NORTHERN WATER WORKS DEVELOPMENT

AGENCY MAJI HSE-KISMAYU RD

P.O BOX 495-70100, GARISSA.

We, the undersigned declare

that:

1. We understand that, according to your conditions, bids must be supported by a bid securing declaration.
2. We accept that we will automatically be suspended from being eligible for bidding in any contract with the purchaser for the period of time as shall be determined by the procuring entity, beginning from such a date as may be set, if we are in breach of our obligation/s under the bid conditions because we:
 - (a) Have withdrawn our bid during the period of bid validity specified by us in the bidding data sheet; or
 - (b) Having been notified of the acceptance of our bid by the purchaser during the period of bid validity;
 - i. Fail or refuse the contract if required, or
 - ii. Fail or refuse to finish the performance security in accordance with the ITT.
3. We understand that this bid security declaration shall expire if we are not the successful bidder, upon the earlier of ;
 - i. Our receipt of a copy of your notification of the outcome of the bidding process; or
 - ii. Thirty (30) days after the expiry of our tender validity period.
4. We understand that if we are a Joint Venture, the bid security declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the bid securing declaration shall be in the names of all future partners as named in the letter of intent.

Signed:

(Insert signature of person whose name and capacity are shown)

In the Capacity of

(Insert legal capacity of person signing the bid securing declaration)

Name:

(Insert complete name of person signing the bid securing declaration)

Duly authorized to sign the bid for and on behalf of:
..... (Insert complete name of bidder).

Date on Day of

(Insert date signing)

7.5 CONTRACT FORM

This agreement is made on _____ (day) of _____ (Month) _____ (Year) _____ (Year in words) between **MS** _____ of Post Office Number _____, _____, in the Republic of _____ (Country) (Hereinafter called the “Supplier” which expression shall where the context so admit include it’s successors and permit assigns) of the one part

AND

NORTHERN WATER WORKS DEVELOPMENT AGENCY (NWWDA) P.O Box 495-70100, GARISSA

(hereinafter called “**The Customer**” which expression shall where the context so admits include its successors and permitted assigns) of the other part.

Whereas the said Supplier has agreed to supply and deliver to the Customer`s Headquarters located in GARISSA Town, the list of any of the attached specified **items** of genuine quality (listed in clause **1.0**) as MAY be ordered from time to time, payable within 30 days following the date of completion of the delivery and inspection of the items.

Now therefore it is mutually agreed by and between the parties hereto as follows.

- a) NWWDA desires to have the specified items herein after (clause **1.0**) supplied and delivered to NWWDA Headquarters, located in GARISSA town, along Kismayu Road, as and when ordered for, strictly within the duration stated in the order.
- b) The Supplier is willing and able to supply genuine and original items as may be required by the customer as listed in clause (**1.0**) under the terms and condition of this contract.

Therefore in consideration of mutual premises, representation, conversant and other good and valuable consideration, the receipt and adequateness of which is hereby acknowledged by the parties to the following terms and conditions and to be bound thereby.

(1.0) SCOPE

The supply and delivery of the **items listed herein** shall cover the following specified items as set out below:

NO.	ITEM DESCRIPTION	UNIT OF ISSUE	Price/Unit	Remarks
1.				

This Agreement shall commence on _____ (Day/Month/Year) and expire by _____ (Day, Month/Year); BUT could be extended through writing or terminated before the expiry of the stated duration owing to a breach of this Agreement as stated herein.

- (2.0) That the contracted firm shall supply and deliver the specified items and transport them to the Customer`s Headquarters to allow for the final inspection and verification of the same and that the said delivery shall include and be limited to the involved activities under clause 1.0 if any.

(3.0) Either party may cancel either in whole or in part the provisions under this Agreement or cancel the Agreement entirely upon identifying a fundamental breach of the terms and conditions under this contract

and giving a written notice thereof; otherwise termination of this Agreement shall be effected following an advance notice of at least a one (1) month prior to the date of such termination where such termination is occasioned by the lapse of this contract's duration.

(4.0) The following obligations are conditions for this Agreement and any breach thereof shall be deemed a fundamental breach, which shall determine this Agreement immediately, and the rights and liabilities of the parties shall be determined:

- 4.0.1 Failure on the part of the customer or the Supplier to observe the obligation under this Agreement not requiring notice to be served and in the case of obligations requiring notice to be served, failure to comply with the terms of any notice;
- 4.0.2 The doing or permitting of any act by which the Supplier and the customer's rights may be prejudiced or put in jeopardy;
- 4.0.3 The levying of any distress or execution against the Supplier or customer or liquidation of the customer's company;
- 4.0.4 Colluding on the part of the Supplier, with individuals either within the Supplier's organization, with those of the customer to defraud the customer by way of delivery of substandard items, failure to supply or allow inspection to occur or such other activities detrimental to the welfare of the customer.

(5.0) In the event of this Agreement being determined whether by afflation of time, notice, breach or otherwise;

- a) The customer may pay to the Supplier a fair and reasonable amount for justifiable and quantifiable supplied items, where such price reflects only those costs not otherwise recoverable by the Supplier, at the time of termination and the Supplier shall give the customer full assistance to check the event of any work in progress.
- b) Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this Agreement and the determination of this Agreement shall not affect or prejudice such rights and remedies and each party shall remain liable to perform all outstanding liabilities under this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it.

(6.0) Amendments or Variations to the quoted supply and delivery prices to this contract shall be in accordance with the provisions under section 139 of the public procurement and Asset Disposal Act, 2015. Notwithstanding this provision, the procuring entity may terminate this contract if the proposed variation by the contracted supplier is not supported by any sustainable evidence of market dynamics or if such variation/s render/s the subsequent price to be beyond the client's budgetary allocation/s for the supply of the items. No assumptions/or projections of future expenditures/Claims, relating to the supply of this item/s shall be used by the Supplier as a basis for price variations, rather actual and documentary supported evidence shall be the basis for any amendments or variations to the prices herein. The onus of confirming the actual claims shall lie with the Supplier and be confirmed by the client/Procuring Entity.

(7.0) Proposal for any price amendments or variation/s if any, shall be communicated in writing to the Customer at least three (3) months in advance before the actual date when such variations are intended to be effected, failure to which no such price variation/s shall be effected or be considered a subject of negotiation by the Customer. Such communication shall both be through electronic media (emails) and in hard copy (ies).

(8.0) Any amendment(s)/variation(s) of price(s) shall in no way affect the quality of the supplied items, whereof such items shall maintain their quality based on the procuring entity's appraisals and ratings. Agreement(s) by both parties to the price amendment(s)/variation(s) shall be a subject of `settling` or otherwise within one (1) month following a formal communication by either party; and subsequent negotiation meetings, in which case termination processes shall commence if NO agreement is made.

(9.0) That the Supplier will only undertake responsibility to supply and deliver the named items on an understanding that genuine items, as specified by the customer shall be supplied and delivered as herein

stated and shall be purchased by the customer at the stated prices; and there shall be a guarantee of the duration as specified by the customer, following the date of the supply and delivery.

- (10.0) That the Supplier will not be responsible for replacement of the items to the said cases of negligence or willful damage; where any of these can be established beyond any reasonable doubt and consented to by the parties to this Agreement.
- (11.0) Both parties shall be released from their respective obligations in the event of national emergency, war, prohibitive Government regulations or any other cause beyond the reasonable control of the parties or either of those that render the performance of this Agreement impossible, whereupon money under this Agreement shall be paid immediately in proportion to the items delivered or otherwise as it may be agreed upon by the parties to this Agreement.
- (12.0) If any provision of this Agreement is declared by any judicial or any competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from a competent authority the parties shall amend that provision in such a reasonable manner as to achieve the intention of the parties.
- (13.0) This Agreement supersedes any prior Agreement between the parties whether written or oral.
- (14.0) Both parties shall comply with all laws, rules and regulation bearing upon the performance of these obligations under the terms of this Agreement.
- (15.0) That the Customer's Management shall appoint officer/s, who in liaison with the Supplier's supervisor, shall address and communicate issues pertaining to the supply and delivery of the items stated herein.
- (16.0) The Supplier shall be liable for any damages to the delivered items emanating from negligence or incompetence of the handlers as the case may be and shall subsequently be charged accordingly basing on the existing market rates or to replace the damaged items, as may be decided by the customer. The Supplier shall offset any charges/or undertake replacement/s within 30 days after the date of communication in writing.
- (17.0) The Supplier shall insure workers (the drivers, or others under the Supplier's authority) with Insurance firms of choice, and the Customer shall not be liable.
- (18.0) That any internal misunderstanding on the part of the Supplier's firm (poor employer-employee relations or otherwise as the case may be) shall not filter down to the inconvenience of the Customer with regard to the execution of obligations under this Agreement; in the event of which this contract shall be terminable.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first herein before written.

For and on behalf of **NORTHERN WATER WORKS DEVELOPMENT AGENCY**

Name: _____

Designation: **CHIEF EXECUTIVE OFFICER-NWWDA**

Signature: _____

Date: _____ *(Day/Month/Year)*

In the presence of:

Witness: Name: _____

Address: 495-70100, GARISSA

Signature: _____

Date: _____ (Day/Month/Year)

.....
For and on behalf of the Company: **MS** _____

Full name of the

Authorized representative: _____

Designation: _____

Signature: _____

Date: _____

In the presence of:

Witness: Name: _____

Address: _____

Signature: _____

Date: _____ (Day/Month/Year)

7.6 PERFORMANCE SECURITY FORM

To
[name of Procuring entity]

WHEREAS [name of tenderer] (hereinafter called “the tenderer”) has undertaken , in pursuance of Contract No. _____
_____ [reference number of the contract] dated _____ 20 _____
_____ to supply [description of goods] (hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of [amount of the guarantee in words and figure] and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of [amount of guarantee] as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the _____ day of _____ 20 _____

Signed and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

7.7 BANK GUARANTEE FOR ADVANCE PAYMENT FORM

To
[name of Procuring entity]

[name of tender]

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment, [name and address of tenderer](hereinafter called “the tenderer”) shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of [amount of guarantee in figures and words].

We, the [bank or financial institutions], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding[amount of guarantee in figures and words]

We further agree that no change or addition to or other modification of the terms of the Contract to be performed there-under or of any of the Contract documents which may be made between the Procuring entity and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid in full effect from the date of the advance payment received by the tenderer under the Contract until[date].

Yours truly,

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

7.8 MANUFACTURER'S AUTHORIZATION FORM

To *[name of the Procuring entity]*

WHEREAS *[Name of the manufacturer]* who are established and reputable manufacturers of *[name and/or description of the goods]* having factories at *[address of factory]* do hereby authorize *[name and address of Agent]* to submit a tender, and subsequently negotiate and sign the Contract with you against tender No. *[reference of the Tender]* for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

[Signature for and on behalf of manufacturer]

Note: This letter of authority should bear the letterhead of the Manufacturer and should be signed by a competent person.

7.9 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 OFFICER

7.10 FORM RB 1

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

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

BETWEEN

.....APPLICANT

AND

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

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
.....dated the...day of20.....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
D.G
