



Ref.: CWWDA/AFD/PQ/W3/2022-2023 (92)

Date: 27th January 2025

Dear all Bidders,

Arab Contractors

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RE: IMPROVEMENT OF DRINKING WATER AND SANITATION SYSTEMS IN MOMBASA-MWACHE,CKE 1103- TENDER FOR DESIGN, BUILD AND OPERATE OF MWACHE WATER TREATMENT PLANT AND ASSOCIATED WORKS
TENDER NO. CWWDA/AFD/PQ/W3/2022-2023

Clarification No. 4

Reference is made to the ongoing procurement of Works for Design, Build and Operate of Mwache Water Treatment Plant and Associated Works-Tender No. CWWDA/AFD/PQ/W3/2022-2023.

Kindly find attached herein response to the Clarifications requested by bidders. The same has been uploaded on our website <https://www.cwwda.go.ke/tenders> and the password remains the same. The bid submission deadline also remains unchanged.


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Ag. Chief Executive Officer



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**Design, Build and Operate of Mwaché Water Treatment Plant (CWWDA/AFD/W3/2022-2023)
Responses to requests for Clarifications (Sets No. 04 & 5)**

No.	Reference Document / Section	Clause or Page	Request for Clarification	Responses
Set No. 4				
1	About the part of Foreign Currency (Offshore payment)		Please clarify whether this part of payment can directly made to the account of the leader of the joint venture.	Payment of any amount due to the Contractor (Local and Foreign Currency) shall be made into the bank account nominated by the Contractor. The successful Bidder will be required to submit details of the nominated bank accounts which will form part of the Contract documents.
2	Tax payment subject and payment method		Please clarify whether the employer or the contractor responsible for the tax payment? And what is the payment method?	The Employer will remit withholding tax (WHT) to the Kenya Revenue Authority (KRA) on behalf of the contractor. Any other eligible taxes will be paid by the contractor to KRA. Refer to the Kenyan legislation on taxes for the tax obligations of the Employer and the Contractor, as well as responses to previous requests.
3	About advance payment		Please clarify whether VAT invoice required for advance payment?	The Project is not VAT exempted. All payments will be subject to VAT. Refer to the local legislation on taxes for the tax obligations of the Employer and the Contractor.
Set No. 5				
1	About the review of the Contractor's Documents.	GCC 5.2	The maximum number of reviews before the Contractor obtains the approval from the Employer's Representative on the documents are not specified. Please consider to specify.	Approval (where specified) of Contractor's documents will only be issued upon satisfactory conformity with the Employer's Requirements. We cannot specify a maximum number of reviews, it depends on the quality of the Contractor's submissions and how well they address the comments made on the submissions. If a Contractor's Document so fails to conform, it shall be rectified, resubmitted and reviewed (and, if specified, approved) at the Contractor's cost.
2	The Commencement Date shall be the date at which the following conditions precedent have all been fulfilled, which are: a) signature of the Contract Agreement by both Parties, and if required, approval of	PCC 8.1 PCC 9.1	The conditions to be met before the Commencement date and the execution of works shall also cover the following issues: 1. The Contractor has submitted to the Employer the Advance Payment Bond and the Performance Bond;	Performance Bond – provisions of Sub clause 4.2 of the Conditions of Contract remains unchanged.

**Design, Build and Operate of Mwache Water Treatment Plant (CWWDA/AFD/W3/2022-2023)
Responses to requests for Clarifications (Sets No. 04 & 5)**

No.	Reference Document / Section	Clause or Page	Request for Clarification	Responses
	<p>the Contract by relevant authorities of the Country; b) effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.14 [Compliance with Laws] as required for the commencement of the Works.</p> <p>Besides, there shall be no work authorized to proceed on any Project Area until such time the Contractor has:</p> <p>a) effected the insurances defined under Sub-Clause 19.2; and b) obtained the approval of the Employer's Representative of the Contractor's Worksite - ESMMP for the corresponding Project Area.</p>		<p>2. The advance payment has been made to the Contractor by the Employer;</p> <p>3. The Employer has achieved its financial closure;</p> <p>4. The Employer has obtained all the permits and approvals necessary for the commencement of the Works.</p> <p>Please clarify and consider to include the above conditions in the Contract terms.</p>	<p>Advance Payment Bond – refer to Annex L in Clarification No. 2.</p> <p>The Employer's Financial arrangements will be provided upon request by the Contractor (refer to GCC 2.4). The proposal to include this requirement as a precondition for commencement date is therefore rejected.</p> <p>The Contractor is responsible for obtaining Permits, Licenses or Approvals (refer to GCC Sub clause 2.2). Contractor's request to transfer this obligation to the Employer and its inclusion as precondition for Commencement Date is NOT Acceptable.</p>
3	<p>The Contractor shall ensure that the Works comply with the handback requirements specified in the Employer's Requirements prior to the issue of the Contract Completion Certificate.</p>	GCC 8.7	<p>What are the handback requirements? Please specify.</p>	<p>Handback requirements refer to the conditions and criteria that the Contractor must meet when handing over the works to the Employer at the end of the operation period (refer to chapter 7 of Section 7.4 of the Employer's Requirements.</p>
4	<p>Maximum amount of compensation payable by Contractor: 100% of the Accepted Contract Amount</p>	PCC Contract data 10.6 (a)	<p>When delays or interruptions are caused by the Contractor during the Operation Service, the Contractor shall only be responsible for the direct loss or damages arising therefrom. It is suggested that the maximum amount of such compensation should be 10% to 15% of the Accepted Contract Amount for Operation Service. Please clarify.</p>	<p>GCC and PCC 10.6 (a) refer to "Delays and interruptions during the Operation period" caused by the Contractor. As stated in the GCC 10.6 (a), the Contractor shall compensate the Employer for any losses including loss of revenue, loss of profit and overhead losses.</p> <p>PCC Contract data 10.6 (a) is changed and this compensation is limited to 100% of the Accepted Contract Amount for Operation Service.</p>

**Design, Build and Operate of Mwachwe Water Treatment Plant (CWWDA/AFD/W3/2022-2023)
Responses to requests for Clarifications (Sets No. 04 & 5)**

No.	Reference Document / Section	Clause or Page	Request for Clarification	Responses
5	<p>The penalty for the failure based on the level of non-conformity as defined in the ESHS requirements.</p> <p>i. A minimum of 15,000 EUR or as otherwise determined by the Engineer for Level 1 non-conformity.</p> <p>ii. A minimum of 40,000 EUR or as otherwise determined by the Engineer for Level 2 non-conformity.</p> <p>iii. A minimum of 75,000 EUR or as otherwise determined by the Engineer for Level 3 non-conformity.</p>	PCC 14.7 (Part B – Specific Provisions)	<p>There is no definition for “Engineer” in the Conditions of Contract. Should it be the “Employer’s Representative”?</p> <p>Is the amount of penalty for the levels of non-conformity effected on a daily basis or for each event?</p> <p>The levels of the non-conformity should be quantified, as it is difficult to determine whether the risk is moderate and non-immediate or not.</p>	<p>The term “The Engineer” is replaced with “The Employer’s Representative”.</p> <p>Penalty/deduction shall be effected in the subsequent payment certificate for each failure which will vary based on the level of non-conformity as defined in the ESHS requirements:</p> <p>The levels of non-conformity are clearly detailed in Part 2, Section 7.6 (Specifications for ESHS Management of Works), chapter 2.5 / Sub clause 3 (Management of non-conformities). The Contractor will be issued with a signed notification of observation prepared by the Employer’s Representative.</p> <p>Penalty/deduction shall be applied for each failure to perform any ESHS obligations of work under the Contract as determined by the Employer’s Representative.</p> <p>The Contractor is expected to scrupulously respect the ESHS Requirements and Bidder’s request for modification of this requirement is rejected.</p>
6	About payment.	14.8	<p>The Contractor shall be entitled to correct the non-conformity within a specified time period as instructed by the Employer’s Representative. Only when the Contractor still fail to remedy the non-conformity shall the penalty be effected.</p> <p>Please clarify and consider to modify.</p> <p>What is the payment method? L/C or T/T? Please specify.</p>	<p>Please refer to Part 3, Section 10, Appendix 1 for Schedule of Payments.</p>
7	Financing charges for delayed payment: Libor + 2% (annual simple interest rate)	Contract data 14.9	<p>Libor is no longer applicable. Please clarify and consider to modify.</p>	<p>“Libor” is replaced with “Secured Overnight Financing Rate (SOFR)”</p>