

# **COAST WATER SERVICES BOARD**



## **BIDDING DOCUMENTS**

**Project Name: De-Silting and Expansion of Water Pans  
and Earth Dams, Drilling and Equipping of  
Boreholes**

**Issued on: 18<sup>th</sup> December 2018**

**For**

**Contract Name: Construction of Mbilini Dam in Puma  
Ward Kinango Constituency Kwale County.**

**Contract No. CWSB/T/SPB/W/19/18-19**

**Employer:**

**COAST WATER SERVICES BOARD  
P.O. BOX 90417-80100  
MOMBASA, KENYA**

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# SECTION I

## SECTION II

### INSTRUCTIONS TO TENDERERS

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## **INSTRUCTIONS TO TENDERERS.**

### **1. General**

- 1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful Tenderer will be expected to complete the Works by the Intended Completion Date specified in the said Appendix.
- 1.2 Tenderers shall include the following information and documents with their tenders, unless otherwise stated:
- (a) copies of certificates of registration, and principal place of business;
  - (b) Ensure your firm is e- citizen linked
  - (c) Submit Anti-Corruption Declaration Commitment/ Pledge
  - (d) Valid Tax Compliance Certificate
  - (e) Copies of PIN Certificate
  - (f) Copies of VAT Certificate
  - (g) Valid Copies of CR 12
  - (h) Copies valid AGPO Certificate
  - (i) Dully completed , Signed & Stamped Tender Securing declaration
  - (j) Dully filled, signed and stamped price schedules & Bill of quantities.
  - (k) Bid Validity shall be 90 days
  - (l) Power of attorney shall be required
  - (m) Dully completed , Signed & Stamped Form of Tender
  - (n) Dully completed , Signed & Stamped Business questionnaire
  - (o) Copies of certificate of registration NCA 8 and above on water works
  - (p) Document must be paginated
  - (q) total monetary value of construction work performed for each of the last Three (3) years;
  - (r) experience in works of a similar nature and size for each of the last Three (3) years, and clients who may be contacted for further information on these contracts;
  - (s) major items of construction equipment owned or leased
  - (t) qualifications and experience of key site management and technical personnel proposed for the Contract;
  - (u) reports on the financial standing of the Tenderer, such as profit and loss statements and auditor's reports for the last two years;
  - (v) Authority to seek references from the Tenderer's bankers.
- 1.3 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.
- 1.4 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for

preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Tenderer's own expense.

- 1.5 The procurement entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 1.6 The price to be charged for the tender document shall not exceed Kshs.1,000/=
- 1.7 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

## **2. Tender Documents**

- 2.1 The complete set of tender documents comprises the documents listed here below and any addenda issued in accordance with clause 2.4 herebelow:-
  - (a) These instructions to Tenderers
  - (b) Form of Tender
  - (c) Conditions of Contract and Appendix to Conditions of Contract
  - (d) Specifications
  - (e) Drawings
  - (f) Bills of Quantities/Schedule of Rates (whichever is applicable)
  - (g) Other materials required to be filled and submitted in accordance with these Instructions and Conditions
- 2.2 The Tenderer shall examine all instructions, forms and specifications in the tender documents. Failure to furnish all information required by the tender documents may result in rejection of his tender.
- 2.3 A prospective Tenderer making inquiries of the tendering documents may notify the Employer in writing or by cable, telex or facsimile at the address indicated in the letter of invitation to tender. The Employer will respond to any request for clarification received earlier than seven [7] days prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.
- 2.4 Before the deadline for submission of tenders, the Employer may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all

Tenderers. Prospective Tenderers shall acknowledge receipt of each addendum in writing to the Employer.

- 2.5 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders in accordance with clause 4.2 here below.

### **3. Preparation of Tenders**

- 3.1 All documents relating to the tender and any correspondence shall be in English Language.
- 3.2 The tender submitted by the Tenderer shall comprise the following:-
- (a) The Tender;
  - (b) Tender Security;
  - (c) Priced Bill of Quantities/Schedule of Rates for lump-sum Contracts
  - (d) Any other materials required to be completed and submitted by Tenderers.
- 3.3 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities/Schedule of Rates. Items for which no rate or price is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities/Schedule of Rates. All duties, taxes and other levies payable by the Contractor under the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the Tenderer.
- 3.4 The rates and prices quoted by the Tenderer shall not be subject to any adjustment during the performance of the Contract.
- 3.5 The unit rates and prices shall be in Kenya Shillings.
- 3.6 Tenders shall remain valid for a period of sixty (60) days from the date of submission. However in exceptional circumstances, the Employer may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing.
- 3.7 The Tenderer shall prepare one original of the documents comprising the tender documents as described in these Instructions to Tenderers.
- 3.8 The original shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the Tenderer. All pages of the tender where alterations or additions have

been made shall be initialed by the person or persons signing the tender.

3.9 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.

3.10 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.

#### **4. Submission of Tenders**

4.1 The tender duly filled and sealed in an envelope shall;-

(a) be addressed to the Employer at the address provided in the invitation to tender;

[b] bear the name and identification number of the Contract as defined In the invitation to tender; and

[c] Provide a warning not to open before the specified time and date for Tender opening.

4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender.

4.3 The tenderer shall not submit any alternative offers unless they are specifically required in the tender documents.

Only one tender may be submitted by each tenderer. Any tenderer who fails to comply with this requirement will be disqualified.

4.4 Any tender received after the deadline for opening tenders will be returned to the tenderer un-opened.

4.5 The Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with sub-clause 2.5 in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will then be subject to the new deadline.

#### **5. Tender Opening and Evaluation**

5.1 The tenders will be opened in the presence of the Tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender.

- 5.2 The Tenderers' names, the total amount of each tender and such other details as may be considered appropriate, will be announced at the opening by the Employer. Minutes of the tender opening, including the information disclosed to those present will also be prepared by the Employer.
- 5.3 Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of the Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Employer's officials, processing of tenders or award decisions may result in the rejection of his tender.
- 5.4 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:
- (a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
  - (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's representative, there is an obvious typographical error, in which case the 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 Bill of Quantities/Quotation, 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 P.C. 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 valuation 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 forfeited.
- 5.5 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.



- 5.6 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 5.7 Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.
- 5.8 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.
- 5.9 Preference where allowed in the evaluation of tenders shall not exceed 15%
- 5.10 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may request [in writing] any Tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the tender price or substance of the tender shall be sought, offered or permitted.
- 5.11 The Tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.

## **6. Award of Contract**

- 6.1 The award of the Contract will be made to the Tenderer who has offered the lowest evaluated tender price.
- 6.2 Notwithstanding the provisions of clause 6.1 above, the Employer reserves the right to accept or reject any tender and to cancel the tendering process and reject all tenders at any time prior to the award of Contract without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the action.
- 6.3 The Tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum [hereinafter and in all Contract documents called the "Contract Price" which the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. The contract shall be formed on the parties signing the contract. At the same time the other tenderers shall be informed that their tenders have not been successful.

- 6.4 The Contract Agreement will incorporate all agreements between the Employer and the successful Tenderer. It will be signed by the Employer and sent to the successful Tenderer, within 30 days following the notification of award. Within 21 days of receipt ,the successful Tenderer will sign the Agreement and return it to the Employer.
- 6.5 Within 21 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Employer a Performance Security amount stipulated in the Appendix to Conditions of Contract.
- 6.6 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.
- 6.7 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 6.8 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 das of receiving the request from any tenderer.

## **7. Corrupt and fraudulent practices**

- 7.1 The procuring entity requires that the tenderer observes the highest standard of ethics during the procurement process and execution of the contract. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.
- 7.2 The procuring entity will reject a tender if it determines that the tenderer recommended for award has engaged in corrupt and fraudulent practices in competing for the contract in question.
- 7.3 Further a tenderer who is found to have indulged in corrupt and fraudulent practices risks being debarred from participating in public procurement in Kenya.



**SECTION III**  
**CONDITIONS OF CONTRACT**

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## SECTION III - CONDITIONS OF CONTRACT

### 1. Definitions

1.1 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. Contract Documents**

2.1 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) Specifications,
- (6) Drawings,
- (7) Bills of Quantities or Schedule of Rates [whichever is applicable]

## **3. Employer’s Representative’s Decisions**

3.1 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.

#### **4. Works, Language and Law of Contract**

- 4.1 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.
- 4.2 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.

#### **5. Safety, Temporary works and Discoveries**

- 5.1 The Contractor shall be responsible for design of temporary works and shall obtain approval of third parties to the design of the temporary works where required.
- 5.2 The Contractor shall be responsible for the safety of all activities on the Site.
- 5.3 Any thing 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.

#### **6 Work Program and Sub-contracting**

- 6.1 Within seven days after Site possession date, the Contractor shall submit to the Employer's Representative for approval a program showing the general methods, arrangements, order and timing for all the activities in the Works.
- 6.2 The Contractor may sub-contract the Works (but only to a maximum of 25 percent of the Contract Price) with the approval of the Employer's Representative. However, he shall not assign the Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor's obligations.

#### **7 The site**

- 7.1 The Employer shall give possession of all parts of the Site to the Contractor.
- 7.2 The Contractor shall allow the Employer's Representative and any other person authorised by the Employer's Representative ,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.

## **8 Instructions**

- 8.1 The Contractor shall carry out all instructions of the Employer's Representative which are in accordance with the Contract.

## **9 Extension of Completion Date**

- 9.1 The Employer's Representative shall extend the Completion Date if an occurrence arises which makes it impossible for completion to be achieved by the Intended Completion Date. The Employer's Representative shall decide whether and by how much to extend the Completion Date.

- 9.2 For the purposes of this clause, the following occurrences shall be valid for consideration;

Delay by:-

- (a) force majeure, or
- (b) reason of any exceptionally adverse weather conditions, or
- (c) reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
- (d) reason of the Employer's Representative's instructions issued under these Conditions, or
- (e) reason of the contractor not having received in due time necessary instructions, drawings, details or levels from the Employer's Representative for which he specifically applied in writing on a date which having regard to the date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under this clause was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- (f) delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
- (g) reason of delay by statutory or other services providers or similar bodies engaged directly by the Employer, or
- (h) reason of opening up for inspection of any Work covered up or of the testing or any of the Work, materials or goods in accordance with these conditions unless the inspection or test showed that the Work, materials or goods were not in accordance with this Contract, or



- (i) reason of delay in appointing a replacement Employer's Representative, or
- (j) reason of delay caused by the late supply of goods or materials or in executing Work for which the Employer or his agents are contractually obliged to supply or to execute as the case may be, or
- (k) delay in receiving possession of or access to the Site.

## **10 Management Meetings**

- 10.1 A Contract management meeting shall be held regularly and attended by the Employer's Representative and the Contractor. Its business shall be to review the plans for the remaining Work. The Employer's Representative 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 Employer's Representative either at the management meeting or after the management meeting and stated in writing to all who attend the meeting.
- 10.2 Communication between parties shall be effective only when in writing.

## **11 Defects**

- 11.1 The Employer's Representative 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 Employer's Representative may instruct the Contractor to search for a defect and to uncover and test any Work that the Employer's Representative 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.
- 11.2 The Employer's Representative 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.
- 11.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Employer's Representative's notice. If the Contractor has not corrected a defect within the time specified in the Employer's Representative's notice, the Employer's Representative 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.

## **12 Bills of Quantities/Schedule of Rates**

- 12.1 The Bills of Quantities/Schedule of Rates shall contain items for the 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/Schedule of Rates for each item. Items against which no rate is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the rates for other items in the Bills of Quantities/Schedule of Rates.
- 12.2 Where Bills of Quantities do not form part of the Contract, the Contract Price shall be a lump sum (which shall be deemed to have been based on the rates in the Schedule of Rates forming part of the tender) and shall be subject to re-measurement after each stage.

## **13 Variations**

- 13.1 The Contractor shall provide the Employer's Representative with a quotation for carrying out the variations when requested to do so. The Employer's Representative shall assess the quotation and shall obtain the necessary authority from the Employer before the variation is ordered.
- 13.2 If the Work in the variation corresponds with an item description in the Bill of Quantities/Schedule of Rates, the rate in the Bill of Quantities/Schedule of Rates shall be used to calculate the value of the variation. If the nature of the Work in the variation does not correspond with items in the Bill of Quantities/Schedule of Rates, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 13.3 If the Contractor's quotation is unreasonable, the Employer's Representative may order the variation and make a change to the Contract Price, which shall be based on the Employer's Representative's own forecast of the effects of the variation on the Contractor's costs.

## **14 Payment Certificates and Final Account**

- 14.1 The Contractor shall be paid after each of the following stages of Work listed herebelow (subject to re-measurement by the Employer's Representative of the Work done in each stage before payment is made). In case of lump-sum Contracts, the valuation for each stage shall be based on the quantities so obtained in the re-measurement and the rates in the Schedule of Rates.
- (i) Advance payment \_\_\_\_\_ (*percent of Contract Price,*  
[after Contract execution] *to be inserted by the Employer.*)

- (ii) First stage (*define stage*) \_\_\_\_\_
- (iii) Second stage (*define stage*) \_\_\_\_\_
- (iv) Third stage (*define stage*) \_\_\_\_\_
- (v) After defects liability period .

14.2 Upon deciding that Works included in a particular stage are complete, the Contractor shall submit to the Employer's Representative his application for payment. The Employer's Representative shall check, adjust if necessary and certify the amount to be paid to the Contractor within 21 days of receipt of the Contractor's application .The Employer shall pay the Contractor the amounts so certified within 30 days of the date of issue of each Interim Certificate.

14.3 The Contractor shall supply the Employer's Representative 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 Employer's Representative 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 Employer's Representative 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 Employer's Representative 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.

14.4 If the period laid down for payment to the Contractor upon each of the Employer's Representative's Certificate by the Employer has been exceeded, the Contractor shall be entitled to claim simple interest calculated pro-rata on the basis of the number of days delayed at the

Central Bank of Kenya's average base lending rate prevailing on the first day the payment becomes overdue. The Contractor will be required to notify the Employer within 15 days of receipt of delayed payments of his intentions to claim interest.

## **15. Insurance**

15.1 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.

## **16. Liquidated Damages**

16.1 The Contractor shall pay liquidated damages to the Employer at the rate 0.001 per cent of the Contract price per day for each day that the actual Completion Date is later than the Intended Completion Date except in the case of any of the occurrences listed under clause 9.2. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

## **17. Completion and Taking Over**

17.1 Upon deciding that the Work is complete the Contractor shall request the Employer's Representative 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 Employer's Representative issuing a Certificate of Completion.

## **18. Termination**

18.1 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 Employer's Representative;
- (b) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (c) a payment certified by the Employer's Representative is not paid by the Employer to the Contractor within 30 days after the expiry of the payment periods stated in sub clauses 14.2 and 14.3 hereinabove.
- (d) the Employer's Representative gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time.

18.2 If the Contract is terminated, the Contractor shall stop Work immediately, and leave the Site as soon as reasonably possible. The Employer's Representative 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.

## **19. Payment Upon Termination**

19.1 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.

19.2 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 Employer's Representative 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.

19.3 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 therefor the Employer's Representative 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.

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

20.1 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 favour or disfavour to any person in relation to this or any other contract with the Employer.
- (b) 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 an offence under the Laws of Kenya.

## **21. Settlement of Disputes**

21.1 Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.

## APPENDIX TO CONDITIONS OF CONTRACT

THE EMPLOYER IS

Name: Coast Water Services Board

Address: 90417 – 80100 Mombasa

Name of Employer's Representative Joseph Omwange

Title; Chief Executive Officer

Telephone: +254412315230

The name (and identification number) **Construction of Mbilini Dam in Kinango Constituency**

**Contract. CWSB No. CWSB/T/SPB/W/19/18-19**

The Works consist of:

- Excavation and Earth Works
- Construction of water draw off structures.

The Start Date shall be 15<sup>th</sup> February 2019

The Intended Completion Date for the whole of the Works shall be 15<sup>th</sup> September 2019

The following documents also form part of the Contract:

- (1) Agreement,
- (2) Letter of Acceptance,
- (3) Contractor's Tender,
- (4) Conditions of Contract,
- (5) Specifications,
- (6) Drawings,
- (7) Bills of Quantities or Schedule of Rates [whichever is applicable]

The Site Possession Date shall be 23<sup>rd</sup> February 2019

The Site is located at Mbilini in Kinango

The Defects Liability Period is 185 days.

Amount of Tender Security is Kshs 100,000

The name and Address of the Employer for the purposes of submission of tenders is the Chief Executive Officer, Coast Water Services, P.O.Box 90417-80100, Mombasa

The tender opening date and time is 2:00 pm on 8<sup>th</sup> day of January 2019

The amount of performance security is Kshs 300,000 .(Note: the Employer must select the form of performance security to be accepted. A bank guarantee of between five (5) and ten (10) percent is acceptable. A performance bond on the other hand from an insurance company may be of up to thirty (30) percent of the Contract Price).

## **SECTION IV – SPECIFICATIONS, DRAWINGS AND BILLS OF QUANTITIES/SCHEDULE OF RATES**

### **I. SPECIFICATIONS**

#### **Notes for preparing Specifications**

- 1.0 Specifications must be drafted to present a clear and precise statement of the required standards of materials and workmanship for tenderers to respond realistically and competitively to the requirements of the Employer and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other supplies to be permanently incorporated in the Works be new, unused, of the most recent or current models and incorporating all recent improvements in designs and materials unless provided otherwise in the Contract.
- 2.0 Specifications from previous similar projects are useful and it may not be necessary to rewrite specifications for every works contract.
- 3.0 Care must be taken in drafting Specifications to ensure they are not restrictive. In the specification of standards for materials, plant and workmanship existing Kenya Standards should be used as much as possible otherwise recognized international standards may also be used.

#### **II DRAWINGS**

- NOTE:
1. A list of the Contract Drawings should be inserted here
  2. The actual Contract Drawings including Site plans should be Annexed in a separate booklet

### **III BILL OF QUANTITIES/SCHEDULE OF RATES**



**CONSTRUCTION OF MBILINI DAM IN KINANGO CONSTITUENCY KWALE COUNTY**

<b>TITLE : PRELIMINARY AND GENERAL ITEMS</b>					
<b>Item No.</b>	<b>Description</b>	<b>Unit</b>	<b>QTY</b>	<b>Rate (Kshs)</b>	<b>Amount (KSHS)</b>
	<b>Preliminaries and General Items</b>				
<b>A0.1</b>	<b><u>GENERAL OBLIGATIONS</u></b>				
	<b>Preliminary and General Items are subject to the Conditions of Contract and the Specifications of the Contract.</b>				
A0.1.1	Provision of Performance Bank Guarantee in accordance with Clause 55.1 of Part II of the Conditions of Contract.	Item	1		
A0.1.2	Onshore insurance Provision of Insurance of damage to Equipment in accordance with Clause 14.1 of Part I of the Conditions of Contract.	Item	1		
A0.1.3	Onshore insurance Provision of insurance for loss or damage to property (except the Works, Plant, Materials or Equipment) in accordance with the Clause 14.1 of Conditions of Contract.	Item	1		
A0.1.4	On-shore insurance accordance with Clause 14.1 of Part I of the Conditions of Contract. Third party	Item	1		
A0.1.5	Onshore insurance of workmen	Item	1		
A0.1.6	Establishment of Contractor's camps, offices, facilities,etc. and provision of all equipment that will be required during the entire contract period, to site during the entire contract period	Item	1		

A0.1.7	Insert sum for Survey and setting out of the works in accordance with the Clause 17.1 of the Part I of the Conditions of Contract and Clause 1.4 of the Specifications.	Item	1		
A0.1.8	Provide, erect and maintain sign boards at locations shown by the Engineer.	Item	1		
A0.1.9	Mobilization and maintenance of Contractor's plant and equipment for the Contract period, including demobilization when finishing the Contract, as Lump Sum.	Sum	1		-
A0.2	<b><u>SERVICES FOR THE ENGINEER</u></b>				
A0.2.1	Allow for CWSB staff supervision	Sum	1	300,000.00	300,000.00
A0.2.2	Allow for any repairs and maintenance of the above vehicles of the Engineer during the entire Contract	Sum	1	10,000.00	10,000.00
A0.2.3	Allow for profits and overheads on items A0.2.1 and A0.2.2	%	%	310,000.00	
<b>PAGE TOTAL CARRIED FORWARD TO BILL NO. A0 COLLECTION SHEET</b>					

<b>TITLE : MBILINI WATER PAN</b>					
<b>Item No.</b>	<b>Description</b>	<b>Unit</b>	<b>Qty</b>	<b>Rate (Kshs)</b>	<b>Amount (Kshs)</b>
<b>A1.0</b>	<b>EARTHWORKS FOR DAM, SPILLWAY AND ANCILLARY WORKS</b>				
A1.1	Clear site of all bushes, undergrowth, other vegetation and all trees grub up roots, burn or dispose off as directed on site by the Engineer.	Ha	1		
A1.2	Remove top soil to a depth not exceeding 250mm and set aside for re-use or disposal as may be directed by the Engineer.	m <sup>2</sup>	5,000		
A1.3	Excavate in pan area to required dimensions in normal soil and alluvial sands to a depth not exceeding 4.0 m and set aside material for re-use and/or disposal of unsuitable material within 500 m of the dam site at approved tip.	m <sup>3</sup>	20,000		
A1.4	Allow for dewatering of excavations during works.	Item	1		
A1.5	Excavate, load and haul to the dam site approved materials from identified material sites or borrow pits for embankment and access ramps. Compact to >85% MDD in layers not exc. 75mm.	m <sup>3</sup>	500		
A1.6	Allow for filling and compaction to >85% MDD at o.m.c to dam embankments in layers not exceeding 300 mm on the dam slopes using materials excavated from dam site.	m <sup>3</sup>	2,000		
					-
A1.7	Provide and compact 100 mm thick granular sub-base of selected materials for access ramps.	m <sup>3</sup>	500		

A1.8	Provision of approved clay fill in the dam core section as impervious seal	m <sup>3</sup>	500		
A1.9	Provision of filter transition material at the toe drain	m <sup>3</sup>	80		
A1.10	Provision of rip rap on upstream side as directed by the Engineer	m <sup>2</sup>	400		
	<b><u>Ground Investigations</u></b>				
A1.11	Excavate Trial Pits in material other than rock, maximum depth 2-3 m; minimum plan area at the bottom of the excavation. Collect distributed samples and backfill after sampling.	Item	1		
A1.12	<b><u>Geotextile membrane Lining</u></b>				
	Supply and laying of geomembrane lining as impermeable tightness. To be applied horizontally and on slopes of max1:3	m <sup>2</sup>	500		
	<b><u>Excavations for Ancillary Works</u></b>				
A1.13	Excavations for inflow channels to dam area and silt traps	m <sup>3</sup>	50		
A1.14	Excavations for overflow/Spillway canals	m <sup>3</sup>	1000		
<b>PAGE TOTAL CARRIED FORWARD TO COLLECTION SHEET</b>					
A2.0	<b>SILT TRAP-INCOMING FLOW CHANNELS</b>				
A2.1	Stone pitch the area with natural stone 150 mm thick and 0.6 m wide to the edges. Stones to be jointed using 1:3 cement mortar mix.	m <sup>2</sup>	15		
	<b>INFLOW AND OVERFLOW CHANNELS</b>				

A2.2	Provide and place 300 mm thick mass concrete sill mix 1:2:4 including for all the necessary formwork.	m <sup>3</sup>	5		
A2.3	Provide and place natural stone hardcore fill 500 mm thick.	m <sup>3</sup>	40		
A2.4	Stone pitch the side slopes area with natural 300 mm thick and 0.825 m wide to the edges. Stones to be joined using 1;3 cement mortar mix.	m <sup>2</sup>	50		
	<b><u>SPILLWAY CANAL</u></b>				
A2.10	Allow for shaping of bottom and sides of spillway canals as directed by the Engineer and as shown on drawings.	m <sup>2</sup>	50		
A2.15	Allow for installation of DN100 UPVC draw-off pipe complete with fittings and valve	m	100		
<b>PAGE TOTAL CARRIED FORWARD TO COLLECTION SHEET</b>					
<b>A3.0</b>	<b>OFF-SITE WORKS</b>				
A3.1	Supply all materials and erect security fence all around the Dam Site with one vehicular access and one pedestrian gate, with 2.5m high concrete poles at 3.0 m maximum corner bars, supports, barbed wire, concrete foundation all complete to the satisfaction of the Engineer.	m	120		
A3.2	Provide and plant shrubs and approved grass, suitable for sandy area in the green belt around the dam site, as specified and /or directed by the Engineer. The work to include all relevant activities and materials.	m <sup>2</sup>	500		
A3.3	Allow for construction of a cattle trough as per details in the drawings including supply of all materials, excavations etc.	nr	1		

A3.4	Provide all materials, lay, joint and test DN50 mm UPVC class C pipes from manhole chamber to cattle trough and local water supply point including all excavations and testing. Total length 50m.	m	50		
					-
<b>TOTAL CARRIED TO SUMMARY PAGE</b>					

<b>DEVELOPMENT OF WATER PAN AT MBILINI PUMA WARD IN KINANGO CONSTITUENCY</b>			
<b>CONTRACT No. CWSB/T/SPB/W/19/18-19</b>			
<b>SUMMARY OF BOQ'S</b>			
<b>BILL No.</b>	<b>Description</b>	<b>Amount (Kshs)</b>	
<b>1</b>	<b>PRELIMINARIES AND GENERAL ITEMS</b>		
<b>2</b>	<b>MBILINI WATER PAN</b>		
	<b>BILL OF QUANTITIES SUB TOTAL</b>		
	<b>ADD 16% VAT</b>		
<b>GRAND TOTAL</b>			

### **Notes for preparing Bills of Quantities**

1. The objectives of the Bills of Quantities are;
  - (a) to provide sufficient information on the quantities of Works to be performed to enable tenders to be prepared efficiently and accurately; and
  - (b) when a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.

In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bill of Quantities should be as simple and brief as possible.

### **Notes for preparing Schedule of Rates**

Where the time limit or other constraints do not allow the preparation of a Bill of Quantities for the Works, a lump-sum Contract shall be adopted and a Schedule of Rates (in place of a Bills of Quantities) shall be issued as part of the tender documents.

The objectives of the Schedule of Rates are;

- (a) to provide sufficient information on the nature of work items to be performed to enable tenders to be prepared efficiently and accurately; and
- (b) when a Contract has been entered into, to provide a basis for the pricing of Works executed for interim and final valuations.

In order to attain these objectives, Works should be itemized in the Schedule of Rates in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of Schedule of Rates should be as simple and brief as possible.

Measurement of Work executed after every agreed stage should be done and the quantities so obtained used alongside the rates in the schedule to arrive at interim valuation [for each stage]and the final valuation.

**SECTION V**  
**STANDARD FORMS**

**List of Standard Forms**

- (i) Form of Invitation for Tenders**
- (ii) Form of Tender**
- (iii) Letter of Acceptance**
- (iv) Form of Agreement**
- (v) Form of Tender Security**
- (vi) Performance Bank Guarantee**
- (vii) Performance Bond**
- (viii) Bank Guarantee for Advance Payment**
- (ix) Qualification Information**
- (x) Tender Questionnaire**
- (xi) Confidential Business Questionnaire**
- (xii) Details of Sub-Contractors**
- (xiii) Request for Review Form**



# FORM OF INVITATION FOR TENDERS

\_\_\_\_\_ [date]

To: \_\_\_\_\_ [name of Contractor]  
\_\_\_\_\_ [address]  
\_\_\_\_\_  
\_\_\_\_\_

Dear Sirs:

Reference: \_\_\_\_\_ [Contract Name]

You have been prequalified to tender for the above project.

We hereby invite you and other prequalified tenderers to submit a tender for the execution and completion of the above Contract.

A complete set of tender documents may be purchased by you from \_\_\_\_\_  
\_\_\_\_\_ [mailing address, cable/telex/facsimile numbers].

Upon payment of a non-refundable fee of Kshs \_\_\_\_\_

All tenders must be accompanied by \_\_\_\_\_ number of copies of the same and a tender security in the form and amount specified in the tendering documents, and must be delivered to

\_\_\_\_\_ [address and location]

at or before \_\_\_\_\_ (time and date). Tenders will be opened immediately thereafter, in the presence of tenderers' representatives who choose to attend.

Please confirm receipt of this letter immediately in writing by cable/facsimile or telex.

Yours faithfully,

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

\_\_\_\_\_ Name and Title

# 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/Schedule of Rates 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 Employer's Representative'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.
5. 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 Tenderer] of  
\_\_\_\_\_ [Address of Tenderer]

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

(Amend accordingly if provided by Insurance Company)

**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
  - (iv) Appendix to Conditions of Contract
  - (v) Specifications
  - (vi) Drawings
  - (vii) Priced Bills of Quantities/Priced Schedule of Rates [whichever is applicable]
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:

If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers

Or

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;

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]

## **PERFORMANCE BANK GUARANTEE**

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 civil 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 thereunder 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)*

## **PERFORMANCE BOND**

By this Bond, We \_\_\_\_\_ of (or whose registered office is situated at] \_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_ of[or whose registered office is situated at] \_\_\_\_\_ as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_ of[or whose registered office is situated at] \_\_\_\_\_ as Obligee (hereinafter called “the Employer”) in the amount of Kshs. \_\_\_\_\_ *[amount of Bond in figures]*/Kenya Shillings

\_\_\_\_\_ *[amount of Bond in words]*, for the payment of which sum well and truly, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a Contract with the Employer dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ for the execution of

\_\_\_\_\_ *[name of Contract]* in accordance with the Contract documents, Specifications and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a tender or tenders from qualified tenderers for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the



lowest responsive tenderer, arrange for a Contract between such tenderer and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof.

The term "Balance of the Contract Price", as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor under the

Contract, less the amount properly paid by the Employer to the Contractor;  
or

- (3) pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

SIGNED ON \_\_\_\_\_ SIGNED ON \_\_\_\_\_

On behalf of \_\_\_\_\_ On behalf of \_\_\_\_\_  
*[name of Contractor]* *[name of Surety]*

By \_\_\_\_\_ By \_\_\_\_\_

In the capacity of \_\_\_\_\_ In the capacity of \_\_\_\_\_

In the presence of;Name \_\_\_\_\_ In the presence of;Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## **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 thereunder 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: \_\_\_\_\_

# QUALIFICATION INFORMATION

## 1. Individual Tenderers or Individual Members of Joint Ventures

### 1.1 Constitution or legal status of tenderer **(Shall attach copy of Incorporation Certificate);**

Place of registration: \_\_\_\_\_

Principal place of business \_\_\_\_\_

Power of attorney of signatory of tender **shall be required**

### 1.2 Total annual volume of construction work performed in the last **Three (3) years shall be kshs.20 Million**

Year	Volume	
	Currency	Value
Yr 1		
Yr 2		
Yr 3		

### 1.3 Work performed as Main Contractor on works of a similar nature within the last Three (3) years with a *minimum value* of Ksh.10 Million. Also list details of work under way or committed, including expected completion date.

Year	Project name	Name of Client	Description of Similar work performed	Value of Contract (Ksh)
Yr 1				
Yr 2				
Yr 3				

### 1.4 Major items of Contractor's Equipment proposed for carrying out the Works. List all information requested below.

### 1.5. Equipment

The Bidder must demonstrate that it will have access to the key Contractor's equipment listed hereafter:

<b>No.</b>	<b>Equipment Type and Characteristics</b>	<b>Minimum Number required</b>
1	7/10 ton Tipper Lorry	1
2	Dozer	1
3	Excavator	1
4	4WD Pickup	1
5	Rock breakers	
6	Back hoe excavator	1
7	Water Bowser	1
8	Hand tools equipment (Assorted)	Various

## 1.6. Personnel

Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data.

The Bidder must demonstrate that it will have the personnel for the key positions that meet the following requirements:

<b>No.</b>	<b>Position</b>	<b>Total Work Similar Experience (years)</b>	<b>In Similar Works Experience (years)</b>
1	Civil Engineer	5	3
2	Hydro-geologist	5	3
3	Construction Technicians (Pipefitters)	7	5
4	Plant Operators	8	6
5	Surveyor	5	3

## 1.7. Financials

Financial reports for the last three (3) years: balance sheets, profit and loss statements, auditor's reports, etc. List below and attach copies.

- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of supportive documents
- 1.9 Name, address and telephone, telex and facsimile numbers of banks that may provide reference if contacted by the Employer.
- 1.10 Statement of compliance with the requirements of Clause 1.2 of the Instructions to Tenderers.
- 1.11 Proposed program (work method and schedule) for the whole of the Works shall be submitted

## **2 Joint Ventures**

- 2.0 The information listed in 1.1 – 2.0 above shall be provided for each partner of the joint venture.
- 2.1 The information required in 1.11 above shall be provided for the joint venture.
- 2.2 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture
- 2.3 Attach the Agreement among all partners of the joint venture ( and which is legally binding on all partners), which shows that:
  - a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
  - c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

## **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 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*)

**ANTI-CORRUPTION DECLARATION COMITMENT/ PLEDGE**

**(Sections39, 40,41,42,43 & of the PPD Act, 2005)**

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We .....

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No .....

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized  
Signature.....

Name and Title of Signatory.....





# **CONFIDENTIAL BUSINESS QUESTIONNAIRE**

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 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:*

	<i>Name in full</i>	<i>Nationality</i>	<i>Citizenship Details</i>	<i>Shares</i>
1	.....	.....	.....	.....
2	.....	.....	.....	.....
3	.....	.....	.....	.....

## **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

# **Tender-Securing Declaration (Mandatory)**

Date: *[insert **date** (as day, month and year)]*

Tender No.: *[insert **number of Tendering process**]*

Alternative No.: *[insert **identification No if this is a Tender for an alternative**]*

To: *[insert **complete name of Procuring Entity**]*

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time of *[insert **number of months or years**]* starting on *[insert **date**]*, if we are in breach of our obligation(s) under the Tender conditions, because we;

- a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- b) Having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity,
  - (i). Fail or refuse to execute the Contract, if required, or
  - (ii). Fail or refuse to furnish the Performance Security, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of;

- 1) Our receipt of your notification to us of the name of the successful Tenderer; or
- 2) Thirty days after the expiration of our Tender.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Tender Securing Declaration]*

Name: *[insert **complete name of person signing the Tender Securing Declaration**]*

Duly authorized to sign the Tender for and on behalf of: *[insert **complete name of Tenderer**]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

Corporate Seal (where appropriate)

**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

**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

## **ANNEX 1 – EVALUATION CRITERIA**

### PRELIMINARY EXAMINATION OF COMPLETENESS OF BID DOCUMENTS

#### **A. MANDATORY REQUIREMENTS**

- (a) copies of certificates of registration, and principal place of business;
- (b) Ensure your firm is e- citizen linked
- (c) Valid Tax Compliance Certificate
- (d) Copies of PIN Certificate
- (e) Copies of VAT Certificate
- (f) Valid Copies of CR 12
- (g) Copies valid AGPO Certificate
- (h) Dully completed , Signed & Stamped Tender Securing declaration
- (i) Dully filled, signed and stamped price schedules & Bill of quantities.
- (j) Bid Validity shall be 90 days
- (k) Power of attorney shall be required
- (l) Dully completed , Signed & Stamped Form of Tender
- (m) Dully completed , Signed & Stamped Business questionnaire
- (n) Copies of certificate of registration NCA 8 and above on water works
- (o) Document must be paginated
- (p) total monetary value of construction work performed for each of the last Three (3) years;
- (q) experience in works of a similar nature and size for each of the last Three (3) years, and clients who may be contacted for further information on these contracts;
- (r) major items of construction equipment owned or leased
- (s) qualifications and experience of key site management and technical personnel proposed for the Contract;
- (t) reports on the financial standing of the Tenderer, such as profit and loss statements and auditor's reports for the last two years;
- (u) Authority to seek references from the Tenderer's bankers.
- (v) Submit Anti-Corruption Declaration Commitment/ Pledge

#### **B. QUALIFICATION CRITERIA**

- a) Access to Liquid assets
- b) Minimum average annual construction turnover
- c) General construction experience
- d) Minimum contracts of similar experience
- e) Adequacy of technical proposal
- f) Key Personnel
- g) Equipment