

Design, Build and Operate of Mwache Water Treatment Plant (CWWDA/AFD/W3/2022-2023)

Responses to requests for Clarifications (Set No. 03)

No.	Reference Document / Section	Clause or Page	Request for Clarification	Responses
1.	Part 2 - Employer's Requirements 33. Contractors Key Personnel	Page 63/848	"Construction Site Manager; to manage the construction activities" is mentioned twice. Can you please confirm the number of Construction Site Manager necessary.	<i>Only one Construction Site Manager is requested.</i>
2.	"Part 2 – Employer's Requirements - Section 7,2 Design requirements "	Page 132/848	"ventilation rate min 10 liter per person" We are not used to this unit; Usually we are talking about: Air renewal rate (v/h) = fresh air flow rate (m ³ /h)/enclosed space volume (m ³). Can you please clarify the requirement?	<i>Air renewable rate for air conditioning is the greatest value of the following:</i> <ul style="list-style-type: none"> • 30 m³/h per 10m² of floor • For Offices and Meeting Rooms: 10 l/s per person • Chemical Storage Areas, Process rooms and laboratories: 15-30 l/s/person <i>As per WHO and EN 13779.</i>
3.	"UPDATED Part 2 – Employer's Requirements - Section 7.2 Design Requirements and Performances Specifications		3.5.6.2. Chlorine disinfection "[...] In case the UV reactor is not working, the minimum chlorine dosage should be 2 mg/l." Can you please precise a minimum time for the 2 mg/L dosage?	<i>Question is unclear. The dose of 2 mg/L must be achieved whenever the UV reactor is not functioning.</i>
4.	"Part 2 – Employer's Requirements - Section 7.2 Design Requirements and Performances Specifications	Page 139/848	3.18.3. Workshop - Store "[...] heavy-duty shelving (permissible unit loads of 100 kg)" Can you please clarify if this load is per m ² or some other unit?	<i>Permissible unit loads is 100 kg/m².</i>
5.	Part 2 – Employer's Requirements - Section VII, Vol 5	Section 14100 Pipes and Fittings	"All piping shall be designed for a minimum working pressure of 10 bar expect for the effluent pressure line which shall be designed for a minimum working pressure of 16 bar." Does "effluent" mean "raw water pipelines" between the RWPS and the WTP?	<i>Effluent term is not applicable. Consider a minimum working pressure of 10 bars for all pipes but please note that this is the minimum requirement, and that Contractor shall design the working pressure for each system as per Employer's Requirements.</i>
6.	Part 3 – Conditions of Contract Section 9 – Particular Conditions of Contract	Page 24/69	It is stated that "Operation Service Period: 8.2 The Contractor shall be responsible for Operation Service Period of two (2) years after the issuance of Commissioning Certificate, for the firm part only or for both firm and conditional part (whether the conditional part is notified or not)" Since the Firm Part and the Conditional Part of the WTP will have to be operated together and since the Conditional Part can be started up to one	<i>The Contractor shall be responsible for the Operation Service for a period of two (2) years. It could be for the firm part only or for both firm and conditional part or a mix between firm part and firm + conditional parts (whether the conditional part is notified or not and when). If the conditional</i>

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			<p>year after the Firm Part, can you please detail how the Operation Service Period of the Firm Part will be managed and paid to the Contractor during the period between the end of the Operation Service Period of the Firm Part and the end of the Operation Service Period of the Conditional Part? In particular for the guarantees and retentions.</p>	<p><i>part is notified some months after the firm part and that Commissioning Certificate is provided first for the firm part and later for the commissioning part, the Operation Service Period will be (2) years starting from the date of the firm part Commissioning Certificate and will end with operation of both the firm and the conditional parts.</i></p> <p><i>For illustration purposes, this can represent 6 months of operation for firm part only and 1 year and a half for firm part + conditional part.</i></p> <p><i>The Contractor will be paid on the basis of quantities actually executed in respect of the contract and contractual performances i.e. payment will be per month depending on the plant capacity. If firm part only is notified, the PS schedule 8 of firm part will be used. If after some time, the conditional part is notified, from the beginning of Operation Service Period for firm and conditional part, the PS schedule 8 of firm + conditional part will be used.</i></p> <p><i>There is no advance payment (and no advance payment guarantee) for the Operation phase, as per PCC 14.2)</i> <i>In cases where the retention periods for the Firm Part and Conditional Part vary, the reduction of the performance security amount will be executed in stages as follows:</i></p> <p><i>a. Upon completion of construction and the end of the retention period for the Firm Part,</i></p>

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				<p><i>the Contractor shall be entitled to the release of 5% of the Contract Amount corresponding to the Firm Part.</i></p> <p><i>b. Upon completion of construction and the end of the retention period for the Conditional Part, the Contractor shall be entitled to the release of 5% of the Contract Amount corresponding to the Conditional Part.</i></p>
7	<p><i>Part 3 – Conditions of Contract Section 10 – Contract Forms Appendix 1 – Schedule of Payments</i></p>	<p><i>Page 59/69</i></p>	<p><i>Payments instalments for Schedule No. 3: Equipment, Materials, Tools and Mandatory Spare Parts Supplied Within Employer's Country (Kenya) are not detailed. Can you please provide us with those details?</i></p>	<p><i>Payment instalments for Schedule No 3 will be the same as Payment instalments for Schedule No 2 with "CIP" replaced by "EXW" (Appendix 1 – "Schedule of payments" to the Contract Agreement to be amended accordingly)</i></p>
8	<p><i>Part 3 – Conditions of Contract Section 10 – Contract Forms Appendix 1 – Schedule of Payments</i></p>	<p><i>Page 59/69</i></p>	<p>Payments instalments for Price Schedule No. 2 – Equipment, Materials, Tools and mandatory Spare Parts supplied from abroad and Price Schedule No. 4 – Civil Engineering and Building Works mention respectively "Ten percent (10%) of the total or pro rata CIP amount upon issue of the Taking-Over Certificate." and "Thirty percent (30%) of the measured value of work performed by the Contractor as certified by the Engineer in accordance with the provisions of GCC Sub-Clause 14.6 [Issue of Interim Payment Certificates] upon issue of the Taking-Over Certificate."</p> <p>According to FIDIC Gold 2008 Contract and Particular Conditions of Contract, there is no "Taking-Over Certificate". Can you please clarify?</p>	<p><i>"Taking Over Certificate" shall be replaced by "Commissioning Certificate".</i></p>
9.	<p>Part 3 – Conditions of Contract Section 10 – Contract Forms Appendix 3 – Performance damages</p>	<p>Page 64/69</p>	<p>Calculation of Performance Damages for Minimum Sludge Dry Solids Contents is based on "AR = Average sludge production Ratio (in kg of Dry Solids per kg of COD at the inlet of the wastewater treatment plant)". This ratio is not applicable for a drinking water treatment plant. Can you please specify the ratio to be considered?</p>	<p><i>Please disregard this performance damage.</i></p>

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10.	Part 3 – Conditions of Contract Section 10 – Contract Forms Appendix 3 – Performance damages	Page 64 & 65/69	Calculation of Performance Damages are based on "I = Inflation rate over the RLE, in percentage". But there is no clear definition of this Inflation rate in the Tender Documents. Can you please specify the Inflation rate to be considered?	<i>Please refer to Annex N - Revised Part 3, section 10, contract agreement, appendix 3. For reminder, the life span expectancy for calculating the RLE was defined at 30 years in response to query 8 of set no. 1.</i>
11.	Part 2 – Employer’s Requirements Section 7.3 – Control of Performances Levels 3.3. ENERGY AND REAGENT CONSUMPTION & Part 3 – Conditions of Contract Section 10 – Contract Forms Appendix 3 – Performance damages	Page 63 & 64/69	In Part 2 – Employer’s Requirements - Section 7.3 – Control of Performances Levels - .3. ENERGY AND REAGENT CONSUMPTION it is stated that "However, without affecting the validity of the tests, the following tolerances will be allowed for excess consumption: Electrical energy 5%, <u>Reagents:10%</u> ". In Part 3 – Conditions of Contract - Section 10 – Contract Forms - Appendix 3 – Performance damages it is stated that "No damages apply" for "Failure to meet the rate by less than 5%" for "Guaranteed Maximum Energy Consumption Rate", "Guaranteed Minimum Sludge Dry Solids Contents" and " <u>Guaranteed Maximum Chemicals Consumption Rate</u> ". Those two requirements seem in contradiction. Can you please clarify?	<i>Tolerance included in Part 2 - Employer’s Requirements shall be considered. Part 3 – Section 10- KPI breach for chemical consumption rate is modified accordingly to 10%.</i> <i>Please refer to Annex N - Revised Part 3, section 10, contract agreement, appendix 3.</i>
12.	Part 3 – Conditions of Contract Section 10 – Contract Forms Appendix 3 – Performance damages	Page 64/69	Calculation of Performance Damages for Failure to meet Performance Guarantees during the Operation Service Period is not complete: the "USD <u>X</u> " amount per m ³ of production below the minimum production set in KPI and the " <u>A</u> %" value of Non-compliance of Continuous water supply (24x7) to the water supply network are not specified. Can you please provide us with those values?	<i>Please refer to Annex N - Revised Part 3, section 10, contract agreement, appendix 3.</i>
13.			Considering the project is funded by the AFD and the EIB, can you please confirm that the project qualifies as an "Official Aid Funded Project"?	<i>The credit financing agreement (CFA) for the AFD component has been signed (hence forming the firm tranche) while for the EIB component (provisional tranche), the Government of Kenya has requested for the funds. The project qualifies as an “official Aid Funded Project” except that the EIB component requires that the CFA is signed.</i>

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14.			Can you please confirm that the Employer will assist the Contractor in obtaining an exemption of PVOC (Pre-shipment Verification of Conformity) for all incorporated imported goods of the Project?	<i>Preparation and submission of the required documents for any exemption will be the responsibility of the Contractor. However, the Employer may assist where possible.</i>
15.			Can you please confirm that the Employer or the Kenyan Ministry of Water could be named as consignee for the incorporated imported goods of the Project?	<i>Any goods used in the contract shall be owned by the Contractor until handed over to the Employer as per the conditions of contract</i>
16.	Contract/ Appendix 1 Schedule of Payment	Part 3 /Appendix 1 - Item A	<p>PAYMENT INSTALMENTS</p> <p>Price Schedule No. 2 Equipment & material Supplied form aboard</p> <p>Ten percent (10%) of the total or pro rata CIP amount upon issue of the Taking-Over Certificate</p> <p>Price Schedule No.4 Civil & Building Thirty percent (30%) of the measured value of work performed by the Contractor as certified by the Engineer in accordance with the provisions of GCC Sub-Clause 14.6 [Issue of Interim Payment Certificates] upon issue of the Taking-Over Certificate.</p>	<p>PAYMENT INSTALMENTS</p> <p>Price Schedule No. 2 – Equipment, Materials, Tools and mandatory Spare Parts supplied from abroad</p> <p><i>In respect of equipment, Materials, tools and mandatory spare parts supplied from abroad, the following payments shall be made:</i></p> <ul style="list-style-type: none"> • <i>Seventy percent (70%) of the total or pro rata CIP amount upon delivery to the Site. Twenty percent (20%) of the total or pro rata CIP amount upon electrical connection and dry commissioning</i> • <i>Ten percent (10%) of the total or pro rata CIP amount upon issue of the Commissioning Certificate.</i> <p>Schedule No.4 – Civil Engineering and Building Works</p> <p><i>In respect of installation and other services for both the foreign and local currency portions, the following payments shall be made:</i></p> <p>☒ <i>Seventy percent (70%) of the measured value of work performed by the Contractor as certified by the Engineer in accordance with the provisions of GCC Sub-Clause 14.6 [Issue of Interim Payment Certificates] during the execution of the Works.</i></p>

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				<ul style="list-style-type: none">• <i>Thirty percent (30%) of the measured value of work performed by the Contractor as certified by the Engineer in accordance with the provisions of GCC Sub-Clause 14.6 [Issue of Interim Payment Certificates] upon issue of the Commissioning Certificate.</i>• <i>Provisional Sums shall be certified and paid as and when used in accordance with Sub-Clause 13.5 [Provisional Sums].</i>

Appendix 3 – Performance damages

1) Introduction and scope of application of performance damages

This Appendix defines the performance damages which are to be paid by the Contractor in case the Contractor does not comply, during the Operation Service Period, with the Performance Guarantees defined under the Schedule of Performance Guarantees.

Such performance damages apply in furtherance to the provisions contained in:

- a) GCC Sub-Clause 10.7 [*Failure to Reach Production Outputs*]; and
- b) GCC Sub-Clause 11.11 [*Failure to pass tests Prior to Contract Completion*].

These performance damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Clause 15 [*Termination by Employer*].

The payment of such performance damages shall not relieve the Contractor of any duties, obligations or responsibilities he has under the Contract, including, for the avoidance of doubt, the obligation to ensure that the Works remain in accordance with the Contract during the Operation Service Period.

2) Failure to meet Performance Guarantees during the Operation Service Period:

The performance damages referred to under GCC Sub-Clause 10.7, due by the Contractor to the Employer, shall be as follows:

No.	KPI Description	KPI Breach	Performance Damages
1	<i>Compliance with the drinking water quality standards defined in the Employer's Requirements</i>	<i>Non-compliance</i>	<i>No Operation Service payment for the non-compliant water produced</i>
2	<i>Production of a minimum of 93,000 m3/day for the firm part and 186,000 m3/day for the firm + conditional parts at the outlet of the Water Treatment plant at any time of the year.</i>	<i>Lower production than the lowest between minimum set and the actual demand from the client.</i>	<i>Shortfall between 0 and 10%: fixed penalty of 5,000 EUR per day for firm part and 10,000 EUR per day for firm + conditional parts. Shortfall above 10%: 0.5 EUR per m3 of production below the minimum production set in KPI</i>
3	<i>Continuous water supply (24x7) to the water supply network</i>	<i>Non-compliance exceeds 5%. Non-compliance is calculated as being the ratio of the number of non-supply hours, divided by hours in the month.</i>	<i>Operation Service payment over the month is reduced by the actual percentage of non compliance (equal or above the 5%)</i>

3) Failure to pass Tests Prior to Contract Completion:

The performance damages below correspond to the amount to be paid by the Contractor to the Employer for failure to pass the Tests Prior to Contract Completion, as laid down under sub-paragraph (c) of PCC Sub-Clause 11.11.

No.	KPI Description	KPI Breach	Performance Damages
1	Guaranteed Maximum Energy Consumption Rate	Failure to meet the rate by less than 5%	No damages apply
		Failure to meet the rate by more than 5%	Calculated as per formulae below
2	Guaranteed Maximum Chemicals Consumption Rate	Failure to meet the rate by less than 10%	No damages apply
		Failure to meet the rate by more than 10%	Calculated as per formulae below

Formulae for performance damages under item 1:

$$PD = (AECR - (GMECR \times 1,05)) \times V \times RLE \times CE$$

Where:

- PD =** Performance damages in currency
- AECR =** Actual Energy Consumption Rate (in kWh per m³ of water production)
- GMECR =** Guaranteed Maximum Energy Consumption Rate (in kWh per m³ of water production) as defined in the Schedule of Performance Guarantees
- V =** Production Volume (in m³/year)
- RLE =** Residual Life Expectancy of the facility, being the difference in between the life span expectancy of the facility, as defined in the Schedule of Performance Guarantees, and the Operation Service Period
- CE =** Cost of Electricity, in currency per kWh

Formulae for performance damages under item 2:

$$PD = (ACCR - (GMCCR \times 1,10)) \times V \times RLE \times CC$$

Where:

- PD =** Performance damages in currency
- ACCR =** Actual Chemical Consumption Rate (in kg per m³ of water production or kg per ton of DS)
- GMCCR =** Guaranteed Maximum Energy Consumption Rate (in kWh per m³ of water production or kg per ton of DS) as defined in the Schedule of Performance Guarantees
- V =** Production Volume (in m³/year or tDS/year)
- RLE =** Residual Life Expectancy of the facility, being the difference in between the life span expectancy of the facility, as defined in the Schedule of Performance Guarantees, and the Operation Service Period
- CC =** Cost of Chemical, in currency per kg

Part 3 – Conditions of Contract
Section 10 – Contract Forms

The performance damages used in conjunction with Sub-Clause 11.11 are meant to cover the likely losses of the Employer, over the remaining life span of the facility beyond the Contract completion, and therefore beyond the Operation Service completion.

Accordingly, if the Tests Prior to Contract Completion reveal that, for example, the consumption of energy or of chemicals is still higher than the Contractor's Performance Guarantees in the Schedule of Performance Guarantees, this means that the Employer will suffer from the consequences of such breach of Contract once the Employer takes over the facility from the Contractor and until the end of the life span of the facility; it was the Contractor who suffered from the consequences of such breach during the Operation Service Period.

The performance damages shall be set to remedy such breach, by providing adequate compensation to the Employer.